

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

**In re**

**UAL CORPORATION, et al.,  
  
Debtors.**

**Chapter 11**

**Case No. 02-B-48191  
(Jointly Administered)**

**Honorable Eugene R. Wedoff**

**NOTICE OF FILING**

PLEASE TAKE NOTICE that on the 12th day of December, 2005, the undersigned caused to be filed with the Clerk of the United States Bankruptcy Court for the Northern District of Illinois the **REDACTED OBJECTION OF THE ASSOCIATION OF FLIGHT ATTENDANTS-CWA, AFL-CIO, TO DEBTORS' FIRST AMENDED JOINT PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**, a copy of which is attached hereto and hereby served upon you.

Dated: December 12, 2005

Respectfully Submitted,  
By: /s/ Fruman Jacobson

Fruman Jacobson (ARDC No. 1315846)  
SONNENSCHNEIN NATH & ROSENTHAL LLP  
8000 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606-6404  
312-876-8000 (telephone)  
312-876-7934 (facsimile)

Carole Neville (CN/5733)  
Mark S. Fink (MF/8665)  
SONNENSCHNEIN NATH & ROSENTHAL LLP  
1221 Avenue Of the Americas  
New York, New York 10020-1089  
212-768-6700 (telephone)  
212-768-6800 (facsimile)

*Attorneys for the Official Committee  
of Unsecured Creditors*

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: Jan. 18, 2006
	)	Hearing Time: 10:30 a.m. CST
	)	

**REDACTED**  
**OBJECTION OF THE ASSOCIATION OF FLIGHT ATTENDANTS-CWA, AFL-CIO,**  
**TO DEBTORS' FIRST AMENDED JOINT PLAN OF REORGANIZATION**  
**PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**  
**[Docket No. 13277]**

The Association of Flight Attendants-CWA, AFL-CIO ("AFA"), hereby objects to Debtors' First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code ("Plan of Reorganization" or "Plan"). As we demonstrate below, Debtors' proposed Management Equity Incentive Plan ("MEIP") and Debtors' reservation of the right to reject AFA's collective bargaining agreement ("CBA") after confirmation, in the event the Flight Attendant defined benefit pension plan ("Flight Attendant Plan") is restored or the Modifications to the 2003-2009 Flight Attendant Agreement Pursuant to Bankruptcy Code § 1113 ("2005 Restructuring Agreement") are terminated, preclude confirmation of the Plan.

**INTRODUCTION**

The MEIP would reserve 15% of United's total equity at exit for grants to 400 unnamed, senior executives, which would have a value at exit of \$285 million. Debtors have provided virtually no

details regarding how the shares reserved under the MEIP would be allocated to the eligible recipients. Nor have Debtors provided any information regarding the total compensation of these employees. Therefore, it is simply impossible to evaluate the fairness of any individual grant under the MEIP. What is clear, however, is that the MEIP does not reflect either sound business judgment or good faith, much less respect for the enormous sacrifices employees have made to keep United flying.

Without any grounds for doing so, Debtors reserve the right to reject AFA's CBA after confirmation, in the event that either the Flight Attendant Plan is restored as a result of AFA's administrative challenge of PBGC's involuntary termination or the 2005 Restructuring Agreement is terminated as a result of United's failure to cure its breach. First, it is clear that the Court would abstain from exercising jurisdiction over a post-confirmation motion to re-terminate the Flight Attendant Plan. Furthermore, fundamental principles of equity forbid United from obtaining rejection of AFA's CBA through its wrongdoing or bad faith. Indeed, as we demonstrate below, the rights that United seeks to reserve are rights that it has forfeited by its own actions. United, therefore, has no basis for reserving the right in its Plan of Reorganization to file a post-confirmation Section 1113(c) motion that plainly would be barred as a matter of law and equity.

#### **FACTUAL BACKGROUND**

From the outset of this bankruptcy, Debtors have insisted that, in order "[t]o preserve the [Company] and the jobs that it

can sustain, all of United's employees must equitably share the pain of United's restructuring." Debtors' 1st § 1113(c) Mem. (filed Mar. 17, 2003) at 1. As the Court has observed, a successful restructuring of United "requir[es] extraordinary sacrifices from everyone," Exh. 1 (1/31/05 Hr'g Tr.) at 51:12-13, and depends on "the fair treatment of employees." In re UAL Corp., 307 B.R. 80, 87 (Bankr. N.D. Ill. 2004).

This principle of shared sacrifice has been the moral cornerstone of Debtors' reorganization. Over the course of the bankruptcy, the Company has demanded billions of dollars in annual concessions from labor in order to achieve the "transformation" of the Company that Debtors maintain is necessary for a successful reorganization. Debtors have repeatedly stated that this transformation of the Company requires the sacrifice of all employees. Management's promise to "equitably share the pain of United's restructuring," unquestionably, has provided the Company the essential legal basis to demand, and obtain, such tremendous sacrifices of labor. United consistently asserted that all the concessions that it was extracting from its employees and retirees satisfied the fair and equitable standard set forth in Section 1113 and Section 1114 of the Bankruptcy Code.

**A. Labor's Sacrifice.**

In the first days of the bankruptcy, the Company filed a Section 1113(c) motion. The Company demanded \$2.5 billion in annual savings from its unions. The Company vowed that "United [w]as spread[ing] the burdens of saving the company to every

constituency." Debtors' 1st § 1113(c) Mem. at 78 (quotation omitted). Indeed, in a gesture of shared sacrifice at that time, United Chairman, President and CEO Glenn Tilton further reduced his own annual base salary from \$845,500 to \$712,000. According to USA Today, "Tilton noted that everyone at United is contributing significantly and proportionately to the airline's financial recovery." AFA's Joinder IAM Mot. Appt. Trustee, Exh. 2 (filed Sept. 7, 2004).

Relying on management's promise to share the financial burden of the restructuring, United's unions, in April 2003, reached a consensual agreement with the Company on a package of wage, benefit and work rule concessions, valued at \$2.56 billion per year between 2003 and 2008. For Flight Attendants, this restructuring of their CBA entails average annual concessions of \$314 million through 2008. AFA agreed to numerous cost-saving modifications to its CBA, including a 9% cut in average Flight Attendant pay, a sharp increase in the cost of Flight Attendants' medical benefits, including a significant increase in the contributions of future retirees to their healthcare, and a substantial reduction in vacation time.

In the spring of 2004, Debtors demanded a drastic reduction in the medical benefits of current retirees. The Company initially proposed increases in retiree contributions to medical coverage that would have made healthcare simply unaffordable for many of United's retirees, especially those trying to survive on fixed incomes. Again, Debtors invoked the principle of shared sacrifice,

asserting that severe cuts in retiree healthcare were justified because "United ha[d] [already] spread the burdens of saving the company to every [other] constituency." Debtors' § 1114 Mem. (filed May 21, 2004) at 65 (quotation and citation omitted). Ultimately, an agreement was reached with Debtors, according to which the cost of retiree medical benefits would increase, but remain affordable.

On November 25, 2004, the Company again moved the Court for authority to reject its CBAs pursuant to Section 1113(c). Specifically, United sought authority to reject any provisions in its CBAs that would bar a voluntary distress termination of United's four defined benefit pension plans, under Section 4041 of ERISA. In addition, the Debtors demanded a further \$725 million in annual labor concessions through January 2010, the term of the Debtors' restructuring business plan.

In demanding termination of its defined benefit plans, as well as \$725 million in additional annual concessions from labor, management once again pledged that the Company's "[o]ther stakeholders" including "the Company's officers [and] salaried and management employees . . . [were] again being asked to contribute substantially to United's cost-cutting efforts." Debtors' 2d § 1113(c) Mem. (filed Dec. 14, 2004) at 81. Painful though it was, the unions ultimately reached consensual agreements with the Debtors providing the Company with all of the \$725 million in additional annual savings that it had sought through January 2010.

The agreement reached between AFA and United (the 2005 Restructuring Agreement), which was ratified by the membership and approved by the Court on January 31, 2005, provided the Company with \$131 million in additional annual savings through January 2010. As part of AFA's concessionary package, Flight Attendants' wages were cut by an additional 9.5% in 2005. Beginning in 2007, Flight Attendants are to receive annual wage increases, but only of 2%, meaning that in 2009 they will still be earning 12.5% less than they were earning in 2002.

However, AFA, along with other unions, opposed termination of the defined benefit plans. While the Pension Benefit Guaranty Corporation ("PBGC") moved to involuntarily terminate ALPA's and IAM's plans on December 29, 2004 and March 10, 2005, respectively, PBGC consistently maintained that the Flight Attendant Plan was "affordable" and could be "retained in a successful reorganization." PBGC's Obj. Debtors' 1113(c) Mot. (filed Jan. 4, 2005) at 20; see also PBGC's Mem. Supp. Emerg. Mot. Postpone Consid. Debtors' Mot. Distress Termination (filed Apr. 14, 2005) at 1-7 (calling United's motion for a distress termination of the Flight Attendant Plan "premature" and asserting that the Company had failed to show that none of its plans were salvageable).

**B. United's Failure to Comply with the Parity Provision of the 2005 Restructuring Agreement.**

On April 8, AFA gave notice of its intention to terminate the 2005 Restructuring Agreement if United did not demonstrate fair and equitable treatment of all parties by verifying that it had achieved \$112 million in average annual savings from salaried and

management ("SAM") employees, as it had agreed to do under the 2005 Restructuring Agreement.<sup>1/</sup> In response to AFA exercising its contractual right to rescind the 2005 Restructuring Agreement in the event of a violation of its Termination Rights provision by United, Debtors, on April 15, filed a motion seeking interim emergency relief from AFA's CBA pursuant to Section 1113(e). At a hearing on April 22, United withdrew its Section 1113(e) motion, and the parties reached an agreement, which was approved by the Court on May 2, to submit the dispute over SAM savings to arbitration, in which the System Board of Adjustment would be empowered to devise a cure in the event United was found to have violated the CBA.<sup>2/</sup> See Order on Debtors' Mot. Interim Relief

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<sup>1/</sup> The 2005 Restructuring Agreement provides, in pertinent part:

This Letter of Agreement may be terminated by the Company or the AFA-CWA, on two business days written notice to the other (the "Termination Notice"), given before or after the Effective Date but no later than the Exit Date, upon failure of the Company to implement, through binding agreement or final judicial order effective no later than January 31, 2005, revisions to (i) the labor contracts of the Company's other unionized employees and (ii) the wages, benefits and working conditions of the Company's salaried and management employees so that the aggregate revisions in (i) and (ii) are reasonably projected to produce at least \$547 million in average annual savings for the Company from January 1, 2005 through and including January 1, 2010, unless such action is cured to the reasonable satisfaction of the AFA-CWA within twenty (20) days of the Termination Notice.

2005 Restructuring Agreement at 3.

<sup>2/</sup> The arbitration hearing was completed last month and a decision is expected next month.

Pursuant to § 1113(e) ("Section 1113(e) Order") (filed May 2, 2005)

¶ 1.

**C. The UAL-PBGC Settlement Agreement and AFA's Challenge to PBGC's Decision to Involuntarily Terminate the Flight Attendant Plan.**

On April 22, 2005, United announced that it had reached an agreement with PBGC, which would result in the involuntary termination of all four defined benefit plans pursuant to Section 4042 of ERISA ("Settlement Agreement"). According to the terms of the Settlement Agreement, United is to provide securities with a face value of \$1.5 billion to PBGC in exchange for the agency terminating the four pension plans and settling other claims.

As the Company stated in seeking Court approval of the Settlement Agreement, the Debtors entered into the Settlement Agreement, whereby PBGC assumed responsibility for terminating the plans pursuant to ERISA Section 4042, in order to avoid "the risks associated with litigating a sharply contested ERISA Section 4041 sponsor-initiated distress termination of all four Pension Plans, together with the Section 1113(c) trial." Debtors' Emerg. Mot. Appr. Agrm't PBGC (filed Apr. 26, 2005) at 18. AFA objected to the Agreement, arguing, inter alia, that by entering into the Agreement, United aborted the Section 1113(c) process and thereby deprived the union of its rights under the Bankruptcy Code and ERISA to judicial review of an employer's demand to terminate the Flight Attendant Plan. See AFA's Obj. Debtors' Emerg. Mot. Appr. Agrm't PBGC.

At the May 11 hearing on the Debtors' motion for an order approving the Settlement Agreement, the Court questioned counsel for both United and PBGC about whether judicial review of a determination by PBGC to terminate a pension plan would be available to aggrieved beneficiaries. Debtors' counsel repeatedly reassured the Court that judicial review would be available outside of the bankruptcy court in the form of an administrative challenge to an agency action: "The Jones & Laughlin case is exactly that. . . . the court held against the unions, but they got their day in court and went through the entire process all the way to the Second Circuit and had their position aired voluminously." Exh. 2 at 54:10-15. Likewise, counsel for PBGC confirmed the Court's understanding that, under ERISA, "there is a provision for some kind of judicial review of administration -- of the PBGC's decision." Id. at 59:9-12.

At the conclusion of the May 11 hearing, the Court approved the Settlement Agreement. However, the Court expressed its concern that, because the Settlement Agreement jettisoned the Section 1113 process, "the employees [would be] left with no remedy, the unions have no voice, no opportunity to get judicial review of [a] decision" by PBGC to terminate one of the pension plans. Id. at 186:11-13. Hence, the Court underscored the "critical[] importan[ce]" of "the right [of] any aggrieved party . . . to bring the PBGC into court to challenge the propriety of action that the PBGC has taken under the statute." Id. at 187:2-6. As the Court said,

the important thing is that if the agency were to act in an inappropriate way, if it were to take action that's not authorized by the statute in seeking involuntary termination of a pension plan, the agency would be subject to a lawsuit under [ERISA] Section 1303 to have its decision reviewed by a court. And if the agency were acting arbitrarily, contrary to its statutory duties, that action could be undone. That's critical here.

Id. at 187:21-188:4. Thus, the Court made clear that there would be a judicial remedy available to AFA, in the event that PBGC's determination to terminate the Flight Attendant Plan was unlawful: the court in which the Section 1303 action was brought would have jurisdiction to set aside PBGC's decision to terminate the Flight Attendant Plan.

While the Court clearly stated that an administrative challenge to PBGC's involuntary termination of a pension plan could result in PBGC's termination of the plan "be[ing] undone," United never reserved its right to seek removal of the contract bar and a distress termination under Section 1113(c) and ERISA Section 4041 in such an event. Upon approval of the Settlement Agreement by the Court, Debtors "withdr[ew] without prejudice [their] pending 1113(c) motion to reject the AFA contract on the grounds that it [was] no longer necessary to proceed against the AFA." Id. at 192:25-193:3. Debtors have made clear that the only scenario in which United would renew its Section 1113(c) motion against AFA was "if the PBGC [were to] find[] that the Flight Attendant Plan should not be terminated under 29 U.S.C. § 1342, then United [would] have to proceed under its Section 1113 and 29 U.S.C. § 1341 motions." Appellee UAL's Resp. Br. (filed June 22, 2005, N.D. Ill.) at 23. United also recognized that, "if the PBGC [were to] decide[] to

involuntarily terminate the Plan," then in that case "the AFA [could] seek judicial review under 29 U.S.C. § 1303 to have a court ensure that the PBGC properly complied with 29 U.S.C. § 1342." Id. at 23-24. United never represented that there were any scenarios, other than PBGC declining to involuntarily terminate the Flight Attendant Plan, under which United would proceed with its Section 1113 motion.

On May 20, AFA sued PBGC in the United States District Court for the District of Columbia and moved for a preliminary injunction, enjoining PBGC from instituting proceedings to involuntarily terminate the Flight Attendant Plan. On June 8, the district court denied AFA's motion for a preliminary injunction. On June 23, PBGC issued its Notice of Determination that the Flight Attendant Plan would be terminated, pursuant to ERISA Section 4042, as of June 30, 2005. On October 3, after a compressed discovery period, PBGC moved for summary judgment against AFA. And on October 24, AFA filed its opposition to PBGC's motion for summary judgment and cross-motion for summary judgment, alleging that PBGC's administrative decision-making process was arbitrary and capricious. The motions for summary judgment were fully briefed as of November 18, and the parties are now awaiting a decision of the court. At no point during the six-month pendency of the litigation between AFA and PBGC has United even attempted to intervene in the lawsuit or otherwise assert an interest in the outcome of the litigation.

In their Plan of Reorganization, Debtors, for the first time, seek to reserve the right to "re-terminat[e]" the Flight Attendant Plan in the event it is restored by a court reviewing PBGC's involuntary termination determination. Plan at 87. Specifically, in Article VII.F.2 of the Plan, the Company seeks to "reserve the right to . . . seek termination of the Flight Attendant [] Plan under Title IV of ERISA and/or rejection of the AFA Collective Bargaining Agreement . . . under Section 1113 of the Bankruptcy Code" in the event "the terminated Flight Attendant [] Plan is restored for any reason . . . including . . . as a result of judicial . . . activity . . . including . . . the voiding or invalidation of the . . . PBGC notice of determination" after exit. Id. Further, in Article XIV, Paragraph 27 of the Plan, Debtors purport to retain the Bankruptcy Court's jurisdiction, post-confirmation, to "[c]onsider any requests for relief pursuant to Title IV of [ERISA] or Section 1113 of the Bankruptcy Code as set forth in ARTICLE VII.F.2 of the Plan." Id. at 121.

The reservation of rights regarding Section 1113(c) also extends to the termination of the 2005 Restructuring Agreement, see Plan at 87, which would only occur if the System Board ruled in AFA's favor and the Company refused to cure in the manner set forth in the decision.

**D. Executive Compensation.**

While Flight Attendants and the other unionized employees have committed to enormous sacrifices through 2009, United's officers have received generous increases in compensation, even before

United exits bankruptcy. According to the Company's 2004 10-K, United Officers' compensation increased in either base salary and/or bonuses by amounts ranging from \$33,799 for Chief Operating Officer Peter McDonald and \$150,413 for Executive Vice President Douglas Hacker to \$377,476 for Chairman, Chief Executive Officer and President Glenn Tilton.

In particular, the compensation of United's chief executive, Mr. Tilton, is out of line with that of other U.S. airline chief executives. In 2004, the median salary of the chief executives of the 11 largest U.S. airlines was \$461,325.<sup>3/</sup> In 2004, Mr. Tilton's base salary was \$605,625, or 30% higher than the median. Of the 11 largest U.S. airlines, the CEO of only one, Continental, had a higher base salary in 2004. By contrast, in 2004, Gerald Grinstein, the CEO of Delta Air Lines, received a base salary of \$250,000.

