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: August 26, 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. 12189]

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 periods. Accordingly, the Motion should be denied.

FACTUAL BACKGROUND

1. Debtors' Motion to extend their exclusivity periods is the tenth such motion Debtors have filed during the over 32 months that United has been in bankruptcy.

2. In their seventh and eighth motions to extend exclusivity, filed on January 7 and April 8, 2005, respectively, the Company requested extensions in order to (1) complete the Section 1113 process and resolve the pension issue; (2) continue the Section 1110 process; (3) realize the savings provided for in the business plan; (4) obtain exit financing; and (5) develop a plan of reorganization.

See Debtors' Seventh Exclusivity ("7th") Mot. (filed Jan. 7, 2005) at 3; Debtors' Eighth Exclusivity ("8th") Mot. (filed Apr. 8, 2005) at 1-3.

3. 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.

4. 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 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.

5. On June 3, United filed its ninth motion for an extension of exclusivity, requesting an additional 60 days. See Debtors' Ninth Exclusivity ("9th") Mot. (filed June 3, 2005). The Company stated that exclusivity would ensure "a stable environment in which it [could] work closely with its stakeholders, particularly the Creditors' Committee, to develop and articulate a more detailed exit process." Id. at 6. According to the Company, it needed the stable environment provided by exclusivity because: (1) "additional work remain[ed] to be done" with regard to the Section 1113 and pension processes, id. at 5; (2) aspects of the Section 1110 process remained unresolved, see id. at 5-6; and (3) it needed "time to . . . develop a thoughtful, measured, and

confirmable plan of reorganization." Id. at 6. On June 17, 2005, the Court granted United's motion for a ninth extension of exclusivity.

6. On July 1, Debtors filed a scheduling motion, indicating that the Company intended to file its plan of reorganization and disclosure statement on or about August 1. On July 8, the Official Committee of Unsecured Creditors ("Creditors' Committee" or "Committee") filed a limited objection to Debtors' scheduling motion ("Objection"). In its Objection, the Creditors' Committee indicated that it could not support Debtors' schedule for filing a plan of reorganization, "not[ing] that a number of important building blocks essential to a confirmable plan ha[d] not been finalized." Creditors' Obj. at 2. Ultimately, according to the Company, "United agreed not to file its plan and disclosure statement . . . and the Creditors' Committee agreed to support a 60-day extension of the exclusivity periods." Mot. at 2.

7. On August 12, 2005, the Company filed the instant Motion, requesting its tenth extension of exclusivity for an additional 60 days. In its Motion, the Company reports that it has largely completed the work, which, in its view, had necessitated a ninth extension of exclusivity. Specifically, United states that "the lion's share of United's labor and pension cost savings initiative has been completed." Mot. at 4. With regard to the Section 1110 process, United states that "[t]he flurry of recent transactions with the Public Debt Group over the past two months marks the culmination both of United's section 1110 process and of the protracted and arduous negotiations with the Public Debt Group." Id. at 5. The Company also states that "[a]t the end of July, United finalized its business plan . . . [which it] will use . . . as a platform to obtain exit financing." Id.

8. Debtors state that "United, in cooperation with the Creditors' Committee's professionals, has undertaken a renewed meeting and negotiation process with the DIP lenders to

gauge their willingness to provide exit capital." Id. Debtors further state: "At the same time . . . United has continued to reach out to other traditional lenders that have not participated in the DIP facility, as well as non-traditional providers of capital if necessary." Id. at 6.

9. Unlike in its eighth and ninth motions for exclusivity, United, having resolved its Section 1113 and Section 1110 issues to the point of being prepared to file a disclosure statement and plan of reorganization in early August, no longer contends that it needs the stable environment provided by exclusivity to work with the Creditors' Committee and other stakeholders. Rather, the Company simply states that "[i]t remains essential that United have sufficient time to finalize its restructuring while working closely with its stakeholders, particularly the Creditors' Committee, to develop a thoughtful, measured, and confirmable plan of reorganization." Id. According to the Company, "[a]n additional two-month extension [until late October] will allow United to secure exit financing while continuing to work collaboratively with the Creditors' Committee and other stakeholders," while "[t]ermination of exclusivity . . . [would] serve only to complicate United's efforts." Id.

