IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re	
UAL CORPORATION, et al.	Chapter 11
Debtors.	Case No. 02-B-48191 (Jointly Administered)
	Hon. Eugene R. Wedoff
	Hearing Date: May 11, 2005 Hearing Time: 2:00 p.m.

SUPPLEMENTAL OBJECTION OF ASSOCIATION OF FLIGHT ATTENDANTS-CWA, AFL-CIO, TO DEBTORS' MOTION TO REJECT THEIR COLLECTIVE BARGAINING AGREEMENT PURSUANT TO 11 U.S.C. § 1113(c) AND FOR VOLUNTARY TERMINATION OF THEIR DEFINED BENEFIT PENSION PLANS PURSUANT TO 29 U.S.C. § 1341(c)
[Docket No. 10808]

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Dated: April 29, 2005.

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The Association of Flight Attendants-CWA, AFL-CIO ("AFA"), hereby submits its supplemental objection to Debtors' motion under Bankruptcy Code 11 U.S.C. § 1113(c) and ERISA 29 U.S.C. § 1341(c). This objection supplements and is intended to be read in conjunction with AFA's prior objection to Section 1113(c) rejection, re-filed with this Court on April 11, 2005.

INTRODUCTION

In its first Memorandum in opposition to United's Section 1113(c) motion, AFA emphasized that the burden Section 1113 imposes upon a debtor is infused with good faith. None of the statutory elements can be satisfied if the company lacks the honesty of purpose Section 1113 assumes. In January 2004, AFA had ample reason to challenge United's ability to carry its burden of proof as the Company had repeatedly demonstrated that its sense of fairness was at best questionable. One need only recall that, but for the Court's intervention, United would have forced AFA to negotiate over pensions on a tilted playing field under United's initial agreement with the Airline Pilots Association ("ALPA").

Despite AFA's serious doubts about United's good faith, it went forward and reached an agreement providing United with the Flight Attendants' allocated annual savings of $130 million. It was also agreed that the parties would devote the next three months to negotiate over United's proposal to terminate the Flight Attendant Pension Plan. Failing a consensual agreement, the Company would renew its Section 1113(c) motion limited to this single issue.

Since February 1, when the pension negotiations began, United has pursued a course that demands more savings than are needed for a successful reorganization, evades its legal obligations, and is intended to block the protections Section 1113 affords employees. While United's good faith was of concern in January, it did not bar an agreement between parties. That is no longer the case. As shown below, United's bad faith and overreaching has infected every aspect of these Section 1113 negotiations.

Information critical to AFA's assessment of United's proposal and financial position is not credible. The Company has replaced good faith negotiations with unreasonable intransigence, only "tempered" by its new demand that any alternative to termination provide a twenty-year cure to its purported pension problem.

Indeed its only response in negotiations mimics its only objective -- United must terminate the Flight Attendants' pension plan. Rather than commit available resources, United secreted $1 billion in securities that will now be used, not to maintain the Plan, but to guarantee its demise.

United's agreement with the Pension Benefit Guaranty Corporation ("PBGC") is the most stark example and indeed the tell-tale sign of United's unwillingness to carry out its Section 1113 responsibilities. It cannot be disputed that this agreement, if approved, would abort the Section 1113 process -- negotiations would end; judicial scrutiny of United's conduct would be avoided; and the unique standard protecting labor agreements would be annulled.

Even though the depths of United's conduct extend to extinguishing the statutory rights afforded its employees, AFA has not responded in kind. The Union has developed a proposal that would, if United had treated it as Section 1113 requires, preserve the Flight Attendant Plan. Termination of the Plan is not necessary for United to exit bankruptcy.

Equally important, the balance of equities clearly favors the Flight Attendants who would suffer a tremendous harm if their pension plan is terminated and replaced with the Company-proposed defined contribution plan. The average cut in benefits would be 50%, dropping current Flight Attendants' retirement income from a modest amount to one below a subsistence level.

Accordingly, and as fully described below, United's motion must be denied as it cannot satisfy any of the requirements of Section 1113 or the distress termination standard of ERISA.

STATEMENT OF FACTS

I. THE FLIGHT ATTENDANT PENSION PLAN AND THE IMPACT OF PLAN TERMINATION.

There are 28,402 participants in the UAL Corporation Flight Attendant Defined Benefit Plan ("Flight Attendant Plan" or "Plan"): 15,254 active employees; 7,949 deferred employees; and 5,199 retirees. Supplemental Declaration of Timothy J. Marnell, dated April 11, 2005, ¶ 12. The Flight Attendant Plan covers 23% of all participants in United's four defined benefit plans. Id.

The Flight Attendant Plan provides for a very modest level of benefits, however, for the class of non-highly compensated employees covered by the Plan, it represents indispensable retirement income. For example, the projected benefit at retirement for a 49-year-old Flight Attendant with a salary of $42,000, who has worked 26 years and retires at age 56 (the historical average age of a Flight Attendant at retirement) is approximately $1,943 per month. Second Declaration of David Feinstein, filed this same date, ¶ 10. The benefits for variously situated Flight Attendants are also modest:

	Age	Service	Salary	Monthly Benefit Under Current Plan
Flight Attendant 1	49	26 years	42,000	$1,943.90
Flight Attendant 2	43	16 years	42,000	$2,184.85
Flight Attendant 3	31	8 years	37,200	$3,413.18
Flight Attendant 4	25	0 years	20,000	$2,101.79

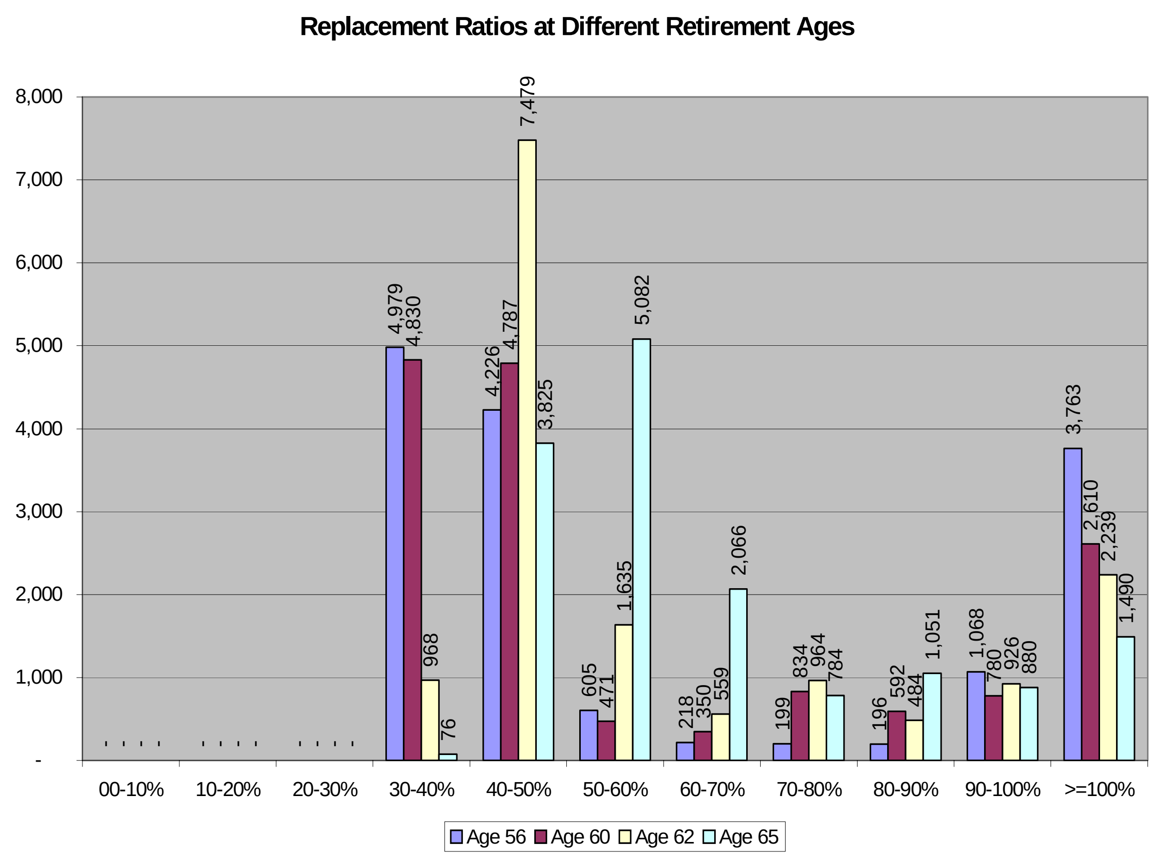
Id.

United is currently proposing to terminate the Flight Attendant Plan and replace it with a defined contribution plan, under which the Company would contribute 4% of a Flight Attendant's annual salary. If United were to terminate the Flight Attendant Plan, the impact on Flight Attendants would be severe, particularly for the over 15,000 active Flight Attendants participating in the Plan. For example, the 49-year-old Flight Attendant making $42,000, who has worked 26 years and retires at age 56 would only receive $888 per month after termination and replacement of the current Plan, a monthly loss of retirement income equal to $1055. Id. Other Flight Attendants would fare even worse after termination and replacement:

	Age	Service	Salary	Monthly Benefit Under Current Plan	Monthly Benefit After Termination
Flight Attendant 1	49	26 years	42,000	$1,943.90	$888.36
Flight Attendant 2	43	16 years	42,000	$2,184.85	$692.97
Flight Attendant 3	31	8 years	37,200	$3,413.18	$1,060.49
Flight Attendant 4	25	0 years	20,000	$2,101.79	$802.80

Id.

United has presented to this Court a limited and distorted assessment of the impact of plan termination and replacement on active Flight Attendants. As determined by AFA's actuary using the same data, assumptions, and methodology employed by United, the impact on the benefits of active Flight Attendants retiring at the assumed ages of 56, 60, 62, and 65 would be as follows:



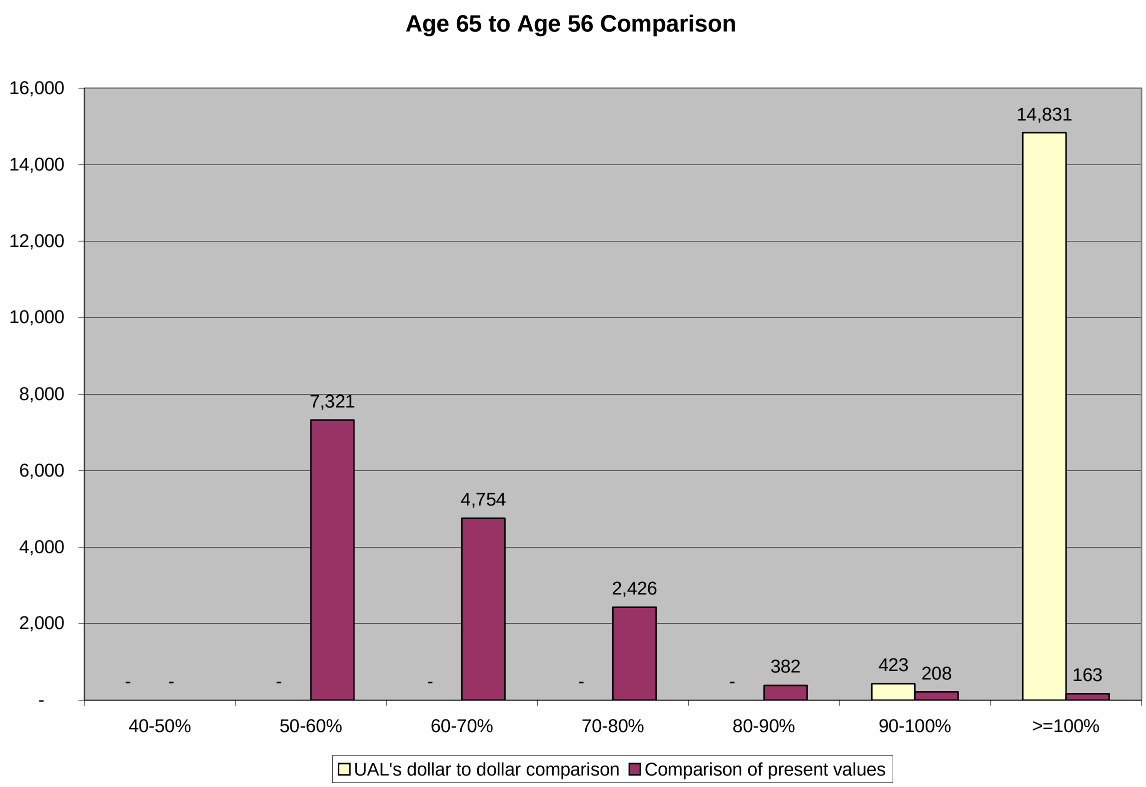
Id. ¶ 8. Thus, at assumed retirement ages of 56, 60, and 62, fully 50% of active Flight Attendants will receive 50% or less of their current benefits under United's proposed termination and replacement. Over 25% of those retiring at age 65 would receive

50% less. In addition, more participants at assumed retirement ages 60, 62, and 65 will suffer an adverse impact from termination than participants at age 56. Id.

United's representations regarding the impact of termination and replacement are distorted. The Company purports to compare the benefits received by active Flight Attendants at the assumed retirement age of 56 under the current plan to the benefits received at the assumed retirement age of 65 after termination and replacement. According to United, by working until age 65, Flight Attendants "would earn 117 percent of the current monthly benefits if they instead worked until age 65." Debtors' Supp. 1113(c) Mem. at 62. United's assessment, however, is based upon a dollar-to-dollar comparison of the benefits that Flight Attendants would receive under the current Plan at the assumed retirement age 56 and after termination and replacement at age 65. Id. at 63 n.184. This is an "apples to oranges" comparison because the dollar value of benefits received at different points in time are not actuarially equivalent.

As set forth in the Declaration of United's actuary, Timothy J. Marnell, dated December 14, 2004, "[t]wo pension benefits are 'actuarially equivalent' when they have the same present value given a constant set of assumptions (such as mortality rates)." Marnell Decl. ¶ 17. Mr. Marnell gives the example that an $1,800 per month pension benefit commenced at age 65 is actuarially equivalent to a $770 per month pension benefit commenced at age 55, which is a 57% difference in dollar value. Id. The $770 per month starting at age 56 is equivalent to $1,800 starting at age 65 because of the nine years of payments between ages 56 and 65, as well as the 6% to 8% probability that an age 56 Flight Attendant would not live to age 65. Declaration of David Feinstein, dated January 3, 2005, ¶ 11. Such present value comparisons are the standard actuarial method for comparing different pension benefits. Id.

When the present values of the benefits under the current Plan at age 56 and the benefits at age 65 after termination and replacement are compared, the results are vastly different than United's dollar-to-dollar comparison.



2d Feinstein Decl. ¶ 11. In fact, over 48% of Flight Attendants working until age 65 will receive less than 60% of the actuarially equivalent benefit that they would have received under their current plan at age 56. Only 1% of Flight Attendants would fully recoup the value of their lost benefits through an additional nine years of service.

According to United, the present value of all projected benefits under its defined benefit plans is $10.7 billion, and the value of projected benefits under the Flight Attendant Plan is $1.9 billion. Marnell Supp. Decl. ¶ 17. Thus, the Flight Attendant Plan accounts for only 18% of projected benefits, although the plan covers 23% of all current plan participants.

Also according to United, its minimum funding requirements for all of its defined benefit plans for the next six years will be $4.4 billion, with $624 million attributable to the Flight Attendant Plan. Id. ¶ 20. Thus, the Flight Attendant Plan, which covers 23% of all plan participants, accounts for only 14% of United's total minimum funding requirements over the next six years. This fact is attributable in part to significant reductions in benefits under the Plan, agreed to by AFA in the first Section 1113 process. According to United's own actuaries, these benefit reductions decreased United's minimum funding requirements by $68 million for 2004. 2d Feinstein Decl. ¶ 3. From 2003 to 2004, in large part as a result of this change, the Plan's "normal cost" decreased from $49 million to $13 million.[1/] Id.

United estimates its total savings from the termination of all its pension plans and replacement with its proposed defined contribution plans at $3.9 billion from 2005 through 2010, or $645 million per year. Marnell Supp. Decl. ¶ 24. The savings from termination and replacement of the Flight Attendant Plan total $494 million from 2005 through 2010 and average $82.3 million per year. Id.; Nelson Supp. Decl. ¶ 9.

II. NEGOTIATIONS OVER UNITED'S PROPOSAL TO TERMINATE THE FLIGHT ATTENDANT PLAN.

On November 4, 2004, United delivered term sheets to all of its unions, seeking to obtain an additional $725 million in annual labor savings. United also proposed to all of its unions modifications to their collective bargaining agreements that would permit termination of all four of the Company's defined benefit plans. Second Declaration of Gregory Davidowitch, filed this same date, ¶ 3. The ensuing negotiations between United and AFA focused on the $130 million in annual labor savings allocated to Flight Attendants by the Company. The proposed modification of the collective bargaining agreement ("CBA") to allow termination of the pension plan was not part of the $130 million in savings. In fact,

[1/] Pursuant to IRS Regulations the normal cost "for any year is the amount actuarially determined which would be required as a contribution by the employer in such year to maintain the plan if the plan had been in effect from the beginning of service of each then included employee and if such costs for prior years had been paid and all assumptions as to interest, mortality, time of payment, etc., had been fulfilled." 26 C.F.R. § 1.404(a)-6(a)(2).