Against this backdrop of extreme employee sacrifice and increasing executive compensation levels, Debtors have proposed an extraordinarily generous MEIP in their Plan of Reorganization. Under the MEIP, 18,750,000 UAL shares, or 15% of United's total equity at exit, would be reserved for "stock-based awards" to be paid to "approximately 400" unidentified "senior management-level employees." 1st Amend. Discl. Statement at 94. Ten million shares would be reserved for emergence grants to be awarded upon exit,

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<sup>3/</sup> Based on 2004 Proxy Statements of AirTran Holdings Inc.; America West Holdings Corp.; AMR Corp.; ATA Holdings Corp. (2003); Continental Airlines, Inc.; Delta Air Lines, Inc.; Jetblue Airways, Inc.; Northwest Airlines; Southwest Airlines Co.; US Airways Group; and United Airlines.

with the remaining 8,750,000 shares to be awarded as annual grants in the years following exit. See id. Assuming a share price of \$15.20, see id. at 191, the total value of the MEIP is approximately \$285 million, of which \$152 million would comprise the emergence grant. Even assuming the emergence grants were allocated evenly, each of the 400 individuals would receive \$380,000 in equity, or approximately one hundred times more than the \$3,400 in UAL stock that Flight Attendants, on average, will receive at exit.

According to Debtors' Amended Disclosure Statement ("Disclosure Statement"), the purpose of the MEIP is "to provide the Reorganized Debtors' management with incentives to maximize future stockholder value [and to] align their interests with the interests of stockholders." Id. at 94. Notwithstanding the stated purpose of aligning the interests of management and stockholders, however, Debtors expressly state in their Disclosure that "[a]wards under the [MEIP] . . . will not be based on performance conditions," id.,

**[REDACTED]**

Nowhere in their Disclosure Statement or in their Plan of Reorganization do the Debtors offer any rationale for choosing 15% as the amount of equity to be reserved for MEIP grants. Nor do the Debtors either identify the recipients of the MEIP grants or

explain how, or on what basis, the total reserved equity would be allocated among the recipients.

As part of Mr. Tilton's 2002 Employment Agreement, he received stock options for 1,150 shares of UAL common stock, to vest over four years beginning in September 2003, which had an approximate value of \$3,450,000 on the day the Employment Agreement was executed, September 5, 2002. See Exh. 4 (Employment Agreement). Debtors have not disclosed whether Mr. Tilton's grant under the MEIP would be in line with the stock grant he received before the Company entered bankruptcy and before employees had made such extreme sacrifices to save the Company.

Except for the 15% of equity reserved for MEIP grants, Debtors have not disclosed any information regarding the post-exit compensation of senior executives, including officers. There is also no evidence even suggesting that senior management, in deciding to reward itself with hundreds of millions of dollars worth of stock, took into account either the extreme sacrifices of labor or the unions' commitment to provide the Company with billions of dollars in average annual labor cost-savings over the entire term of the business plan. Finally, although every other United employee is obligated to work under a four-year concessionary package, there is no evidence that United's top executives have agreed to make any sacrifices during the next 48 months.

## ARGUMENT

Debtors' Plan of Reorganization should not be confirmed absent removal of both (1) the proposed MEIP and (2) Debtors' reservation of rights to file a Section 1113(c) motion after confirmation.

### **I. DEBTORS' PROPOSED MANAGEMENT EQUITY INCENTIVE PLAN PRECLUDES CONFIRMATION OF THE PLAN OF REORGANIZATION.**

AFA objects to the MEIP, as set forth in the Disclosure Statement and the Plan of Reorganization, on three independent grounds. First, the MEIP is neither a valid exercise of Debtors' business judgment nor are its terms fair and reasonable, as required by Section 363(b)(1). See 11 U.S.C. § 363(b)(1). Second, the MEIP demonstrates a lack of good faith by United in proposing the Plan of Reorganization, as required by Section 1129(a)(3). See 11 U.S.C. § 1129(a)(3). And third, Debtors fail to specify the amount of the MEIP awards to be received by Company insiders, as required by Section 1129(a)(5)(B). See 11 U.S.C. § 1129(a)(5)(B).

#### **A. The Plan of Reorganization Cannot Be Confirmed Because the MEIP Does Not Satisfy Section 363(b)(1).**

Section 363(b)(1) of the Bankruptcy Code provides that a debtor-in-possession, "after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Here, the MEIP would reduce the recovery of Debtors' unsecured creditors by 15%, a plan which is clearly outside the ordinary course of United's business. Accordingly, the Court should only approve the MEIP "if the Debtor[s] ha[ve] used proper business judgment in formulating the [plan] and the court finds the [plan] to be 'fair and reasonable.'"

In re Aerovox, Inc., 269 B.R. 74, 80 (Bankr. D. Mass. 2001) (citing In re Interco, 128 B.R. 229, 234 (Bankr. E.D. Mo. 1991)).

Where insiders would be compensated by the estate, as they would be under the MEIP, the plan is subject to "rigorous scrutiny." Pepper v. Litton, 308 U.S. 295, 306 (1939); see also In re Regensteiner Printing Co., 122 B.R. 323, 326 (Bankr. N.D. Ill. 1990) ("Courts must scrutinize transactions between insiders and the debtor-in-possession to ensure that the transactions are fair to the estate and creditors."). As a general matter, transactions that involve an insider trigger a more exacting scrutiny by the bankruptcy court. See In re Trident Shipworks, Inc., 247 B.R. 856, 865-66 (M.D. Fla. 2000) (lease transaction involving insider); In re Bidermann Indus., 203 B.R. 547, 551 (Bankr. S.D.N.Y. 1997) (leveraged buyout to insider's firm). Thus, the MEIP should be scrutinized not just for the soundness of United's business judgment, but also for its "inherent fairness," as well as its reasonableness. Pepper, 308 U.S. at 308. As the U.S. Airways court observed, in the end, "there is something inherently unseemly in the effort to insulate the executives from the financial risks all other stakeholders face in the bankruptcy process." In re U.S. Airways Inc., 329 B.R. 793, 797 (Bankr. E.D. Va. 2005).

Here, Debtors clearly have failed to meet their burden under Section 363(b)(1). To begin with, Debtors' business judgment is fundamentally unsound. Debtors' reservation of over 15% of the new UAL shares for awards to 400 or fewer individuals is plainly excessive, especially given United's "total reorganized equity

value," which United estimates to be "\$1.9 billion." 1st Amend. Discl. Statement at 191.

**[REDACTED]**

Furthermore, the MEIP is unreasonable because, as it is currently formulated, the Plan will not achieve its stated objective. Debtors state that the purpose of the MEIP is "to provide the Reorganized Debtors' management with incentives to maximize future stockholder value [and to] align their interests with the interests of stockholders." 1st Amend. Discl. Statement at 94. However, the MEIP, by its own terms, fails to motivate executives to maximize future shareholder value. First, the MEIP provides for the awarding of emergence grants, with a total value of \$152 million, to up to 400 eligible executives. This is purely a reward for not quitting during the bankruptcy and bears no

relation whatsoever to future stockholder value. As for the remaining 8.75 million shares to be awarded annually through 2010, according to the Debtors themselves, the MEIP "will not be based on performance conditions." Id. at 94. Clearly, therefore, the MEIP, if confirmed, would indeed "insulate [United] executives from the financial risks all other stakeholders face in the bankruptcy process." In re U.S. Airways Inc., 329 B.R. at 797.

**B. The MEIP Demonstrates that the Debtors Have Not Proposed Their Plan of Reorganization in Good Faith.**

The MEIP also evidences a lack of good faith by the Company in proposing the Plan of Reorganization. Courts will not confirm a plan of reorganization unless it "has been proposed in good faith." 11 U.S.C. § 1129(a)(3). In evaluating whether the good faith requirement has been met, the "court looks to the debtor's plan and determines, in light of the particular facts and circumstances, whether the plan will fairly achieve a result consistent with the Bankruptcy Code." In re Madison Hotel Assocs., 749 F.2d 410, 425 (7th Cir. 1984).

As a threshold matter, the MEIP, as we demonstrate above, is manifestly inconsistent with the requirements of Section 363(b)(1) of the Bankruptcy Code. Because the MEIP achieves a result that is not consistent with the Bankruptcy Code, it does not satisfy Section 1129(a)(3)'s good faith requirement, as a matter of law.

In addition to consistency with the Bankruptcy Code, however, Section 1129(a)(3) also "requires a fundamental fairness in dealing with ones creditors." In re WCI Cable, Inc., 282 B.R. 457, 484 (Bankr. D. Or. 2002) (quotation omitted). As a New Jersey district

court observed, "there is considerable judicial discretion in finding good faith, with the most important feature being an inquiry into the fundamental fairness of the plan." In re Am. Family Enters., 256 B.R. 377, 401 (D.N.J. 2000) (quotation and citation omitted). Consequently, only a plan that has been "proposed with honesty and good intentions" will be confirmed. Kane v. Johns-Manville Corp., 843 F.2d 636, 649 (2d Cir. 1988) (quotation omitted). The Seventh Circuit has made clear that, in determining a debtor's good faith in proposing a plan, the "plan must be viewed in light of the totality of the circumstances surrounding [the] confection of the plan" including "the conduct of the debtor . . . throughout the Bankruptcy proceedings." In re Madison Hotel Assocs., 749 F.2d at 425 (quotations and citations omitted).

Here, "the conduct of the debtor" "throughout the Bankruptcy proceedings," id., demonstrates, without question, that the MEIP has not been "proposed with honesty and good intentions." Kane, 843 F.2d at 649. First, senior management's decision to award itself hundreds of millions of dollars in stock upon exit, without any regard to performance, leaves no doubt that United misled its unions about senior management's intention to share the sacrifices necessary for a successful reorganization. As shown above, United repeatedly invoked the principle of shared sacrifice in demanding billions of dollars in labor cost-savings. AFA and the other unions relied on senior management's pledge to share the financial pain required to reorganize the Company in agreeing to provide the

Company with \$4 billion in annual savings. Now, the MEIP reveals that, contrary to their promises during the Sections 1113 and 1114 negotiations, United's senior management had no intention of honoring its pledge to share the financial burden of this reorganization. In short, the Company's repeated, feigned appeals to the principle of shared sacrifice demonstrate an appalling lack of good faith.

**[REDACTED]**

There is simply no evidence that United so much as paused to consider the "fundamental fairness" of the MEIP.

**[REDACTED]**

Finally, United's lack of good faith is evidenced by the Company's refusal to provide any information regarding executive compensation, other than what little has been disclosed about the MEIP. Debtors have not even provided tentative tally sheets for its officers, much less the identities and overall compensation of the 400 senior managers eligible for MEIP grants. For instance, no information regarding Mr. Tilton's total compensation package has been provided. Nor have Debtors indicated whether Mr. Tilton's grant under the MEIP will be in line with the \$3.45 million grant he received as part of his 2002 Employment Agreement. Out of respect for the extreme sacrifices that employees have made to ensure a successful restructuring, surely the total of any MEIP grant Mr. Tilton receives should not exceed what he received before United entered Chapter 11. However, until United discloses the overall compensation of those eligible for MEIP grants, including Mr. Tilton, evaluating the MEIP's fundamental fairness is significantly hindered. In withholding basic information that is clearly necessary to fully evaluate the fairness of the MEIP, Debtors again demonstrate their lack of good faith, as well as "sound business judgment." In re Geneva Steel Co., 236 B.R. 770, 773 (Bankr. D. Utah 1999) (in rejecting a key employee retention program, which included an emergence bonus, on grounds that debtor had not "discussed its provisions with the [represented employees]," finding that "the support and participation of the [represented employees] [was] equally critical to [the debtor's]

successful reorganization as the support and participation of the key employees.")

**C. Debtors' Failure to Disclose Information Regarding the Post-Emergence Compensation of Insiders Precludes Confirmation of the Plan of Reorganization.**

By withholding information regarding the post-emergence compensation of insiders, Debtors have also failed to meet their disclosure obligations under Section 1129(a)(5)(B), which requires that the debtor "disclose[] the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider." 11 U.S.C. § 1129(a)(5)(B). Because the Debtors have not disclosed any specific information regarding the post-emergence compensation of insiders, Section 1129(a)(5)(B) forbids confirmation of the Plan of Reorganization.<sup>4/</sup>

Considering the length of this bankruptcy and the innumerable times United claimed that it was only months from exit, one can only assume that the Debtors had the time to prepare, and, in fact, have prepared, a comprehensive compensation package for at least the top eight officers who comprise United's Executive Council. Either United has deliberately forestalled decisions regarding executive compensation or has intentionally concealed these determinations. In either case, United is acting in bad faith by

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<sup>4/</sup> The Creditors' Committee has filed a preliminary objection to the MEIP on the grounds that Debtors have failed to provide sufficient information regarding the nature of insider compensation. See Prel. Obj. Official Comm. Unsecured Creditors Debtors' Proposed MEIP (filed Dec. 5, 2005).

purposefully avoiding disclosure of statutorily required information.<sup>5/</sup>

**II. DEBTORS' RESERVATION OF THE RIGHT TO REJECT AFA'S CBA AFTER CONFIRMATION OF THEIR PLAN OF REORGANIZATION IS CONTRARY TO LAW AND EQUITY.**

In their Plan of Reorganization, Debtors erroneously reserve their right to "seek termination of the Flight Attendant . . . Plan under Title IV of ERISA and/or rejection of the AFA Collective Bargaining Agreement . . . under Section 1113 of the Bankruptcy Code, notwithstanding the occurrence of the Effective Date" in the event "the terminated Flight Attendant . . . Plan is restored" as a result of "the voiding or invalidation" of the "PBGC notice of determination" or "the AFA 2005 Restructuring Agreement is terminated for any reason (including without limitation based on arbitration between the parties based on the AFA's April 8, 2005 notice of termination of such Agreement)." Plan at 87. Further, Debtors purport to retain the Court's jurisdiction to "[c]onsider any request for relief pursuant to Title IV of [ERISA] or Section 1113 of the Bankruptcy Code." Plan at 121. However, as we demonstrate below, the Court would decline jurisdiction to hear a motion seeking a distress termination of the Flight Attendant Plan, filed after the effective date. Further, fundamental principles of equity proscribe any additional Section 1113(c) relief for the Debtors, in the event that either the Flight Attendant Plan is

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<sup>5/</sup> Further evidencing United's stonewalling on the disclosure of management compensation, the Company continues, in December 2005, to refuse to provide the allocation of the \$70 million award under its 2003 Performance Incentive Program or PIP. See 1st Amend. Discl. Statement at 95.

restored by a judicial undoing of PBGC's involuntary termination or the 2005 Restructuring Agreement is terminated. Accordingly, Debtors lack any basis for reserving the right, in their Plan, to reject AFA's CBA.

**A. The Court Would Not Retain Jurisdiction to Hear a New Motion to Terminate the Flight Attendant Plan Under Section 1113 and ERISA Section 4041.**

Pursuant to 28 U.S.C. § 1334(b), the bankruptcy court has "jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). However, Section 1142 of the Bankruptcy Code expressly limits a bankruptcy court's post-confirmation jurisdiction to authority to "direct . . . [the] perform[ance of] . . . act[s] . . . necessary for the consummation of the plan." 11 U.S.C. § 1142(b). "[T]he jurisdictional authority of a bankruptcy [court] is sharply reduced following confirmation." In re Schwinn Bicycle Co., 210 B.R. 747, 754 (Bankr. N.D. Ill. 1997). In general, after confirmation "a bankruptcy court's . . . jurisdiction is limited to enforcing the plan of reorganization." In re Cary Metal Prods. Inc., 152 B.R. 927, 933 (Bankr. N.D. Ill. 1993). As the Seventh Circuit has observed:

Once the bankruptcy court confirms a plan of reorganization, the debtor may go about its business without further supervision or approval. The firm also is without the protection of the bankruptcy court. It may not come running to the bankruptcy judge every time something unpleasant happens.

Pettibone Corp. v. Easley, 935 F.2d 120, 122 (7th Cir. 1991)  
(emphasis in original).

Here, Debtors are purporting to retain the Court's jurisdiction over a purely hypothetical Section 1113(c) proceeding. There is no pending Section 1113(c) motion before the bankruptcy court. Upon approval of the Settlement Agreement by the Court, Debtors withdrew their 1113(c) motion to reject AFA's contract bar "on the grounds [that] it [wa]s no longer necessary to proceed against the AFA." Exh. 2 at 193:2-3.

Furthermore, to the extent that consummation of the Plan of Reorganization is contingent upon termination of the Flight Attendant Plan, that contingency has been satisfied by PBGC's involuntary termination. United has consistently stated that termination of the Flight Attendant Plan is necessary for consummation of the Plan of Reorganization only inasmuch as termination is purportedly necessary to satisfy the metrics of United's exit lenders. See Debtors' 2d § 1113(c) Mem. at 25-26; Debtors' Supp. § 1113 Mem. (filed Apr. 11, 2005) at 20-21. Here, the Flight Attendant Plan was terminated on June 30, and thus, as of the effective date of the reorganization, the metrics of United's lenders will be satisfied. Once the Plan of Reorganization is consummated, there is absolutely no basis under Section 1142(b) for retaining the Court's jurisdiction to hear a hypothetical motion to re-terminate the Flight Attendant Plan. Similarly, if United's costs and revenue projections are not realized after emergence from bankruptcy, Debtors could not reserve and then resurrect the Court's jurisdiction, so as to obtain additional concessions from labor under Section 1113.

Finally, any basis for retaining post-confirmation jurisdiction a bankruptcy court may have becomes increasingly attenuated with the passage of time. See 8 Lawrence P. King, Collier on Bankruptcy ¶ 1142.04[2] (15th ed. rev. 2000) ("The closer in time to confirmation that a dispute arises, the more likely that it ought to be heard by the bankruptcy court."); see also In re Cary Metal Prods., 158 B.R. at 462-63. Here, Debtors chose the PBGC-initiated involuntary termination path to terminate the Flight Attendant Plan, understanding that such an administrative action would be subject to the potentially time-consuming judicial review of another court. As of this filing, AFA's and PBGC's cross-motions for summary judgment are still pending. It is almost certain that whoever's summary judgment motion is denied will appeal the decision to the D.C. Circuit. Thus, it is highly probable that a final, unappealable decision in AFA's challenge of PBGC's involuntary termination of the Flight Attendant Plan will not be rendered until 2007.

**B. Debtors Are Judicially Estopped from Filing a Section 1113(c) Motion to "Re-Terminate" the Flight Attendant Plan After Confirmation.**

As the Seventh Circuit recently observed, "[i]t is well established that the doctrine of judicial estoppel acts to 'protect the integrity of the judicial process . . . by prohibiting parties from deliberately changing positions according to the exigencies of the moment.'" Jarrard v. CDI Telecomm., Inc., 408 F.3d 905, 914 (7th Cir. 2005) (quoting New Hampshire v. Maine, 532 U.S. 742, 749-50 (2001)). Courts apply the doctrine "where intentional self-

contradiction is being used as a means of obtaining [an] unfair advantage in a forum designed for suitors seeking justice." In re Cassidy, 892 F.2d 637, 641 (7th Cir. 1990) (quotation omitted).