10. While Debtors were prepared to file their disclosure statement and plan of reorganization on August 1, they state that they have agreed, at the Creditors' Committee's request, to delay that filing. See id. at 2. According to the Company, it plans to file its disclosure statement and plan in "early September." Id.

ARGUMENT

11. 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).

12. 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.

13. 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." H.R. Rep. No. 95-595, at 231 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6191. 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).

14. 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

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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).

> 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). As the Third Circuit observed, "[t]he legislative history counsels a narrow reading of . . . section [1121]." Century Glove, Inc. v. First Am. Bank of N.Y., 860 F.2d 94, 102 (3d Cir. 1988).

15. 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., 121 B.R. 1002, 1004 (Bankr. N.D. Ind. 1990) (quotation and citation omitted).

16. 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).

17. As we demonstrate below, United clearly has failed to carry its statutory burden of proving that cause exists to extend its exclusivity periods for the tenth time and for the 33rd and 34th 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 DO NOT ESTABLISH CAUSE FOR AN EXTENSION OF EXCLUSIVITY.

18. United cites the "size and complexity" of its bankruptcy, noting as well that "current fuel pricing and depressed revenue and pricing power . . . have added to the complexity of United's

restructuring," as cause for extending exclusivity. Mot. at 3. However, the size and complexity of United's bankruptcy were no more of a factor in July and early August than they are now, and the Company was prepared at that time to file its disclosure statement and plan. Indeed, the Company states that "[a]t the end of July, [it] finalized its business plan, which . . . incorporates . . . updated revenue forecasts and fuel assumptions." Id. at 5.

19. Further, "size and complexity alone cannot suffice as 'cause' for a 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, 100-01 (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, Debtors' Motion should be denied.

II. "UNITED'S PROGRESS TOWARDS REORGANIZATION" EVIDENCES WHY EXCLUSIVITY SHOULD END.

20. Debtors claim that "[e]xtending exclusivity will allow United to build on . . . developments" in the Section 1113 and Section 1110 processes. Mot. at 4. According to Debtors themselves, however, the "building" is over. As Debtors state in their Motion, while "pension matters remain, the lion's share of United's labor and pension cost savings initiative has been completed." Id. Similarly, the Company states that "[t]he flurry of recent transactions with the Public Debt Group over the past two months marks the culmination both of United's Section 1110 process and of the protracted and arduous negotiations." Id. at 5. Further, the Company has "finalized its business plan, which assumes the savings from Public Debt Group restructuring transactions, and further incorporates the savings achieved through the labor and pension processes. . . ." Id. In short, with the exception of the pension issue,[2/] the Company has, through negotiation or litigation, completed its restructuring under Sections 1110 and 1113.

21. Given that the Company has completed its restructuring under Sections 1110 and 1113, Debtors do not, because they cannot, claim any longer the need for a stable negotiating environment as the basis for exclusivity. Instead, United claims that it needs "[a]n additional two-month extension . . . to secure exit financing." Id. at 6. Debtors state that "[United] will use its completed business plan as a platform to obtain exit financing," that "United has undertaken a renewed meeting and negotiation process with the DIP lenders to gauge their willingness to provide exit capital," and that "United has continued to reach out to other traditional lenders that have not

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[2/] "Litigation 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.

participated in the DIP facility, as well as non-traditional providers of capital if necessary." Id. at 5-6. Apparently, Debtors, who said in July they were planning to file their plan and disclosure statement on August 1, have not yet figured out the capital structure of a reorganized United.