United's term sheet did not attribute any dollar amount to this contractual change. Accordingly, there was very little discussion at the bargaining table over United's proposal to allow termination of the Flight Attendant Plan. Id. ¶ 4.

Just as the scheduled hearing on United's Section 1113(c) motion was set to begin, the parties reached agreement on the $131 million in annual savings ("2005-2010 Agreement"). A side letter to the 2005-2010 Agreement provided that "United and AFA-CWA will continue to meet and confer regarding the Defined Benefit Plan." Declaration of Gregory Davidowitch, dated April 15, 2005, Exh. 3. That letter further provided that, if the parties were unable to reach agreement on the pension issue by April 11, United would re-file its Section 1113(c) motion with respect to the pension issue. 2d Davidowitch Decl. ¶ 5.

On January 31, Flight Attendants ratified the 2005-2010 Agreement by a margin of 56% to 44%. Over 70% of eligible Flight Attendants participated in the ratification vote, the highest turnout for any vote conducted by the Union in the course of United's bankruptcy. Immediately upon ratification, this Court approved the 2005-2010 Agreement. Id. ¶ 6.

In late January, while the 2005-2010 Agreement was still out for a ratification vote, AFA turned its efforts toward addressing the open pension funding issues. On January 27, 2005, AFA met with the Pension Benefit Guaranty Corporation ("PBGC") and learned that the agency was willing to explore a wide range of options to termination of the Flight Attendant Plan. Id. ¶ 7. In the wake of that meeting, Greg Davidowitch, President of AFA's United Master Executive Council, wrote a letter to Glenn Tilton, United's Chief Executive Officer, on February 1. Id. ¶ 8. Davidowitch informed Tilton about PBGC's willingness to explore alternatives and urged the Company to meet with AFA and the PBGC as soon as possible. Id., Exh. 1.

By letter dated February 4, Frederic Brace, United's Executive Vice President and Chief Financial and Restructuring Officer, responded. Id. ¶ 9. He stated that "we continue to believe that we must terminate and replace all four of our pension plans" and that "[t]o date, we know of no viable alternatives and have not received any from you or anyone else." Id., Exh. 2. Nevertheless, Brace stated United would meet with AFA to discuss the pension issue, either with PBGC or separately. Id.

During February 2005, the actuarial firm of Feinstein, Glaser & Olney, previously retained by AFA, continued to provide professional analysis of alternatives to plan termination, and the impact of those alternatives on the retirement benefits of Flight Attendants. AFA also continued to request from the Company the information necessary for the Union's actuaries and other professionals to evaluate alternatives to termination. Declaration of Elizabeth Hiszczynski, dated April 8, 2005, Exh. A. In the same time period, AFA also researched various pension funding solutions, including the solution adopted by General Motors Corporation in 2003, in which the company issued debt and placed the proceeds into its plans. 2d Davidowitch Decl. ¶ 10.

On February 25, 2005, Greg Davidowitch wrote a letter to Frederic Brace requesting that the Company meet with AFA and the PBGC in order to explore the available alternatives to plan termination. Id. ¶ 11, Exh. 3. The letter listed several alternatives to termination that in AFA's view required further investigation, including the General Motors solution. Id.

AFA and the Company met to discuss pension issues on March 3, 2005. The PBGC participated in the meeting by telephone. At the meeting, AFA outlined the ideas that would later form its proposal to United, including the contribution of common stock received by AFA in bankruptcy, issuance to AFA of a note like that United issued to ALPA, and a possible contribution from PBGC to assist in meeting the minimum funding requirements for the Plan. Id. ¶ 12. Frederic Brace told AFA that the Company needed more information regarding AFA's proposed alternative to termination. He also stated that regardless of whether AFA's proposal covered United's costs for the next five years, United was unwilling to entertain any proposal that did not relieve it of the purported volatility resulting from a defined benefit plan. Id. ¶ 13.

In order to further develop its alternative funding proposal, AFA retained corporate counsel Gregg S. Lerner of Freidman Kaplan Seiler & Adelman LLP in early March. On March 15, AFA representatives, including Mr. Lerner, met with the PBGC to discuss further the outlines of AFA's proposal. The PBGC representatives were receptive to AFA's proposal, despite the fact that it contemplated PBGC undertaking unprecedented obligations in order to preserve a pension plan. AFA met again with the agency the following week. Id. ¶ 14.

That same week, Greg Davidowitch met with Frederic Brace and Pete McDonald, United's Chief Operating Officer, to discuss the potential for a legislative solution to the pension funding issue. The Company expressed the view that there would be no additional legislative pension relief in the near future. Nevertheless, AFA asked that legislative professionals from both the Union and the Company confer on the matter. At that conference, United made it clear that it did not believe there was a legislative solution that it could support. Id. ¶ 15.

On March 30, 2005, AFA's corporate counsel sent a letter to Bradley D. Belt, PBGC's Executive Director. Id. ¶ 16, Exh. 4. Earlier that same day, AFA had presented to PBGC staff a formal term sheet for AFA's proposal. Id., Exh. 5. The term sheet presented five potential sources of funding that would permit the Plan to remain intact:

(1) an estimated \$150-\$250 million in UAL common stock to be received in bankruptcy representing both (i) the value of AFA's unsecured claims arising from prior wage reductions and (ii) the value of PBGC's claim were the Flight Attendant Plan terminated;

(2) \$165 million in payments that United had proposed to make to a defined contribution plan in lieu of payments to the Flight Attendant Plan;

(3) a note of like tenor to the note received by ALPA from United in conjunction with termination of the pilot's plan;

(4) application to the IRS for minimum funding waivers; and

> (5) if necessary, a contribution from PBGC in an amount sufficient when combined with the other funding sources in 1-4 to fund United's minimum funding contributions through December 31, 2010.

Id., Exh. 5.

Bradley Belt responded to AFA's letter on April 4, 2005. Mr. Belt characterized the proposal as "constructive" and reiterated the position taken by the agency before this Court "that the AFA plan can and should be maintained by the company upon emergence from Chapter 11." Id. ¶ 17, Exh. 6. Mr. Belt added that: "Based upon available information, we continue to believe that the interests of the participants and the pension insurance program would best be served by the continuance of the AFA plan." Id. In closing, he encouraged further work between the agency and AFA to resolve the pension funding issue. Id.

On April 5, United attended a meeting with AFA and the PBGC. Id. ¶ 18. At the meeting, AFA presented United with the term sheet for its proposal. Id., Exh. 7. United agreed that it would provide a response. Id.

At a meeting between United and AFA held on April 8, the Company presented a counter-proposal to AFA's term sheet. Id. ¶ 19, Exh. 8. The Company's proposal adopted some of the key aspects of AFA's proposal, such as contribution to the Plan of the value of common stock to be issued to AFA and the value of PBGC's claim were the Flight Attendant Plan to be terminated. The Company also agreed to contribute an amount equal to its proposed 4% contributions to a replacement plan. Id. The Company's proposal, however, made no provision for issuance of a note to AFA like that obtained by ALPA. The Company proposal also did not contemplate application for minimum funding waivers. Lastly, the Company required that upon exit, PBGC immediately pay the Plan's unfunded liability in excess of $700 million and then protect United from any shortfall between the Company's limited contributions and the Plan's minimum funding obligations for the next twenty years. This proposal was obviously intended to deter the PBGC from participating more than it was intended to encourage the agency's support. Id. ¶ 20.

At the meeting, Frederic Brace steadfastly maintained that the Company has to be fully shielded from any increase in its pension liability to Flight Attendants for a full twenty years, despite the fact that the Company's original proposal to AFA was based upon a business plan ending in 2010. AFA told Brace that such a demand was unreasonable. AFA also took issue with United's refusal to provide to it a note similar to the one provided to ALPA. In response, Brace asserted that United would renew its Section 1113(c) motion and that, if it prevailed, it would view AFA's CBA as rejected in its entirety and impose upon Flight Attendants wages and working conditions as the Company saw fit. Id. ¶ 21.

AFA was scheduled to meet again with the PBGC on April 21. On April 20, the date for that meeting was confirmed, but subsequently cancelled later that same day. Id. ¶ 22.

On April 22, United reiterated to AFA its position that it will regard Court approval of its Section 1113(c) motion as a rejection of the Flight Attendant CBA in its entirety.

Consequently, United would view itself as able to alter unilaterally the terms and conditions under which Flight Attendants work. Id. ¶ 23.

AFA, United, and PBGC met again on April 28. United maintained its position that it had to be protected from the claimed volatility associated with the Flight Attendant Plan for a full twenty years. Id. ¶ 25.

III. UNITED'S SETTLEMENT WITH PBGC.

On April 22, United announced for the first time in open court that the Company had entered into a settlement agreement with PBGC. Id. ¶ 24. Under the terms of the agreement, PBGC will initiate involuntary termination of all of United's defined benefit plans, including the Flight Attendant Plan. Because United, as the plan administrator, will consent to the involuntary termination, no further judicial proceedings will be required to effect termination. Through the agreement, PBGC also settles some of its claims against United, such as claims relating to minimum funding obligations and claims for unpaid insurance premiums. Motion to Approve Settlement, dated April 26, 2005, Exh. A.

In exchange, PBGC will receive $500 million in senior subordinated notes and $500 million in convertible preferred stock. PBGC will also receive $500 million in contingent senior subordinated notes, with payment triggered by United meeting certain EBITDAR benchmarks on specified dates from 2009 through 2017. In addition, United will allow PBGC's claim for unfunded liabilities to the plan in an amount to be determined under PBGC regulations. Under the agreement, however, United retains the option to direct PBGC to assign 45% of any distribution on its claims to another party, including United itself. Id.

On April 26th, United made an emergency motion in the Bankruptcy Court for approval of the settlement agreement. The hearing on that motion is currently scheduled for May 4.

IV. ADDITIONAL INFORMATION REGARDING UNITED'S FINANCIAL STATUS.

A. United Failed To Obtain Required Cost-Savings From SAM Employees, And Still Cannot Identify The Source Of $46 Million In Promised Annual SAM Savings.

During the first Section 1113 negotiations in the spring of 2003, United implemented $2.5 billion in annual labor concessions. As part of these savings, each work group, including salaried and management ("SAM") employees, would suffer a wage cut in 2003 and would receive small increases during the remaining years of the concessionary period. Davidowitch Decl. ¶ 3. In mid-October 2004, United announced that it needed $725 million in additional annual labor concessions through 2010. Id. ¶ 5. SAM employees' share of this second round of labor concessions was to be $112 million. Id. ¶ 15.

During the ensuing negotiations, AFA requested that the Company explain an apparent discrepancy between the wage levels resulting from the first Section 1113 process and the wage assumptions contained in the Company's current business plan, Gershwin 5.F. Id. ¶ 9-11. For union-represented work groups, Gershwin 5.F showed wage cuts and increases identical to those set in the first Section 1113 process. Compare Declaration of Daniel

Akins, dated April 11, 2005, Exh. 1 with Exh. 2. The cuts and increases for the SAM employees, however, were markedly different, including wage increases of 7.45% in both 2005 and 2006. Akins Decl., Exh. 2.

On December 18, 2004, Greg Davidowitch, President of AFA's Master Executive Council for United, sent an e-mail to Frank Colosi, United's Director of Labor Relations and one of its chief negotiators, asking if the new wage increases for SAM employees contained in Gershwin 5.F were, in fact, "correct." Davidowitch Decl. ¶ 11, Exh. 1. On December 20, Colosi responded by e-mail, stating that the Gershwin 5.F wage increases were not "actual or planned." Id. ¶ 12, Exh. 2.

On January 31, Flight Attendants ratified the 2005-2010 Agreement. A provision of the Agreement required United to obtain a total of $547 million in annual concessions from other employee groups, including $112 million from SAM employees, by January 31, 2005. Id. ¶ 15. In order to determine if the Company had obtained the required savings, AFA requested that United provide a valuation sheet of the concessions provided by each of the other labor groups. Id. ¶ 17, Exh. 4.

When United produced its valuation for the SAM savings, it was clear that the Company was basing SAM wage savings on the inflated wage levels in Gershwin 5.F -- wage increases that United told AFA were not "actual or planned" and which the Company never announced to SAM employees. Id. ¶ 22. As a result, $295 million of the total SAM wage savings through 2010 were illusory and the Company was actually spending more on SAM wages after the second round of "concessions" than if United had simply retained the wage levels adopted in the first Section 1113 process. Akins Decl., Exh. 5. At first United tried to defend its actions claiming that the wage increases included in Gershwin 5.F were necessary to address SAM attrition. Davidowitch Decl. ¶ 26, Exh. 11. The Company, however, abandoned this position rather quickly and agreed to revise its valuations of SAM savings in accordance with the wage levels set in the first Section 1113 process. Id. ¶ 32.

During this same time period, AFA requested information regarding $30 million in General and Administrative ("G & A") productivity savings that United had identified as part of its Business Improvement Initiative ("BII"). Id. ¶ 17. AFA was concerned that United might be counting the G & A savings toward both the $655 million in BII savings contained in Gershwin 5.F and the $112 million in SAM labor savings also reflected in Gershwin 5.F. Id. In response to AFA's questions, United management denied that it was double-counting SAM productivity savings, but nevertheless committed to finding an additional $30 million in G & A productivity savings. Id. ¶ 18, Exh. 6.

When United finally provided its revised valuations of SAM savings based upon the correct wage baseline, the Company was left with a gap in SAM savings that needed to be filled. Id. ¶ 34. The Company filled that gap in two ways: (1) the Company eliminated certain bonuses for SAM employees, which were to have cost United

$68 million from 2005 through 2009;[2] and (2) United raised its projected savings from SAM employee productivity increases by an additional $13 million per year. Id. AFA continued to press United as to the source of the Company's newly-identified productivity savings. Id. ¶ 35. Ultimately, United conceded that it did not know how it would obtain the savings and that it would not know for some months. Id. ¶ 38, Exh. 16. Less than a week later, however, the Company asserted that it was ahead of schedule in achieving SAM savings for 2005. Second Declaration of Daniel Akins, dated April 18, 2005, Exh. 1. A claim apparently based once again on double-counting the SAM productivity increases.

B. United Has Concluded That LCC Penetration Of Its Markets Has Leveled Off.

On March 11, 2005, United provided to AFA a document entitled "United Airlines: Reinvented and Positioned to Compete." 2d Davidowitch Decl. ¶ 26, Exh. 9. In that document, the Company asserted that the "worst of LCC erosion for United now appears over." Id. The document also pointed out that the LCC penetration of United's markets was leveling off. For example, according to the same document, from 1995 to 1999, LCC penetration increased from 47% to 64%, a difference of 17%. Whereas, from 2000 to 2004, LCC penetration increased from 71% to 75%, a difference of only 4%. Id.

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[2] Prior to its revised SAM savings valuation, United was claiming $295 million in illusory wage savings, while at the same time paying out $68 million annually in these bonuses. Thus, fake savings were being used to subsidize the payment of real bonuses.

ARGUMENT

I. UNITED HAS ACTED IN BAD FAITH THROUGH EVERY STAGE OF THE SECTION 1113 PROCESS REGARDING THE FLIGHT ATTENDANT PLAN, CULMINATING IN THE COMPANY'S ATTEMPT TO BYPASS ENTIRELY THE SECTION 1113 PROCESS THROUGH AGREEMENT WITH PBGC.

Debtors cannot carry their burden of establishing that they have "confer[red] in good faith" with the AFA on pension issues, as required by § 1113(b)(2). 11 U.S.C. § 1113(b)(2). In the Section 1113(c) context, good faith bargaining requires "an honest purpose to arrive at an agreement as the result of the bargaining process." In re Walway Co., 69 B.R. 967, 973 (Bankr. E.D. Mich. 1987); In re Blue Diamond Coal Co., 131 B.R. 633, 646 (Bankr. E.D. Tenn. 1991) (same); In re Lady H Coal Co., 193 B.R. 233, 242 (Bankr. S.D. W.Va. 1996) (same). Good faith is measured by an objective standard; the debtor's belief that its actions were permissible is not controlling. In re GCI, 131 B.R. 685, 693 (Bankr. N.D. Ind. 1991).

United's dealings with AFA regarding pension plan termination have been permeated with bad faith -- continued intransigence with regard to plan termination and ultimately unilateral action to terminate the plan in derogation of the bargaining process. Simply stated, United has maintained a "take it or leave it" attitude with respect to termination of the Flight Attendant Plan. The case law is clear that such a stance in negotiations fails the test of good faith. See In re S.A. Mech., Inc., 51 B.R. 130, 132 (Bankr. D. Ariz. 1985); In re Liberty Cab & Limousine Co., 194 B.R. 770, 777 (Bankr. E.D. Pa. 1996). Likewise, a party bargains in bad faith where it simply "goes through the motions with 'a desire not to reach an agreement.'" Chicago & N.W. Ry. Co. v. United Transp.