While "no precise or rigid formula guides the application of judicial estoppel," among the factors courts consider in determining whether a party's subsequent position is barred by the doctrine are: (1) whether the position is "clearly inconsistent with a position earlier taken"; (2) whether the party "prevailed on the basis of its earlier position so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or second court was misled"; (3) "whether the party asserting the inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped"; and (4) "whether the operative facts remain the same in both cases." Jarrard, 408 F.3d at 914-15 (quotation omitted).

Under the Seventh Circuit's test for applying the doctrine of judicial estoppel, Debtors are clearly estopped from invoking this Court's jurisdiction to consider a motion to re-terminate the Flight Attendant Plan. First, Debtors' position that they should be permitted to file a motion to re-terminate the Flight Attendant Plan under Section 1113 and ERISA Section 4041 is "clearly inconsistent" with their position in moving the Court to approve the Settlement Agreement. In seeking approval of the Settlement Agreement, Debtors sought to scrap the sponsor-initiated distress termination process under Section 1113 and ERISA Section 4041 in

favor of a PBGC-initiated involuntary termination of the Company's pension plans. As the Company stated at the time, the Settlement Agreement would enable it to avoid "the risks associated with litigating a sharply contested ERISA Section 4041 sponsor-initiated distress termination of all four Pension Plans, together with the Section 1113(c) trial." Debtors' Emerg. Mot. Appr. Agrm't PBGC at 18. Upon approval of the Settlement Agreement by the Court, Debtors' counsel withdrew its motion to reject AFA's contract bar, stating that "it [wa]s no longer necessary to proceed against the AFA." Exh. 2 at 193:2-3.

In foreclosing on the Section 1113 process, Debtors stressed that AFA would be afforded judicial review of an involuntary termination of the Flight Attendant Plan by PBGC under ERISA Section 4003. See id. at 54:10-15. As the Court stated, the availability of "judicial review of the PBGC's determination," id. at 54:9, that "any aggrieved party has [the right] to bring the PBGC into court to challenge the propriety of action that the PBGC has taken under the statute . . . is critically important." Id. at 187:2-6. Further, the Seventh Circuit, in affirming the Court's approval of the Settlement Agreement, "noted that AFA will have its have its day in court," underscoring that "[b]y enacting § 1303(f), Congress has provided an avenue for challenging PBGC action, and AFA has taken full advantage of that § 1303(f) opportunity through its lawsuit against PBGC." In re UAL Corp., 428 F.3d 677, 684 (7th Cir. 2005)

As the Court itself pointed out, judicial review of PBGC's determination to involuntarily terminate the Flight Attendant Plan could result in termination of the Plan "be[ing] undone." Id. at 188:3-4. According to the Court, the availability of the remedy of plan restoration, should PBGC be found to have acted "contrary to its statutory duties," was also "critical." Id. Importantly, neither the Court, nor the Debtors, ever indicated that this Court should, or could, retain jurisdiction to consider a motion to re-terminate the Flight Attendant Plan in the event a court reviewing PBGC's involuntarily termination determination, ordered the Plan restored. Indeed, if another court were to order restoration of the Flight Attendant Plan, consideration by this Court of a motion to re-terminate the Plan pursuant to Section 1113 and ERISA Section 4041 would amount to a collateral attack on the first court's order restoring the Flight Attendant Plan.

Debtors clearly understood that the sponsor-initiated distress termination and the PBGC-initiated involuntary termination represented two distinct paths to plan termination, each with its own provision for judicial review, and not a single path providing two opportunities to terminate a pension plan. Debtors further understood, that under the terms of the Settlement Agreement, once PBGC issued its notice of determination to involuntarily terminate a plan, Debtors were committed to the involuntary termination path and the judicial review provided by ERISA Section 4003. In a June 22, 2005 filing, for example, United stated: "if the PBGC [were to] find[] that the Flight Attendant Plan should not be terminated

under 29 U.S.C. § 1342, then United [would] have to proceed under its Section 1113 and 29 U.S.C. § 1341 motions"; however, "if the PBGC [were to] decide[] to involuntarily terminate the Plan, the AFA [could] seek judicial review under 29 U.S.C. § 1303 to have a court ensure that the PBGC properly complied with 29 U.S.C. § 1342." Appellee UAL's Resp. Br. at 23-24.

At no point during the six-month pendency of the litigation between AFA and PBGC has United ever indicated that it would, or could, seek to re-terminate the Flight Attendant Plan were it restored by the court hearing that litigation.

Now, in its Disclosure Statement and Plan of Reorganization, United has adopted an entirely contradictory position. For the first time, Debtors claim they have the right to proceed with an sponsor-initiated distress termination of the Flight Attendant Plan in the event that they are not satisfied with the outcome of the PBGC-initiated involuntary termination. Essentially, Debtors are doing nothing more than attempting to hedge their bets, claiming that regardless of which path to termination is taken, this Court retains jurisdiction to review that decision. This position could not be more inconsistent with the position the Company took in seeking approval of the Settlement Agreement.

Second, United prevailed in its motion for an order approving the Settlement Agreement on the basis of its representations to the Court that, once PBGC involuntarily terminated the Flight Attendant Plan, judicial review of that agency action would be available under ERISA Section 4003. Were the Court to hear a Section 1113

motion seeking re-termination of the Flight Attendant Plan, after it has been restored as a result of judicial review under ERISA Section 4003, the only conceivable perception would be that United misled the Court.

Third, United clearly "would derive an unfair advantage [and] impose an unfair detriment" on AFA were it permitted, post-confirmation, to seek re-termination of the Flight Attendant Plan. Jarrard, 408 F.3d at 915. In approving the Settlement Agreement, the Court made clear that the availability of the remedy of plan restoration was "critical." If United were permitted to file a Section 1113(c) motion, however, AFA would be deprived of its essential remedy.

Finally, the operative facts plainly would be the same if United were to seek the post-confirmation distress termination of a restored Flight Attendant Plan as they were when United sought approval of the Settlement Agreement. United has consistently maintained that it is the metrics of its exit lenders that have dictated its purported need to abandon its pension obligations. Thus, nothing will have changed if United seeks to re-terminate a Flight Attendant Plan after confirmation pursuant to Section 1113(c) and ERISA Section 4041, except, of course, for the Company's legal position.

Therefore, United has no grounds whatsoever for reserving the right, in its Plan of Reorganization, to file a post-confirmation Section 1113(c) motion to re-terminate the Flight Attendant Plan, which clearly would be subject to judicial estoppel.

**C. Debtors Have No Basis for Reserving the Right to Reject AFA's CBA after Confirmation, Where the 2005 Restructuring Agreement Would Only Be Terminated as a Direct Result of Their Own Wrongdoing.**

As we demonstrate below, fundamental principles of equity also bar the Debtors from seeking to reject AFA's CBA, pursuant to Section 1113(c), in the event United does not comply with an award of the System Board to cure United's breach of the 2005 Restructuring Agreement, and the 2005 Restructuring Agreement terminates as a result. Accordingly, Debtors have no basis for reserving their right to "seek . . . rejection of the AFA [CBA]" in the event "the AFA 2005 Restructuring Agreement is terminated . . . based on arbitration between the parties based on the AFA's April 8, 2005 notice of termination of such Agreement." Plan at 87.

Pursuant to the Court's Order of May 2, 2005, "[i]n the event that the arbitrator finds . . . a violation [of the 2005 Restructuring Agreement's Termination Rights provision, that United breached its contractual commitment to achieve \$112 million in annual SAM savings], the arbitrator shall determine a cure." Section 1113(e) Order ¶ 1. Under the 2005 Restructuring Agreement, if United does not cure its breach, the Restructuring Agreement will terminate based on AFA's April 8 notice of termination. However, United's contention that, if it elects not to cure and the 2005 Restructuring Agreement terminates, it would then be entitled to seek rejection of AFA's CBA pursuant to Section 111(c), is plain wrong.

To begin with, the doctrine of unclean hands clearly would preclude United from seeking relief under Section 1113(c) after,

or, for that matter before, confirmation. Bankruptcy courts are courts of equity, and there is no more deeply rooted principle of equity than that "a party seeking equitable relief cannot take advantage of his own wrong or, as otherwise stated, he who comes into equity must come with clean hands." In re Midway Airlines, Inc., 180 B.R. 851, 946 (Bankr. N.D. Ill. 1995); see also In re Aimster Copyright Litig., 252 F. Supp. 2d 634, 655 (N.D. Ill. 2002) ("The doctrine of unclean hands prevents plaintiffs from obtaining relief for conduct in which they themselves participated."). The doctrine of unclean hands "applies to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief." Packers Trading Co. v. Commodity Futures Trading Comm'n, 972 F.2d 144, 148 (7th Cir. 1992).

Here, any attempt by United to seek Section 1113(c) relief against AFA would, unquestionably, be "tainted with inequitableness [and] bad faith." Id. First, United would only seek Section 1113(c) relief if it first refuses to comply with the cure determined by the arbitrator, which would be manifestly bad faith conduct. Second, the Company would invoke Section 1113(c) as a direct result of its own wrongdoing. But for the Company's breach, AFA would not have noticed termination of the 2005 Restructuring Agreement. Thus, United clearly would be "tak[ing] advantage of its own wrong" if, after termination of the 2005 Restructuring Agreement, it were to seek Section 1113(c) relief. In re Midway Airlines, Inc., 180 B.R. at 946.

Furthermore, permitting United to seek Section 1113(c) relief would effectively deny AFA the remedy it bargained for, in the event United breached the 2005 Restructuring Agreement by failing to achieve the promised SAM savings. The Termination Rights provision of the 2005 Restructuring Agreement provides that the 2005 Restructuring Agreement "may be terminated by the Company or the AFA-CWA . . . upon failure of the Company to implement, through binding agreement or final judicial order effective no later than January 31, 2005, revisions to (i) the labor contracts of the Company's other unionized employees and (ii) the wages, benefits and working conditions of the Company's salaried and management employees . . . [totaling] at least \$547 million in [projected] average annual savings." 2005 Restructuring Agreement at 3. Thus, implementation of the 2005 Restructuring Agreement is conditioned upon United verifying the SAM savings. If United cannot demonstrate fair and equitable treatment of all parties by verifying the SAM savings, then AFA has the right to rescind the contract. The remedy of rescision clearly would be eviscerated, however, if, as a result of the Company's breach, AFA's CBA is rejected pursuant to Section 1113(c).<sup>5/</sup> The Court made essentially the same point when Debtors attempted to defeat the bargained-for remedy of rescision by seeking Section 1113(e) emergency relief in response to AFA's notice of termination. See Exh. 8 (4/22/05 Hr'g Tr.) at 91:9-92:10.

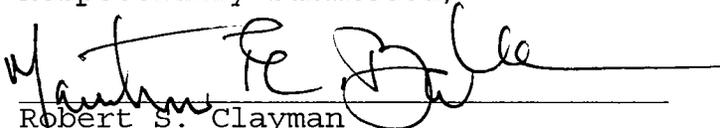
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<sup>5/</sup> Of course, United's failure to cure its breach would preclude even a prima facie showing that rejection of the CBA is necessary for a successful restructuring.

CONCLUSION

For all the foregoing reasons, AFA respectfully submits that Debtors' Plan of Reorganization should not be confirmed as long as it includes the proposed MEIP and a reservation of rights to reject AFA's CBA, after confirmation, in the event the Flight Attendant Plan is restored or the 2005 Restructuring Agreement is terminated as a result of United's refusal to cure its violation of the Termination Rights provision.

Respectfully submitted,



Robert S. Clayman

(admitted pro hac vice)

Matthew E. Babcock

(admitted pro hac vice)

GUERRIERI, EDMOND, CLAYMAN &  
BARTOS, P.C.

1625 Massachusetts Ave., N.W.  
Suite 700

Washington, D.C. 20036-2243

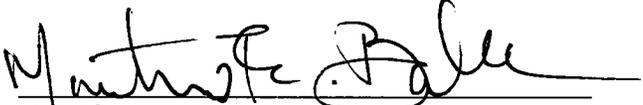
Telephone: (202) 624-7400

Dated: December 12, 2005

Counsel for Association of Flight  
Attendants-CWA, AFL-CIO

CERTIFICATE OF SERVICE

I, Matthew E. Babcock, hereby certify that on this 12th day of December 2005, true copies of the foregoing **Objection of the Association of Flight Attendants-CWA, AFL-CIO, to Debtors' First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code** 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

# **EXHIBIT 1**

0001

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF ILLINOIS  
3 EASTERN DIVISION  
4 In re: )  
5 UAL CORPORATION, et al., ) No. 02 B 48191  
6 ) Chicago, Illinois  
7 Debtors. ) January 31, 2005  
8 ) 4:00 p.m.

9 TRANSCRIPT OF PROCEEDINGS BEFORE THE  
10 HONORABLE EUGENE R. WEDOFF

11 APPEARANCES:

12 MR. ALEX DIMITRIEF  
13 on behalf of the debtors;

14 MR. LEE SEHAM  
15 on behalf of the Aircraft Mechanics Fraternal  
16 Association.

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1 THE CLERK: UAL Corporation, 02 B 48191.

2 MR. DIMITRIEF: Good afternoon, Your  
3 Honor. Alex Dimitrief on behalf of the debtors. If  
4 I might, Your Honor, I'd like to begin this  
5 afternoon with a very pleasant development. We are  
6 happy to report that the tentative agreements were  
7 ratified today by the memberships of ALPA and the  
8 AFA, and, therefore, we would like to present for  
9 the court's approval the ratified 1113(c) agreements  
10 on non-pension issues that have now been approved  
11 and agreed to between the company and ALPA, AFA,  
12 PAFCA, and the TWU. And we have orders to that  
13 effect for Your Honor consistent with  
14 Mr. Sprayregen's presentation at the last omnibus  
15 hearing.

16 THE COURT: All right. And consistent  
17 with the statement that I made at the last hearing,  
18 I am certainly willing to sign those orders. I had  
19 anticipated that I might issue an opinion. Given  
20 the other things that have been going on, I've  
21 determined that that would not be necessary. So  
22 we'll simply let the record stand based on the oral  
23 decisions that I announced before. And if you'll  
24 tender those orders, I'll enter them.

25 MR. DIMITRIEF: Yes, sir. And if I could,

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1 I'll just do that. We could do that now or at the  
2 end of the hearing, whichever Your Honor prefers.  
3 And if the court will indulge me for

12 wanted to address the issues that are before the  
13 court this afternoon?

14 (No response.)

15 THE COURT: All right. Based on the  
16 record that's been presented to me, I will grant the  
17 motion that is pending.

18 I appreciate, Mr. Seham, that there  
19 are a number of issues here that are in disagreement  
20 between AMFA and the company, but I don't think that  
21 any of them, individually or collectively, can be  
22 found by me to so taint the company with bad faith  
23 that they should be prohibited from being granted  
24 1113(e) relief. I think they reflect, at least  
25 based on what I've seen today, legitimate

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1 disagreements between the parties. For example,  
2 there is a factual assertion made by Mr. Dimitrief  
3 that a certain percentage of the fuelers were still  
4 represented by IAM. I have no way to know whether  
5 that's right or not. In the event that there is  
6 ever an 1113(c) trial, it may be something that has  
7 to be adjudicated. But in the context of  
8 negotiations that were ongoing and hopefully will  
9 resume, I can't make a determination that that was  
10 an act taken by the company in bad faith.

11 Similarly, the question of success  
12 sharing can reasonably be seen as an economic issue.  
13 It may be very much in the company's best interest  
14 to give an economic incentive to all of its  
15 employees to do their very best to meet certain  
16 matrix so that the company is competitive with other  
17 players in the industry. And although that can also  
18 be seen legitimately as something that penalizes the  
19 employees for matters that may be beyond their  
20 control, nevertheless the company's taking that  
21 position doesn't strike me as something that I can  
22 make a determination as being bad faith bargaining.  
23 I think there simply may be a difference of opinion  
24 as to the economic significance that success sharing  
25 would have.

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1 Again, it appears that there may be a  
2 legitimate disagreement regarding the value of  
3 non-CBA cost sharing -- or cost savings, excuse me,  
4 that's been suggested by the union, and I can't make  
5 a determination that the company's position in that  
6 respect is a bad faith position.

7 So on each of the points dealing with  
8 an allegation of bad faith, I don't see that based  
9 on what was presented to me today. That doesn't  
10 mean that in the context of an 1113(c) hearing with  
11 fuller evidence and more opportunity for me to  
12 consider the legal background, there might not be a  
13 different conclusion reached, but not on the basis  
14 of what I saw today.

15 The first question that you raised,  
16 though, wholly apart from this question of bad  
17 faith, had to do with the question of whether the  
18 relief sought by the company now was minimum relief  
19 in the context of its ultimate 1113(c) proposal.  
20 And I don't see any factual basis to come to the  
21 conclusion that this is not minimum relief.

22 As you've indicated, at least for  
23 purposes of the negotiation that's been ongoing, the

24 union has accepted United's figures as to the total  
25 savings that it needs to reach, and you've accepted

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1 the company's allocation of that total savings to  
2 AMFA's membership. So given that this is something  
3 that fits into that overall requirement, it's hard  
4 to see that it would not be necessary for ongoing  
5 relief pending an ultimate negotiated settlement or  
6 an 1113(c) hearing.

7 I think it's important to note one  
8 other aspect of the current context, and that is  
9 that the company is negotiating with many other  
10 unions. If I were to deny the company the interim  
11 relief that it is seeking with respect to AMFA, I  
12 think that could legitimately cause great unrest  
13 among the other unions who would be working under  
14 negotiated terms that essentially have the same  
15 proportionate relief asked of them. So there is an  
16 element here that may not be present in some of the  
17 other cases that you've discussed, certainly as you  
18 described them. I haven't read them. But as you  
19 described them, there was no indication that there  
20 were multiple union collective bargaining agreements  
21 being worked out at the same time with 1113(c)  
22 relief sought from one union that was proportionate  
23 to agreements that had already been reached with  
24 other unions. I think that adds an element of  
25 necessity, a necessity of maintaining effective

0051

1 relationships with all employee groups that gives  
2 further reason to impose the relief that's being  
3 sought here.

4 Now, once again, in reaching this  
5 determination I do not in any way want to denigrate  
6 the efforts that AMFA members make for the company  
7 and the efforts that their representatives have made  
8 in negotiating what has to be very difficult  
9 concessions with the company.

10 The industry as a whole, and this  
11 company in particular, is going through a period of  
12 turmoil which is requiring extraordinary sacrifices  
13 from everyone. The only way in which there is going  
14 to be a successful reorganization is if there is an  
15 effective working relationship between the company  
16 and its employees. My hope, as it has been  
17 throughout, is that that kind of a relationship can  
18 be maintained and ultimately will be successful,  
19 benefitting everybody who is participating in this  
20 bankruptcy process. And my hope today is that  
21 granting this motion will add to that process rather  
22 than detract from it.

23 That will be the ruling of the court.

24 MR. DIMITRIEF: I actually have an order  
25 that conforms to the changes that were made to Mr.

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1 Nelson's affidavit.