22. United contends that "[t]ermination of exclusivity . . . will serve only to complicate United's efforts" to obtain exit financing. Id. at 6. Beyond this conclusory assertion, however, the Company offers no affirmative basis -- because none exists -- to explain why ending exclusivity "would complicate United's efforts" or otherwise hinder its ability to obtain exit financing. Ending exclusivity will not impair United's ability to negotiate with its lenders. 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).

III. UNITED, WHICH HAS HAD MORE THAN SUFFICIENT TIME TO DEVELOP A PLAN OF REORGANIZATION, IS ATTEMPTING TO EXTORT A TENTH EXTENSION OF EXCLUSIVITY FROM THE COURT BY THREATENING TO FILE A PLAN THAT DEBTORS KNOW IS NOT CONFIRMABLE.

23. United claims that "[i]t remains essential that United have sufficient time to finalize its restructuring while working closely with its stakeholders, particularly the Creditors' Committee, to develop a thoughtful, measured, and confirmable plan of reorganization." Mot. at 6. However, there is a fundamental contradiction in the Company's position, because at the same that it is claiming that it needs an additional 60 days "to develop a thoughtful, measured and confirmable plan of reorganization," id., it is also claiming that it "anticipates filing its plan and disclosure statement in early September." Id. at 2. Both of these assertions cannot be true. Either the plan and disclosure

statement will be ready to be filed in early September or United requires the requested additional time to obtain exit financing and figure out its capital structure, and, therefore, the plan and disclosure statement will not be ready to be filed until late October.

24. In neither event, moreover, does cause exist for extending exclusivity. If United files a plan that includes exit financing and a disclosure statement in early September, two weeks or less from when the current exclusivity periods expire on August 26, then clearly there is no cause for extending exclusivity until late October. Alternatively, even if the Company needs two more months to secure exit financing, this also does not establish cause for extending exclusivity. As discussed above, ending exclusivity will in no way impair United's ability to negotiate with its lenders. See In re All Seasons Indus., Inc., 121 B.R. at 1005.

25. Debtors cryptically state that "denying an extension likely will harm creditors by depriving all stakeholders of the opportunity for United to proceed without the input [sic] their input on the front-end, as requested by the Creditors' Committee." Mot. at 6-7. The only way stakeholders would be deprived of the opportunity to offer input would be if United were to file its plan and disclosure statement. However, as Debtors acknowledge, in filing their Motion, their plan is patently inadequate. They have not secured exit capital, and so cannot establish the capital structure of the reorganized Company and therefore the value of the creditors' recovery. Section 1125(a) of the Bankruptcy Code requires that a disclosure statement contain "adequate information," 29 U.S.C. § 1125(a)(1), including, inter alia, "[a] complete description of the available assets and their value," "[t]he anticipated future of the debtor," "[a]ny financial information, valuations or pro forma projections that would be relevant to creditors' determinations of whether to accept or reject the plan," "[i]nformation relevant to the risks being taken by the creditors and interest holders," and

"[t]he tax consequences of the plan." In re Scioto Valley Mortgage Co., 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988). Because none of these things are knowable until United has negotiated the terms of its exit financing, the Company cannot possibly file a disclosure statement containing adequate information until it has obtained its exit financing. Thus, Debtors' cryptic statement about "depriving all stakeholders of the opportunity . . . [for] input," Mot. at 7, is really a thinly veiled threat to knowingly file a deficient plan and disclosure statement if the Court denies an extension of exclusivity.