Union, 402 U.S. 570, 578 (1971) (quoting NLRB v. Reed & Prince Mfg. Co., 205 F.2d 131, 134 (1st Cir. 1953)).

A. In The Ultimate Act Of Bad Faith, United Has Entered A Settlement With PBGC In An Attempt To Bypass The Section 1113 Process.

United initiated this Section 1113 process in order to obtain additional labor savings and terminate its pension plans. Now, Debtors seek to bypass the Section 1113 bargaining process by accomplishing through settlement with the PBGC the very objective pursued at the bargaining table. Accordingly, United has not bargained in good faith as it is required to do.

It is well-settled that a party cannot bargain in good faith when the object of bargaining is already a *fait accompli*. The Supreme Court recognized this fundamental principle in NLRB v. Katz, 369 U.S. 736 (1962). In that case, the employer unilaterally implemented changes to certain benefits while it was in negotiation with the union over the very same issues. As the Supreme Court held, such action "amount[s] to a refusal to negotiate about the affected conditions of employment under negotiations, and must of necessity obstruct bargaining." Id. at 747; see also Lady H. Coal Co., 193 B.R. at 242 (debtor that has obligated itself prior to negotiations, by agreeing with the purchaser of its business that it need not assume the collective bargaining agreement, does not fulfill its Section 1113 obligation to negotiate in good faith). Indeed, such conduct in negotiations makes a mockery of the good faith bargaining process.

Yet that is precisely what United has done. Rather than fulfill its obligations under the Section 1113 process that it initiated, United entered into an agreement with PBGC whereby the agency, in exchange for $1 billion in notes and preferred stock, will terminate all of United's plans, including the Flight Attendant Plan. Thus, through agreement with PBGC, United seeks to make plan termination a *fait accompli*. The provision in the agreement with PBGC stating that United may continue to explore alternatives to plan termination prior to approval of the agreement does not alter the situation. Having come to agreement with PBGC to terminate the Flight Attendant Plan, United has absolutely no incentive to reach agreement with AFA providing otherwise. Under such circumstances, even if United continues to sit down at the bargaining table, there can be no "honest purpose to arrive at an agreement as the result of the bargaining process." Walway Co., 69 B.R. at 973.

Bad faith is also shown by the patent unlawfulness of United's attempt to subvert the Section 1113 process. Section 1113(f) of the Bankruptcy Code prohibits a debtor-in-possession from terminating or altering a collective bargaining agreement, other than through the processes of Section 1113. See Adventure Res., Inc. v. Holland, 137 F.3d 786, 796 (4th Cir. 1998) (Section 1113 "plainly imposes a legal duty on the debtor to honor the terms of a collective bargaining agreement, at least until that agreement is properly rejected"). Accordingly, a debtor's violation of Section 1113(f) is grounds for denying a subsequent request for rejection under Section 1113(c). In re Alabama Symphony Ass'n, 211 B.R. 65, 70-71 (N.D. Ala. 1996) ("If a debtor is free to breach the CBA without impairing its ability to reject the contract later, then § 1113 provides no incentive to abide by the terms of the CBA in the interim."); see also In re Elec. Contracting Servs. Co., 305 B.R. 22, 29-30 (Bankr. D. Colo. 2003). Indeed, without the protection of Section 1113(f), a debtor could deprive its union of the due process afforded under Section 1113, as United seeks to do here by paying off the PBGC.

United's conduct also constitutes a bad-faith violation of the RLA. Like Section 1113(f), the RLA precludes unilateral modification of employees' working conditions. 45 U.S.C. § 152, Seventh. Instead, an employer must bargain in good faith over proposed contractual changes under the processes set forth in the Act. 45 U.S.C. § 156. In addition, the RLA imposes a duty "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions." 45 U.S.C. § 152, First. Instead of fulfilling these obligations, United has conspired with PBGC to deprive AFA of its statutory rights.

B. United's Aversion To A Fair Section 1113 Process Was Made Clear Prior To The Beginning Of The Pension Negotiations.

Even before the Company moved for relief under Section 1113, it sought to file an informational brief with the Court explaining why termination of all of its pension plans was needed. AFA moved to strike the filing, objecting that United's brief was an improper attempt to subvert the due processes for adjudication of contested pension issues. The Court granted AFA's motion to strike the informational brief.

After United initiated the Section 1113 process, it quickly sought through agreement with ALPA to preordain the termination of the defined benefit plans of all its other work groups. Unwilling to allow its pension proposals to rise and fall on their own merit, the ALPA agreement constituted a blatant attempt by United to tilt the playing field in favor of termination of all of its plans. This Court, however, rejected United's attempt to warp the process, and forced the Company to strip the plan termination provision from its agreement with ALPA.

In the wake of the Court's rejection of the ALPA agreement, United reached an agreement with AFA on wage and work-rule concessions and agreed to continue to meet and confer regarding pension funding issues. Unfortunately, the mind-set that led the Company to attempt to impose plan termination on AFA through the ALPA agreement did not change.

C. During The Section 1113 Process, United Has Been Intransigent On The Pension Issue And Unwilling To Seriously Entertain Alternatives To Termination.

Throughout the Section 1113(c) process, United has remained intransigent in its demand for termination of all its pension plans, including the Flight Attendant Plan. From the start, United has asserted that it must terminate all of its defined benefit plans. In support of its demand, United has maintained that its business plan assumes termination of all the plans, and potential exit financiers have premised funding on the Company's ability to meet its business plan, and, therefore, it must terminate all of its plans. For United, termination is thus a self-fulfilling prophesy.

Immediately upon ratification of AFA's 2005-2010 Agreement, the Union tried to engage the Company on the pension issue. That overture was met with a tepid response, as United continued to insist that termination was the only possible course. Instead of engaging in the process of exploring alternatives, United placed the burden solely on AFA to come up with a viable pension funding alternative.

In response, AFA took up this burden. The Union conferred with the PBGC to assess the agency's willingness to assist in finding a solution, including its willingness to assume unprecedented responsibility with respect to a plan. At that point AFA returned to the Company, and United told AFA it needed to do more.

So AFA did more. AFA engaged additional professional expertise necessary to generate innovative approaches to the funding issue. The Union then formalized those ideas in a term sheet. AFA presented its term sheet to PBGC's highest official, who encouraged AFA to pursue the proposal further. AFA then presented its proposal to United in an attempt to finally engage the Company in a serious, constructive process to consider alternatives to termination.

United's response to AFA's proposal was to alter the playing field once again such that termination would be an inevitability.

All throughout the Section 1113 process, United had maintained that termination was necessary to meet its business plan. Then, when confronted with AFA's proposal showing that was not the case, United for the first time argued that it needed to be shielded for twenty years from the purported volatility associated with minimum funding obligations to the Flight Attendant Plan. United's current business plan runs through 2010, and projects that the Company will be in a position of financial health by that time. Nevertheless, United's counter-proposal required that AFA obtain agreement from PBGC that it immediately contribute over $700 million in unfunded liabilities to the Plan and that it make up any shortfall in minimum funding obligations for fifteen years beyond the end-point of United's current business plan. As United undoubtedly realized, such an unreasonable demand could not be satisfied, rendering its counter-proposal a "non-starter."

Worse yet, United adamantly refused to commit any funds toward saving the Flight Attendant Plan beyond what the Company planned to spend on a replacement plan, even refusing to issue to AFA a note similar to that afforded to ALPA. United refused to issue such a bond even though its agreement with PBGC now shows that it has the ability to sustain an additional $1 billion in debt and stock over and above the $550 million already committed to ALPA. In fact, in seeking Court approval of the PBGC agreement, the Company affirms: "United believes that providing these PBGC securities will enable United to stay within its anticipated exit financing covenants, have limited impact during the crucial post-exit years, and not impair United's ability to obtain exit financing." Mot. to Approve Settlement at 18. United's representation in negotiations that it could do nothing beyond the meager plan contributions included in its counter-proposal is now revealed to be the product of bad faith.

D. United's Attempt To Use The Pension Process As An Opportunity To Reject The Entire Flight Attendant CBA Further Evidences Bad Faith.

At the meeting on April 8, AFA told United that the terms of its pension counter-proposal were unrealistic. Instead of engaging in further negotiations regarding specific aspects of the proposal, United responded that it would simply proceed with the Section 1113 process. United further threatened that, if it obtained authority to reject from this Court, it would reject the Flight Attendant CBA in its entirety. In essence, United took the position that AFA had a choice between accepting the Company's pension proposal or risking the loss of the entire CBA. United has since repeated its threat to treat the entire CBA as rejected upon approval of its motion.

United issued these threats despite prior representations to this Court and AFA that it would not, indeed could not lawfully, pursue such a course of action. In its Section 1113(c) Memorandum dated December 14, 2004 (and re-filed on April 11, 2005), United states:

> Consistent with the interplay between the RLA and Section 1113, United has never intended to 'abrogate' its CBAs and leave its employees without specific terms of employment or the protections of the RLA. To the contrary, if a ruling on this motion proves unavoidable, United will limit itself to the proposed terms that this

> Court finds were necessary to a successful reorganization and refused by the affected union(s) without good cause.

Debtors' 1113(c) Mem. at 150. In the same court filing, United also set forth its understanding of Section 1113 as protecting unions "against changes to CBAs except those that a bankruptcy court independently confirms are 'necessary' for a reorganization to succeed." Id. Moreover, through the 2005-2010 Agreement, United and AFA agreed that only the Company's pension proposal would be subject to renewed Section 1113(c) proceedings. United's threat to abrogate the Flight Attendant CBA in its entirety, despite its prior assurances to the contrary in court filings and in contract, is further evidence of the bad faith that has marked the conduct of pension negotiations since their inception.

E. United's Bad Faith Conduct In The Pension Negotiations Must Be Viewed In The Larger Context Of United's Unwillingness To Comply With Its Contractual Obligations.

Unfortunately, United's conduct in the pension negotiations is not an isolated instance of bad faith. Instead, in bad faith, Debtors have failed repeatedly to abide by their contractual obligations. This attitude was epitomized by United's recent frivolous Section 1113(e) motion against AFA. When AFA asserted its contractual right to terminate the 2005-2010 Agreement due to United's failure to obtain promised SAM savings, United responded with a motion under Section 1113(e). In the motion, United argued that it was entitled to precisely the same relief obtained at the bargaining table through the 2005-2010 Agreement, despite the fact that its breach of the Agreement precipitated AFA's termination notice. United also disavowed arbitration as a means to resolve any dispute as to whether or not the Company had breached the Agreement. As this Court found, the Section 1113(e) relief sought by United would simply and unjustifiably cancel the termination provision of the 2005-2010 Agreement. Accordingly, the Court denied United's motion.

The incident with AFA echoed an earlier attempt by United to evade its obligations under an agreement with ALPA. As part of ALPA's Restructuring Agreement negotiated in the second Section 1113 process, United committed to maintain the pilots' defined benefit pension plan in full force and effect unless and until it obtained an order from the Court under ERISA's voluntary distress termination provisions. Despite that commitment, within days of the Court approving this agreement, United reneged, announcing that it would cease certain benefit payments under the plan, even though ERISA termination had not occurred. On February 18, 2005, this Court rejected United's argument that the phrase "full force and effect" in the Restructuring Agreement was "mere surplusage" and enforced the Company's obligations under its recently concluded agreement. United's unwillingness to stand by its contractual commitments further evidences the Company's bad faith.

II. UNITED CANNOT SHOW THAT TERMINATION OF THE FLIGHT ATTENDANT PLAN IS NECESSARY TO PERMIT REORGANIZATION UNDER EITHER THE DISTRESS TERMINATION STANDARD OR THE STANDARD OF SECTION 1113.

United, as it must, has moved under both ERISA's distress termination provision, 29 U.S.C. § 1341(c), and the Bankruptcy Code, 11 U.S.C. § 1113(c), in order to terminate the Flight Attendant Plan. Both ERISA's distress termination provision and

Section 1113 require that Debtors satisfy a test of economic necessity for the proposed plan termination. ERISA requires the bankruptcy court to determine that "unless the plan is terminated, [the employer] will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process." 29 U.S.C. § 1341(c)(2)(B)(ii)(IV). Thus, "the appropriate standard of review for the distress termination of a pension plan . . . is whether <u>but for</u> distress termination, the Debtor will not be able to pay its debts when due and not continue in business." <u>In re Resol Mfg. Co.</u>, 110 B.R. 858, 862 (Bankr. N.D. Ill. 1990) (emphasis added). As United's Chief Executive Officer Glenn Tilton stated in a meeting with employees:

> [D]istress termination and replacement of a pension plan, poses a very high threshold of proof. You have to establish that you would not be able to exit your reorganization without having done so. That it's a key component to your exit. And that affords the protection for the plan. That's why it has the highest bar of all.

2d Davidowitch Decl., Exh. 10.

Section 1113 also requires that Debtors show that their proposal is "necessary to permit reorganization." 11 U.S.C. § 1113(b)(1)(A). Courts have differed on the meaning of necessary in the Section 1113 context. Some courts hold that "necessary" means that but for the proposed changes reorganization would not be possible, essentially the same standard as applied under ERISA's distress termination provision. <u>Wheeling-Pittsburgh Steel Corp. v. United Steelworkers</u>, 791 F.2d 1074, 1089 (3d Cir. 1986). Other courts, however, interpret "necessary" with a longer range view, looking toward the goal of increasing the chances for successful rehabilitation. Truck Drivers Local 807 v. Carey Transp., Inc., 816 F.2d 82, 88-90 (2d Cir. 1987). Even courts that have adopted the more lenient standard emphasize that "the debtor may not overreach under the guise of proposing necessary modifications" and the proposal "must be more than just potentially helpful." In re Mile Hi Metal Sys. Inc., 899 F.2d 887, 893 (10th Cir. 1990). As we demonstrate, no matter what standard of necessity is used, United is not entitled to the relief sought.

Under any legal standard, United cannot show that termination of the Flight Attendant Plan is necessary. In United's initial Section 1113 Memorandum, the Company asserted that all of its pension plans had to be terminated in order to satisfy certain financial metrics. Both AFA and PBGC challenged United's analysis on the grounds that the Company failed to demonstrate that it could not satisfy its financial metrics while still retaining one or more of its pension plans, particularly the Flight Attendant Plan. In response to this challenge, United still fails to demonstrate that it cannot satisfy the metrics while retaining the Flight Attendant Plan. Instead, United claims that such a showing would have no value because the metrics themselves are premised on the termination of all of the plans. United also presents a new argument that termination of all plans is necessary to relieve the Company of the purported volatility associated with defined benefit plans. Thus, United completely fails to establish that termination of the Flight Attendant Plan is necessary under any applicable legal standard, much less the stringent standard necessary for a distress termination under ERISA. In fact, United's recent agreement with PBGC demonstrates that United has the resources available to save the Flight Attendant Plan, if only it were willing to do so.

A. United Still Fails To Show That It Cannot Meet Its Financial Metrics If The Flight Attendant Plan Is Maintained, And Instead Argues That Satisfaction Of The Current Metrics Would Still Not Mean That The Flight Attendant Plan Is Affordable.

Conspicuously absent from United's Supplemental Memorandum is any assertion that the Company cannot meet its financial metric if it keeps even one of its defined benefit plans. Instead, United merely states:

> [T]he presently-targeted free cash flow, fixed charge coverage ratio, and financial metrics all are based on capital markets feedback on a business plan that assumed termination and replacement of all of United's defined benefit plans. These target metrics <u>likely</u> would increase if United were required to keep one or more pension plans.

Debtors' Supp. 1113(c) Mem. at 76 (emphasis added). Similarly, in discussing the possibility of maintaining both the Flight Attendant Plan and the MAPC Plan, with freezes and waivers, United only claims that "[t]hese lost savings would cause the Company to miss most of the targets under both the Free Cash Flow and Fixed Charge Coverage Ratio." <u>Id.</u> at 77. In its motion for approval of the PBGC Agreement, United states: "Even if one simply focused on the Flight Attendant Plan and MAPC Plan, which are not yet subject to a PBGC-initiated termination proceeding, termination of those two plans will eliminate approximately $624 million and $1.1. billion, respectively, in MFC obligations over the next five years. These savings will enable United to meet anticipated capital markets requirements for cash flow, debt-coverage ratios, and EBITDAR, and facilitate its ability to obtain firm exit financing commitments." Mot. to Approve Settlement at 15. There is no discussion at all of whether the Flight Attendant Plan on its own is affordable as judged by United's metrics. In fact, in United's own words, termination of the Flight Attendant and MAPC Plans will merely "facilitate" exit financing.

The Declaration and Expert Report of Todd Snyder is likewise devoid of any analysis as to whether United could retain the Flight Attendant Plan and still meet its financial metrics. The lack of any such analysis is particularly startling given that as of the time of United's renewed Section 1113 motion, PBGC had already moved for involuntary termination of United's two most expensive pension plans, the Pilot Plan and the Union Ground Plan. Despite this sea change in events, Mr. Snyder's report fails to reflect the impact of this change on United's ability to meet its stated metrics while maintaining at least one of the two remaining plans.

Although United refuses to analyze whether or not it can afford to retain at least one of its plans according to its metrics, the PBGC has done such an analysis. In the expert report of Michael A. Kramer, PBGC demonstrates that United can achieve or come very close to the financial metrics that it has said are necessary to attract exit financing by employing alternatives to plan termination such as a freeze and waivers in combination.