2 THE COURT: When you have Mr. Seham review  
3 that, if it's formally acceptable, I will enter it.

4 (Which were all the proceedings  
5 had in the above-entitled cause,  
6 January 31, 2005.)

7 I, GARY SCHNEIDER, CSR, RPR, DO HEREBY CERTIFY THAT  
THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF

# **EXHIBIT 2**



1 MR. BILL SMITH  
on behalf of the Bank of New York;

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MS. SHARON LEVINE  
3 on behalf of the International Association of  
Machinists and Aerospace Workers.

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1 PBGC's determination to seek an involuntary  
2 termination is not well-founded, that the interests  
3 of both the company and the PBGC in its many  
4 capacities would not be served by terminating the  
5 plan. But management would prefer to have the plan  
6 terminated for other reasons, and the union is  
7 completely cut out of the process. In that  
8 hypothetical, which I'm not saying exists here, but  
9 if there were an improper determination by PBGC and a  
10 putatively bad faith agreement with that  
11 determination by management, it is nevertheless your  
12 position that the unions have no recourse?

13 MR. SPRAYREGEN: Well, the management  
14 doesn't have input on that PBGC decision.

15 THE COURT: No. But management has, as  
16 you've just explained, the unfettered discretion to  
17 agree with the PBGC's determination.

18 MR. SPRAYREGEN: Your Honor, I think there  
19 is plenty of remedies under the Bankruptcy Code to  
20 address alleged misconduct by management. And we've  
21 seen some of those attempted remedies through the  
22 course of this case, none of which have borne  
23 fruition, thankfully. But the hypothetical you posed  
24 I do not believe is an impediment to this deal. If  
25 those eventualities came to pass, we're not saying

1 nothing can be done about those things. We don't  
2 believe that's obviously a proper hypothetical. But  
3 if it came to pass, there is people who can take  
4 action with respect to the PBGC action, and there is  
5 action that can be taken with respect to us.

6 THE COURT: All right. The action that  
7 would be taken against the PBGC would be some sort of  
8 an administrative challenge, an attempt to get  
9 judicial review of the PBGC's determination?

10 MR. SPRAYREGEN: The Jones & Laughlin case  
11 is exactly that. That's what happened. Now, the  
12 court held against the unions, but they got their day  
13 in court and went through the entire process all the  
14 way to the Second Circuit and had their position  
15 aired voluminously.

16 THE COURT: But with the result that they  
17 lacked standing to challenged the PBGC's action.

18 MR. SPRAYREGEN: Yes.

19 THE COURT: All right. That gets back to  
20 what I was talking about. The position you're taking  
21 here is that the employees, the beneficiaries of the  
22 pension plan, would have no opportunity, given the  
23 Jones & Laughlin decision, to challenge the PBGC's  
24 determination that there should be an involuntary  
25 termination.

1 MR. SPRAYREGEN: That's correct, Your  
2 Honor.

3 THE COURT: So that the only recourse they  
4 have is to challenge management's decision to agree  
5 with the PBGC's determination. And they can do that  
6 in this context by arguing that the settlement is not  
7 a good one.

8 MR. SPRAYREGEN: Well, yes, although we are  
9 asking for authority as part of this settlement to go  
10 and do exactly what the court has posited.

11 THE COURT: I understand that.

12 MR. SPRAYREGEN: Right.

13 THE COURT: So your position would be that  
14 there is no lack of due process, no fundamental  
15 unfairness because if there were in the circumstances  
16 of this case an unfairness, an impropriety of some  
17 sort in an agreement that called for the debtor to  
18 consent to a determination by the PBGC that there  
19 should be involuntary termination, that unfairness  
20 could be challenged here.

21 MR. SPRAYREGEN: I think that's correct,  
22 but I think it needs to be challenged today.

23 THE COURT: I understand that.

24 MR. SPRAYREGEN: And I would say, Your  
25 Honor, the point is, just to make sure I don't leave

1 it as a pure hypothetical, this is the point about  
2 paralysis of the bankruptcy process. The Bankruptcy  
3 Code is constructed with a series of checks and  
4 balances. The PBGC is not all powerful, ERISA is not  
5 all powerful. What we're doing is we're weaving  
6 together the tapestry of these various statutes in the  
7 way the Bankruptcy Code works. And there is plenty  
8 of opportunity for input and ideas from, say, the AFA  
9 to come and make a deal with us. We have,  
10 unfortunately, even a year into talking about this  
11 issue, from July of '04, are still at the point where  
12 there is no basis to have a discussion with the AFA  
13 other than on the basis of complete preservation of  
14 the pension plan. So there is an opportunity to make  
15 a deal. Unfortunately, we have not been able to  
16 engage in that negotiation. And my point is, that  
17 being the case, the debtors' job is not to sit there  
18 like a potted plant and get nothing done. The  
19 debtors' job is to see if we can make arrangements,  
20 legal, with other stakeholders that work and we'll  
21 move this case towards fruition, and at the end of  
22 the day probably encourage, hopefully encourage in a  
23 responsible fashion, other parties like the AFA, IAM,  
24 AMFA to come to an agreement for the benefit of  
25 themselves and all the other parties.

1           I know I only have a moment left. I  
2   guess what I would say, Your Honor, with respect to  
3   the other issues, I think the 45 percent issue is, my  
4   view, at least dealt with by the structure we came up  
5   with because we can't do anything without coming back  
6   to this court on notice and opportunity for a  
7   hearing. So whatever the court wants to do. If you  
8   think, if we come in with a motion, it needs to be  
9   done under the plan, we can deal with it at that  
10  point in time. There is no reason to deal with it  
11  now.

12           With respect to the exit financing and  
13  the benefits, as I noted, the major objector there I  
14  think has withdrawn their objection based on the  
15  reservation. And the benefits are legion and laid  
16  out in the document. Todd Snyder's report I think is  
17  very clear on that, that there are just tremendous  
18  monetary enclosure and ability to exit benefits of  
19  this agreement to the debtors really and to all  
20  parties in creating not just a solution to this  
21  issue, some broader issues, but create a momentum to  
22  put the debtor in a position to exit bankruptcy  
23  hopefully yet this year, hopefully in the fall.

24           So, Your Honor, with that, obviously I  
25  reserve time for rebuttal. But we obviously are

1 asking for the motion to be granted.

2 THE COURT: Okay. Thank you.

3 I'll give the PBGC the option to  
4 either make its argument now or after lunch,  
5 whichever you prefer.

6 MR. COHEN: Why don't we go forward now,  
7 Your Honor.

8 THE COURT: Fine. Go ahead.

9 MR. COHEN: Good afternoon. Jeffrey Cohen  
10 on behalf of the PBGC. Your Honor, let me address  
11 the question you just asked while its fresh in my  
12 mind and then get back to where I was going to start,  
13 which is the question you asked about what recourse  
14 the unions might have in light of the Jones &  
15 Laughlin case.

16 And the answer is, as set forth in  
17 that decision by the Circuit Court, they would have a  
18 right under Section 4003 of ERISA to sue the PBGC as  
19 an aggrieved person sort of apart from the  
20 Section 4042 proceedings, which was the context in  
21 which that case arose. And there is also a sentence  
22 in that decision which I would characterize as dicta  
23 that the participants can also sue the PBGC for  
24 fiduciary breach. I would point out that because the  
25 agency takes the action to terminate the plan in its

1 corporate guarantor capacity, not as a fiduciary,  
2 that wouldn't be a successful action.

3 But nevertheless, the --

4 THE COURT: It only assumes fiduciary  
5 duties after the termination takes place.

6 MR. COHEN: That would be the theory, I  
7 suppose, Your Honor. But I guess our response would  
8 be we didn't take that action as a fiduciary.

9 THE COURT: Okay. But the point you're  
10 making is that there is a provision for some kind of  
11 judicial review of administration -- of the PBGC's  
12 decision, although not in the involuntary termination  
13 proceedings itself.

14 MR. COHEN: Yes, Your Honor, they would  
15 have recourse to get judicial review, but not in the  
16 Section 4042 proceeding.

17 THE COURT: Okay.

18 MR. COHEN: Your Honor, obviously this  
19 agreement reflects a compromise that was achieved  
20 through difficult, hard-fought negotiations over  
21 complex issues. And as I believe would be the case,  
22 the hallmark of any good compromise is that no  
23 parties are especially happy about each and every  
24 provision, as a whole, which we think particularly as  
25 modified as you heard from Mr. Sprayregen.

1           In view of all of that, the PBGC has  
2 concluded that the agreement was in the best interest  
3 of all of the PBGC's stakeholders. And that includes  
4 not only participants in this plan, but the  
5 participants in all the covered plans and the defined  
6 benefit universe, and the premium payers, which are  
7 other employers that sponsor to fund benefit plans,  
8 and ultimately the taxpayer because, as I'm sure Your  
9 Honor is aware, PBGC is a self-financing agency. We  
10 are not -- we get no funds from the treasury. But we  
11 are having a rough time at the moment in terms of our  
12 deficit. And so while we hope that doesn't become  
13 the case like the banking agencies 15 or so years  
14 ago, there is a danger of a taxpayer bailout. I  
15 don't want to say that, you know, the sky is falling.  
16 But ultimately this could be a taxpayer issue. So  
17 while we're being criticized for our parochial  
18 pecuniary interest, our point is that it is the  
19 entire insurance program that PBGC has a duty to act  
20 on behalf of. And it's the system, it's not PBGC's  
21 pocketbook.

22           In that regard, PBGC does not  
23 cavalierly terminate pension plans. We do so only as  
24 a matter of last resort. And to say somehow in this  
25 proceeding that terminating individual plans is

1 case is In re Jones & Laughlin Hourly Pension Plan,  
2 reported at 824 F.2d 197, a 1987 decision of the  
3 Second Circuit.

4 That case presented precisely this  
5 question. This was a proceeding that arose in the  
6 first LTV Steel bankruptcy. The PBGC made a  
7 determination after the plan sponsor stopped making  
8 minimum funding contributions that there should be an  
9 involuntary termination.

10 The union that was affected by that  
11 decision objected and said that this could not be  
12 done without a court hearing to determine the sorts  
13 of things that are covered by Section 1113, one would  
14 assume, and the necessity for the involuntary  
15 termination. The court, looking at the language that  
16 Congress had adopted in ERISA, concluded, and I  
17 believe correctly for a number of good reasons, that  
18 that was not required. A court hearing was not  
19 required, that Congress had given the PBGC the power  
20 to effect this termination without a prior court  
21 opinion, prior court review, when management had  
22 consented. The Jones & Laughlin case has been cited  
23 numerous times. Its holding has never been  
24 questioned. And I believe it's the correct  
25 interpretation of the law that Congress had enacted.

1           The result then is that the PBGC may  
2 terminate a plan in order to protect the pension  
3 benefit guarantee system with the consent of the plan  
4 sponsor without a court hearing even though that  
5 overrides the provisions of a collective bargaining  
6 agreement.

7           Now, I was concerned that that could  
8 be an unchecked power, that somehow the debtors or  
9 the PBGC might be arguing that any time management  
10 and the PBGC get together and decide that a pension  
11 plan ought to be terminated that the employees are  
12 left with no remedy, the unions have no voice, no  
13 opportunity to get judicial review of that decision.  
14 That's why we had the lengthy discussion that we did  
15 have regarding Section 1103 of ERISA.

16           I came upon that section of ERISA by  
17 reading the Jones & Laughlin decision of the Second  
18 Circuit because the Second Circuit also did not want  
19 to be in a position of denying due process.

20           The Second Circuit in that Jones &  
21 Laughlin decision recognized that the right of  
22 employees to receive the benefits that were defined  
23 by their pension plans was an important property  
24 right that should not be taken away without due  
25 process. But in looking at the various elements that

1 defined due process, the court specifically pointed  
2 to Section 1303 of Title 29, 4003 of ERISA, for the  
3 right that any aggrieved party has to bring the PBGC  
4 into court to challenge the propriety of action that  
5 the PBGC has taken under the statute. This is  
6 critically important here.

7 Brought down to its essentials, many  
8 of the parties objecting to the proposed settlement  
9 between United and the PBGC are saying that the PBGC  
10 is not going to be acting under its statutory power  
11 to terminate a pension plan because the continued  
12 existence of the plan would threaten the solvency of  
13 the pension benefit guarantee system, that this plan  
14 would be likely to create losses for PBGC if it were  
15 allowed to continue, but that PBGC is agreeing with  
16 the debtor to terminate a plan so that PBGC can  
17 augment the solvency of the system by receiving funds  
18 that it might otherwise not receive.

19 The information that's been presented  
20 to this court would not support that interpretation.  
21 But the important thing is that if the agency were to  
22 act in an inappropriate way, if it were to take  
23 action that's not authorized by the statute in  
24 seeking involuntary termination of a pension plan,  
25 the agency would be subject to a lawsuit under

1 Section 1303 to have its decision reviewed by a  
2 court. And if the agency were acting arbitrarily,  
3 contrary to its statutory duties, that action could  
4 be undone. That's critical here.

5 This settlement does not itself  
6 terminate the plan, any plan. This settlement  
7 provides that the PBGC will go through its  
8 administrative procedures to come to a conclusion as  
9 to whether the plans in question here ought to be  
10 involuntarily terminated.

11 Now, as Mr. Sprayregen said at the  
12 outset, it is the expectation of the debtors that  
13 that decision will be in favor of involuntary  
14 termination. It would be the expectation of the  
15 debtors because the debtors have said for months that  
16 they believe that these plans cannot be maintained  
17 without generating losses. So PBGC may very well  
18 come to the conclusion that the debtors expect. The  
19 important thing is that if the unions believe that  
20 that is an arbitrary decision not consistent with  
21 PBGC's statutory authority, PBGC's action is  
22 reviewable in court.

23 What that means for the terms of the  
24 settlement that's before this court today is that  
25 this settlement does not violate the law. The debtor

1 is not unilaterally terminating a pension plan. PBGC  
2 is agreeing under this agreement to exercise its  
3 statutory obligation to determine whether a pension  
4 plan ought to be involuntarily terminated. And PBGC,  
5 in exercising that responsibility, will be subject to  
6 judicial review, just as United would not be  
7 violating Section 1113 had it not talked to the PBGC  
8 about the possibility of an involuntary termination.  
9 So it did not violate 1113 when it did talk to the  
10 PBGC about an involuntary termination. United's  
11 talking to the PBGC could not unilaterally terminate  
12 a pension plan. Only the PBGC's decision could do  
13 that.

14           And there is nothing in the Bankruptcy  
15 Code that would prevent a debtor from consulting with  
16 a regulatory agency about the proper exercise of its  
17 responsibility. And, as I said before and I will say  
18 one more time, the agency retains its statutory  
19 obligation to exercise its discretion appropriately.

20           Now, does this limit the unions and  
21 their employees to the opportunity to challenge any  
22 decision that the PBGC might make? No. There are  
23 other remedies besides. And in that connection, the  
24 actions of the pilots union provides something of a  
25 guideline for the sorts of things that can be done.

1 A plan of reorganization still has to be negotiated.  
2 Each of the unions on behalf of their members are  
3 going to have claims against the debtors for wages  
4 and benefits that had to be surrendered in  
5 conjunction with prior agreements and may be  
6 surrendered or lost in connection with activities to  
7 take place in the future.

8           Each of those unions will have claims  
9 that have to be treated in the plan. Each of those  
10 unions will have opportunities to engage in further  
11 collective bargaining in the future. The debtor has  
12 no right to dictate the terms of its plan, no right  
13 to dictate future collective bargaining agreements.  
14 Those are matters to be determined. And the  
15 equitable considerations that would otherwise come to  
16 play in both a plan and in future collective  
17 bargaining agreements certainly will include the loss  
18 of pension benefits that may be accompanied by an  
19 involuntary termination.

20           Now, obviously this is a complex  
21 matter. But I think the important thing to keep in  
22 mind is this: In a bankruptcy proceeding like the  
23 one that is taking place here, and, indeed, in almost  
24 any bankruptcy proceeding I've ever dealt with, no  
25 one ever is able to come out with everything they

1 would have had had there not been a bankruptcy. Had  
2 this company not been involved in a situation where  
3 it could not meet all of its obligations, we wouldn't  
4 be in a situation like the one that we're in now.

5 Bankruptcy generally, and in this case  
6 in particular, involves choosing the least bad among  
7 a number of unfortunate choices. The least bad of  
8 the unfortunate choices here has got to be the one  
9 that keeps an airline functioning, that keeps people  
10 employed, that pays creditors the most they can be  
11 paid, and those creditors, again, include the  
12 employees in a very major way, as an alternative to  
13 what certainly is the worst choice, a shutdown of a  
14 company that results in a loss of employment and a  
15 loss of benefits and pay and payment of deserving  
16 creditors across the board.

17 There is a great deal of work yet to  
18 be done to negotiate a fair outcome for all of the  
19 parties involved in this bankruptcy case and  
20 particularly for the employees who have sustained  
21 this enterprise throughout the bankruptcy proceeding.  
22 My hope is that this agreement today can be an  
23 ingredient that results in that outcome. But that  
24 will depend on the choices that are made by any  
25 number of parties.

1           The decision that I have to make is  
2 one that's dictated by the law. As I've just  
3 outlined, the legal requirements for approval of this  
4 agreement have been met. The agreement will be  
5 approved. That leaves completely open what decisions  
6 that the parties make not dictated by the law. And  
7 my hope is that those decisions will be wise ones.

8           Now, having rendered that decision,  
9 I'll enter an order consistent with it. That order  
10 is going to have to incorporate all of the provisions  
11 that were discussed in colloquy today.

12           And the last order of business will be  
13 to discuss what takes place tomorrow in light of this  
14 ruling.

15           MR. SPRAYREGEN: Thank you, Your Honor.  
16 We'll probably need a little time to address the  
17 order, and maybe we can bring it tomorrow prior to  
18 the trial. Mr. Dimitrief is going to address the  
19 pre-trial issues.

20           THE COURT: Okay.

21           MR. DIMITRIEF: Good afternoon, Your Honor.  
22 Alex Dimitrief on behalf of the debtors. In light of  
23 the court's ruling, and consistent with the comments  
24 that the court just made, as for the trial for  
25 tomorrow, we would ask leave to withdraw without

1 prejudice our pending 1113(c) motion to reject the  
2 AFA contract on the grounds it is no longer necessary  
3 to proceed against the AFA. We also believe that the  
4 scope of the trial on the pending motions to reject  
5 the IAM and AMFA agreements is greatly narrowed so as  
6 not to have to address pension issues any longer  
7 pending proceeding with the settlement agreement with  
8 the PBGC.

9           That, I believe, subject to  
10 confirmation from counsel for the IAM and AMFA, not  
11 only simplifies the trial, but also simplifies the  
12 pre-trial conference because a great number of those  
13 motions were primarily directed towards AFA-raised  
14 issues. So, for example, Your Honor, the motion that  
15 we had for leave to use the bridge report and  
16 tentatively designate Mr. Schneling as a witness, we  
17 would withdraw that issue at this point. And subject  
18 to confirmation by counsel for IMA and AMFA that they  
19 do not intend to use any of the evidence that the  
20 balance of our motions were addressed to, I believe  
21 those can be withdrawn as well. But that would be  
22 our position, sir. And we think it does greatly  
23 simplify things.