26. Debtors also state that "United delayed filing its plan and disclosure statement at the request of its Creditors' Committee." Id. at 6. This claim is also highly disingenuous. First, United now concedes that it had not arranged exit financing as of August 1. Second, the Committee concluded that there were other "building blocks essential to a confirmable plan" that were missing. Creditors' Obj. at 2. Finally, if United now needs 60 days to "develop a thoughtful, measured, and confirmable plan," then the plan United presented to the Committee in late July lacked each of these essential attributes. Faced with the Company's stated intention to file a deficient plan and disclosure statement, the Committee was left with little choice but to accede to an extension of exclusivity to avoid the harm to the estate that would result if United were to knowingly file a deficient plan and inadequate disclosure statement. Indeed, the Court has made clear that filing a plan and disclosure statement prematurely is highly counterproductive and a waste of resources:

> deal[ing] with a plan that may not be well thought out presented to the court prematurely could absorb a great deal of energy from participants that would not be productively spent. The administrative expenses involved in having premature confirmation hearings, disclosure statement hearings could also be a distraction and, again, a nonuseful expenditure of time and energy.

8/20/04 Hr'g Tr. at 191:24-192:7.

27. Like they are now attempting to do with the Court, Debtors used the threat of filing a non-confirmable plan and disclosure statement to extort from the Committee an agreement not to oppose an extension of exclusivity. As long as exclusivity continues and Debtors have a monopoly on authority to file a plan, they can continue to exert their unfair bargaining leverage over creditors.

28. As the Company itself observes, "[c]ourts often have decided whether to extend exclusivity by examining the debtor's motives." Mot. at 6. In this case, it is not so much that "United's extension request is . . . a disguised attempt to gain unfair bargaining leverage over creditors," id., but rather that it seeks through improper means to preserve that unfair advantage. United is brazenly using the spectre of filing a plan prematurely to obtain an extension of the exclusivity periods for another two months. To knowingly file a deficient plan and disclosure statement would, in and of itself, manifest bad faith. See In re Dow Corning Corp., 208 B.R. at 670 ("the Court expects the plan that is filed to be a real plan and not just an excuse to escape dismissal for lack of progress" and "when exclusivity is extended, we expect that the plan which is filed will be one intended to be used to exit chapter 11"). To use the threat of such misconduct to extract the benefit of yet another extension of exclusivity is a clear abuse of process.

IV. ENDING UNITED'S EXCLUSIVITY WILL ONLY HARM CREDITORS IF UNITED FOLLOWS THROUGH ON ITS THREAT TO FILE A DEFICIENT PLAN AND DISCLOSURE STATEMENT.

29. Debtors contend that an extension of exclusivity "will not harm creditors." Mot. at 6. However, this is an entirely self-serving assertion, because the only harm that will result from ending exclusivity will be the harm caused by United itself if it, in fact, files a plan prematurely.

30. Except for the harm that would result from Debtors filing prematurely, Debtors adduce no factual or legal basis for claiming that ending exclusivity will harm creditors. Ending

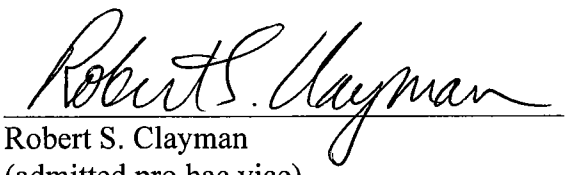
exclusivity will "simply return[] the parties to a level playing field." In re Pub. Serv. Co. of N.H., 88 B.R. at 540. Indeed, the presence of an alternate plan could well benefit creditors, by subjecting United's plan to the competition of the marketplace. Extending exclusivity for a tenth time, in all likelihood, forecloses for good on any opportunity for the creditors to be presented with an alternative plan.

31. Debtors' reliance on a smattering of conclusory assertions to support their Motion evidences United's mistaken view that there is a presumption of debtor exclusivity. This view 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-two months into this bankruptcy, Debtors have not, and cannot, meet their burden of establishing that cause exists to extend their exclusivity periods for a tenth time.

CONCLUSION

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

Respectfully submitted,



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Dated: August 19, 2005

CERTIFICATE OF SERVICE

I, Robert S. Clayman, hereby certify that on this 19th day of August 2005, true copies of the foregoing **AFA's Objection to 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.

Robert S. Clayman

Robert S. Clayman