PBGC's analysis further shows that "[u]nder the Gershwin 5.0F projections, the Company has sufficient liquidity and free cash flow to support at least one of the Pension Plans currently in place, namely the FA plan, even without application for any waivers." Declaration and Expert Report of Michael A. Kramer, dated December 28, 2004, ¶ 8. The PBGC's analysis "demonstrates that, even on United's own terms, it has failed to carry its requisite burden to demonstrate that it must terminate all of the Pension Plans to successfully reorganize and avoid liquidation." Id. ¶ 12.

Through the Supplemental Declaration and Expert Report of Todd Snyder, United responds to the PBGC's analysis. Significantly, Mr. Snyder does not dispute PBGC's conclusion that the Company could satisfy its current financial metrics in the ways identified by PBGC. Instead, Mr. Snyder devotes several pages to explaining why such an analysis would not accurately reflect whether or not the Company could successfully reorganize. In United's initial Section 1113 filing, the Company established the ability to meet its financial metrics as the empirical test of necessity. Nevertheless, Mr. Snyder now claims that "the assessment as to whether United can afford to maintain one or more of its defined benefit plans entails more than simply layering alternative pension funding and expense projections onto the financial forecast which is the by product of operating in accordance with United's business plan. Rather, maintaining one or more defined benefit pension plans undermines fundamental assumptions and guiding principles upon which United's business plan was created." Snyder Supp. Decl. ¶ 21.

In support of this contention, Mr. Snyder explains that maintaining one or more plans has "a reasonable potential to create disharmony among United's employees" and that the "structure of defined benefit pension plans creates substantial additional volatility for an airline's cash flows and liabilities." Id. ¶¶ 22, 23. According to Mr. Snyder, these risks were not reflected in the current business plan because it assumes termination of all plans, and therefore were not "contemplated by the capital markets when they provided United with target credit metrics." Id. ¶ 22. In other words, the argument once again is that United must terminate all of its plans because United has said that it must terminate all of its plans.

Beyond the circularity of Mr. Snyder's contentions, it is also clear that United does not really know the impact that changes to the assumptions underlying its business plan will have. As Mr. Snyder states: "If United's business plan included one or more defined benefit pension plans, capital markets requirements for exit financing may become even more stringent than currently anticipated given the significantly higher business risk and volatility discussed in this report and the capital markets awareness of such implications." Id. at ¶ 27 (emphasis added). Section 1113(c) relief cannot be predicated upon the type of speculation presented by United's expert. In re Sun Glo Coal Co., 144 B.R. 58, 63 (Bankr. E.D. Ky. 1992).

That Mr. Snyder's assertions regarding the requirements of exit financiers are nothing more than rank speculation is further demonstrated by the Company's discussion of its attempts to obtain exit financing to date. In its Supplemental Section 1113 Memorandum, it is clear that United has only presented exit financiers with a business plan that presupposes termination of all its plans. Thus, the reaction of debt financiers to any alternative business plan remains unknown and Mr. Snyder's conclusions wholly speculative.[3]

B. United's Insistence Upon Insulation From The Vicissitudes Of The Market Well Into The Future Is Not A Proper Basis For Arguing That Plan Termination Is Necessary.

Having failed to demonstrate that it cannot afford to maintain one or more of its defined benefit plans, United instead argues that the Company's defined benefit plans add "volatility" to the airline's finances. According to the Company, this volatility is due to macro-economic forces such as a "bearish stock market" and "low interest rates" in combination with "ERISA's byzantine funding rules." Debtors' Supp. 1113(c) Mem. at 87. United advances this argument for the first time in its supplemental memorandum in

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[3] In addition, United also fails to demonstrate that it has explored other plans of reorganization beyond a plan premised entirely on debt financing. Thus, it is unknown whether other reorganization plans would permit United to continue any of its pension plans. Many types of reorganization plans beyond debt-financing are available to a reorganizing debtor. Such plans include the offering of public equity or an investment of equity from a single investor or group of investors. The latter option, however, might lead to a loss of control by current management. There is no indication that current management has put aside its own parochial interests in an attempt to even explore such an option.

support of Section 1113(c) relief. Id. at 86-88; see also Marnell Suppl. Decl. ¶¶ 86-91. The appearance of this new argument raises the question: if volatility is such a concern, why has United only started talking about it now?

In any event, the desire for insulation from market volatility far into the future is not a legitimate basis upon which to seek distress termination under ERISA or Section 1113(c) relief, and instead constitutes gross overreaching by Debtors. Obviously, such an argument cannot pass muster under ERISA's stringent "but for" test. In addition, Section 1113 "proposals must be more than potentially helpful." Mile Hi Metal Sys., Inc., 899 F.2d at 893. The purpose of Section 1113 is to permit reorganization, not to provide debtors with a permanent shield from normal market forces. Thus, United's stated rationale for terminating the Flight Attendant Plan goes far beyond what is necessary for reorganization.

C. If United Can Afford To Give PBGC $1 Billion In Notes And Preferred Stock, It Can Afford To Maintain The Flight Attendant Plan.

United's settlement with PBGC makes clear that the Company has available to it the resources necessary to retain the Flight Attendant Plan. Therefore, plan termination is not a financial necessity as United claims in its Section 1113(c) motion. In January, United agreed to give ALPA notes worth $550 million. Now, the Company has promised an additional $1 billion in notes and stock to PBGC. As United affirms in its motion for approval of its settlement with PBGC, the $1 billion promised is affordable under the current business plan: "United believes that providing these PBGC securities will enable United to stay within its anticipated exit financing covenants, have limited impact during the crucial post-exit years, and not impair United's ability to obtain exit financing." Mot. at 18. AFA's proposal to the Company makes clear, a similar note would be sufficient to maintain the Flight Attendant Plan in combination with Flight Attendants' own contribution to the Plan and a contribution from United equal to the cost of a replacement plan.

United maintains, however, that securities, such as those granted PBGC and ALPA, are only available in exchange for agreeing to plan termination, and are not available to save any of the pension plans. That stance, however, is plainly the product of United's preference for plan termination, not the financial needs of the Company. Under Section 1113(c), United's preference is not a legitimate basis for the relief sought. To use Section 1113(c) to absolve a debtor of financial obligations that plainly can be met, but which it simply chooses not to meet, would completely undermine the protection that Section 1113 is meant to afford workers. See In re Century Brass Prods., Inc., 795 F.2d 265, 272 (2d Cir. 1986) (Section 1113 enacted to insure that employers do not use Bankruptcy Code "as medicine to rid themselves of corporate indigestion"); In re K & B Mounting, Inc., 50 B.R. 460, 467-68 (Bankr. N.D. Ind. 1985) (necessity does not mean mere "desirability"). In fact, such a use of Section 1113(c) would constitute a return to the "business judgment standard" that the

Supreme Court rejected in Bildisco and Congress too rejected in enacting Section 1113. In short, because United has available resources to maintain the Flight Attendant Plan, it cannot claim that plan termination is an economic necessity for reorganization.

III. UNITED IS INCAPABLE OF PROVIDING THE TYPE OF RELIABLE FINANCIAL INFORMATION NECESSARY TO SUBSTANTIATE ITS SECTION 1113 PROPOSAL.

Repeatedly throughout these proceedings, United's financial information has proved to be untrustworthy. Section 1113 requires that the Debtors' proposal be "based on the most complete and reliable information." 11 U.S.C. § 1113(b)(1)(A). In addition, the other requirements of Section 1113 such as the showing of necessity and good faith in negotiations are bottomed on the ability of the debtor to provide reliable financial information. Yet, over and over throughout these proceedings, United has shown itself incapable of providing sound information regarding both its ability to attain savings and its expenses. As a result, United lacks credibility with regard to its financial requirements.

United has repeatedly claimed throughout these proceedings to have exhausted all available non-labor savings in order to exact additional labor concessions. AFA's 1113(c) Mem. at 7-18. Despite these claims, United has repeatedly identified additional non-labor savings shortly after obtaining the requested relief from labor. For example, in August 2004, only two months after obtaining deep cuts in retiree health benefits, United announced for the first time that a study performed by Bain & Company had identified numerous areas of operational costs in which United lagged behind its competitors. As a result of this study, United was ultimately able to identify $655 million in additional non-labor costs. In fact, Company documents now show that at the very same time as United was seeking permission from this Court to cut retiree benefits, management had determined that it could cut General and Administrative annual expenses by at least an additional $30 million. 2d Davidowitch Decl., Exh. 11. Given this record, United's claim in conjunction with the current motion that it has exploited all possible non-labor savings is unworthy of credence.

Another disturbing trend is that AFA and others have repeatedly discovered major flaws in United's business plan. Most recently, AFA discovered that the current business plan claimed $295 million in SAM wage savings that were illusory. In fact, while claiming hundreds of millions in additional savings, United was actually spending more on SAM wages than it would have if it had merely left the first Section 1113 SAM concessions in place. In addition, on the basis of these illusory savings United was proposing to pay out real bonuses worth $68 million to SAM employees. Whether the product of bad faith (as AFA believes) or simple incompetence, the SAM wage valuations were grossly off the mark, depriving the estate of $295 million in savings that United claimed were essential to the Company's survival.

United's approach to valuing SAM productivity increases also shows that the Company's numbers are not worthy of credence. In the fall of 2004, the Company identified $30 million in annual SAM productivity increases as part of its BII savings. These savings were incorporated into the business plan. Separately incorporated into the business plan were $112 million in annual SAM savings. Nonetheless, United proceeded to count the $30 million in annual BII productivity increases toward the $112 million in SAM savings. Thus, United was double-counting the productivity increases. In so doing, United was depriving the estate of $150 million in savings purportedly essential to reorganization.

When confronted by AFA with its double-counting, United committed to identify an additional $30 million in annual productivity increases, but could not explain the source of these savings. Then after AFA forced United to correctly value SAM wage savings, the Company announced that it would locate an additional $13 million in annual productivity savings. Still, United was unable to substantiate the basis for these newly-promised savings. Now, United has claimed that it will actually achieve $105 million in overall annual productivity increases. Thus, within the span of three months, United has claimed access to an additional $70 million in productivity increases, despite its earlier assurances that it had exhausted all potential sources of savings before seeking to reject its union contracts. A company that acts as United has done here lacks basic financial credibility.

United's financial credibility was earlier called into question by a sudden and unexplained increase in projected maintenance costs between the figures in Gershwin 4.0 and those in Gershwin 4.5. Total maintenance expenses as forecast in Gershwin 4.5 were substantially higher than forecast only 5 months before in

Gershwin 4.0. Through the discovery process, AFA attempted to find an explanation for the sudden increase in costs, but was unable to obtain an answer. Deposition of Peter McDonald, taken January 5, 2005 (attached as Exh. A), at 73-74. From United's inability to provide a rational explanation for the huge discrepancy between two iterations of its business plan, it is reasonable to infer that a very substantial error was made.

In discovery United also revealed that its handling of fuel costs in Gershwin 5.F is essentially arbitrary. The Company's fuel expense projections in Gershwin 5.F are based upon the forward curve taken from October 13, 2004. The choice of October 13, however, was not based upon any judgment regarding the accuracy of that benchmark. Rather, October 13, as it happened, coincided with the deadline for United to produce Gershwin 5.F. As Michael Dingboom, United's Director of Financial Planning testified at deposition:

> Q: So for purposes of Gershwin 5F, how did you settle on the October 13 date that you just mentioned?
>
> A: Just the time line in terms of when we would have to have Gershwin done, have it for internal review and backed up. Even though it went out late October, we had to -- there was lots of internal steps. So it was like, okay, here is a good date, this is the date we have currently. . . . So it is like part of that six- to eight-week process; you kind of have to lock it in at a certain date in order to move forward.

Deposition of Michael Dingboom, taken January 6, 2005 (attached as Exh. B), at 58-59. Thus, the October 13 date was not selected due to any financial judgment, but merely due to the dictates of the time-line for production of Gershwin 5.F. If United's fuel projections now more closely match the current market than other dates that might have been selected, that is pure happenstance.

Lastly, in its Supplemental Memorandum, United asserts that LCCs pose a continuing threat to United's ability to grow its revenues. However, a little more than a month before its recent filing, United told AFA that it believed the worst of LCC penetration into its markets was past. 2d Davidowitch Decl., Exh. 9. On the basis of this record, United lacks the financial credibility required to put forth a reliable Section 1113 proposal and to meet the other elements of its burden under Section 1113.

IV. FAIRNESS AND EQUITY DEMAND THAT UNITED TAKE INTO ACCOUNT THE UNIQUE CIRCUMSTANCES OF THE FLIGHT ATTENDANT PLAN.

The Section 1113 requirement of fair and equitable treatment means "fairness under the circumstances." Walway Co., 69 B.R. 967, 974 (Bankr. E.D. Mich. 1987); see also In re Indiana Grocery Co., 138 B.R. 40, 48 (Bankr. S.D. Ind. 1990) (bankruptcy courts are "left with only the general guidance that equity means fairness under the circumstances"). It does not mean, as United now contends, that all work groups must be treated identically with respect to plan termination, regardless of the unique circumstances of their various pension plans.

The circumstances of the Flight Attendant Plan are unique from that of United's other plans. Fairness and equity require that these unique circumstances be taken into account in determining whether to terminate the plan. A key unique feature of the Flight Attendant Plan is the lower level of benefits due under the Plan, and United's corresponding lower obligations to the Plan. The

Flight Attendant Plan covers 23% of all participants in the Company's defined benefit plans. Yet, the Flight Attendant Plan accounts for only 18% of United's overall projected benefits under its plans. More significantly, the Flight Attendant Plan accounts for only 14% of United's projected minimum funding requirements over the next six years. Thus, the Flight Attendant Plan covers more United employees at a lower cost than any of the Company's other plans. In short, it is the most affordable of United's plans.

The lower cost of the Flight Attendant Plan is attributable in part to a reduction in benefit accruals under the Plan agreed to in the first Section 1113 process. Thus, Flight Attendants have already made pension sacrifices to make their Plan more affordable.

In addition, unlike any other labor group, Flight Attendants are willing to contribute their own money to save their Plan. As part of a plan of reorganization, AFA will receive equity in exchange for the nearly $1 billion in wage concessions and other contractual changes agreed to during these proceedings. United currently estimates total allowed claims at $25 billion and the projected equity value of United post-bankruptcy at between $1.5 and $2.5 billion. Therefore, Flight Attendants will have between $60 and $100 million in equity that they are prepared to use in order to save their Plan. The willingness of this group of non-highly compensated employees to use their own money in this fashion shows the importance placed upon retaining the modest level of retirement comfort afforded under the existing Flight Attendant Plan.

United's assertions to the contrary notwithstanding, the law does not require that a debtor terminate all of its pension plans regardless of their unique circumstances. In fact, such a requirement would turn the concept of fairness and equity on its head. Nor is such a position consistent with United's arguments and actions in other phases of these proceedings.

As United itself has emphasized in other stages of the Section 1113 process, the requirement of fair and equitable treatment means "fairness under the circumstances." <u>Walway Co.</u>, 69 B.R. at 974. Specifically, United has recognized that: "Ability to pay, percent of payroll, compensation for comparable positions, and other factors all may play into a fair and equitable allocation of costs." Debtors' 1113(c) Mem. at 120. United summarizes: "a plan may be fair and equitable even when employee groups are treated differently in certain respects."

In accordance with this understanding of fairness and equity, United argued in the first Section 1113 process that it need not impose the same wage cuts on SAM employees as its union employees because SAM employees were already at less than market rates. United cannot be heard to argue in one context that the unique situation of each work group must be considered in assessing fair and equitable treatment, and then insist in a different setting that fairness demands that all groups be treated the same despite their different circumstances.

Similarly, United argues now that it is fair and equitable for it to terminate the pilots' plan on different terms than those offered to other employee groups. Specifically, United agreed to provide the pilots with a 6% defined contribution plan, as opposed to the 4% plans proposed for other groups. In addition, United has agreed to give ALPA a $550 million note. United defends its disparate treatment of the pilot group by claiming that it is "appropriately recogniz[ing] ALPA's responsible action in taking the always difficult step of being the first union to reach a concessionary agreement, . . . and incentiviz[ing] United's pilots to continue providing superior service on a going-forward basis even though they are experiencing larger total pension reductions than other employees." Section 1113(c) Supp. Mem. at 61. AFA takes issue with United's contention that it has good cause to award to the pilots a $550 million note without affording a similar benefit to other work groups. However, regardless of whether United has good cause to differentiate between the pilots and other groups, having done so, the Company cannot be heard to argue that work groups must be treated the same with respect to termination.

United's willingness in the past and presently to treat work groups differently depending upon their individual circumstances, also belies the Company's current argument that all groups must be treated the same to insure labor harmony. In its most recent Section 1113(c) Memorandum, United asserts that "[a]ny perception by one employee group that it is being disfavored over another creates friction that could threaten the very fabric of the airline's operations." Section 1113(c) Supp. Mem. at 89. United's new-found concern for employee perceptions rings hollow. Plainly, when the Company has felt that there was good cause to distinguish among different work groups, the possibility of ill-feeling among the groups has not deterred them from their chosen course.