24           I'm prepared, if you would like, to  
25 talk about what I would think a schedule would be at

1 this time, depending on the court's preference.

2 THE COURT: I think it might make more  
3 sense for you to consult with counsel for IAM and  
4 AMFA and come back to me tomorrow morning because the  
5 alternative is for basically a discussion of that  
6 sort to take place on the record, and I think that's  
7 likely to be less productive.

8 MR. DIMITRIEF: Very well, Your Honor.  
9 What time would you like to see us?

10 THE COURT: You can't come -- well...

11 MR. DIMITRIEF: Right now I believe we're  
12 scheduled to appear at 2:00.

13 THE COURT: You are. You could come in at  
14 1:30. We can get a little bit of a head start that  
15 way.

16 MR. DIMITRIEF: Thank you, Your Honor.

17 THE COURT: And I should tell all of the  
18 parties that we're only going to have Friday morning.  
19 Friday afternoon I've got other obligations that I'm  
20 going to have to attend to.

21 MR. DIMITRIEF: Okay. Thank you, Your  
22 Honor. I think we will try to meet with counsel for  
23 the IAM and counsel for AMFA and try to address the  
24 uncertainties or open issues that have been raised by  
25 where we stand right now, and hopefully we'll all be

# **EXHIBIT 3**

**[REDACTED]**

# **EXHIBIT 4**

## EMPLOYMENT AGREEMENT

This Employment Agreement (this "Agreement") is made as of this 5th day of September, 2002 (the "Effective Date"), is by and between UAL Corporation, a Delaware corporation ("UAL") and United Air Lines, Inc. ("UA," UAL and UA sometimes collectively referred to as "United") and Glenn F. Tilton (the "Executive").

### RECITALS

A. United desires to employ the Executive as Chairman of the Board, President and Chief Executive Officer of United, and the Executive desires to accept such employment, on the terms and conditions hereinafter set forth.

In consideration of the mutual covenants contained herein, and intending to be legally bound, United and the Executive agree as follows:

#### **1. Employment and Duties.**

*a. Employment.* Subject to all of the terms and conditions of this Agreement, United agrees to employ the Executive as its Chairman of the Board, President and Chief Executive Officer for the Employment Period (defined below), and the Executive accepts such employment.

*b. Duties.* On and after the Employment Date (defined below), as Chairman of the Board, President and Chief Executive Officer of United, Executive will have overall charge and responsibility for the business and affairs of United, and will perform such duties as he is reasonably directed to perform by the Board of Directors of UAL (the "Board"). If so elected, the Executive will also serve as chairman of the board and chief executive officer of any subsidiaries or affiliates of United designated by United. Executive shall perform such duties at United's headquarters located in Elk Grove Township, Illinois.

*c. Scope.* While the Executive is employed by United hereunder, Executive will devote substantially all of his business time, attention, skills and efforts to the business and affairs of United and the performance of his duties under this Agreement. The Executive acknowledges that his duties and responsibilities under this Agreement will require his full-time business efforts and agrees that he will not engage in any other business activity or have any business pursuits or interests which materially interfere or conflict with the performance of the Executive's duties under this Agreement or which compete with United. Notwithstanding the foregoing, the parties agree that during the Employment Period, it will not be a violation of this Agreement for the Executive to (i) serve on corporate, civic or charitable boards or committees, (ii) deliver lectures or fulfill speaking engagements, and (iii) manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's duties under this Agreement.

#### **2. Term.**

Subject to earlier termination in accordance with Section 4 below, Executive's employment as Chairman of the Board, President and Chief Executive Officer of United pursuant to the terms of this Agreement will become effective on September 2, 2002 (the "Employment Date") and will have a term of five (5) years, subject to earlier termination as provided in this Agreement (the "Employment Period"). Except with respect to those provisions which by their terms survive the expiration of this Agreement, this Agreement will terminate upon the expiration of the Employment Period. In the event either the Executive or United desires the Executive to be employed by United beyond the Employment Period, such party will, at least ninety (90) days prior to the expiration of the Employment

Period, notify the other party in writing of his or its intention to seek to negotiate an extension of this Agreement.

### 3. Compensation.

*a. Signing Bonus.* As an inducement to enter into this Agreement, Company will pay Executive a signing bonus in the gross amount of Three Million Dollars (\$3,000,000) ("Signing Bonus"), which amount shall be fully earned by Executive upon, and will be payable by United concurrently with, Executive's execution of this Agreement. Executive agrees to repay an amount equal to the Signing Bonus if the Executive's employment with the Company is terminated either due to voluntary resignation by Executive other than for Good Reason (as defined in Section 4(d)) or by the Company for Cause (as defined in Section 4(c)) on or before the first anniversary of the Employment Date. Without limiting the generality of the foregoing, in no event shall Executive have any obligation to make such repayment if his employment terminates as a result of a repudiation, rejection or similar breach of this Agreement by United.

*b. Base Salary.* During the Employment Period, the Company will pay the Executive a base salary (the "Base Salary") at an initial rate of \$950,000 per year in accordance with the Company's standard payroll practices. The Base Salary will be reviewed as part of the normal salary administration program for the Company's senior executives by the Compensation Committee of the Board (the "Committee"), for the purpose of considering increases in the Executive's Base Salary in light of the Committee's executive compensation philosophy statement then in effect, the performance by the Executive of his duties under this Agreement, and base salaries of chief executive officers of companies in the peer group identified by the Committee in its executive compensation policy. During the Employment Period the Committee will review and consider further increases in the Base Salary, at the times and pursuant to the procedures used in connection with considering base salary adjustments for United's other senior executives. Base Salary will not thereafter during the term of this Agreement be decreased, unless such reduction (i) is approved by the Board in accordance with the standards set forth in the UAL Restated Certificate of Incorporation, and (ii) is applied on a proportionally similar and no less favorable basis to Executive than to substantially all other management employees of United.

*c. Annual Bonus.* In addition to other compensation to be paid under this Section 3, the Executive will be eligible to receive a target annual bonus for each year during the Employment Period, to be administered by the Board under United's Performance Incentive Plan or other annual bonus plan hereafter approved by the Board (the "Incentive Plan"). The Executive's target percentage will be 100% of his Base Salary (the "Target Bonus"). Executive will be entitled to an additional 100% over the Target Bonus amount for superior performance ("Extraordinary Bonus"). The Target Bonus and the Extraordinary Bonus will be paid outside of the Incentive Plan. The annual bonuses under this Section 3(c) will hereinafter be referred to as the "Annual Bonus."

#### *d. Stock Options.*

(i) Initial Grant. In addition to other compensation to be paid under this Section 3, United will grant the Executive as of the Employment Date (i) a ten-year stock option to purchase 500,000 shares of UAL's common stock, \$.01 par value per share (the "Common Stock"), under United's 2000 Incentive Stock Plan (the "2000 Plan") and (ii) a ten-year option to purchase 650,000 shares of Common Stock under United's 2002 Share Incentive Plan (the "2002 Plan") (together, the "Options") which shall be pursuant to the terms set forth in the Stock Option Agreements in the form attached hereto as **Exhibit A**. The exercise price of the Options will be the average of the high and low sale prices of the Common Stock on the New York Stock Exchange on August 30, 2002 and September 3, 2002. The Options will become exercisable in equal annual installments on the first four (4) anniversaries of the Employment Date pursuant to the terms of the 2000 Plan and the 2002 Plan, as applicable.

(ii) Additional Grants. During the Employment Period, the Executive will be eligible to receive stock options consistent with his position in the same manner as United's other senior executives.

*e. Restricted Stock.*

(i) Initial Grant. In addition to other compensation paid under this Section 3, United will grant the Executive as of the Employment Date 100,000 restricted shares of UAL's common stock pursuant to United's 2002 Share Incentive Plan and in accordance with the Restricted Stock Agreement in the form attached hereto as **Exhibit B**.

(ii) Additional Grants. During the Employment Period, the Executive will be eligible to receive restricted stock consistent with his position in the same manner as United's other senior executives.

*f. Long Term Incentive Plans*. In addition to other compensation to be paid under this Section 3, the Executive will be entitled to participate during the Employment Period in all long term incentive plans now maintained or hereafter established by United for the purpose of providing long term incentive compensation to senior executives of United. The Executive's participation in such plans will be consistent with his position and no less favorable than the basis and terms applicable to other senior executives of United.

*g. SERP*. In consideration of pension benefits forfeited by reason of his resignation from employment with his prior employer and as an inducement to enter into this Agreement, Executive will be entitled to Four Million Five Hundred Thousand Dollars (\$4,500,000), which amount is fully earned as of the date hereof, and is funded as follows:

(i) Concurrent with the execution of the Agreement by Executive, United has caused \$1,500,000 to be paid to an account in the Executive's name under an irrevocable trust governed by the trust agreement titled the Glenn Tilton Secular Trust No. 1, in the form of the instrument attached to this Agreement as **Exhibit C**, with such amount to be fully earned upon execution of this Agreement. Subject only to the following sentence, Executive shall be fully vested with respect to such trust and the funds held therein and shall have all right, title and ownership thereof. If Executive's employment with United is terminated due to voluntary resignation by Executive other than for Good Reason(as defined in Section 4(d)) and the effective date of termination is on or before the first anniversary of the Employment Date, then Executive will forfeit 100 percent of his interest in his account under the Glenn Tilton Secular Trust No. 1. In all other cases, Executive's right, title and interest in his account under the Glenn Tilton Secular Trust No. 1 will be paid in full to Executive in a single lump-sum cash amount as of the first business day of January next following the earlier of the first anniversary of the Employment Date or Executive's termination of employment.

(ii) Concurrent with the execution of the Agreement by Executive, United has caused \$1,500,000 to be paid to an account in the Executive's name under an irrevocable trust governed by the trust agreement titled the Glenn Tilton Secular Trust No. 2, in the form of the instrument attached to this Agreement as **Exhibit D**, with such amount to be fully earned upon execution of this Agreement. Subject only to the following sentence, Executive shall be fully vested with respect to such trust and the funds held therein and shall have all right, title and ownership thereof. If Executive's employment with United is terminated due to voluntary resignation by Executive other than for Good Reason(as defined in Section 4(d)) and the effective date of termination is on or before the second anniversary of the Employment Date, then Executive will forfeit 100 percent of his interest in his account under the Glenn Tilton Secular Trust No. 2. In all other cases, Executive's right, title and interest in his account under the Glenn Tilton Secular Trust No. 2 will be paid in full to Executive in a single lump-sum cash amount as of the first business day of January next following the earlier of the second anniversary of the Employment Date or Executive's termination of employment.

(iii) Concurrent with the execution of the Agreement by Executive, United has

caused \$1,500,000 to be paid to an account in the Executive's name under an irrevocable trust governed by the trust agreement titled the Glenn Tilton Secular Trust No. 3, in the form of the instrument attached to this Agreement as **Exhibit E**, with such amount to be fully earned upon execution of this Agreement. Subject only to the following sentence, Executive shall be fully vested with respect to such trust and the funds held therein and shall have all right, title and ownership thereof. If Executive's employment with United is terminated due to voluntary resignation by Executive other than for Good Reason (as defined in Section 4(d)) and the effective date of termination is on or before the third anniversary of the Employment Date, then Executive will forfeit 100 percent of his interest in his account under the Glenn Tilton Secular Trust No. 3. In all other cases, Executive's right, title and interest in his account under the Glenn Tilton Secular Trust No. 3 will be paid in full to Executive in a single lump-sum cash amount as of the first business day of January next following the earlier of the third anniversary of the Employment Date or Executive's termination of employment.

(iv) All earnings on the foregoing trusts shall be distributed to Executive as of the first business day of January next following the date earned by such trusts.

The payments under this Section 3(g) are in addition to any pension benefit payable under the United Airlines Management, Administrative, and Public Contact Defined Benefit Pension Plan and the supplemental pension benefit under the United Air Lines, Inc. Supplemental Retirement Plan (the "Pension Plans"). The payments under Sections 3(a) and 3(g)(i),(ii) and (iii) will not be included in earnings when determining Executive's benefit under the Pension Plans.

The trustee(s) of the foregoing trusts shall be mutually acceptable to United and the Executive and the trustee(s) shall be directed with respect to investments either by the Executive or by an investment manager selected by Executive.

**h. Other Benefits.** In addition to other compensation to be paid under this Section 3, during the Employment Period the Executive will be entitled to participate in all employee benefit plans, practices and programs maintained by United and made available to its senior executives, as those plans, practices and programs may be amended, supplemented, replaced or terminated from time to time, including without limitation (A) medical, hospitalization, disability, dental, life, health and travel accident insurance to the extent offered by United, and in amounts consistent with United policy for all its senior executives; (B) other benefit arrangements, including but not limited to the retirement plan, supplemental retirement plan, split dollar life insurance programs (as may be permitted by law), stock purchase plan, 401(k) plan, flexible spending arrangement, income deferral plan, financial planning services, free and reduced rate transportation, to the extent made generally available by United to its senior executives; and (C) a number of weeks of paid vacation each year, consistent with United policy for all its senior executives.

**i. Relocation Benefits.** The Company will pay all costs of relocation of the Executive and his family to the Chicago metropolitan area in accordance with the Company's relocation policy (specifically to include any costs associated with the termination of Executive's current lease of his principal residence to the extent not provided in such policy) and an additional cash payment (a "Gross-Up Payment") to the Executive equal to an amount such that after payment by the Executive of all taxes imposed on such Gross-Up Payment, the Executive would retain an amount of the Gross-Up Payment equal to the taxes imposed on the relocation benefits.

**j. Reimbursement of Business Expenses.** United agrees to reimburse the Executive for all reasonable out-of-pocket business expenses incurred by the Executive on behalf of United, provided that the Executive properly accounts to United for all such expenses in accordance with the rules and regulations of the Internal Revenue Service under the Code, and in accordance with the standard policies and procedures of United relating to reimbursement of business expenses, which obligation shall survive the expiration or termination of this Agreement.

**k. Retiree Travel Benefit.** United will provide the Executive upon termination of this Agreement upon its expiration, upon mutual agreement, upon Executive's retirement in accordance with United policy, by reason of

Executive's Disability, by United for other than Cause, or by the Executive for Good Reason, Director Emeritus retiree travel benefits (or any successor benefit) in accordance with United's policy (without regard to any applicable years of service requirement) which may be in effect from time to time, which obligation shall survive the expiration or termination of this Agreement.

*l. Taxes, etc.* All compensation payable to the Executive pursuant to this Agreement is stated in gross amount and will be subject to all applicable withholding taxes, other normal payroll taxes and any other amounts which United reasonably determines are required by law to be withheld.

*m. No Director Fees, etc.* The Executive will not receive any additional compensation for (i) serving as a director of UAL or UA or (ii) if so elected, serving as chairman of the board and chief executive officer of any subsidiaries or affiliates of United.

#### **4. Termination.**

*a. Mutual Agreement.* The Executive's employment hereunder may be terminated at any time by mutual agreement on terms to be negotiated at the time of such termination.

*b. Death or Disability.* This Agreement will terminate automatically upon the Executive's death. If United determines in good faith that the Disability (as defined below) of the Executive has occurred, subject to the respective continuing obligations of United and the Executive under Sections 5 (Compensation Upon Termination), 7 (Confidentiality), and 9 (Non-Competition), the Company has the right to terminate the Executive's employment under this Agreement by notice pursuant to Sections 4(e) and 4(f) below. For purposes of this Agreement, the Executive will be deemed to have a "Disability" if the Executive has been unable, by reason of illness or physical or mental incapacity or disability (from any cause or causes whatsoever) to perform each and every material duty of his employment under this Agreement, whether with or without reasonable accommodation by the Company, in substantially the manner and to the extent required hereunder prior to the commencement of such Disability, for a period of six (6) consecutive months in any twelve (12)-month period. Such termination may not be arbitrary or unreasonable, and the Board will obtain and take into consideration the opinion of a physician chosen by the Board, the opinion of the Executive's personal physician, if reasonably available, as well as applicable provisions of the Americans with Disabilities Act, but such determination by the Board will be final and binding on the parties to this Agreement.

*c. By United for Cause.* Subject to the respective continuing obligations of United and the Executive under Sections 5 (Compensation Upon Termination), 7 (Confidentiality) and 9 (Non-Competition), United has the right to terminate the Executive's employment under this Agreement for Cause (as defined below) by notice pursuant to Sections 4(e) and 4(f) below. For purposes of this Agreement, "Cause" means:

- (i) a significant act or acts of personal dishonesty or deceit that have a material adverse effect on United taken by the Executive in the performance of his duties hereunder;
- (ii) the willful and continued failure by the Executive to substantially perform the Executive's material duties under this Agreement, including the duties set forth under Section 1(b) of this Agreement (unless such failure is cured within thirty (30) days after the Executive receives written notice of such failure); or
- (iii) the Executive's conviction of, or his entry of a plea of guilty or *nolo contendere* to, any felony (other than a felony predicated upon the Executive's vicarious liability), or the entry of any final civil judgment against him for fraud, misrepresentation, or misappropriation of property.

Notwithstanding the foregoing, the Executive will not be deemed to have been terminated for Cause unless and until there has been delivered to the Executive a copy of a resolution, duly adopted by the affirmative vote of not less than a majority of the members of the Board at a meeting of the Board (after reasonable notice which shall not be less than thirty (30) days written notice to the Executive and an opportunity for the Executive, together with his counsel, to

be heard before the Board), stating that in the good faith opinion of the Board the Executive was guilty of conduct constituting "Cause" as set forth above and specifying the particulars thereof in reasonable detail.

**d. By the Executive for Good Reason.** Subject to the respective continuing obligations of United and the Executive under Sections 5 (Compensation Upon Termination), 7 (Confidentiality), 8 (Non-Disparagement) and 9 (Non-Competition), the Executive has the right to terminate his employment under this Agreement for Good Reason (as defined below) by notice pursuant to Sections 4(f) and 4(g). For purposes of this Agreement, "Good Reason" means:

- (i) if United becomes a debtor(s) under the Bankruptcy Code, the failure of United to seek assumption of this Agreement pursuant to Section 365 of the U.S. Bankruptcy Code within thirty (30) days after entry of an order for relief under Chapter 11 of the U.S. Bankruptcy Code or failure of the bankruptcy court having jurisdiction over such case to enter a final order authorizing such assumption within ninety (90) days from such date;
- (ii) the assignment to the Executive of any duties inconsistent in any respect with the Executive's position, including status, offices, titles and reporting relationships, authority, duties or responsibilities as contemplated by Section 1 of this Agreement, or any other action by United which results in a significant diminution in such position, authority, duties or responsibilities, excluding for this Section 4(d)(ii) any isolated, immaterial and inadvertent action not taken in bad faith and which is remedied by United within thirty (30) days after receipt of a notice thereof given by the Executive, and further excluding any action in connection with the termination of the Executive's employment for Cause, upon the death or the Disability of the Executive pursuant to the terms of this Agreement, or by the Executive other than for Good Reason pursuant to this Section 4(d);
- (iii) a reduction by United in the Executive's Base Salary (other than a decrease contemplated by Section 3(a)) or any other failure by United to comply with any of the provisions of Section 3 of this Agreement, including treatment of the Executive in a manner or with an outcome inconsistent with United's treatment of its other senior executives, other than an isolated, immaterial and inadvertent failure not occurring in bad faith and which is remedied by United promptly after receipt of notice thereof given by the Executive;
- (iv) the relocation of the Executive's principal place of employment to a location more than 50 miles from the Executive's principal place of employment immediately prior to such relocation, except for travel reasonably required in the performance of the Executive's responsibilities;
- (v) any purported termination by United of the Executive's employment otherwise than as expressly permitted by this Agreement; or
- (vi) Executive's failure to be reelected as a director and Chairman of the Board of United.

