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: June 17, 2005
	)	Hearing Time: 9:30 a.m.

OBJECTION OF ASSOCIATION OF FLIGHT ATTENDANTS-CWA, AFL-CIO, TO DEBTORS' MOTION TO EXTEND EXCLUSIVE PERIODS TO FILE AND SOLICIT VOTES ON CHAPTER 11 PLAN [Docket No. 11539]

The Association of Flight Attendants-CWA, AFL-CIO ("AFA"), respectfully submits this Objection to Debtors' Motion to Extend Debtors' Exclusive Periods to File and Solicit Votes on a Chapter 11 Plan ("Motion"). As we demonstrate below, United plainly has failed to meet its statutory burden of establishing cause for the extension of its exclusivity period. Accordingly, the Motion should be denied.

FACTUAL BACKGROUND

1. Debtors' Motion to extend its exclusivity period is the ninth such motion Debtors have filed over the 30 months that United has been in bankruptcy.

2. In their January 7, 2005 motion for a seventh extension of exclusivity, Debtors stated that United needed a three month extension: (1) to complete the Section 1113 process and resolve the pension issue; (2) to continue the Section 1110 process; (3) to realize the savings provided for in the business plan; (4) to

obtain exit financing; and (5) to develop a plan of reorganization. See Debtors' Seventh Exclusivity ("7th") Mot. (filed Jan. 7, 2005) at 3. On January 21, 2005, the Court granted United's motion for a seventh extension of exclusivity.

3. On April 8, Debtors moved the Court for the eighth time to extend their exclusive period, this time, for two months. In so doing, they cited the exact same five justifications for an extension that they cited in January. See Debtors' Eighth Exclusivity ("8th") Mot. (filed Apr. 8, 2005) at 1-3. For example, in January, the Company had stated that it needed three additional months to "develop a plan of reorganization." 7th Mot. at 3. In its April motion, the Company did not indicate that it had made any progress in developing a plan of reorganization during the three months of the seventh extension. Rather, it requested two additional months to "develop[] a plan of reorganization." 8th Mot. at 2.

4. According to Debtors' eighth exclusivity motion, "[a]n extension . . . [would] create a stable working environment through the mid-May pension trial and subsequent ruling without averting the parties' attention towards competing plans," after which "United [could] then take into account current facts and circumstances in requesting a further extension of exclusivity to give it time to obtain exit financing and formulate, propose and seek confirmation of a plan of reorganization in an appropriate timeframe." 8th Mot. at 2-3. On April 22, the Court granted Debtors' motion for an eighth extension of exclusivity.

5. Over the next two months, United realized virtually all of the labor savings called for in its business plan. All of the Company's unions have agreed to substantial additional concessions. At the same time, United reached a Court-approved Settlement Agreement with the Pension Benefit Guaranty Corporation ("PBGC"), which provides for the termination and replacement of United's four employee defined benefit plans.

6. Recently United Chairman, President and CEO Glenn Tilton, stated that United "find[s] [itself] in a position to be selective in securing financing that is most appropriate and properly priced for exit financing." Exh. 1 at 2.

7. On June 3, United filed the instant Motion, requesting its ninth extension of exclusivity for an additional 60 days. United cites the same five justifications for extending exclusivity as it did in January and April. See Mot. at 3. Although the Company has achieved the labor cost savings it had sought, through agreements with its unions and PBGC, it states that to "build upon" these developments, it needs an extension of the exclusivity period because "there will be significantly more clarity [regarding pension litigation] in the next 60 days, enabling United to better articulate the process for exiting Chapter 11." Id. at 3-5. The Company gave no indication that it has made any progress in developing its plan of reorganization, despite having told the Court in January and again in April that it needed extensions to do precisely that.

8. Further, the Debtors state the they now "intend[] to file [their tenth] exclusivity extension motion for the August 26 omnibus hearing that will describe in detail" a "process and timeline to finalize United's business plan, obtain exit financing commitments, formulate a plan of reorganization, complete the plan voting and confirmation process, and emerge from bankruptcy." Id. at 2.