In concluding that fairness and equity under Section 1113(c) require termination of all of its pension plans, United relies entirely on a recent decision of the United States District Court for the District of Delaware. In re Kaiser Aluminum Corp., No. Civ.A. 04-145-JJF, 2005 WL 735551 (D. Del. Mar. 30, 2005). The Company reads Kaiser broadly to hold that fairness demands that a debtor terminate all of its pension plans, regardless of whether it can afford to maintain certain of its plans. The Kaiser decision, however, contains no discussion as to what, if any, differences may have existed among the pension plans at issue in that case. United's broad reading of Kaiser is also inconsistent with the statutory purpose of Title IV of ERISA. As Congress has stated, the purpose of Title IV is "to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants." 29 U.S.C. § 1302(a)(1). Any rule of law that would lead to the unnecessary termination of a pension plan, would be inconsistent with Congress' statutory pronouncement of public policy.

Moreover, United is not faced with a situation in which it alone must determine which plans to keep and which to terminate. Instead, PBGC has already determined that the termination of

United's two most expensive pension plans is necessary and has moved for involuntary termination. Now that PBGC has acted, it is incumbent upon United to determine whether it can afford to maintain one or both of the remaining plans. Fairness and equity does not permit the Company to simply terminate the remaining plans solely because the others have been slated for termination by the PBGC.

V. AFA HAS GOOD CAUSE TO REFUSE THE COMPANY'S PROPOSAL FOR TERMINATION OF THE FLIGHT ATTENDANT PLAN, BECAUSE THE UNION HAS PUT FORWARD A PENSION SOLUTION THAT WILL ALLOW UNITED TO EXIT BANKRUPTCY WITH THE PLAN INTACT.

If a debtor's Section 1113 proposal is not fair and equitable or not necessary to reorganization, then the union has good cause to reject. In re Express Freight Lines, Inc., 119 B.R. 1006, 1017 (Bankr. E.D. Wis. 1990). In this sense, good cause to reject simply flows from debtor's failure to meet the standards of Section 1113. As demonstrated above, United cannot meet these standards here, and thus AFA has good cause to reject.

In addition, good cause is present "where the union makes compromise proposals during the negotiation process that meet its needs while preserving the debtors' savings." In re Maxwell Newspapers, Inc., 981 F.2d 85, 90 (2d Cir. 1992). In this sense as well, AFA has good cause to reject United's proposal to terminate its Plan. AFA has proposed alternatives to Plan termination that would give United the savings that it claims are necessary. United claims to need $82.3 million in annual pension savings from AFA in order to satisfy its Gershwin 5.F business plan. AFA proposes to meet these target savings by contributing to the Flight Attendant

Plan the value of its own claims in bankruptcy and the claims that would arise if the Plan were terminated, as well as the money that United would expend upon a replacement plan. In order to bridge the remaining gap, AFA proposed that United put forward a note similar to that already granted to ALPA with the contribution of additional funds from PBGC if necessary. United's recent grant of $1 billion in notes and preferred stock to PBGC reveals that AFA's proposal is feasible, even without a commitment of funds by PBGC itself. In fact, AFA did not know when it made its initial proposal that Debtors could afford debt and equity commitments on the magnitude of those promised to PBGC. As set forth above, if United can afford to issue $1 billion in notes and stock to PBGC, it can certainly commit equivalent resources in order to maintain the Flight Attendant Plan.

Thus, there is a viable solution to United's pension funding problem that will enable it to meet its targeted savings under Gershwin 5.F. Under these circumstances, AFA has good cause to reject the proposed termination of its Plan.

VI. THE BALANCE OF THE EQUITIES CLEARLY WEIGHS AGAINST PLAN TERMINATION IN LIGHT OF UNITED'S CONTINUED BAD FAITH, THE ENORMOUS HARM TO FLIGHT ATTENDANTS FROM TERMINATION, AND THE HIGH LIKELIHOOD OF A STRIKE.

Finally, even assuming the debtor meets its other evidentiary burdens, Section 1113 nonetheless forbids rejection of a CBA, unless "the balance of the equities clearly favors rejection of such agreement." 11 U.S.C. § 1113(c)(3). "Clearly," in this case, means clearly. Thus, where the equities "militate in favor of allowing rejection of the CBA" but do not "clearly favor rejection," the debtors' Section 1113 motion must be denied. In re Indiana Grocery Co., 136 B.R. 182, 196 (Bankr. S.D. Ind. 1990) (emphasis in original).

Of the numerous factors that courts consider in balancing the equities under Section 1113, three are at the heart of this case:

(1) "the good or bad faith of the parties in dealing with the debtor's financial dilemma;"

(2) "the cost-spreading abilities of the various parties"; and

(3) "the likelihood and consequences of a strike if the bargaining agreement is voided."

Truck Drivers Local 807 v. Carey Transp., 816 F.2d 82, 93 (2d Cir. 1987). Throughout this memorandum, AFA has highlighted United's bad faith in the Section 1113 process and beyond. We incorporate those sections here. The evidence plainly demonstrates that equity cannot countenance Debtors' repeated misconduct through the grant of this motion, especially in the face of AFA's continual good faith efforts to reach consensual resolution of the pension issue.

As for the other two key factors, plan termination will doubtless work a grave injury to Flight Attendants, whose modest livelihoods have already been greatly diminished in these proceedings. That tremendous harm will likely precipitate a strike, as Flight Attendants are pushed past the breaking-point.

A. Flight Attendants Will Suffer Tremendous Harm As A Result Of Termination Of Their Pension Plan.

The statistics regarding the impact of plan termination on Flight Attendants are stark. Taking into account both PBGC's guaranteed payments and United's proposed replacement plan, fully

60% of current Flight Attendants at their historical average retirement age will receive less than 50% of the benefits available to them under the current plan. Over 32% will receive less than 40% of their current benefits.

These lost benefits constitute precious lost retirement income -- literally the difference between modest comfort and poverty-level subsistence. The present Plan certainly does not provide for a sumptuous retirement. For example, a Flight Attendant who is currently 49 years old with an annual income of $42,000 and 26 years of service, only receives $1,943 at the current average retirement age of 56. That same Flight Attendant, however, will receive only $888 per month after termination and replacement of the Plan, a loss of $1055 per month.

In response to the severe financial impact of termination, United asserts that Flight Attendants can "mitigate" the harm by simply working an additional nine years. As a threshold matter, this is an option that most Flight Attendants would not accept, and for many is a choice that they cannot make for a variety of reasons. In fact, United fails to point out that from 6% to 8% of Flight Attendants, based on actuarial mortality tables, would die during the nine-year postponement and receive no benefit at all from their additional labors.

More significantly, the mitigation argument is based on the flawed premise that benefits payable at age 65 are the "same" as benefits payable at age 56 if the dollar amount of the payments is identical. That is simply not true. The rudimentary concept of the present value of money establishes otherwise. A monthly pension benefit of $1000 beginning at age 56 is simply not the same as a $1000 benefit beginning at age 65 because there has been a stream of income for nine more years. In fact, 48% of Flight Attendants will receive less than 60% of the actuarially equivalent benefit that they would have received under the current plan, even if they work an additional nine years. Only 1% of Flight Attendants could fully recoup their lost benefits through nine years of added service. Thus, United's mitigation argument is simply a sham, an unconscionable attempt to hide the real impact of termination on Flight Attendants.

These statistics tell much of the story, but there are further harms they do not capture. Among these is the fact that over the years of collective bargaining, Flight Attendants have given up wage increases and other benefits in order to secure the current pension benefits available under their CBA. Flight Attendants, however, will receive no compensation for these foregone wages and benefits if their plan is terminated.

It should also not be overlooked that attaining liveable pension benefits has been a cornerstone of Flight Attendants' long struggle to make flying a career, not just a job. Thus, the loss of hard-won pension benefits would deal a severe blow to the professional dignity of United Flight Attendants.

No balancing of the equities could permit these harms to ensue simply because United is unwilling to commit the same resources toward saving the Flight Attendant Plan that it is willing to commit toward eliminating the Plan.

B. The Likelihood Of A Strike Resulting From Rejection Is High, Especially Given United's Position That It Will Regard Rejection As Authority To Set Aside The Entire Flight Attendant CBA.

Under the Railway Labor Act ("RLA"), 45 U.S.C. § 151 et seq., an employer that unilaterally modifies a collective bargaining agreement has created a "major dispute" over which employees may strike. Bhd. of R.R. Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 378-80 (1969); Pan Am World Airways v. IBT, 894 F.2d 36 (2d Cir. 1990). "If the [carrier] is free [to] . . . resort to self-help, the union cannot be expected to hold back its own economic weapons." Deloit & Toledo Shore Line v. UTU, 396 U.S. 142, 155 (1969).

Nothing in the bankruptcy process suspends operation of the RLA or precludes an otherwise lawful strike. See, e.g., In re Cont'l Airlines Corp., 901 F.2d 1259 (5th Cir. 1990) (discussing strike after company unilaterally changed contract, then rejected it); IAM v. Eastern Airlines, 121 B.R. 428 (S.D.N.Y. 1990), aff'd, 923 F.2d 26 (2d Cir. 1991) (strike after company unilaterally implemented contract proposals remained legal during bankruptcy and could not be enjoined). "[E]mployers [may not] . . . use the bankruptcy courts as protection from adhering to federal labor law requirements." Eastern, 121 B.R. at 433. Indeed, a strike in the Section 1113 context is recognized as a necessary "safeguard against overreaching" by the debtor. Mile Hi Metal Sys., 899 F.2d at 893 n.10; see also Carey Transp., 816 F.2d at 93; Garofalo's Finer Foods, 117 B.R. 363, 371 (Bankr. N.D. Ill. 1990).

In this case, there is a high likelihood that rejection will trigger a strike. AFA members have already voted to authorize a strike in the event of rejection of their contract by United. The strike vote passed by an overwhelming 88% margin. It should also be noted that the last round of Flight Attendant concessions in January barely attained ratification. Flight Attendants have thus made clear that their tolerance for further cuts in compensation and benefits has reached an end-point.

Obviously, the consequences of a strike, even narrowly targeted work stoppages and picketing, will be considerable. However, if the Flight Attendants' backs are against the wall, they will be left with no other option. A strike is all the more likely, if United fulfills its foolhardy and unlawful threat to treat rejection as a complete abrogation of the Flight Attendant CBA. Flight Attendants have simply worked too hard and invested too much to permit the total annihilation of their contractual rights. Thus, the balance of the equities strongly favors denial of the instant motion, the effect of which would be to return the parties to the negotiating table, instead of triggering a strike.

CONCLUSION

For all the foregoing reasons, Debtors' motion to reject under Bankruptcy Code Section 1113(c) and for distress termination under ERISA Section 1341 must be denied.

Respectfully submitted,

Robert S. Clayman
(admitted pro hac vice)
Carmen R. Parcelli
(admitted pro hac vice)
Matthew E. Babcock
(admitted pro hac vice)
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Counsel for Association of Flight
Attendants-CWA, AFL-CIO

Dated: April 29, 2005

CERTIFICATE OF SERVICE

I, Carmen R. Parcelli, hereby certify that on this 29th day of April, 2005, true copies of the foregoing **Supplemental Objection of Association of Flight Attendants-CWA, AFL-CIO, to Debtors' Motion to Reject Their Collective Bargaining Agreements Pursuant to 11 U.S.C. § 1113(c) and for Voluntary Termination of Their Defined Benefit Pension Plans** were served via overnight delivery on the attached Core Group Service List and via electronic mail or facsimile on the Updated 2002 Service List. Pursuant to Section C.3.i(1) of the Second Amended Notice, Case Management and Administrative Procedures in this proceeding, service lists have been filed with the Court. In accordance with Rules 9014 and 7004, a true copy of the foregoing Objection was served by first-class mail on Frederic Brace, an Officer of United.

Carmen R. Parcelli

Exhibit A

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: UAL CORPORATION,) Chapter 11
et al.,) No. 02-B-48191
Debtors.) Honorable Eugene R.
) Wedoff

The deposition of PETER McDONALD, called for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States Bankruptcy Courts pertaining to the taking of depositions, taken before LINDA M. STRATTON, CSR No. 84-2613, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, at Suite 5400, 200 East Randolph Drive, Chicago, Illinois, on the 5th day of January, A.D. 2005, at 10:05 a.m.

PRESENT:

KIRKLAND & ELLIS, LLP,
(200 East Randolph Drive,
Chicago, Illinois 60601,
312-861-3030), by:
MR. ALEXANDER DIMITRIEF, P.C.,
-and-
UNITED,
(World Headquarters, P.O. Box 66100 - WHQLD,
Chicago, Illinois 60666,
847-700-5717), by:
MR. PAUL R. LOVEJOY,
appeared on behalf of the Debtors;

SONNENSCHEIN NATH & ROSENTHAL, LLP,
(233 South Wacker Drive, Suite 8000,
Chicago, Illinois 60606,
312-876-8000), by:
MR. TOBIAS E. SCHLUETER,
appeared on behalf of The Official Committee of Unsecured Creditors;

PRESENT: (Continued)

GUERRIERI, EDMOND & CLAYMAN, P.C.,
(1625 Massachusetts Avenue, N.W.,
Washington, D.C. 20036-243,
202-624-7400), by:
MR. ROBERT S. CLAYMAN,
appeared on behalf of the Association of Flight Attendants;

LOWENSTEIN SANDLER, PC,
(65 Livingston Avenue,
Roseland, New Jersey 07068-1791,
973-597-2374), by:
MR. THOMAS E. REDBURN, JR.,
appeared on behalf of the International Association of Machinists and Aerospace Workers;

PRESENT: (Continued)

PENSION BENEFIT GUARANTY CORPORATION,
(1220 K Street, NW, Suite 340,
Washington, D.C. 20005-4026,
202-326-4020), by:
MS. JACQUELYN M. GRAY,
appeared on behalf of Pension Benefit Guaranty Corporation;

REPORTED BY: LINDA M. STRATTON, CSR, RPR, CRR,
CSR Certificate No. 84-2613

project maintenance costs.
Q. Does United maintain a projection for each aircraft?
A. Yes.
Q. And that projection would then include when it is projected that a C check would have to be performed?
A. Yes.
Q. And how far out do those projections go?
A. Typically, we've done it for a year. Most recently, we've done it much longer as part of the G5 process.
Q. And does maintenance then vary to a fairly large extent based upon the number of C and D checks you may have in any given year?
A. Yes. You know, engine -- particularly engines. The cost can vary significantly.
Q. Do you know how in G4 the maintenance expense projection was done for 2004?
A. My recollection is that we had a -- you know, a more detailed forecast, you know, a typical one-year fairly detailed forecast for 2004.
Q. Do you believe that got incorporated into G4?

A. I believe the 2004 did.
Q. Uh-huh.
A. Okay. But subsequent years were based on more of an ASM 2003-type projection.
Q. Why would the company adopt that kind of projection for years beyond one?
A. It -- I mean, we -- we should have had a more, you know, plane-by-plane, engine-by-engine forecast, and that's what we did for G5.
Q. When did you come to realize that you should have had a more accurate plane-by-plane forecast?
A. Earlier this year.
Q. Like when approximately?
A. Midyear, when we started doing the G5 process. I think it was midyear.
Q. I think I was told that Mr. Brace testified a bit about this, and that his recollection was that it may have been before the ATSB final denial at the end of June. Does that sound right to you?
A. That I -- I don't know. I mean, clearly we -- you know, we had -- we had not projected our maintenance expenses, okay, in G4, okay, on a

plane-by-plane, engine-by-engine basis. It was more of an ASM based on 2003 basis. And we -- in G5, we did it on that plane-by-plane, engine-by-engine basis.
Q. Let me have you look at -- this is not Bates stamped. I apologize, but it's -- this will be G 7.
MR. DIMITRIEF: Do you mean McDonald 7?
BY THE WITNESS:
A. Yeah, I don't think we're at G 7.
BY MR. CLAYMAN:
Q. Is that what I said? You just don't know about it yet.
A. I know I don't know about the 6, too.
(WHEREUPON, a certain document was marked McDonald Deposition Exhibit No. 7, for identification, as of 1/5/05.)
BY MR. CLAYMAN:
Q. Can you identify this?
A. It says, United Air Lines Gershwin 4.0 Data Book.
Q. And let me turn your attention to a page that's been marked Roman Numeral VIII-3, and let

me -- tell me what that is.
A. It says Section VIII, financial model, 2002, 2010, income statement.
Q. I mean, have you seen this data book before?
A. Rob, it may have been sent to me. I don't read all those numbers.
Q. I understand. What you told me before is that when you were working out the projections, you did plane by plane between 2003 and 2004.
A. And my recollection is for the 2004 budget, we had, you know, we had taken into account expenses that are driven by things other than ASMs, okay, engine volumes.
Q. When you say budget, that is not this. You had a separate, I take it, within your department a maintenance budget for 2004?
A. There may be a distinction, there, okay, that we had a maintenance budget, which -- there could be a distinction.
Q. Do you recall how much your maintenance budget had increased from 2003 to 2004 based on that aircraft-by-aircraft analysis?
A. I don't. I mean, we could get that.