**e. Change of Control Termination.** A "Change of Control Termination" includes, during a period of 24 months following a Change of Control, any termination by the Executive for Good Reason or any involuntary termination of the Executive's employment by United other than for Cause, Disability, or death. A "Change of Control," means the first of the following events to occur:

- (i) there is consummated a merger or consolidation to which United or any direct or indirect subsidiary of United is a party if the merger or consolidation would result in the voting securities of United outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) less than 80% of the combined voting power of the securities of United or such surviving entity or any parent thereof outstanding immediately after such merger or consolidation; or

(ii) the direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") in the aggregate of securities of United representing twenty-five percent (25%) or more of the total combined voting power of United's then issued and outstanding securities is acquired by any person or entity, or group of associated persons or entities acting in concert; provided, however, that for purposes hereof, the following acquisitions shall not constitute a Change of Control: (A) any acquisition by United or any of its subsidiaries, (B) any acquisition by any employee benefit plan (or related trust or fiduciary) sponsored or maintained by United or any corporation controlled by United, (C) any acquisition by an underwriter temporarily holding securities pursuant to an offering of such securities, (D) any acquisition by a corporation owned, directly or indirectly, by the stockholders of United in substantially the same proportions as their ownership of stock of United, and (E) any acquisition in connection with a merger or consolidation which, pursuant to paragraph (i) above, does not constitute a Change of Control; or

(iii) there is consummated a transaction contemplated by an agreement for the sale or disposition by United of all or substantially all of United's assets, other than a sale or disposition by United of all or substantially all of United's assets to an entity, at least 80% of the combined voting power of the voting securities of which are owned by stockholders of United in substantially the same proportions as their ownership of United immediately prior to such sale; or

(iv) the stockholders of United approve any plan or proposal for the liquidation of United; or

(v) the occurrence within any twenty-four month or shorter period of a change in the composition of the Board such that the "Continuity Directors" cease for any reason to constitute at least a majority of the Board. For purposes of this clause, "Continuity Directors" means (A) those members of the Board who were directors on the date hereof and (B) those members of the Board (other than a director whose initial assumption of office was in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of United) who were elected or appointed by, or on the nomination or recommendation of, at least a two-thirds (2/3) majority of the then-existing directors who either were directors on the date hereof or were previously so elected or appointed; or

(vi) such other event or transaction as the Board shall determine constitutes a Change of Control.

**f. Notice of Termination.** Any termination of the Executive's employment by United or by the Executive (other than termination upon the Executive's death, which does not require notice) must be communicated by written Notice of Termination to the other party hereto given in accordance with Section 10(m) of this Agreement. For purposes of this Agreement, a "Notice of Termination" means a notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provisions so indicated and (iii) if the Termination Date (as defined below) is other than the date of receipt of such notice, specifies the Termination Date (which date will not be less than thirty (30) days after the giving of such notice. The failure by United or the Executive to set forth in the Notice of Termination any fact or circumstance that contributes to a showing of the basis for termination will not waive any right of such party hereunder or preclude such party from asserting such fact or circumstance in enforcing his or its rights hereunder.

**g. Termination Date.** "Termination Date" means (i) if the Executive's employment is terminated by his death, the date of his death, (ii) if the Executive's employment is terminated by reason of his Disability pursuant to Section 4(b), thirty (30) days after the receipt by the Executive of the Notice of Termination, (iii) if the Executive's employment is terminated by United for Cause pursuant to Section 4(c) or by the Executive for Good Reason pursuant to Section 4(d), the date specified in the Notice of Termination, (iv) if the Executive's employment is terminated by mutual agreement of the parties, the date specified in such agreement, and (v) if the Executive's employment is terminated for any other reason, the date specified in the Notice of Termination, provided that if within thirty (30) days

after any Notice of Termination is given the party receiving such Notice of Termination notifies the other party that a dispute exists concerning the termination, the Termination Date will be the date on which the dispute is finally determined, either by mutual written agreement of the parties, by a binding and final arbitration award or by a final judgment, order or decree of a court of competent jurisdiction (the time for appeal therefrom having expired and no appeal having been perfected), but in no event will the Termination Date be later than the fifth anniversary of the commencement of the Employment Period. Notwithstanding the foregoing, but subject to Section 9, the Executive may accept any other employment, without diminishing any of his rights or benefits hereunder, at any time after the Termination Date, determined without regard to any extensions pursuant to the proviso clause of the preceding sentence.

## 5. Compensation Upon Termination.

**a. Death.** If the Executive's employment is terminated by reason of the Executive's death, this Agreement will terminate without further obligations to the Executive's legal representatives under this Agreement, other than those obligations accrued or earned and vested (if applicable) by the Executive as of the Termination Date, including without limitation (i) the Base Salary through the Termination Date at the rate in effect on the Termination Date, disregarding any reduction in Base Salary in violation of this Agreement (the "Highest Base Salary"), (ii) the Target Bonus described in Section 3(c), pro-rated to the Termination Date, (iii) any other benefits payable to the Executive pursuant to the terms of any benefit plan, the right to which had or becomes vested on or after the Termination Date pursuant to the terms of the plan (such amounts specified in clauses (i) through (iii) are hereinafter referred as "Accrued Obligations," (iv) all outstanding long-term incentive awards, stock options, restricted units and restricted stock, will immediately become fully vested; and (v) each outstanding stock option will continue to be exercisable in accordance with its terms and will remain exercisable for the lesser of five years following the Termination Date, or the remainder of its term. All such Accrued Obligations will be paid to the Executive's estate or beneficiary, as applicable, in a lump sum in cash within ten (10) business days of the Termination Date, or in such other form as may be provided for pursuant to such plans.

**b. Disability.** If the Executive's employment is terminated by reason of the Executive's Disability, this Agreement will terminate without further obligations to the Executive, other than those obligations accrued or earned and vested (if applicable) by the Executive as of the Termination Date, including without limitation Accrued Obligations. All such Accrued Obligations will be paid to the Executive in a lump sum in cash within ten (10) business days of the Termination Date, or in such other form as may be provided for pursuant to such plans.

**c. By United For Cause; By Executive Other Than For Good Reason.** If the Executive's employment is terminated for Cause or by the Executive other than for Good Reason, this Agreement will terminate without further obligations to the Executive, other than those obligations accrued or earned and vested (if applicable) by the Executive through the Termination Date, including without limitation all Accrued Obligations (which for purposes of this provision will specifically exclude any Annual Bonus pursuant to Section 3(c)). All such Accrued Obligations will be paid to the Executive in a lump sum in cash within ten (10) business days of the Termination Date, or in such other form as may be provided for pursuant to such plans.

**d. By United in Breach of Agreement; By Executive For Good Reason.** If (i) United terminates the Executive's employment other than for Cause, Disability or death or if the Executive terminates his employment hereunder for Good Reason and (ii) such termination does not constitute a Change of Control Termination:

(i) to the extent not theretofore paid, within ten (10) business days after the Termination Date, United will pay the Executive his Base Salary and any Annual Bonus that may be due and owing through the Termination Date;

(ii) within ten (10) business days after the Termination Date, United will pay the Executive those other obligations accrued or earned and vested (if applicable) by the Executive as of the Termination Date, including without limitation Accrued Obligations;

(iii) in lieu of any further payments of Base Salary and Annual Bonus to the Executive for periods subsequent to the Termination Date, United will, within ten (10) business days after the Termination Date, make a lump sum cash payment to the Executive equal to the Base Salary, multiplied by the lesser of (A) the greater of (X) the number of years remaining under the term of this Agreement or (Y) two years, and (B) three;

(iv) for a period of time equal to the lesser of (A) the greater of (X) the number of years remaining in the term of this Agreement or (Y) two years, and (B) three years, United will continue benefits to the Executive and/or the Executive's family at least equal to those which would have been provided to them in accordance with the plans, programs, practices and policies described in Section 3(h) of this Agreement if the Executive's employment under this Agreement had not been terminated, including health insurance and life insurance, in accordance with the plans, practices, programs or policies of United and its subsidiaries in effect on the Termination Date;

(v) all outstanding long-term incentive awards, stock options, restricted units and restricted stock, will immediately become fully vested; and

(vi) each outstanding stock option will continue to be exercisable in accordance with its terms and will remain exercisable for the lesser of five years following the Termination Date, or the remainder of its term.

***e. Change of Control Termination.*** In the event of a Change of Control Termination:

(i) to the extent not theretofore paid, within ten (10) business days after the Termination Date, United will pay the Executive his Base Salary and any Annual Bonus that may be due and owing through the Termination Date;

(ii) within ten (10) business days after the Termination Date, United will pay the Executive those other obligations accrued or earned and vested (if applicable) by the Executive as of the Termination Date, including without limitation Accrued Obligations;

(iii) in lieu of further payments of Base Salary and Annual Bonus to the Executive for periods subsequent to the Termination Date, United will, within ten (10) business days after the Termination Date, make a lump sum cash payment to the Executive equal to the Base Salary and the Target Bonus described in Section 3(c), multiplied by three;

(iv) for a period of time equal to the lesser of (A) the greater of (X) the number of years remaining in the term of this Agreement or (Y) two years, and (B) three years, United will continue benefits to the Executive and/or the Executive's family at least equal to those which would have been provided to them in accordance with the plans, programs, practices and policies described in Section 3(h) of this Agreement if the Executive's employment under this Agreement had not been terminated, including health insurance and life insurance, in accordance with the plans, practices, programs or policies of United and its subsidiaries in effect on the Termination Date;

(v) all outstanding long-term incentive awards, stock options, restricted units and restricted stock, will immediately become fully vested; and

(vi) each outstanding stock option will continue to be exercisable in accordance with its terms and will remain exercisable for the lesser of five years following the Termination Date

or the remainder of its term.

**f. *By Executive By Taking Competitive Position.*** If the Executive is in violation of Section 9(a), the Executive's entitlement to benefits under this Agreement will be limited to Accrued Obligations (which for purposes of this provision will specifically exclude any Annual Bonus pursuant to Section 3(c)), and Executive will forfeit any other additional benefits or payments in which he is not otherwise vested, other than benefits to which he is entitled under any other United employee benefit plan, program or arrangement.

**g. *Gross-Up Payment.*** Following any termination of employment, United will cause a nationally recognized accounting firm (the "Accountant"), acceptable to Executive, to promptly review, at United's sole expense, the applicability of Code section 4999 to any payment or distribution of any type by United to or for the benefit of the Executive pursuant to Section 5(e), or otherwise (the "Total Payments"). If the Accountant determines that the Total Payments result in an excise tax imposed by Code section 4999 or any comparable state or local law, or any interest or penalties with respect to such excise tax (such excise tax, together with any such interest and penalties, are collectively referred to herein as the "Excise Tax"), United will make an additional cash payment (a "Gross-Up Payment") to the Executive within ten (10) days after such determination equal to an amount such that after payment by the Executive of all taxes (including any interest or penalties imposed with respect to such taxes), including any Excise Tax, imposed upon the Gross-Up Payment, the Executive would retain an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Total Payments. For purposes of the foregoing determination, the Executive's tax rate will be deemed to be the highest statutory marginal state and federal tax rate (on a combined basis) then in effect. If no determination by the Accountant is made prior to the time the Executive is required to file a tax return reflecting the Total Payments, the Executive will be entitled to receive from United a Gross-Up Payment calculated on the basis of the Excise Tax the Executive reported in such tax return, within ten (10) days after the later of the date on which the Executive files such tax return or the date on which the Executive provides a copy thereof to United. In all events, if any tax authority determines that a greater Excise Tax should be imposed upon the Total Payments than is determined by the Accountant or reflected in the Executive's tax return pursuant to this paragraph, the Executive will be entitled to receive from United the full Gross-Up Payment calculated on the basis of the amount of the Excise Tax determined to be payable by such tax authority within ten (10) days after the Executive notifies United of such determination.

**h. *No Mitigation Required.*** The Executive will not be required in any way to mitigate the amount of any payment provided for in this Section 5, including, but not limited to by seeking other employment, nor will the amount of any payment provided for in this Section 5 be reduced by any compensation earned by the Employee as the result of employment with another employer after the Termination Date, or otherwise; provided, however, that in the event United terminates this Agreement for Cause or the Employee terminates this Agreement other than for Good Reason, United will be entitled to reduce the benefits otherwise required to be provided to the Executive, if any, from the Termination Date to the date that the Employment Period would have expired, to the extent such benefits are actually provided to the Executive by subsequent employers.

**i. *No Other Entitlement to Benefits Under Agreement.*** Following a termination governed by this Section 5, the Executive will not be entitled to any compensation or benefits beyond those set forth in this Agreement, except as Executive may otherwise be entitled to receive outside the terms of this Agreement and as may be separately negotiated by the parties and approved by the Compensation Committee or the Compensation Administration Committee, as applicable, in writing in conjunction with the termination of the Executive's employment under this Agreement.

**j. *Survival.*** The obligations of this Section 5 will survive the expiration or termination of this Agreement.

## 6. Indemnification.

United shall maintain, for the benefit of the Executive, director and officer liability insurance in form at least as comprehensive as, and in an amount that is at least equal to, that maintained for its officers and directors by United on the Effective Date. In addition, the Executive shall be indemnified by United against liability as an officer and director

of United and any subsidiary or affiliate of United to the maximum extent permitted by applicable law. The Employee's rights under this Section 6 shall continue so long as he may be subject to such liability, whether or not this Agreement may have terminated prior thereto.

## 7. Confidentiality.

**a. Definition.** "Confidential Information," as used in this Agreement, means and includes (without limitation) the kinds of services provided or proposed to be provided by United and its subsidiaries to customers, the manner in which such services are performed or offered to be performed, information concerning United's and its subsidiaries' fleet plan, cost structure, strategic plan, labor strategy, information concerning the creation, acquisition or disposition of products and services, personnel information, and other trade secrets and confidential or proprietary information concerning United's and its subsidiaries' business, but shall not include information which (i) is or becomes generally available to the public other than as a result of a disclosure by Executive, (ii) was available to Executive on a non-confidential basis prior to its disclosure by United or any subsidiary of United, or (iii) becomes available to Executive on a non-confidential basis from a person other than United, any subsidiary of United or their officers, directors, employees or agents who is not otherwise bound by any confidentiality obligations with respect to the information provided to Executive.

### **b. Prohibition on Use of Confidential Information.**

(i) The Executive acknowledges that: (a) United's and its subsidiaries' business is intensely competitive and that the Executive's employment by United will require that the Executive have access to and knowledge of Confidential Information of United, (b) the direct or indirect disclosure of any Confidential Information would place United at a disadvantage and would do damage, monetary or otherwise, to United's business, and (c) the engaging by the Executive in any of the activities prohibited by this Section 7 may constitute improper appropriation or use of such Confidential Information. The Executive expressly acknowledges the trade secret status of the Confidential Information and that the Confidential Information constitutes a protectible business interest of United.

(ii) From and after the Effective Date, the Executive will not make known, disclose, furnish, make available or use any of the Confidential Information, whether directly or indirectly, individually, as a director, stockholder, owner, partner, employee, principal, or agent of any business, or in any other capacity, other than in the proper performance of his duties contemplated under this Agreement. Upon termination of this Agreement (or at any other time requested by United), the Executive will return to United any tangible Confidential Information, including photocopies, extracts and summaries thereof, or any such information stored electronically on tapes, computer disks, or in any other manner that the Executive has in his possession.

**c. Survival.** The obligations of this Section 7 will survive the expiration or termination of this Agreement.

## 8. Non-Disparagement.

**a. Limitation on Application.** If United terminates the Executive's employment other than for Cause, Disability or death or if the Executive terminates his employment hereunder for Good Reason, then, and only then, shall the terms of this Section 8 become effective.

**b. By the Executive.** The Executive agrees not to make, or cause to be made, any statement, observation or opinion, or communicate any information (whether oral or written, directly or indirectly) that (i) accuses or implies that United and/or any of its parents, subsidiaries and affiliates, together with their respective present or former officers, directors, partners, stockholders, employees and agents, and each of their predecessors, successors and assigns, engaged in any wrongful, unlawful or improper conduct, whether relating to the Executive's employment (or the termination thereof), the business or operations of United, or otherwise; or (ii) disparages, impugns or in any way reflects adversely

upon the business or reputation of United and/or any of its parents, subsidiaries and affiliates, together with their respective present or former officers, directors, partners, stockholders, employees and agents, and each of their predecessors, successors and assigns.

*c. By United.* United agrees not to willfully authorize any statement, observation or opinion (whether oral or written, direct or indirect) that is materially injurious to the Executive and that (i) accuses or implies that the Executive engaged in any wrongful, unlawful or improper conduct relating to the Executive's employment with United or (ii) disparages, impugns or in any way reflects adversely upon the reputation of the Executive.

*d. Limitations.* Nothing herein will be deemed to preclude the Executive or United from providing truthful testimony or information pursuant to subpoena, court order or similar legal process, or instituting and pursuing legal action.

*e. Survival.* The obligations of this Section 8 will survive the expiration or termination of this Agreement.

## 9. Non-Competition.

*a. Non-Compete; Non-solicitation.* Without the consent in writing of the Board, during the Employment Period and for a period of two years after termination of the Executive's employment hereunder, (i) the Executive will not become a consultant to, or an officer, employee, agent, advisor, principal, partner, director or substantial stockholder of any airline, air carrier, or any company or other entity affiliated, directly or indirectly, with another airline or air carrier, including holding company thereof, and (ii) the Executive will not, directly or indirectly, for the benefit of any airline or air carrier or any company or other entity affiliated, directly or indirectly, with another airline or air carrier other than United, solicit the employment or services of, hire, or assist in the hiring of any person eligible for United's Performance Incentive Plan (or any successor incentive compensation plan).

*b. Acknowledgment.* The Executive has carefully read and considered the provisions of this Section 9 and, having done so, agrees that the restrictions set forth in this Section 9 (including the period of restriction, scope of activity to be restrained and the geographical scope) are fair and reasonable and are reasonably required for the protection of the interests of United, its officers, directors, employees, creditors and stockholders. The Executive understands that the restrictions contained in this section may limit his ability to engage in a business similar to that of United's, but acknowledges that he will receive sufficiently high compensation and other benefits hereunder to justify such restrictions.