ARGUMENT

9. Section 1121 of the Bankruptcy Code presumptively limits the period in which a debtor has the exclusive right to propose a plan of reorganization to 120 days. See 11 U.S.C. § 1121. A bankruptcy court is authorized to extend that period, but only "for cause." 11 U.S.C. § 1121(d).

10. Congress "intended" "exclusivity . . . to promote an environment in which the debtor's business may be rehabilitated and a consensual plan may be negotiated. However, undue extension can result in excessively prolonged and costly delay, to the detriment of the creditors." H.R. Rep. No. 103-835, at 36 (1994) reprinted in 1994 U.S.C.C.A.N. 3340, 3344.

11. Congress enacted Section 1121 "to place limits on the debtor's exclusive right to propose a plan." In re Gibson & Cushman Dredging Corp., 101 B.R. 405, 409 (E.D.N.Y. 1989). Prior to the enactment of Section 1121, there was no time limit on a debtor's exclusive right to propose a plan. Section 1121 reflects Congress's recognition that conferring unlimited exclusivity on the debtor "gives the debtor undue bargaining leverage." 1978

U.S.C.C.A.N. 5963, 6135. Thus, "[t]he effect of § 1121 is to give the debtor the exclusive right during a limited period to present the creditor body with a proposed plan of reorganization. Once the exclusivity period ends, competing plans may be proposed." In re Pub. Serv. Co. Of N.H., 88 B.R. 521, 533 (Bankr. D.N.H. 1988) (emphasis added).

12. In an oft-quoted opinion,[1/] the Fifth Circuit has stressed that Section 1121's cause exception should not be permitted to swallow Section 1121's fundamental rule, limiting the debtor's exclusivity period:

> any bankruptcy court involved in an assessment of whether 'cause' exists should be mindful of the legislative goal behind § 1121. The bankruptcy court must avoid reinstituting the imbalance between the debtor and its creditors that characterized proceedings under the old Chapter XI. Section 1121 was designed, and should be faithfully interpreted, to limit the delay that makes creditors the hostages of Chapter 11 debtors.

In re Timbers of Inwood Forest Assocs., Ltd., 808 F.2d 363, 372 (5th Cir. 1987), aff'd, 484 U.S. 365 (1988).

13. Given the clear legislative purpose of Section 1121, extensions of exclusivity are "not favored." In re Southwest Oil Co. of Jourdanton, Inc., 84 B.R. 448, 450 (Bankr. W.D. Tex. 1987). Consequently, "a motion [to extend exclusivity] should be granted neither routinely nor cavalierly." In re All Seasons Indus., Inc.,

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[1/] See, e.g., In re Curry Corp., 148 B.R. 754, 755 (Bankr. S.D.N.Y. 1992); In re All Seasons Indus., 121 B.R. 1002, 1004 (Bankr. N.D. Ind. 1990); In re Gibson & Cushman Dredging Corp., 101 B.R. at 409-10; In re Washington-St. Tammany Elec. Coop., Inc., 97 B.R. 852, 855 (E.D. La. 1989).

121 B.R. 1002, 1004 (Bankr. N.D. Ind. 1990) (quotation and citation omitted).

14. The debtor bears "the burden of proving that cause exists for the extension of" exclusivity. In re Curry Corp., 148 B.R. 754, 755 (Bankr. S.D.N.Y. 1992). Moreover, the debtor's "burden gets heavier with each extension it seeks as well as the longer the period of exclusivity lasts." In re Dow Corning Corp., 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997).

15. Concerned about abuse of the Bankruptcy Code, Congress recently enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. See 119 Stat. 23. Significantly, the Act amends Section 1121(d) to establish an 18-month limit on a Chapter 11 debtor's exclusivity. See 119 Stat. 23, § 411. This modification clearly evidences Congress's view that 18 months is the absolute maximum amount of time, regardless of "cause," that a debtor should retain the exclusive right to propose a plan. See H.R. Rep. 109-31(I), at 88 (2005) ("Section 411 amends section 1121(d) of the Bankruptcy Code to mandate that a debtor's exclusive period for filing a plan may not be extended beyond a date that is 18 months after the order for relief in the chapter 11 case.") While not retroactive, and therefore not binding on this Court, Section 1121, as amended, plainly evidences Congress's conclusion that permitting exclusivity to be extended beyond 18 months is contrary to Section 1121's fundamental purpose of allowing other parties to propose alternative plans after a limited period of debtor exclusivity.