Exhibit B

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

------------------------) Chapter 11
IN RE:) Joint Case
UAL CORPORATION, et al.,) No. 02-B-48191
Debtors.) Honorable
------------------------) Eugene R. Wedoff

The deposition of MICHAEL F. DINGBOOM, called as a witness for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before PAULINE M. VARGO, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, C.S.R. No. 84-1573, at the offices of Kirkland & Ellis, Suite 5400, 200 East Randolph Drive, Chicago, Illinois, on the 6th day of January, A.D. 2005, at 1:00 p.m.

PRESENT:
KIRKLAND & ELLIS, L.L.P.,

term one that you are doing as of this date. That's going to go in there. That's got a date that's based on a market price or it is coordinated with a market price of a certain date, like NYMEX of -- for example, Gershwin 5 is based on the October 13th market close. They gave it to us on the 14th but it was based on the close of the 13th, so we can go find the forward curve for that same day, but then we would also talk to Bob about, okay, here is what you told us you thought the long-range crack would eventually get to, 14 or 15 cents a gallon. Are you still comfortable with that, and the same with the system differential and then they we put it together.

Q. So for purposes of Gershwin 5F, how did you settle on the October 13 date that you just mentioned?

A. Just the time line in terms of when we

would have to have Gershwin done, have it for internal review and backed up. Even though it went out late October, we had to -- there was lots of internal steps. So it was like, okay, here is a good date, this is the date we have currently. Two weeks later we want to change it after we have told the board here is all the numbers. So it is like part of that six- to eight-week process; you kind of have to lock it in at a certain date in order to move forward.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re	
UAL CORPORATION, et al.	Chapter 11
Debtors	Case No. 02-B-48191 (Jointly Administered)
	Hon. Eugene R. Wedoff

SECOND DECLARATION OF DAVID FEINSTEIN

David Feinstein hereby declares, in accordance with 28 U.S.C. § 1746, as follows:

1. I am principal of the firm Feinstein Glaser Olney & Co., which provides technical actuarial and consulting support to clients. I have thirty-one years of experience as an actuary working on retirement benefit valuations. The ERISA plans on which I have worked include joint labor-management trusteed and single employer pension funds. At the present time I am the consulting actuary for fourteen multiemployer clients. I consult on defined benefit plans, defined contribution plans, and health and welfare plans for these clients. I am also the actuary for two public employer plans. I am a fellow in the Society of Actuaries and a member of the American Academy of Actuaries. I have been an enrolled actuary under ERISA since 1984.

2. I have been retained by the Association of Flight Attendants-CWA, AFL-CIO to advise on actuarial topics related to

the Flight Attendant Plan and to assist in the evaluation of the Supplemental Declaration of Timothy J. Marnell dated April 11, 2005, filed in the above-captioned proceeding.

3. As part of the first Section 1113 process, AFA agreed to reductions in benefits under the Flight Attendant Plan. United's own actuaries show in their 2004 pension valuation report that the minimum funding requirement for 2004 decreased by $68 million as a result of the reduction in benefits. From 2003 to 2004 in large part as a result of the benefits reduction, the Plan's normal cost decreased from $49 million to $13 million.

4. The Supplemental Declaration of Timothy J. Marnell presents an analysis of the impact on participants of termination of the Flight Attendant Plan and replacement of the Plan with a defined contribution plan. Specifically, Mr. Marnell presents a histogram showing the impact of termination and replacement on flight attendants retiring at 56, which is the current average retirement age for Plan participants (hereinafter "Marnell's Age 56 Histogram"). Marnell Supp. Decl. ¶ 37. Using the same participant data, employing essentially the same actuarial assumptions and methodology, I conducted my own analysis of the impact of plan termination and replacement on those retiring at assumed age 56, as well as ages 60, 62, and 65.

5. In conducting my analysis, I used participant data collected by United Airlines for the company's January 1, 2005 pension valuation. United informed me that this same participant data was used to create Marnell's Age 56 Histogram.

6. I also relied upon the following actuarial assumptions in my analysis. United informed me that these same assumptions were relied upon to create Marnell's Age 56 Histogram.

a. plan termination date of June 30, 2005;

b. 4.00% rate of salary increases;

c. 1983 Unisex Group Annuity Mortality Table;

d. 4.00% contribution rate for the replacement defined contribution plan;

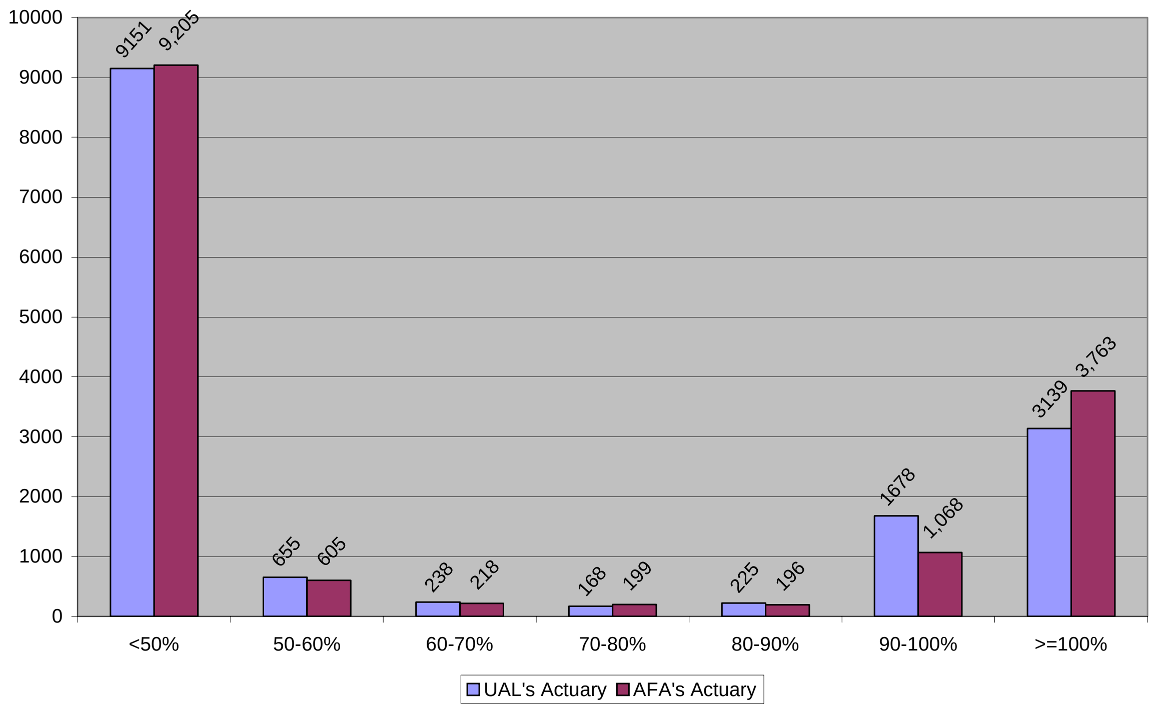
e. 7.50% rate of return on contributions to the replacement defined contribution plan;

f. 7.50% rate to convert either the defined benefit annuity to a single sum value or the defined contribution single sum to an annuity; and

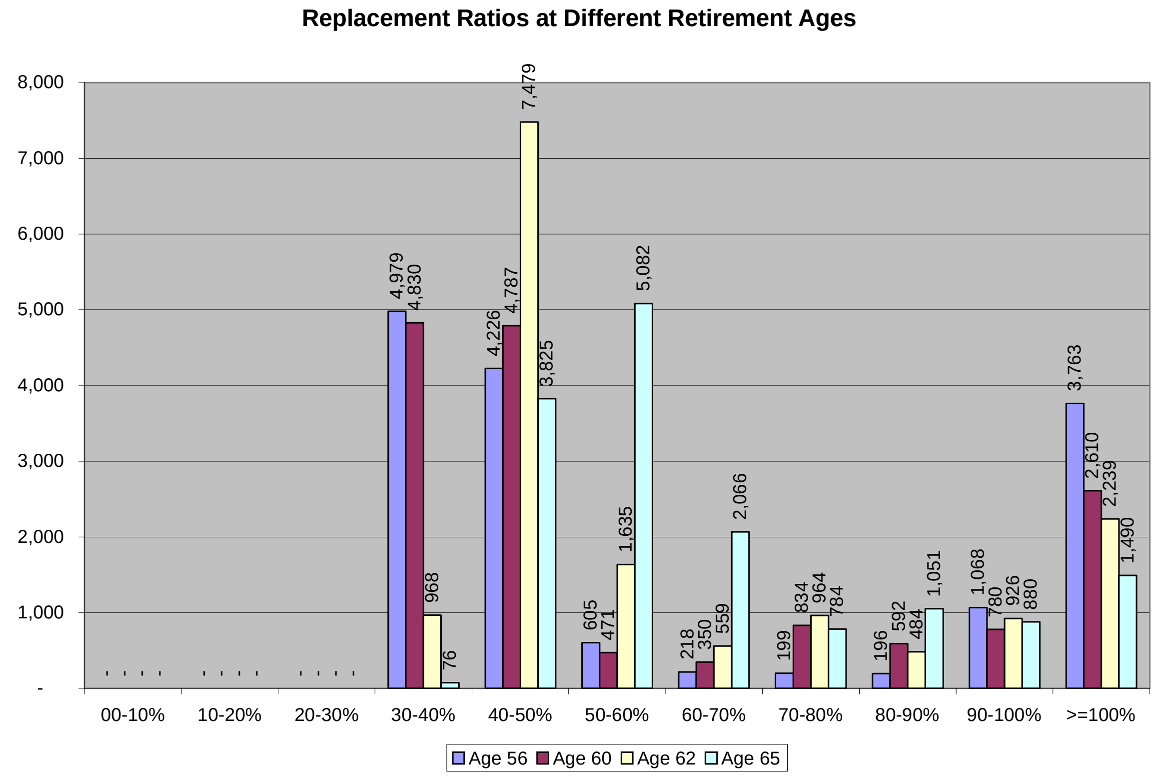
g. assumed that only PBGC Category 4 benefits would be available.

7. In my analysis, I employed the same methodology outlined in Mr. Marnell's Declaration with one variation. The results obtained through my analysis of the impact on participants retiring at age 56 are comparable to the results contained in Marnell's Age 56 Histogram. The following chart compares Mr. Marnell's results ("UAL") in the Age 56 Histogram to the results of my analysis ("AFA").

Replacement Ratios at Age 56



8. Using the same data, assumptions, and methodology described above, I also analyzed the impact of termination and replacement on current Flight Attendants retiring at ages 60, 62, and 65. The results of my analysis are as follows:



9. As these results show, 60% of those retiring at ages 56 will receive less than 50% of the value of their current benefits after termination and replacement; 63% of those retiring at age 60 will receive 50% less; 55% of those retiring at age 62 will receive 50% less; and 25% of those retiring at age 65 would receive 50% less. In addition, more participants at assumed retirements ages 60, 62, and 65 will suffer an adverse impact from termination and replacement than will participants at the assumed retirement age of 56.

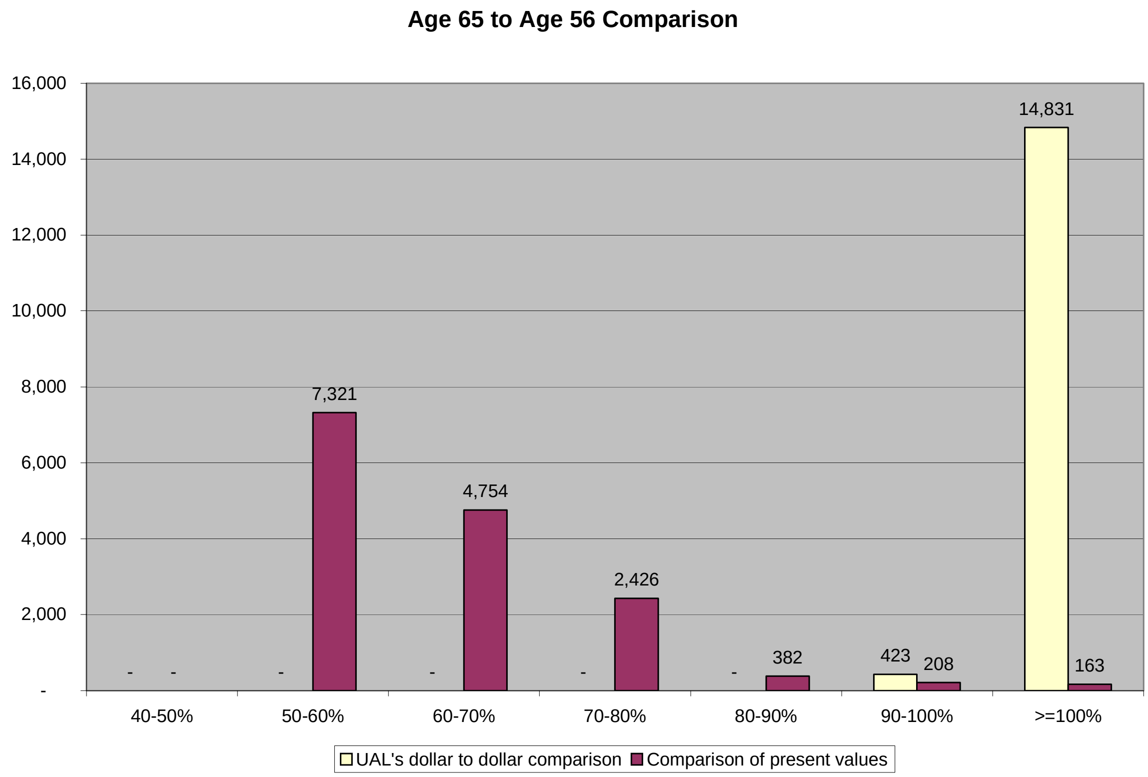
10. Based upon plan data provided to AFA from United's actuaries, I have calculated the current benefits due to variously situated Flight Attendants, and the benefits that would be payable after termination of the plan and replacement with a 4% defined

contribution plan. The calculations assume the historical average retirement age under the plan of 56. The results of my calculations are as follows:

	Age	Service	Salary	Monthly Benefit Under Current Plan	Monthly Benefit After Termination
Flight Attendant 1	49	26 years	42,000	$1,943.90	$888.36
Flight Attendant 2	43	16 years	42,000	$2,184.85	$692.97
Flight Attendant 3	31	8 years	37,200	$3,413.18	$1,060.49
Flight Attendant 4	25	0 years	20,000	$2,101.79	$802.80

11. Mr. Marnell's Supplemental Declaration also presents a histogram entitled "Impact on Flight Attendants at Assumed Retirement Age (65)." Marnell Supp. Decl. ¶ 39. In this histogram, Mr. Marnell compares the benefits that flight attendants would receive under their present Plan at the current average retirement age of 56 to the benefits that flight attendants would receive at the assumed retirement age of 65 after termination and replacement of the current Plan. Mr. Marnell's comparison, however, fails to take into account the present value of the benefits compared. Therefore, his histogram does not provide a comparison of actuarially equivalent values.

12. When the present values of the benefits under the current Plan at age 56 and the benefits at assumed retirement age 65 after termination and replacement are compared, the results are vastly different than Mr. Marnell's dollar to dollar comparison.



13. In fact, over 48% of flight attendants working until age 65 will receive less than 60% of the actuarially equivalent benefit that they would have received under their current Plan at age 56. Moreover, only 1% of flight attendants would fully recoup the value of the benefits lost as a result of termination and replacement through an additional nine years of service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of April 2005.

David Feinstein

David Feinstein

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re	
UAL CORPORATION, <u>et al.</u>,	Chapter 11
Debtors.	Case No. 02-B-48191 (Jointly Administered)
	Hon. Eugene R. Wedoff

<u>SECOND DECLARATION OF GREGORY DAVIDOWITCH</u>

Gregory Davidowitch hereby declares, in accordance with 28 U.S.C. § 1746, as follows:

1. Since July 1, 2002, I have served as the President of the Master Executive Council ("MEC") for the Association of Flight Attendants-Communications Workers of America, AFL-CIO ("AFA"), at United Airlines ("United" or the "Company"). The MEC is composed of the presidents of 17 Local Executive Councils ("LEC") at United. AFA establishes an LEC at each domicile where Flight Attendants are based. I am the highest elected AFA official, representing exclusively United Flight Attendants.

2. As MEC President, I communicate regularly with United's executives, including officers of the Company and senior management, regarding issues of importance to Flight Attendants. The matters set forth herein are based upon my personal knowledge.

3. On November 4, 2004, United delivered term sheets to all of its unions, seeking to obtain an additional $725 million in annual labor savings. United also proposed to all of its unions modifications of their collective bargaining agreements that would permit termination of all four of the Company's defined benefit plans.

4. The negotiations that followed between United and AFA focused on the $130 million in annual labor savings allocated to Flight Attendants by the Company. The proposed modification of the CBA to allow termination of the pension plan was not part of the $130 million in savings. In fact, United's term sheet did not attribute any dollar amount to this contractual change. Accordingly, there was very little discussion at the bargaining table over United's proposal to allow termination of the Flight Attendant Plan.