*c. Survival.* The obligations of this Section 9 will survive the expiration or termination of this Agreement.

## 10. Miscellaneous.

*a. Stock Ownership Requirements.* Executive is not required to comply with United's current stock ownership guidelines applicable to United's senior executives.

*b. No Adequate Remedy.* The Executive understands that if he fails to fulfill his obligations under Sections 7 (Confidentiality), 8 (Non-Disparagement) or 9 (Non-Competition) of this Agreement, United will suffer irreparable injury, and the damages to United would be very difficult to determine. Therefore, in addition to any other rights or remedies, the Executive agrees that United will be entitled to a temporary, preliminary, and permanent injunction enjoining or restraining the Executive from any such violation or threatened violation, without the necessity of proving the inadequacy of monetary damages or the posting of any bond or security. The Executive hereby consents to specific enforcement of Sections 7, 8 and 9 of this Agreement by United through an injunction or restraining order issued by any state or federal court of competent jurisdiction. The Executive further acknowledges and agrees that due to the uniqueness of his services and confidential nature of the Confidential Information he possesses or will possess during the Employment Period, the covenants set forth herein are reasonable and necessary for the protection of the business and the goodwill of United.

**c. No Conflicts.** The Executive represents and warrants to United that neither the entering into of this Agreement nor the performance of any obligations hereunder will conflict with or constitute a breach under any obligation of him, as the case may be, under any agreement or contract to which he is a party or any other obligation by which the Executive is bound. Without limiting the foregoing, the Executive agrees that at no time will he knowingly use any trade secrets or other intellectual property of any third party while performing services hereunder, unless properly authorized by such third party.

**d. Reimbursement of Professional Fees.** United will pay on the Executive's behalf all bills rendered to the Executive by the Executive's attorneys, accountants and other advisors in connection with the negotiation and execution of this Agreement; provided, however, that the amount of professional fees payable hereunder will not exceed \$60,000.

**e. Successors and Assigns.** This Agreement is personal to the Executive and may not be assigned or delegated by the Executive or transferred in any manner whatsoever, nor are such obligations subject to involuntary alienation, assignment or transfer. This Agreement will inure to the benefit of and be enforceable by the Executive's legal representatives. This Agreement is binding on and inures to the benefit of United's successors and assigns. As used in this Agreement, the term "United" includes any successor to United's business and/or assets which assumes and agrees to perform this Agreement by operation of law or otherwise.

**f. Modification.** This Agreement may be modified or amended only by a writing signed by United and the Executive.

**g. Governing Law.** The laws of the State of Illinois will govern the validity, construction, and performance of this Agreement (without regard to conflict of laws principles).

**h. Dispute Resolution.** Except for any proceeding brought pursuant to Section 10(a) herein, the parties agree that any dispute arising out of or relating to this Agreement or the formation, breach, termination or validity thereof (a "Dispute"), will be settled by binding arbitration by a panel of three (3) arbitrators in accordance with the commercial arbitration rules of the American Arbitration Association. The arbitration proceedings will be located in Chicago, Illinois. The arbitrators are not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives any damages in excess of compensatory damages. Judgment upon any arbitration award may be entered into any court having jurisdiction thereof and the parties consent to the jurisdiction of any court of competent jurisdiction located in the State of Illinois. In the event Executive prevails in arbitration on a material issue, Executive will be entitled to recover his costs of arbitration, including reasonable attorneys' fees, and any costs associated with the enforcement of the arbitrator's decree, including reasonable attorneys' fees. Notwithstanding the foregoing, if litigation is brought with respect to this Agreement, other than litigation not permitted by this Agreement which is commenced by Executive, Executive shall be entitled to recover from United his costs and expenses associated with such litigation, including reasonable attorneys' fees.

**i. Construction.** Whenever possible, each provision of this Agreement will be interpreted so that it is valid under the applicable law. If any provision of this Agreement is to any extent declared invalid by a court of competent jurisdiction under the applicable law, that provision will remain effective to the extent not declared invalid. The remainder of this Agreement also will continue to be valid to the extent it is consistent with the essential intent and principles of the Agreement, and the entire Agreement will continue to be valid in other jurisdictions.

**j. Waivers.** No failure or delay by United or the Executive in exercising any right or remedy under this Agreement will waive any provision of the Agreement. Nor will any single or partial exercise by either United or the Executive of any right or remedy under this Agreement preclude either of them from otherwise or further exercising these rights or remedies, or any other rights or remedies granted by any law or any related document.

**k. Entire Agreement.** This Agreement and option agreements to which the Executive is a party together embody the entire agreement and understanding of the parties hereto in respect of the matters contemplated by this Agreement. This Agreement supersedes all prior and contemporaneous agreements and understandings between the

parties with respect to the matters contemplated by this Agreement, including without limitation the Term Sheet dated August 30, 2002.

**l. Actions by United.** All actions (or decisions to take no action) by UAL or UA in connection with this Agreement will be taken on behalf of UAL or UA by its Board of Directors (except as otherwise specifically provided in this Agreement), by a majority of such board (not including the Executive).

**m. Notices.** All notices and other communications under this Agreement must be in writing and must either be delivered personally, sent by first class mail, certified or registered with return receipt requested, postage prepaid; if to United, to the attention of the General Counsel at 1200 East Algonquin Road, Elk Grove Township, Illinois 60007; and if to the Executive, at his address most recently on file with United, or such other address as either party may specify by like notice.

**n. Employment Status.** Nothing herein contained shall interfere with United's right to terminate the Executive's employment with United at any time, with or without Cause, subject to the Company's obligation to provide severance benefits and other amounts as may be required hereunder.

United and the Executive have executed this Agreement as of the date first above written.

**UAL CORPORATION**

By: /s/ Francesca M. Maher

Name: Francesca M. Maher

Title: Senior Vice President,  
General Counsel and Secretary

**EXECUTIVE**

/s/ Glenn F. Tilton

Glenn F. Tilton

**UNITED AIR LINES, INC.**

By: /s/ Francesca M. Maher

Name: Francesca M. Maher

Title: Senior Vice President,  
General Counsel and Secretary

EXHIBIT A

AGREEMENT WITH SENIOR OFFICERS OF UNITED AIR LINES, INC.  
NON-QUALIFIED STOCK OPTION UNDER THE UAL CORPORATION  
2000 INCENTIVE STOCK PLAN

This Option, granted this 2<sup>nd</sup> day of September, 2002 by UAL Corporation, a Delaware corporation (hereinafter called the "Company"), to Glenn F. Tilton (hereinafter called the "Employee") of the Company or one of its Subsidiaries (as defined below).

WITNESSETH:

The object of this Option is to provide a means to permit the Employee to acquire shares of Common Stock, \$.01 par value per share (hereinafter referred to as "Common Stock"), of the Company pursuant to a non-qualified option for the purposes set forth in the 2000 Incentive Stock Plan (the "Plan").

NOW, THEREFORE, the Company hereby grants to the Employee an option (hereinafter called the "Option") to purchase, from time to time, all or any part of a total of the number of 500,000 shares of Common Stock for a period of time beginning the date of the grant and ending September 1, 2012, ten years after the date of the Option (hereinafter called the "Option Period"), upon and subject to the following terms and conditions:

1. Price. For any shares of Common Stock purchased at any time during the Option Period, the Employee shall pay to the Company Three Dollars and Three Cents (\$3.03) per share (hereinafter called the "Option Purchase Price"), being not less than 100% of the fair market value of the shares on the date hereof.

2. Exercise Procedures. The Option may be exercised, subject to the provisions of Sections 3, 6, 7 and 8 hereof, only within the Option Period and only (a) by notices in writing of intent to exercise the Option, each of which notices shall state the number of shares in respect of which the Option is exercised, delivered to the Corporate Secretary of UAL Corporation, or mailed by registered or certified mail addressed to the Corporate Secretary of UAL Corporation, P. O. Box 66919, Chicago, Illinois 60666, from time to time, until the total number of shares underlying this Option have been purchased, and (b) by payment to the Company of the aggregate Option Purchase Price for the number of shares in respect of which the Option is exercised (together with any taxes required to be withheld) contemporaneously with its receipt of each such notice. Payment of such aggregate Option Purchase Price may be made, in whole or in part, by the delivery, or, if administratively permitted by the Company, by attestation of ownership, of whole shares of Common Stock which (i) have a market value equal to such aggregate Option Purchase Price (or equal to the portion of such aggregate Option Purchase Price being paid with such shares), (ii) are held of record by the Employee, and (iii) have been owned by the Employee, either of record or beneficially through a broker or other nominee, for at least six months. The Company may require at the time the Option is exercised a written statement of the person exercising the Option that his or her intention is to acquire the shares for investment and without a view to their distribution.

3. Vesting. Subject to Section 6A below, the Option is subject to the following limitations upon its exercise:

(a) No shares may be acquired until September 2, 2003.

(b) Commencing on each consecutive September 2<sup>nd</sup>, beginning on September 2, 2003, the Employee will be entitled to exercise the right to purchase one-fourth (1/4) of the total number of shares specified in the Option.

4. Deferral. The Employee may elect, in accordance with the Option Deferral Policy as in effect from time to time, to defer receipt of the shares that result from the exercise of the Option. The election to defer receipt of shares is irrevocable.

5. Transferability. Unless an election to transfer has been made, the Option is not transferable by the Employee, other than by will or the laws of descent and distribution, and may be exercised, during the lifetime of the Employee, only by the Employee. Upon election, Employee may transfer any part of or all of the Option, but only to persons provided by, and in a manner consistent with, the Option Transfer Policy.

6. Expiration - Other Than Retirement. Subject to Section 6A below, the Option shall not be exercisable after the Expiration Date. Subject to Sections 6A and 7, the Expiration Date shall be the earliest to occur of (a) or (b):

(a) September 1, 2012; or

(b) Six months after the Employee's cessation of employment by the Company and all of its Subsidiaries (without regard to the Employee's subsequent re-employment by the Company or

a Subsidiary) under any circumstances except Retirement (as defined in Section 7), death or termination by the Company other than for Cause (as defined in Section 6A) and may be exercised only in respect of the number of shares which the Employee could have acquired under the Option by the exercise thereof immediately prior to such cessation of employment.

For purposes of this Section 6 and Sections 6A and 7, and for purposes of the other provisions of this Agreement, an Employee employed by a subsidiary or other entity which ceases to meet the definition of a Subsidiary contained in this Agreement will be treated as though his or her employment has ceased as of the date the entity ceases to meet such definition. In the event of any disagreement as to whether for the purposes of this Option an Employee's employment by the Company or a Subsidiary has ceased, the committee appointed to administer the Plan shall have absolute and uncontrolled discretion to determine whether such employment has ceased, and the effective date of such cessation of employment, and its determination shall be final and conclusive on all persons affected thereby.

6A. Termination without Cause or Resignation for Good Reason. Notwithstanding the foregoing provisions of this Agreement, in the event that the Employee's termination of employment occurs by reason of either (i) termination by the Company for reasons other than Cause, Disability or Retirement (as defined in Section 7), (ii) resignation by the Employee for Good Reason, or (iii) death, then the Option shall immediately become fully vested and exercisable as of the date of termination and shall remain exercisable for the lesser of five years following the date of termination or the remainder of the original term, as though the Employee's employment had continued without regard to such termination. For purposes of this Agreement, the terms "Cause," "Disability" and "Good Reason" shall be as defined and determined in that Employment Agreement entered into by an between the Employee and the Company effective as of September 2, 2002.

7. Expiration - Retirement. If cessation of employment occurs due to Employee's Retirement (as defined below), the Option may be exercised on or prior to the Expiration Date, and the right to purchase shares under this Option shall continue to accrue, as provided in Section 3 above, to the Employee (without regard to the Employee's subsequent re-employment by the Company or a Subsidiary). As used in this Agreement, "Retirement" shall mean an Employee's termination of employment by the Company and all of its Subsidiaries, other than by reason of death of the Employee, (i) at any time the Employee is eligible to immediately receive early or normal benefits under his or her employer's defined benefit pension plan, including any supplemental defined benefit pension plan or, in all other cases, (ii) that is determined by the Company, in its sole discretion, to be a Retirement for purposes of this Agreement. Notwithstanding the foregoing, in the event of the Employee's death following the Employee's Retirement but prior to the Expiration Date, the Option may be exercised within one year after the date of death (but not later than the Expiration Date) by his or her estate or by the person or persons to whom his or her rights under the Option shall pass by will or the laws of descent and distribution, but only in respect of the number of shares which the Employee could have acquired under the Option by the exercise thereof immediately prior to the date of death.

8. Securities Law Compliance. The Company shall not be required to issue or deliver any certificate for its Common Stock purchased upon the exercise of this Option prior to compliance by the Company with any requirements of any stock exchange on which Common Stock of the Company may at that time be listed. If at any time during the Option Period the Company shall be advised by its counsel that the shares of Common Stock deliverable upon an exercise of the Option are required to be registered under the Federal Securities Act of 1933, as amended, or any state securities law or that delivery of such Common Stock must be accompanied or preceded by a Prospectus meeting the requirements of such Act, the Company will use its reasonable efforts to effect such registration or provide such Prospectus not later than a reasonable time following each exercise of this Option, but delivery of Common Stock by the Company may be deferred until such registration is effected or such Prospectus is available. If at any time during the Option Period the Company shall be advised by its counsel that the Common Stock deliverable upon exercise of this Option are subject to the restrictions on sale imposed on "affiliates" under Rule 144 of the Federal Securities Act of 1933, the Employee will use his or her best efforts to comply with said Rule 144. This Option shall not confer upon the Employee any rights as a shareholder of the Company prior to the date on which the Employee fulfills all conditions for receipt of such rights.

9. Stock Splits, Reclassifications, Etc. In the event the outstanding shares of Common Stock of the Company

shall be changed into an increased number of shares, through a stock dividend or a split-up of shares, or into a decreased number of shares, through a combination of shares, then immediately after the record date for such change, the number of shares of Common Stock then subject to the Option shall be proportionately increased, in case of such stock dividend or split-up of shares, or proportionately decreased, in case of such combination of shares, and the Option Purchase Price under such Option shall be adjusted to such amount that the aggregate cost of the shares subject to such Option immediately after such increase or decrease in shares shall be the same as the aggregate cost of the shares subject to such Option immediately prior to such increase or decrease in shares.

In the event that, as a result of a reorganization, sale, merger, consolidation or similar occurrence, there shall be any other change in the shares of Common Stock of the Company, or of any stock or other securities into which such Common Stock shall have been changed, or for which it shall have been exchanged, then the Board of Directors of the Company shall make such equitable adjustments to the Option (including, but not limited to, changes in the number or kind, or the Option Purchase Price, of shares then subject to the Option), as it shall deem appropriate, and any such adjustments shall be effective and binding on the Employee for all purposes of the Option.

10. Use of Shares for Tax Withholding. Notwithstanding anything in this Agreement to the contrary, the Employee may elect, prior to delivery of the shares arising from exercise of the Option, to satisfy any Federal, State, local, FICA, Medicare or other tax withholding obligation attributable to the exercise of the Option by having the Company withhold from the Common Stock a number of whole shares of Common Stock with a fair market value equal to the amount of such tax withholding obligations with respect to which such election is made (with the Employee to pay in cash any remaining amount of such tax withholding obligation which is less than the fair market value of a whole share). The amount withheld pursuant to this Section shall be calculated based upon the minimum tax rate or rates at which the Company is required to withhold under applicable law.

11. Successors and Assigns. This Option shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the Company and the heirs and personal representatives of the Employee.

12. Governing Law. This Option shall be governed by the laws of the State of Illinois applicable to agreements made and to be performed entirely within such State.

13. Applicability of Plan. This Option shall be subject to the terms of the Plan, including, without limitation, Sections 2, 5, 9, 14 and 15 thereof; provided, however, that in the event of any inconsistency between this Option and the Plan, the terms of this Option shall govern.

14. Modification. Except as expressly provided herein or in the Plan, this Option may not be altered, modified, changed or discharged, except by a writing signed by or on behalf of both the Company and the Employee.

15. Securities Trading Policy. The Employee acknowledges and agrees to comply with the legal requirements and Company's policies applicable to trading in UAL securities by the Employee, as described in the United Airlines Code of Conduct and Securities Trading Policy, as they appear in Regulations 5-4.

IN WITNESS WHEREOF, the Company and the Employee have executed this Option as of the day and year first above written.

UAL CORPORATION

By: /s/ Francesca M. Maher \_\_\_\_\_

Senior Vice President,

General Counsel and Secretary

ACCEPTED:

/s/ Glenn F. Tilton \_\_\_\_\_

(signature of employee)

Print Name: Glenn F. Tilton

AGREEMENT WITH SENIOR OFFICERS OF UNITED AIR LINES, INC. NON-QUALIFIED STOCK OPTION  
UNDER THE UAL CORPORATION  
2002 SHARE INCENTIVE PLAN

This Option, granted this 2<sup>nd</sup> day of September, 2002 by UAL Corporation, a Delaware corporation (hereinafter called the "Company"), to Glenn F. Tilton (hereinafter called the "Employee") of the Company or one of its Subsidiaries (as defined below).

WITNESSETH:

The object of this Option is to provide a means to permit the Employee to acquire shares of Common Stock, \$.01 par value per share (hereinafter referred to as "Common Stock"), of the Company pursuant to a non-qualified option for the purposes set forth in the 2002 Share Incentive Plan (the "Plan").

NOW, THEREFORE, the Company hereby grants to the Employee an option (hereinafter called the "Option") to purchase, from time to time, all or any part of a total of the number of 650,000 shares of Common Stock for a period of time beginning the date of the grant and ending September 1, 2012, ten years after the date of the Option (hereinafter called the "Option Period"), upon and subject to the following terms and conditions:

1. Price. For any shares of Common Stock purchased at any time during the Option Period, the Employee shall pay to the Company Three Dollars and Three Cents (\$3.03) per share (hereinafter called the "Option Purchase Price"), being not less than 100% of the fair market value of the shares on the date hereof.

2. Exercise Procedures. The Option may be exercised, subject to the provisions of Sections 3, 6, 7 and 8 hereof, only within the Option Period and only (a) by notices in writing of intent to exercise the Option, each of which notices shall state the number of shares in respect of which the Option is exercised, delivered to the Corporate Secretary of UAL Corporation, or mailed by registered or certified mail addressed to the Corporate Secretary of UAL Corporation, P. O. Box 66919, Chicago, Illinois 60666, from time to time, until the total number of shares underlying this Option have been purchased, and (b) by payment to the Company of the aggregate Option Purchase Price for the number of shares in respect of which the Option is exercised (together with any taxes required to be withheld) contemporaneously with its receipt of each such notice. Payment of such aggregate Option Purchase Price may be made, in whole or in part, by the delivery, or, if administratively permitted by the Company, by attestation of ownership, of whole shares of Common Stock which (i) have a market value equal to such aggregate Option Purchase Price (or equal to the portion of such aggregate Option Purchase Price being paid with such shares), (ii) are held of record by the Employee, and (iii) have been owned by the Employee, either of record or beneficially through a broker or other nominee, for at least six months. The Company may require at the time the Option is exercised a written statement of the person exercising the Option that his or her intention is to acquire the shares for investment and without a view to their distribution. Shares of Common Stock delivered to Employee pursuant to the exercise of this Option shall consist exclusively of treasury shares.