16. As we demonstrate below, United clearly has failed to carry its statutory burden of proving that cause exists to extend its exclusivity period for the ninth time and for the 31st and 32nd months. The Company cites four supposed grounds for an extension, none of which have any merit. Accordingly, Debtors' Motion should be denied.

I. THE SIZE AND COMPLEXITY OF THIS BANKRUPTCY DOES NOT ESTABLISH CAUSE FOR AN EXTENSION OF EXCLUSIVITY.

17. United cites the "size and complexity" of its bankruptcy, noting as well that "current fuel pricing and depressed revenue and pricing power . . . only have added to the complexity of United's restructuring," as cause for extending exclusivity. Mot. at 3. According to United CEO, Chair and President Glenn Tilton, however, United "find[s] [itself] in a position to be selective in securing financing that is most appropriate and properly priced for exit financing." Exh. 1 at 2. If Debtors' financial strength is such that they can be selective with regard to their choice of exit lenders, surely the Debtors' businesses are sufficiently rehabilitated, however complex the bankruptcy remains, so as to no longer warrant exclusivity.

18. Further, "size and complexity alone cannot suffice as 'cause' for continuation of a debtor's plan exclusivity right." In re Pub. Serv. Co. of N.H., 88 B.R. at 537; see also In re Express One Int'l, Inc., 194 B.R. 98, 100-101 (Bankr. E.D. Tex. 1996); In re Washington-St. Tammany Elec. Coop., Inc., 97 B.R. 852, 854-55 (E.D. La. 1989). As the court in Public Service Co. of New Hampshire observed, "[i]f that were so, a debtor in a case such as

the present would automatically have a right to plan exclusivity throughout the proceedings -- contrary to the . . . rationale underlying § 1121." 88 B.R. at 537. "If size and complexity alone were sufficient cause, that interpretation of the statutory standard would in effect eat up the rule." Id. Therefore,

> an appropriate interpretation of the 'for cause' language of § 1121(d) would provide that size and complexity must be accompanied by other factors pertinent to the particular debtor and its reorganization to justify extension of plan exclusivity, except perhaps in the very early, initial stages of the chapter 11 proceeding.

Id.; see also In re Express One Int'l, Inc., 194 B.R. at 100-01; In re Washington-St. Tammany Elec. Coop., Inc., 97 B.R. at 854-55. As we show below, even assuming that the size and complexity were a factor supporting an extension, United has proffered no other sufficient basis for justifying its request. Thus, the Debtors' Motion should be denied.

II. UNITED'S DESIRE TO "BUILD UPON" RECENT DEVELOPMENTS IN THE SECTIONS 1110 AND 1113 AND PENSION PROCESSES IS NOT CAUSE TO EXTEND EXCLUSIVITY.

19. Debtors claim that "[e]xtending exclusivity will allow United to build upon" recent developments, including concessionary labor agreements reached with its unions, the Court's approval of United's settlement agreement with PBGC to terminate the four defined benefit plans, and the voluntary dismissal of its antitrust complaint against APG. Mot. at 3.

20. In its last motion requesting an extension of the exclusivity period filed in early April, United also claimed that exclusivity should be extended to "build upon" certain "positive developments." 8th Mot. at 9-10. Specifically, United claimed it

had "developed a roadmap to address its remaining major cost reduction initiatives relating to Section 1113 and pension matters, Section 1110 matters and UAX matters" and that it "believe[d] that an extension of the Exclusive Periods [would] allow it to build upon these positive developments." Id. at 9-10.

21. According to Debtors, the Company has now achieved almost all of those cost reductions. United nevertheless claims once again that exclusivity is necessary to "build upon" these developments. United apparently believes that, so long as it continues to carry out the responsibilities of a debtor-in-possession, it is entitled to an endless stream of extensions. There is no case law, however, that establishes such a low threshold for indefinitely maintaining exclusivity.