5. Just as the scheduled hearing on United's Section 1113(c) motion was set to begin, the parties reached agreement on the $131 million in annual savings ("2005-2010 Agreement"). A side letter to the 2005-2010 Agreement provided that "United and AFA-CWA will continue to meet and confer regarding the Defined Benefit Plan." That letter further provided that, if the parties were unable to reach agreement on the pension issue by April 11, United would re-file its Section 1113(c) motion with respect to the pension issue.

6. On January 31, Flight Attendants ratified the 2005-2010 Agreement by a margin of 56% to 44%. Over 70% of eligible Flight Attendants participated in the ratification vote, the highest

turnout for any vote conducted by the Union in the course of United's bankruptcy.

7. In late January, while the 2005-2010 Agreement was still out for a ratification vote, AFA turned its efforts toward addressing the open pension funding issues. On January 27, 2005, AFA met with PBGC and learned that the agency was willing to explore a wide range of options to termination of the Flight Attendant Plan.

8. After that meeting, I wrote a letter to Glenn Tilton, United's Chief Executive Officer, on February 1. I informed Mr. Tilton about PBGC's willingness to explore alternatives and urged the Company to meet with AFA and the PBGC as soon as possible. Attached as Exhibit 1 is a true and correct copy of my letter to Glenn Tilton.

9. By letter dated February 4, Frederic Brace, United's Executive Vice President and Chief Financial Officer, responded. He stated that "we continue to believe that we must terminate and replace all four of our pension plans" and that "[t]o date, we know of no viable alternatives and have not received any from you or anyone else." Nevertheless, Brace stated United would meet with AFA to discuss the pension issue, either with PBGC or separately. Attached as Exhibit 2 is a true and correct copy of the letter received from Mr. Brace.

10. During February 2005, the actuarial firm of Feinstein, Glaser & Olney, previously retained by AFA, continued to provide professional analysis of alternatives to plan termination, and the

impact of those alternatives on the retirement benefits of Flight Attendants. AFA also continued to request from the Company the information necessary for the Union's actuaries and other professionals to evaluate alternatives to termination. In the same time period, AFA also researched various pension funding solutions, including the solution adopted by General Motors Corporation in 2003, in which the company issued debt and placed the proceeds into its plans.

11. On February 25, 2005, I wrote a letter to Frederic Brace requesting that the Company meet with AFA and the PBGC in order to explore the available alternatives to plan termination. Attached as Exhibit 3 is a true and correct copy of the letter. The letter listed several alternatives to termination that in AFA's view required further investigation, including the General Motors solution.

12. AFA and the Company met to discuss pension issues on March 3, 2005. The PBGC participated in the meeting by telephone. At the meeting, AFA outlined the ideas that would later form its proposal to United, including the contribution of common stock received by AFA in bankruptcy, issuance to AFA of a note like that United issued to ALPA, and a possible contribution from PBGC to assist in meeting the minimum funding requirements for the Plan.

13. At the meeting, Frederic Brace told AFA that the Company needed more information regarding AFA's proposed alternative to termination. He also stated that regardless of whether AFA's proposal covered United's costs for the next five years, United was

unwilling to entertain any proposal that did not relieve it of the purported volatility resulting from a defined benefit plan.

14. In order to further develop its alternative funding proposal, AFA retained corporate counsel Gregg S. Lerner of Freidman Kaplan Seiler & Adelman LLP in early March. On March 15, AFA representatives, including Mr. Lerner, met with the PBGC to discuss further the outlines of AFA's proposal. The PBGC representatives were receptive to AFA's proposal, despite the fact that it contemplated PBGC undertaking unprecedented obligations in order to preserve a pension plan. AFA met again with the agency the following week.

15. That same week, I met with Frederic Brace and Pete McDonald, United's Chief Operating Officer, to discuss the potential for a legislative solution to the pension funding issue. The Company expressed the view that there would be no additional legislative pension relief in the near future. Nevertheless, I asked that legislative professionals from both the Union and Company confer on the matter. At that conference, United made it clear that it did not believe there was a legislative solution that it could support.

16. On March 30, 2005, AFA's corporate counsel sent a letter to Bradley D. Belt, PBGC's Executive Director. Attached as Exhibit 4 is a true and correct copy of the letter. Earlier on the same date, AFA had sent to PBGC a formal term sheet for its pension proposal. Attached as Exhibit 5 is a true and correct copy of the

term sheet. The term sheet presented five potential sources of funding that would permit the Plan to remain intact:

(1) an estimated $150-$250 million in UAL common stock to be received in bankruptcy representing both (i) the value of AFA's unsecured claims arising from prior wage reductions and (ii) the value of PBGC's claim were the Flight Attendant Plan terminated;

(2) $165 million in payments that United had proposed to make to a defined contribution plan in lieu of payments to the Flight Attendant Plan;

(3) a note of like tenor to the note received by ALPA from United in conjunction with termination of the pilot's plan;

(4) application to the IRS for minimum funding waivers; and

(5) if necessary, a contribution from PBGC in an amount sufficient when combined with the other funding sources in 1-4 to fund United's minimum funding contributions through December 31, 2010.

17. Bradley Belt responded to AFA's letter on April 4, 2005. Attached as Exhibit 6 is a true and correct copy of the letter. Mr. Belt characterized the proposal as "constructive" and reiterated the position taken by the agency before this Court "that the AFA plan can and should be maintained by the company upon emergence from Chapter 11." Mr. Belt added that: "Based upon available information, we continue to believe that the interests of participants and the pension insurance program would best be served by the continuance of the AFA plan." In closing, he encouraged further work between the agency and AFA to resolve the pension funding issue.

18. On April 5, United attended a meeting with AFA and the PBGC. At the meeting, AFA presented United with the term sheet for

its proposal. Attached as Exhibit 7 is a true and correct copy of the term sheet. United agreed that it would provide a response.

19. At a meeting between United and AFA held on April 8, the Company presented a counter-proposal to AFA's term sheet. Attached as Exhibit 8 is a true and correct copy of United's counter-proposal. The Company's proposal adopted some of the key aspects of AFA's proposal, such as contribution to the Plan of the value of common stock to be issued to AFA and the value of PBGC's claim were the Flight Attendant Plan to be terminated. The Company also agreed to contribute an amount equal to its proposed 4% contributions to a replacement plan.

20. The Company's proposal, however, made no provision for issuance of a note to AFA like that obtained by ALPA. The Company proposal also did not contemplate application for minimum funding waivers. Lastly, the Company required that upon exit, PBGC immediately pay the Plan's unfunded liability in excess of $700 million and then protect United from any shortfall between the Company's limited contributions and the Plan's minimum funding obligations for the next twenty years. This proposal was obviously intended to deter the PBGC from participating more than it was intended to encourage the agency's support.

21. At the meeting, Frederic Brace steadfastly maintained that the Company has to be fully shielded from any increase in its pension liability to Flight Attendants for a full twenty years, despite the fact that the Company's original proposal to AFA was based upon a business plan ending in 2010. AFA told Brace that

such a demand was unreasonable. AFA also took issue with United's refusal to provide to it a note similar to the one provided to ALPA. In response, Brace asserted that United would renew its Section 1113(c) motion and that, if it prevailed it would view AFA's CBA as rejected in its entirety and impose upon Flight Attendants wages and working conditions as the Company saw fit.

22. AFA was scheduled to meet again with the PBGC on April 21. On April 20, the date for that meeting was confirmed, but subsequently cancelled later that same day.

23. On April 22, United reiterated to AFA its position that it will regard Court approval of its Section 1113(c) motion as a rejection of the Flight Attendant CBA in its entirety. Consequently, United would view itself as able to alter unilaterally the terms and conditions under which Flight Attendants work.

24. Also on April 22, United announced for the first time in open court that the Company had entered into a settlement agreement with PBGC.

25. AFA, United, and PBGC met again on April 28. United maintained its position that it had to be protected from the claimed volatility associated with the Flight Attendant Plan for a full twenty years.

26. At a meeting held on March 11, 2005, United provided to AFA a document entitled "United Airlines: Reinvented and Positioned to Compete." Attached as Exhibit 9 is a true and correct copy of that document.

27. Attached as Exhibit 10 is a document produced by United to AFA in the course of discovery in this case, and bates numbered UAL-AFA 034056-034064.

28. Attached as Exhibit 11 is a document produced by United to AFA in the course of discovery in this case, and bates numbered UAL-AFA 020379-020415.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of April 2005.

Greg

Gregory E. Davidowitch

Exibit 1

ASSOCIATION OF FLIGHT ATTENDANTS-CWA,AFL-CIO
6250 N. River Road, Suite 4020, Rosemont, IL 60018

PHONE 847•292•7170 FAX 847•292•7180 website:www.unitedafa.org

February 1, 2005

Mr. Glenn F. Tilton, Chairman
President and Chief Executive Officer
United Airlines
1200 East Algonquin Road
Elk Grove Township, Illinois 60007

Dear Glenn:

When the United Master Executive Council took the bold and decisive step to defend Flight Attendants and our careers by recommending a "FOR" vote on the Agreement ratified by our Members yesterday, we did so recognizing the circumstances upon which we were able to achieve a Tentative Agreement that protects Flight Attendants and our Company from destructive litigation.

The certified results of the Tentative Agreement balloting produced a result that will present additional challenges for United Airlines as the Company moves towards exit from bankruptcy. Only fifty-six percent of eligible Flight Attendants who cast their ballots voted for the Tentative Agreement. Over seventy percent of eligible Flight Attendants participated in the vote. It should be noted that this voter turn out is the highest of all votes conducted by the Association during the pendency of United's bankruptcy.

The results of this vote indicate clearly that Flight Attendants have hit the threshold of pain and sacrifice. Our dedication to our jobs and our airline shall not waiver, but it is clear that Flight Attendants are demanding that management deliver on its responsibility to exit bankruptcy in short order. Furthermore, as the voting results dictate, there is no opportunity to return to Flight Attendants for additional concessions. There must be a solution that allows United Airlines to restructure without terminating the Flight Attendant defined benefit pension plan.

Six weeks have passed since representatives of United, the Pension Benefit Guarantee Corporation (PBGC), the Association of Flight Attendants – CWA (AFA), the International Association of Machinists and Aerospace Workers (IAM), and the United Retired Pilots Benefit Protection Association's (URPBPA) met in Washington to discuss alternatives to termination of the pension plans. At that meeting, Jake Brace stated that United was committed to exploring and considering options that would preserve these plans. Since then the Company has not taken any steps to advance this discussion and instead continues to treat termination as inevitable.

In light of United's intransigence and apparent unwillingness to take the initiative, we went ahead and met with the PBGC last week. During the meeting we learned that the PBGC is willing to consider a wider range of solutions than some may have previously believed.

Given PBGC's willingness to explore any and all options, United has even less reason to remain fixed on terminating the Flight Attendants' plan and more reason to prepare a solution that will keep the Flight Attendants' plan intact and ongoing. Accordingly, we would ask that United attend a meeting with the PBGC and AFA as soon as possible at which time we can discuss United's position, and hopefully its solutions(s), as well as other issues related to the preservation of our pension plan. Please let me know as soon as possible if you or your designee is available to meet on this critical issue.

Sincerely,

Greg Davidowitch, President
United Master Executive Council

INFLIGHT SAFETY PROFESSIONALS

ITF INTERNATIONAL TRANSPORT WORKERS FEDERATION

483 MBE

Exhibit 2

Frederic F. Brace
Executive Vice President and
Chief Financial Officer

UNITED

A STAR ALLIANCE MEMBER ™

February 4, 2005

Greg Davidowitch, President
United Master Executive Council
Association of Flight Attendants
6250 N. River Road, Suite 4020
Rosemont, IL 60018

Dear Greg:

I am writing in response to your February 1 letter to Glenn Tilton regarding alternatives to termination of United's pension plans.

As you are aware, after extensive analysis we continue to believe that we must terminate and replace all four of our pension plans in order to restructure successfully, exit bankruptcy and compete in a fundamentally changed marketplace. At the same time, we have made clear that we are open to exploring all alternatives to termination that will still enable us to meet these goals.

To date, we know of no viable alternatives and have not received any from you or anyone else. Your letter suggests, though, that you and the PBGC may have discussed some ideas. We welcome the opportunity to meet with the AFA, either with the PBGC or separately, to hear any new ideas.

Please let me know when and where you would like to meet as soon as possible.

Sincerely,

Jake

Exhibit 3

ASSOCIATION OF FLIGHT ATTENDANTS-CWA,AFL-CIO
6250 N. River Road, Suite 4020, Rosemont, IL 60018

PHONE 847•292•7170 FAX 847•292•7180 website:www.unitedafa.org

February 25, 2005

Mr. Frederic F. Brace, Executive Vice President and
Chief Financial Officer
United Airlines
1200 East Algonquin Road
Elk Grove Township, Illinois 60007

Jake:

As you know we have a limited amount of time to meet and confer in an effort to keep the plan viable. AFA has received assurances that representatives of the Pension Benefit Guarantee Corporation (PBGC) will make themselves available for a meeting(s) to discuss United's position, and explore the universe of possibilities that exist to keep the Flight Attendant Defined Pension Plan viable.

On several occasions we have suggested the following points to avoid the termination of the Flight Attendant plan. None of which have been considered 'viable' by United, nor have they been explored to the satisfaction of the Association. Those include:

- a waiver of the minimum funding requirements
- a deferral of the current funding requirements
- a combination of both waivers and deferrals
- amortizing funding requirements over an extended period of time
- in kind contributions

Another potential solution exists. Consider, for example two years ago, General Motors Corporation (GM) pension plans were under funded by $17.8 billion. GM faced the prospect of having to contribute $15 billion in cash in the next five years in variable-rate premiums. So GM issued $13.5 billion in debt in 2003, set to mature in 20 years, and put the proceeds in the plans. That resulted in fully funded pension plans, decreasing the likelihood that GM will need to contribute to the plans for the remainder of the decade.

There may in fact be a universe of possible ways to keep our plan viable; it would be helpful for us to understand the extensive analysis that United has conducted that has set the Company upon a course of action that has led you to conclude that there are no viable alternatives other than termination. Perhaps this should be the primary topic of discussion at our meeting.

Sincerely,

Greg Davidowitch, President
United Master Executive Council

Exhibit 4

FRIEDMAN KAPLAN SEILER & ADELMAN LLP

1633 BROADWAY

NEW YORK, NY 10019-6708

TELEPHONE (212) 833-1100

FACSIMILE (212) 833-1250

WWW.FKLAW.COM

WRITER'S DIRECT DIAL
(212) 833-1110

WRITER'S DIRECT FAX
(212) 373-7910

E-MAIL
GLERNER@FKLAW.COM

March 30, 2005

Bradley D. Belt
Executive Director
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005-4026
belt.bradley@pbgc.gov

Re: United Airlines Flight Attendant Defined Benefit Plan

Dear Mr. Belt:

On behalf of the Association of Flight Attendants ("AFA"), earlier today we sent to members of the Staff of the Pension Benefit Guaranty Corporation ("PBGC") a term sheet summarizing the principal terms and conditions under which AFA proposes that the UAL Corporation ("UAL") Flight Attendant Defined Benefit Plan (the "APA Plan") can be maintained. As you are aware, the Staff and representatives of the PBGC have met with AFA representatives on a number of occasions to discuss our mutual desire to explore all possibilities to continue the AFA Plan. The term sheet contemplates that the PBGC will provide financial support, in a form to be determined, as a critical component of the arrangements to preserve the AFA Plan. Without the PBGC's financial support, it is highly unlikely that AFA will succeed in negotiating to retain the AFA Plan in a reorganized UAL. AFA believes strongly that the transaction contemplated by the term sheet can form the basis on which AFA's and the PBGC's shared objective of continuing the AFA Plan can be accomplished. In addition, such a transaction will enable the PBGC to avoid significant termination liability and to fulfill an important aspect of its mission of ensuring the continued existence and solvency of defined benefit pension plans for those workers who have bargained for them.

UAL has steadfastly maintained that termination and replacement of its defined benefit pension plans is necessary if UAL is to be successfully reorganized. In UAL's Annual Report on Form 10-K for the fiscal year ended December 31, 2004, UAL stated in its Management's Discussion and Analysis of Financial Condition and Results of Operations that "[w]e believe that in order to obtain non-guaranteed exit financing, and successfully reorganize and emerge from Chapter 11 bankruptcy proceedings, it is necessary to terminate and replace our defined benefit pension plans." AFA does not believe that UAL has seriously considered the possibility that a financially-sound, reorganized UAL can emerge from bankruptcy with the AFA Plan unchanged. UAL has sought to paint all four of its defined benefit pension plans with the same broad brush despite the existence of crucial differences between the AFA Plan and the other three defined benefit plans that UAL had historically maintained for its workforce. AFA strongly believes that important factors unique to the AFA Plan militate in favor of preserving the AFA Plan.

First, the AFA Plan, by any reasonable measure, is affordable for UAL. This is in no small part due to the significant reduction in benefits agreed to by AFA in 2003. In fact, as a result of these changes, over the next six years the actuarial "normal cost" (more or less the actuarial present value of the benefits earned) is actually less than the defined contribution plan currently offered by UAL. Accordingly, it is not as if the benefits will explode should the AFA Plan not be terminated. Indeed, the AFA Plan is clearly the least expensive pension plan for UAL to maintain. Over the next six years, the aggregate funding needs of the AFA Plan are projected to be approximately $500 million, representing only approximately 11% of the total pension obligations of UAL in respect of the four defined benefit plans that UAL had historically maintained.

Second, although the AFA Plan provides for a very modest level of benefits for this class of non-highly compensated employees, it represents an indispensable portion of the individual participants' expected retirement income. The projected benefit at retirement for a flight attendant with an assumed salary of $45,640 who has worked 26 years and retires at age 56 (the historical average age of a flight attendant at retirement) is approximately $1,575 per month, hardly the foundation of a sumptuous retirement. Should UAL be permitted to terminate the AFA Plan, this average flight attendant's projected retirement benefit would be reduced to approximately $1,000 per month, a pension benefit that might not provide for a standard of living at retirement that is above the poverty level. The defined contribution plan that UAL is proposing to substitute for the AFA Plan will replace, by UAL's own calculations, only a small fraction of the benefits that the AFA Plan is designed to provide.

Lastly, unlike any other labor group, AFA's members are offering to invest their own funds to contribute to reestablishing the solvency of the AFA Plan. AFA is prepared to contribute to the AFA Plan the UAL equity it will receive pursuant to the reorganization, obtained at the cost of nearly $1 billion in wage and other contractual reductions, as well as any note that UAL would issue to AFA to replace the value of the benefits AFA would lose under UAL's proposal to terminate the AFA Plan. In addition, the flight attendants will forego participating in UAL's proposed defined contribution plan and instead direct that those contributions be made directly to the AFA Plan.

UAL has sought to create significant momentum towards terminating all of its defined benefit pension plans, including the AFA Plan. A clear and unambiguous indication from the PBGC that the termination of the AFA Plan is not necessary for UAL to reorganize and emerge successfully from Chapter 11 is urgently needed if the AFA Plan is to be preserved. As you know, the Section 1113 and pension termination litigation is currently scheduled to begin on April 11, 2005. AFA strongly believes that with the influence and support of the PBGC, including some form of financial participation, the AFA Plan can be preserved, thereby enabling the PBGC to carry out its mission of ensuring the continued existence of defined benefit plans for those who have bargained for them. By working with the AFA to retain the AFA Plan, the PBGC can avoid incurring the enormous liability that will result from termination and preserve the retirement security of the more than 20,000 flight attendants covered by the AFA Plan.

We appreciate your consideration of our proposal and look forward to hearing from you.

Very truly yours,

Gregg S. Lerner

cc: Jeffrey Cohen
John Spencer
Greg Davidowitch
Robert Clayman

Exhibit 5

Term Sheet to Retain UAL Flight Attendant Defined Benefit Plan

Objective of Association of Flight Attendants:	• To continue in effect the United Airlines ("UAL") Flight Attendant Defined Benefit Plan (the "Plan"), with the present benefits (as reduced in 2003) to the Association of Flight Attendants ("AFA") unchanged. • In order to accomplish this objective, AFA is willing to contribute, or cause to be contributed to the Plan, through direct contributions by AFA (or other amounts that UAL would otherwise pay to AFA or its members as listed below under "Sources of Funding"), a portion of the amounts necessary to fund the unfunded pension benefit obligation.
Pension Benefit Guaranty Corporation:	• It is expected that the Pension Benefit Guaranty Corporation ("PBGC") will provide funding to the Plan, either through a cash contribution, loan guarantee, pension bond, or other acceptable consideration, in an amount sufficient to fund, together with AFA's contributions, the full amount of UAL's annual unfunded pension obligation to the Plan through December 31, 2010. In addition, PBGC will provide, or cooperate in obtaining, Internal Revenue Service funding waivers or restructurings and other satisfactory funding arrangements) and other accommodations in order to facilitate the continuation of the Plan and avoid the PBGC assuming liability resulting from terminating the Plan. • The PBGC will work with AFA and UAL to determine the most cost-effective means to achieve this objective.

Sources of Funding:		**Amount**
	• Value of UAL Common Stock to be received in bankruptcy based upon value of: (i) AFA's unsecured claim arising from prior wage reductions ($972 million), (ii) the estimated amount of the PBGC funding obligation if the Plan is terminated ($1.8 billion),	$150- 250 million

(iii) current estimates of total allowed unsecured claims ($25 billion), and
(iv) the projected aggregate common equity value of UAL post-bankruptcy (between $1.5 and $2.5 billion). Specified amounts of the UAL equity to be received by AFA pursuant to the reorganization shall be contributed to the Plan by UAL annually as agreed upon by UAL and AFA.

• Defined Contribution Plan payments that UAL has proposed to make in lieu of payments under the Plan @ 4% per year through 2010 ($27.5 million per year for six years).	$165 million
• Note of like tenor to the note received by ALPA from UAL in consideration for terminating the pilots' defined benefit plan in a principal amount equal to the equivalent benefit afforded to the pilots for terminating their Defined Benefit Plan (AFA may seek to monetize the value of this note by reselling it and contributing the cash proceeds to the Plan).	$____ million
• PBGC contribution, either through a cash contribution, loan guarantee, pension bond or other acceptable consideration.	$____ million

Exhibit 6

PBGC
Protecting America's Pensions
Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

Office of the Executive Director

APR 04 2005

Gregg S. Lerner
Friedman Kaplan Seiler & Adelman LLP
1633 Broadway
New York, NY 10019-6708
GLerner@fklaw.com

Re: United Airlines Flight Attendant Defined Benefit Plan

Dear Mr. Lerner:

Thank you for your letter of March 30, 2005, outlining your proposal for United's continued maintenance of the United Airlines Flight Attendant Defined Benefit Plan ("AFA Plan"). Your proposal is constructive, and I appreciate the flight attendants' commitment to maintaining the AFA Plan.

As you know, in briefs filed in the pending bankruptcy matter, PBGC advised the court of its view that the AFA plan can and should be maintained by the company upon emergence from Chapter 11. Based upon available information, we continue to believe that the interests of the participants and the pension insurance program would best be served by the continuance of the AFA Plan.

I know that PBGC staff have been meeting with you and other AFA representatives to discuss the proposal outlined in your letter, and I hope that further progress can be made in resolving these issues.

Sincerely,

Bradley D. Belt

cc: Greg Davidowitch
Robert Clayman

Exhibit 7

Term Sheet to Retain
UAL Flight Attendant
Defined Benefit Plan

Objective of Association of Flight Attendants:

- To continue in effect the United Airlines ("UAL") Flight Attendant Defined Benefit Plan (the "Plan"), with the present benefits (as reduced in 2003) to the Association of Flight Attendants ("AFA") unchanged.
- In order to accomplish this objective, AFA is willing to contribute, or cause to be contributed to the Plan, through direct contributions by AFA (or other amounts that UAL would otherwise pay to AFA or its members as listed below under "Sources of Funding"), a portion of the amounts necessary to fund the unfunded pension benefit obligation.
- AFA, UAL, and the Pension Benefit Guaranty Corporation ("PBGC") will work jointly to determine the most cost-effective means to achieve this objective.

Sources of Funding:

	Amount
• Value of UAL Common Stock to be received in bankruptcy based upon value of: (i) AFA's unsecured claim arising from prior wage reductions ($972 million), (ii) the estimated amount of the PBGC funding obligation if the Plan is terminated ($1.8 billion), (iii) current estimates of total allowed unsecured claims ($25 billion), and (iv) the projected aggregate common equity value of UAL post-bankruptcy (between $1.5 and $2.5 billion). Specified amounts of the UAL equity to be received by AFA pursuant to the reorganization shall be contributed to the Plan by UAL annually as agreed upon	$150- 250 million

by UAL and AFA.

• Defined Contribution Plan payments that UAL has proposed to make in lieu of payments under the Plan @ 4% per year through 2010 ($27.5 million per year for six years).	$165 million
• Note of like tenor to the note received by ALPA from UAL in consideration for terminating the pilots' defined benefit plan in a principal amount equal to the equivalent benefit afforded to the pilots for terminating their Defined Benefit Plan (AFA may seek to monetize the value of this note by reselling it and contributing the cash proceeds to the Plan).	$____ million
• UAL will apply to the Internal Revenue Service ("IRS") for waivers of its minimum funding contributions under Section 412 of the Internal Revenue Code, which request will be fully supported by AFA. The PBGC will give due consideration to the waiver request(s) and will provide its views to the IRS.	
• The PBGC will contribute, if necessary, either through a cash contribution, loan guarantee, pension bond or other acceptable consideration an amount sufficient to fund, together with the above sources of funding, the full amount of UAL's annual	$____ million

unfunded pension obligation
to the Plan through December
31, 2010.

Exhibit 8

IN RE UAL CORPORATION, ET AL. (Case No. 02-B-48191)

Preliminary Term Sheet By and Among UAL Corporation and all direct and indirect subsidiaries ("United") and the Association of Flight Attendants ("AFA")[1]

The following is a Preliminary Term Sheet setting forth the principal terms and conditions under which United and AFA (collectively referred to as the "Parties") will agree to a settlement and compromise of certain of their disputes (the "AFA/United Settlement") in connection with United's Flight Attendant Plan (the "FA Plan"), the potential filing of a motion seeking the distress termination of the FA Plan, and the potential re-filing of a motion to reject the Flight Attendant collective bargaining agreement ("AFA CBA") pursuant to Section 1113 of the Bankruptcy Code.

The Preliminary Term Sheet is an expression of interest in considering a settlement under the general terms and conditions outlined below. It is not intended to and does not create any binding legal obligation on the part of any Party. Nothing contained herein shall in any manner waive, limit, modify or adversely affect any of the rights, claims, causes of action, powers or protections of either of the Parties under any of the applicable documents.

[1] "United" shall include all United debtors and their bankruptcy estates, and all of United's direct and indirect non-debtor subsidiaries, affiliates and controlled group members.

	General Terms
1. Continuation of the FA Plan	Immediately after the effective date set forth in any definitive agreement implementing the terms of this Preliminary Term Sheet (the "Effective Date"), United shall withdraw (and if not filed as of such date, shall not file) any pending motion seeking the distress termination of the FA Plan and any pending Section 1113 motion with respect to such distress termination of the FA Plan.
2. Funding of the FA Plan	From and after the Effective Date and for twenty (20) years thereafter, the FA Plan shall be funded as follows: a. As soon as reasonably practicable after the effective date (the "Exit Date") of United's confirmed plan of reorganization (the "POR"), and on the dates of the relevant distributions under such POR, (I) the value of any actual distributions under the POR to AFA-represented employees on account of any allowed pre-petition general unsecured claims arising under the April 30, 2003 AFA CBA Restructuring Agreement and the January, 2005 amendment to the AFA CBA shall be assigned and contributed to the FA Plan, <u>plus</u> (II) the value of any actual distributions under the POR to the PBGC on account of any allowed pre-petition general unsecured claim in an amount equal to the PBGC's unfunded liability claim as if the FA Plan was terminated as of the Exit Date, shall be assigned and contributed to the FA Plan; <u>provided</u>, <u>however</u>, that for both (I) and (II), the form of such assignments and contributions of value (e.g., cash, stock, or proceeds from the sale of stock) shall be in the sole discretion of United to ensure, among other things, no adverse impact on UAL's capital structure or the trading or float of reorganized UAL securities. b. United shall contribute an annual amount equal to 4% of the earnings (as defined in the United Airlines FA 401(k) Plan) of each flight attendant with a pro rata contribution for 2005 commencing on the Effective Date. c. Funding contributions by the PBGC in amounts and on dates (and in forms mutually acceptable to United and the AFA) that, together with all other sources of funding for the FA Plan, ensure that i) at each annual valuation date, the FA Plan is at least 100% funded, including benefits expected to accrue in the coming plan year, measured using the interest rates, mortality table and/or other assumptions prescribed in Internal Revenue Code Section 412(l) now or as changed in the future and ii) at all times the total annual contributions to the FA Plan satisfy, and are fully compliant with, ERISA, the Internal Revenue Code, and the funding rules

	General Terms
	thereunder (including without limitation the payment of any missed funding contributions to date).
3. Termination of the Appointment of the IFS	a. With respect to the FA Plan, United shall terminate that certain Fiduciary Services Agreement by and between United and IFS (and accepted by the Department of Labor ("DOL")), dated as of September 3, 2004 (the "FSA") so that such termination is effective (taking into account, among other things any notice requirements) as of the Effective Date, and thereafter United shall be the sole plan administrator of the FA Plan. With respect to the FA Plan, the AFA shall support such termination, and shall use its best efforts, including without limitation court activity, to defend any challenge by any potentially objecting party to the termination of the FSA. b. With respect to the FA Plan, United shall terminate that certain Agreement for Appointment of Independent Fiduciary, dated as of August 17, 2004, by and between United and the DOL (the "IFS Appointment Agreement"), so that such termination is effective (taking into account, among other things, any notice requirements) as of the Effective Date, and thereafter United shall be the sole plan administrator of the FA Plan. With respect to the FA Plan, the AFA shall support such termination, and shall use its best efforts, including without limitation court activity to defend any challenge by any potentially objecting party to the termination of the IFS Appointment Agreement.
4. Restructuring Activities and Plan of Reorganization	The AFA shall affirmatively support, in a manner not inconsistent with this Preliminary Term Sheet or the Bankruptcy Code, including, without limitation, Section 1125 of the Bankruptcy Code, United's restructuring activities and positions in its Chapter 11 case and the POR. Nothing herein shall limit or impair AFA in the exercise of its fiduciary duties in its capacity as a member of the Official Committee of Unsecured Creditors.
5. Conditions to Effectiveness	The effectiveness of the AFA/United Settlement shall be subject to the occurrence of the following conditions precedent and subsequent (as applicable): a. Consent and agreement by the PBGC. b. Consent and agreement by any required federal government agency, including without limitation the IRS and the Department of Labor (the "DOL"). c. Preparation, execution and delivery of definitive documentation incorporating the terms set forth herein, which documentation shall

	General Terms
	be reasonably satisfactory to the Parties. d. Bankruptcy Court approval of the AFA/United Settlement. e. With respect to the AFA Plan, withdrawal with prejudice or complete denial of the IFS's motion for the allowance of minimum funding contributions as administrative claims. f. Upon and after the Exit Date, and except as otherwise specifically provided for herein, United having no liability (through release, waiver and/or discharge) to the United States of America (including without limitation the IRS, the DOL, and the Department of Justice) ("USA"), Independent Fiduciary Services, Inc. ("IFS"), or any other party, on account of: i any and all claims as of the Exit Date arising from or related to any minimum funding obligations, including without limitation, any and all unpaid minimum funding contribution claims, claims for interest, penalties, and/or excise taxes, and fiduciary duty claims, relating in any way to the FA Plan; and ii any and all claims as of the Exit Date relating in any way to United's FA Plan, as well as any claims against any other entity, based on "controlled group" liability or any other theory, relating in any way to the FA Plan. g. With respect to the FA Plan, termination of the FSA and the IFS Appointment Agreement. h. Unless waived by United, any order approving the AFA/United Settlement becoming a final order no longer subject to appeal, reconsideration, or modification. i. Execution of this Preliminary Term Sheet on or before May 10, 2005 by the Parties and the PBGC.
6. Disputes	Each Party hereto agrees that it shall not commence or proceed with any litigation against any Party or take any action inconsistent with the terms of the AFA/United Settlement. All disputes arising between the Parties under this Preliminary Term Sheet, or any document entered pursuant hereto shall, prior to the issuance of a final decree from the Bankruptcy Court closing United's pending Chapter 11 case, be resolved by the United States Bankruptcy Court for the Northern District of Illinois which has exclusive jurisdiction over such disputes.

	General Terms
7. Authority	Subject to Bankruptcy Court approval in United's Chapter 11 case, the Parties represent that they have authority to execute this Preliminary Term Sheet and to enter into the transactions contemplated thereby.
8. Non-Severability	Each of the terms of this Preliminary Term Sheet are a material and integral part hereof. Should any provision of this Preliminary Term Sheet be held unenforceable or contrary to law, the entire Preliminary Term Sheet shall be null and void.
9. Governing Law	Illinois law shall apply.
10. Miscellaneous	This Preliminary Term Sheet may not be amended or modified except by a writing signed by all Parties. This Preliminary Term Sheet may be executed in one or more counterparts, each of which together or separately shall constitute an original and when taken together, shall be considered one and the same binding agreement.

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UNITED AIR LINES, INC.

By: ______________________________

Name:_____________________________

Title:______________________________

Dated: ____________________________

ASSOCIATION OF FLIGHT ATTENDANTS

By: ______________________________

Name:_____________________________

Title:______________________________

Dated: ____________________________

CONSENTED AND AGREED TO BY THE
PENSION BENEFIT GUARANTY
CORPORATION

By: ______________________________

Name:_____________________________

Title:______________________________

Dated: ____________________________

____

By: ______________________________

Name:_____________________________

Title:______________________________

Dated: ____________________________

Exhibit 9

REDACTED

Exhibit 10

REDACTED

Exhibit 111

REDACTED