22. In the instant Motion, the Company points to unresolved litigation as cause for extending exclusivity. However, it is well settled that "[l]itigation with creditors is not an unusual circumstance, and the fact that litigation is pending with creditors is not in itself sufficient cause to justify an extension of the exclusivity period." In re Southwest Oil Co. of Jourdanton, Inc., 84 B.R.at 452.

III. BECAUSE THIRTY MONTHS IS MORE THAN SUFFICIENT TIME TO DEVELOP A PLAN OF REORGANIZATION AND NEGOTIATE WITH CREDITORS, CAUSE DOES NOT EXIST TO EXTEND UNITED'S EXCLUSIVITY PERIOD.

23. The Company claims that "[i]t remains essential that United has sufficient time to finalize its restructuring efforts and develop a thoughtful, measured, and confirmable plan of reorganization" and that exclusivity will ensure "a stable

environment in which it can work closely with its stakeholders, particularly the Creditors' Committee, to develop and articulate a more detailed exit process." Mot. at 6.

24. United has retained the exclusive right to propose a plan of reorganization during the entire pendency of this bankruptcy, which has now entered its 31st month. In that time, United has received eight extensions of its exclusivity period, totaling 24 months. Clearly, Congress never intended for Section 1121's 120-day limitation on exclusivity to be extended by 794 days. See In re Ravenna Indus., Inc., 20 B.R. 886, 890 (Bankr. N.D. Ohio 1982) (denying the debtor's motion for an extension of the exclusivity period, where the debtor had "had 435 days to file a Plan of Arrangement-or nearly 3½ times the amount of time deemed by Congress to be sufficient to arrive at a Plan."); In re Hoffinger Indus., Inc., 292 B.R. 639, 644 (B.A.P. 8th Cir. 2003) (same). Here, United's exclusivity period has lasted 914 days, as of the expiration of the eighth extension.

25. Passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which amends Section 1121 to establish a strict 18-month limit on the debtor's exclusivity period, removes any doubt that Congress considers an exclusivity period in excess of 30 months to be inconsistent with Section 1121's essential purpose of allowing parties other than the debtor to file plans of reorganization.

26. Moreover, United clearly has failed to do what it told the Court it would do with its extensions of exclusivity. In its

January exclusivity motion, United told the Court that it needed three additional months to "develop a plan of reorganization." 7th Mot. at 3. Then, in April, when the Company had made no progress developing a reorganization plan, it asked for two more months to "develop[] a plan of reorganization." 8th Mot. at 2. At the same time, the Company also stated that it would seek a ninth extension to, among other things, "give it time to . . . formulate . . . a plan of reorganization in an appropriate timeframe." Id. at 3. In its Motion for the ninth extension, however, the Company advised the Court that it "intends to file an[other] exclusivity extension motion [for its tenth extension] for the August 26 omnibus hearing that will describe in detail" the "process and timeline to finalize United's business plan, obtain exit financing commitments, formulate a plan of reorganization, complete the plan voting and confirmation process, and emerge from bankruptcy." Mot. at 2. Despite having told the Court in January that it would use its seventh extension to develop a plan of reorganization by April, and then having told the Court in April that it would use its eighth extension to develop a plan of reorganization by June, United is now telling the Court that it needs until August 26 to "describe in detail" the "process and timeline to . . . formulate a plan of reorganization [as well as] complete the plan voting and confirmation process and emerge from bankruptcy." Id.

27. It is clear beyond any doubt that United fully intends to preserve its exclusivity for the duration of this bankruptcy. In order to do so, United is effectively asking the Court to render

Section 1121's limitation on the debtor's exclusivity a nullity and to "reinstitut[e] the imbalance between debtor and its creditors that characterized proceedings under the old Chapter XI." In re Timbers of Inwood Forest Assocs., Ltd., 808 F.2d at 372.

28. United claims that an extension of exclusivity "is appropriate . . . so that United has a stable environment in which it can work closely with its stakeholders . . . to develop and articulate a more detailed exit process." Mot. at 6. However, United's desire for an environment free of competing plans in which to negotiate with its creditors does not establish cause. Ending exclusivity will not impair United's ability to negotiate with its creditors. When exclusivity is terminated,

> [t]he debtor remains free to take as long as it wishes or feels appropriate to develop and propose its own plan. The risk is, of course, that while it is developing its plan, another party in interest will file a plan. However, that is as Congress intended.

In re All Seasons Indus., Inc., 121 B.R. at 1005 (quotation and citation omitted). Nor does "ending plan exclusivity . . . by itself mean that multiple plans will be filed, or that the parties may not still agree to a consensual debtor plan. It simply returns the parties to a level playing field after the period of debtor control intended by Congress has expired." In re Pub. Serv. Co. of N.H., 88 B.R. at 540.

IV. ENDING UNITED'S EXCLUSIVITY WILL NOT HARM CREDITORS AND MAY HELP THEM.

29. United contends that "an extension will not harm creditors." Mot. at 7. However, United provides no factual basis whatsoever for this conclusory assertion.

30. It is clear that creditors would not be harmed by ending exclusivity. The Company erroneously claims that "denying an extension likely will harm creditors by depriving all stakeholders of the opportunity for United to develop and articulate an exit process after taking stock of the events of the past 60 days." Id. First, what has happened in the past 60 days, including the additional labor concessions and termination of the pension plans, simply represents the realization of savings called for in United's business plan, which has been in place for over six months. It makes absolutely no sense that United needs 60 days to take stock of what it has assumed for the past six months. Further, as shown above, ending exclusivity will not "depriv[e] all stakeholders of the opportunity for United to develop and articulate an exit process," but rather will "simply return[] the parties to a level playing field." In re Pub. Serv. Co. of N.H., 88 B.R. at 540. Indeed, the presence of an alternate plan could well benefit creditors, by subjecting United's plan to the competition of the marketplace.

31. United points out "that, to date, no one ever has come forward arguing that it would file a plan if exclusivity were not extended." Mot. at 7. However, the fact that no one has come forward publicly, while United retains exclusivity, in no way means that there are not parties interested in filing an alternate plan. Indeed, the Creditors' Committee has refused to "acquiesce in or endorse any implication in the Debtors' motion that there are not qualified parties interested in submitting alternate plans of

reorganization." Statement OCUC Regarding Debtors' Mot. (filed June 9, 2005) at 1. Clearly, only by ending exclusivity will it be possible to determine if there are interested parties who are waiting for exclusivity to end before they step forward.

32. Finally, the Company wrongly implies that, as long as "no one . . . come[s] forward arguing that it would file a plan if exclusivity were not extended," cause exists to extend exclusivity. Mot. at 7. The Company cites no authority -- because none exists -- to support the proposition that the absence of an alternate plan constitutes cause to extend the debtor's exclusivity. According to Debtors, their period of exclusivity should run indefinitely and only end, potentially, when and if another plan sponsor steps forward. United's view that there is a presumption of debtor exclusivity, which can only be rebutted by the appearance of an alternate plan, is plainly contrary to Section 1121's purpose of limiting the debtor's exclusive period. The law is clear that Debtors, and Debtors alone, bear the burden of proving that cause exists for an extension, a burden which "gets heavier with each extension [they] seek[] as well as the longer the period of exclusivity lasts." In re Dow Corning Corp., 208 B.R. at 664. Thirty months into this bankruptcy, Debtors have not, and cannot, meet their burden of establishing that cause exists to extend their exclusivity period.

CONCLUSION

33. For all the foregoing reasons, AFA respectfully requests that the Court deny Debtors' ninth request for an extension of the exclusive period under Section 1121(d) of the Bankruptcy Code.

Respectfully submitted,

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EXHIBIT 1

Chicago Tribune
ONLINE EDITION

http://www.chicagotribune.com/news/nationworld/chi-0506030168jun03,1,474806.story

TRIBUNE INTERVIEW

United's boss sees profits in 2006

Will exit bankruptcy in fall, Tilton says

By Mark Skertic
Tribune staff reporter

June 3, 2005

United Airlines, which has had only one profitable month since it sought protection from creditors in 2002, will leave bankruptcy in the fall and become profitable next year, said Chief Executive Glenn Tilton.

In his first interview after reaching a key agreement this week with the last of United's big unions, Tilton said the airline is about to take the next big step in its financial journey.

"The next chapter of our lives is to make good on the investment that our employees have made and to compete with the financial resilience that we've created for ourselves," he said.

The latest round of labor agreements will save the company $700 million annually. But other cost savings need to be identified, Tilton said.

"There's a lot that remains to be done," said James O'Connor, lead director of parent UAL Corp.'s board.

"Everybody sort of views this as the end of the beginning."

Just how challenging posting a monthly profit will be was underscored Thursday, when United reported a net loss of $124 million in April. It blamed dramatically higher fuel prices and the cost of bankruptcy reorganization.

Through April, the airline has lost more than $1.2 billion this year. But Tilton said he was encouraged that the airline had a cash balance of $2.4 billion.

Aircraft leases, fuel conservation efforts and reservation systems are among the areas under review for additional savings.

While in bankruptcy, United's workforce has shrunk to about 60,000 employees from 100,000.

The Elk Grove Township-based company has seen much of its cost-cutting efforts wiped out by record fuel prices. And intense competition in the industry has, until recently, made it difficult to raise ticket prices and have the increases stick.

In addition to fuel prices, cost restructuring has continued to drag on the bottom line. Tilton said UAL will begin posting operating profits this summer, but he added that it is unlikely the airline will show a net profit until next year.

Bankruptcy enabled United to shed some costs. In addition to wage and benefit reductions, the airline will replace its pension obligations with less costly plans, such as a 401(k).

Some airline industry observers are not convinced United will leave bankruptcy this year. Airline analyst Michael Boyd said he believes a spring 2006 exit is more likely.

Boyd is among those critical of United's management for missteps. The carrier's negotiations with aircraft leaseholders have been "beyond hard-nosed," and the airline could be in danger of losing planes, he said.

The amount of time the airline has spent in bankruptcy also could work against it when trying to gain exit financing, Boyd said. The proposed merger of America West Airlines and US Airways has attracted investors, "thus draining the pool of some of the potential capital available for UAL exit financing," he said.

But Tilton said he's convinced that if United's business plan is successful, the airline will have no trouble finding lenders. In fact, he said, the carrier can be choosy.

"We find ourselves in a position to be selective in securing the financing that is most appropriate and properly priced for exit financing," he said.

The business plan includes having a domestic operation that can compete with discount carriers while offering access to premier locations internationally. It also contemplates oil prices at about $50 a barrel. As prices increase, it becomes harder to show a profit.

The airline has talked with four potential lenders: Citibank, JPMorgan Chase & Co., Deutsche Bank and GE Commercial Finance.

Tilton, 57, and his management team were able to breathe a sigh of relief this week when the mechanics union approved a new contract and the union representing baggage carriers and customer-service representatives agreed in principle to a new deal, with some terms still be defined.

Tilton took his wife out for a celebration dinner that night. The next morning, he was back in the office for a long meeting with top UAL executives.

Since entering bankruptcy, United has created its own low-cost carrier, Ted, which recently announced an expansion to additional destinations.

To appeal to business travelers, United added Premium Service--flights with leather trimmed seats that lie flat--on some transcontinental routes.

And a redeployment of the fleet allows the airline to focus more on international markets, which account for more than half of United's revenues.

At the same time, competitors have put more heat on United, domestically and internationally. American Airlines, for example, is preparing to launch service to Shanghai from Chicago, a lucrative route now offered only by United. Delta Air Lines has created its own discount airline, Song.

Tilton said he has emphasized to employees that post-bankruptcy United can be more on the offense rather than having to react to the moves of other major carriers.

"Let's make our own choices," he said. "We'll take advantage of the opportunities presented to us. It will not be the choice that someone else makes for us. We've earned that right."

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CERTIFICATE OF SERVICE

I, Matthew E. Babcock, hereby certify that on this 10th day of June 2005, true copies of the foregoing **AFA's Objection to the Debtors' Motion to Extend Exclusive Periods to File and Solicit Votes on Chapter 11 Plan** 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.

Matthew E. Babcock