3. Vesting. Subject to Section 6A below, the Option is subject to the following limitations upon its exercise:

(a) No shares may be acquired until September 2, 2003.

(b) Commencing on each consecutive September 2<sup>nd</sup>, beginning on September 2, 2003, the Employee will be entitled to exercise the right to purchase one-fourth (1/4) of the total number of shares specified in the Option.

4. Deferral. The Employee may elect, in accordance with the Option Deferral Policy as in effect from time to time, to defer receipt of the shares that result from the exercise of the Option. The election to defer receipt of shares is irrevocable.

5. Transferability. Unless an election to transfer has been made, the Option is not transferable by the Employee, other than by will or the laws of descent and distribution, and may be exercised, during the lifetime of the Employee, only by the Employee. Upon election, Employee may transfer any part of or all of the Option, but only to persons provided by, and in a manner consistent with, the Option Transfer Policy.

6. Expiration - Other Than Retirement. Subject to Section 6A below, the Option shall not be exercisable after the Expiration Date. Subject to Sections 6A and 7, the Expiration Date shall be the earliest to occur of (a) or (b):

(a) September 1, 2012; or

(b) Six months after the Employee's cessation of employment by the Company and all of its Subsidiaries (without regard to the Employee's subsequent re-employment by the Company or a Subsidiary) under any circumstances except Retirement (as defined in Section 7), death or termination by the Company other than for Cause (as defined in Section 6A) and may be exercised only in respect of the number of shares which the Employee could have acquired under the Option by the exercise thereof immediately prior to such cessation of employment.

For purposes of this Section 6 and Sections 6A and 7, and for purposes of the other provisions of this Agreement, an Employee employed by a subsidiary or other entity which ceases to meet the definition of a Subsidiary contained in this Agreement will be treated as though his or her employment has ceased as of the date the entity ceases to meet such definition. In the event of any disagreement as to whether for the purposes of this Option an Employee's employment by the Company or a Subsidiary has ceased, the committee appointed to administer the Plan shall have absolute and uncontrolled discretion to determine whether such employment has ceased, and the effective date of such cessation of employment, and its determination shall be final and conclusive on all persons affected thereby.

6A. Termination without Cause or Resignation for Good Reason. Notwithstanding the foregoing provisions of this Agreement, in the event that the Employee's termination of employment occurs by reason of either (i) termination by the Company for reasons other than Cause, Disability or Retirement (as defined in Section 7), (ii) resignation by the Employee for Good Reason, or (iii) death, then the Option shall immediately become fully vested and exercisable as of the date of termination and shall remain exercisable for the lesser of five years following the date of termination or the remainder of the original term, as though the Employee's employment had continued without regard to such termination. For purposes of this Agreement, the terms "Cause," "Disability" and "Good Reason" shall be as defined and determined in that Employment Agreement entered into by an between the Employee and the Company effective as of September 2, 2002.

7. Expiration - Retirement. If cessation of employment occurs due to Employee's Retirement (as defined below), the Option may be exercised on or prior to the Expiration Date, and the right to purchase shares under this Option shall continue to accrue, as provided in Section 3 above, to the Employee (without regard to the Employee's subsequent re-employment by the Company or a Subsidiary). As used in this Agreement, "Retirement" shall mean an Employee's termination of employment by the Company and all of its Subsidiaries, other than by reason of death of the Employee, (i) at any time the Employee is eligible to immediately receive early or normal benefits under his or her employer's defined benefit pension plan, including any supplemental defined benefit pension plan or, in all other cases, (ii) that is determined by the Company, in its sole discretion, to be a Retirement for purposes of this Agreement. Notwithstanding the foregoing, in the event of the Employee's death following the Employee's Retirement but prior to

the Expiration Date, the Option may be exercised within one year after the date of death (but not later than the Expiration Date) by his or her estate or by the person or persons to whom his or her rights under the Option shall pass by will or the laws of descent and distribution, but only in respect of the number of shares which the Employee could have acquired under the Option by the exercise thereof immediately prior to the date of death.

8. Securities Law Compliance. The Company shall not be required to issue or deliver any certificate for its Common Stock purchased upon the exercise of this Option prior to compliance by the Company with any requirements of any stock exchange on which Common Stock of the Company may at that time be listed. If at any time during the Option Period the Company shall be advised by its counsel that the shares of Common Stock deliverable upon an exercise of the Option are required to be registered under the Federal Securities Act of 1933, as amended, or any state securities law or that delivery of such Common Stock must be accompanied or preceded by a Prospectus meeting the requirements of such Act, the Company will use its reasonable efforts to effect such registration or provide such Prospectus not later than a reasonable time following each exercise of this Option, but delivery of Common Stock by the Company may be deferred until such registration is effected or such Prospectus is available. If at any time during the Option Period the Company shall be advised by its counsel that the Common Stock deliverable upon exercise of this Option are subject to the restrictions on sale imposed on "affiliates" under Rule 144 of the Federal Securities Act of 1933, the Employee will use his or her best efforts to comply with said Rule 144. This Option shall not confer upon the Employee any rights as a shareholder of the Company prior to the date on which the Employee fulfills all conditions for receipt of such rights.

9. Stock Splits, Reclassifications, Etc. In the event the outstanding shares of Common Stock of the Company shall be changed into an increased number of shares, through a stock dividend or a split-up of shares, or into a decreased number of shares, through a combination of shares, then immediately after the record date for such change, the number of shares of Common Stock then subject to the Option shall be proportionately increased, in case of such stock dividend or split-up of shares, or proportionately decreased, in case of such combination of shares, and the Option Purchase Price under such Option shall be adjusted to such amount that the aggregate cost of the shares subject to such Option immediately after such increase or decrease in shares shall be the same as the aggregate cost of the shares subject to such Option immediately prior to such increase or decrease in shares.

In the event that, as a result of a reorganization, sale, merger, consolidation or similar occurrence, there shall be any other change in the shares of Common Stock of the Company, or of any stock or other securities into which such Common Stock shall have been changed, or for which it shall have been exchanged, then the Board of Directors of the Company shall make such equitable adjustments to the Option (including, but not limited to, changes in the number or kind, or the Option Purchase Price, of shares then subject to the Option), as it shall deem appropriate, and any such adjustments shall be effective and binding on the Employee for all purposes of the Option.

10. Use of Shares for Tax Withholding. Notwithstanding anything in this Agreement to the contrary, the Employee may elect, prior to delivery of the shares arising from exercise of the Option, to satisfy any Federal, State, local, FICA, Medicare or other tax withholding obligation attributable to the exercise of the Option by having the Company withhold from the Common Stock a number of whole shares of Common Stock with a fair market value equal to the amount of such tax withholding obligations with respect to which such election is made (with the Employee to pay in cash any remaining amount of such tax withholding obligation which is less than the fair market value of a whole share). The amount withheld pursuant to this Section shall be calculated based upon the minimum tax rate or rates at which the Company is required to withhold under applicable law.

11. Successors and Assigns. This Option shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the Company and the heirs and personal representatives of the Employee.

12. Governing Law. This Option shall be governed by the laws of the State of Illinois applicable to agreements made and to be performed entirely within such State.

13. Applicability of Plan. This Option shall be subject to the terms of the Plan, including, without limitation, Sections 3, 4, 11, 14 and 16 thereof; provided, however, that in the event of any inconsistency between this Option and

the Plan, the terms of this Option shall govern.

14. Modification. Except as expressly provided herein or in the Plan, this Option may not be altered, modified, changed or discharged, except by a writing signed by or on behalf of both the Company and the Employee.

15. Securities Trading Policy. The Employee acknowledges and agrees to comply with the legal requirements and Company's policies applicable to trading in UAL securities by the Employee, as described in the United Airlines Code of Conduct and Securities Trading Policy, as they appear in Regulations 5-4.

IN WITNESS WHEREOF, the Company and the Employee have executed this Option as of the day and year first above written.

UAL CORPORATION

By: /s/ Francesca M. Maher  
Senior Vice President,  
General Counsel and Secretary

ACCEPTED:

/s/ Glenn F. Tilton  
(signature of employee)

Print Name: Glenn F. Tilton

EXHIBIT B

### RESTRICTED STOCK AGREEMENT

AGREEMENT made as of September 2, 2002 between Glenn F. Tilton ("Recipient") and UAL Corporation (together with its wholly owned subsidiary, United Air Lines, Inc., the "Company"). For purposes of this Agreement, the term "Shares" shall mean 100,000 shares of Common Stock, \$0.01 par value ("Common Stock"), of the Company.

WHEREAS, Recipient has been awarded the Shares in accordance with and subject to the terms of this Agreement.

NOW THEREFORE IT IS AGREED:

1. Promptly after the execution of this Agreement by Recipient, the Company shall cause Computershare Investor Services of Chicago, the transfer agent for the Common Stock (together with its successors and assigns, the "Transfer Agent"), to make a book entry record showing ownership for the Shares in the name of the Recipient subject to the terms and conditions of this Agreement.

The Shares shall be issued from Common Stock reserved for issuance pursuant to the UAL Corporation 2002 Share Incentive Plan (the "Plan") as Restricted Share grants under Section 8 of the Plan.

2. During the Restricted Period (as defined in Section 8 of the Plan) for the Shares, Recipient shall not sell, assign, exchange, transfer, pledge, hypothecate or otherwise dispose of or encumber any of such Shares.

3. Recipient represents that the Shares are being acquired for investment and that Recipient has no present intention to transfer, sell or otherwise dispose of the Shares, except in compliance with applicable securities laws, and the parties agree that the Shares are being acquired in accordance with and subject to the terms, provisions and conditions of this Agreement. These agreements shall bind and inure to the benefit of the parties' respective heirs, legal representatives, successors and assigns.
4. Twenty-five percent of the Shares shall be released from restrictions under this Agreement on each of the first, second, third and fourth anniversary dates of this Agreement, subject to earlier release pursuant to Section 8 of the Plan and as further provided herein. A certificate for all Shares granted pursuant to this Agreement will be issued to Recipient following such anniversary date or, at Recipient's election, may be transferred in book entry form to Recipient's brokerage account (subject to any adjustment made therein to withhold Shares to pay taxes as provided in Section 5 hereof). Any period during which Shares are subject to restriction hereunder is herein referred to as the "Restricted Period." Notwithstanding the foregoing, in the event of separation or termination of the Recipient's employment with the Company for any reason, including as a result of the Recipient's retirement, disability or termination for Cause, but excluding the resignation of the Recipient for Good Reason, termination by the Company not for Cause or death, then all unreleased, restricted Shares shall be forfeited upon such separation or termination. In the event that the Recipient's termination of employment occurs by reason of either (i) termination by the Company for reasons other than Cause, disability or retirement, (ii) resignation by the Recipient for Good Reason or (iii) death, then all unreleased, restricted Shares shall be immediately released from all such restrictions under this Agreement. For purposes of this Agreement, the terms "Cause" and "Good Reason" shall be as defined and determined in that Employment Agreement entered into by and between the Employee and the Company effective as of September 2, 2002.
5. The Company shall be required to withhold the amount of taxes required to satisfy any applicable federal, state and local tax withholding obligations arising from the lapse of restrictions on Shares. Recipient may elect to satisfy any such tax obligation in cash or by authorizing the Company to withhold from the Shares issued to Recipient as a result of the lapse of the restrictions on Shares, the number of whole shares of Common Stock required to satisfy such tax obligation, the number to be determined by the fair market value of the Shares on the date of the lapse of the restrictions on Shares. If Recipient elects to withhold shares of Common Stock to satisfy any such tax obligation, the Company shall pay to Recipient in cash any remaining proceeds after the application of whole shares that are more than any such obligation.
6. The Company hereby confirms that (i) in the event the outstanding shares of Common Stock of the Company shall be changed into an increased number of shares, through a stock dividend or a split-up of shares, or into a decreased number of shares, through a combination of shares, then immediately after the record date for such change, the number of Shares then subject to this Agreement shall be proportionately increased, in case of such stock dividend or split-up of shares, or proportionately decreased, in case of such combination of shares; and (ii) in the event that, as result of a reorganization, sale, merger, consolidation or similar occurrence, there shall be any other change in the shares of Common Stock of the Company, or of any stock or other securities into which such Common Stock shall have been changed, or for which it shall have been exchanged, then equitable adjustments to the Shares then subject to this Agreement (including, but not limited to, changes in the number or kind of shares then subject to this Agreement) shall be made.
7. Recipient understands that the Company will, and Recipient hereby authorizes the Company to, issue such instructions to the Transfer Agent as the Company may deem necessary or proper to comply with the intent and purposes of this Agreement. This paragraph shall be deemed to constitute the stock power contemplated by the Plan.
8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the Company and the heirs and personal representatives of the Recipient.

9. This Agreement shall be subject to the terms of the Plan; provided, however, that in the event of any inconsistency between this Agreement and the Plan, the terms of this Agreement shall govern.

10. This Agreement shall be governed by the laws of the State of Illinois applicable to agreements made and to be performed entirely within such State.

11. This Agreement may not be altered, modified, changed or discharged, except by a writing signed by or on behalf of both the Company and the Recipient.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first written above.

/s/ Glenn F. Tilton  
Recipient

UAL CORPORATION

By: /s/ Francesca M. Maher  
Name: Francesca M. Maher  
Title: Senior Vice President,  
General Counsel and Secretary

EXHIBIT C

**GLENN F. TILTON  
SECULAR TRUST AGREEMENT NO. 1**

This Agreement is made as of this 5th day of September, 2002, by and among UAL Corporation, a Delaware corporation (the "Company"), Glenn F. Tilton (the "Executive") and The Northern Trust Company, an Illinois corporation, as trustee (the "Trustee").

**RECITALS:**

**WHEREAS**, this Trust Agreement is being entered into pursuant to the terms of the Employment Agreement dated September 5, 2002 (the "Employment Agreement"), attached hereto, for the purpose of establishing a trust (the "Trust") in accordance therewith; and

**WHEREAS**, the Trustee agrees to receive payment from the Company to be held pursuant to the terms of this Trust Agreement (the "Agreement").

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and other valuable consideration, the Company, the Executive and the Trustee agree as follows:

**SECTION 1. Establishment of Trust**

(a) The Company hereby pays to the Trustee \$1,500,000, which payment shall effect an irrevocable transfer and conveyance of all of the Company's legal title and ownership in and to such funds, and such funds shall become the principal of the Trust to be held, administered and disposed of by the Trustee as provided in this Trust Agreement. The property held by the Trustee hereunder shall constitute the trust fund ("Trust Fund").

- (b) The Trust Fund shall be held for the benefit of the Executive on the terms and conditions hereinafter set forth.
- (c) The Trust hereby established is irrevocable.
- (d) The Trust is intended to be taxed as a simple trust pursuant to the provisions of Section 651 of the Internal Revenue Code of 1986, as amended ("Code") and, as such, the Trust's income is required to be distributed currently to Executive at the times provided herein. The Trust's fiscal year is the calendar year.
- (e) Except for the limited and contingent right to receive payment of the Trust Fund as provided in Section 9(b) below, the Company shall have no legal or beneficial right or interest whatsoever in or to the Trust or the Trust Fund. Without limiting the generality of the foregoing, the Trust Fund and the principal and income of the Trust shall not constitute assets or property of the Company and shall not be subject to the claims of creditors of the Company in the event of the Company's insolvency or bankruptcy and in such event Company shall not assert that any portion of the Trust Fund constitutes assets of the debtor's estate.
- (f) This Trust shall terminate immediately upon distribution of the principal and earnings of Trust Fund to the Executive or, solely to the extent provided by Section 2(c), upon forfeiture.
- (g) In no event shall this Trust terminate later than 21 years after the death of the Executive and his current spouse.

## **SECTION 2. Payments to or on Behalf of Executive**

- (a) The Trustee shall hold, manage, invest and reinvest the Trust Fund, collect the income therefrom and dispose of the income and principal of the Trust as provided in this Section 2.
- (b) Subject only to Section 2(c) below, Executive shall be fully vested with respect to his interest in the Trust Fund and shall have all rights, title and ownership thereof.
- (c) If, as provided in the Employment Agreement, Executive's employment is terminated by Executive other than for Good Reason and the effective date of such termination is on or before September 2, 2003, then Executive will forfeit 100% of his interest in the Trust Fund. Executive or the Company may provide written notice to the Trustee of the Executive's termination (with a copy to the other party) and stating therein whether such termination constitutes termination by the Executive for Good Reason. If the other party confirms the content of the notice, or fails to object to it within 30 days, distribution will be made in accordance with such notice and Section 2(d) below. In the event that the parties disagree with respect to the notice, the Trustee shall hold the Trust Fund and all subsequent earnings thereon until such time as the reason for termination has been resolved in accordance with the dispute resolution provisions of the Employment Agreement. In no event shall the Executive be deemed to have forfeited his interest in the Trust or the Trust Fund if his employment terminates as a result of a repudiation, rejection or similar breach of the Employment Agreement by the Company.
- (d) In the event that the Trustee has not been provided written notice, as provided in Section 2(c) above, that there has occurred a forfeiture, or that there is a dispute with respect to a notice, the Trust Fund will be paid in full to Executive in a single lump-sum cash amount as of the first business day of January next following the earlier of September 2, 2003 or the Executive's termination of employment.
- (e) If the Executive is deceased, then any amounts payable to the Executive pursuant to the Trust shall instead be paid to the Executive's beneficiary as provided for under the Employment Agreement.
- (f) In the event the Executive must include in his gross income any or all of the value of his interest in

the Trust (whether or not prior to the distribution of amounts from the Trust), then the Trustee, upon direction from the Company, shall withhold any federal, state and local taxes of whatever type that may be required to be withheld with respect to such inclusion of income, and shall distribute such amounts to the Company for its proper submission and reporting by the Company. Any amounts so included in the gross income of the Executive shall be treated as additional compensation from the Company on the earlier of September 2, 2003 or the Executive's termination equal to the value of the Trust principal as of such date. The computation of the amount to be withheld and submitted to the proper tax authorities shall be determined by the Company.

(g) All current earnings (within the meaning of Code section 651) arising from investment of the Trust Fund shall be distributed to the Executive prior to the last business day of January next following the date earned by the Trust. Such income shall be reported and taxed to the Executive under Code Section 652 as a trust distribution and not as additional compensation from the Company. The Trustee, or such other tax advisor as may be selected by the Executive, shall prepare the annual tax returns for the Trust and deliver such returns to the Trustee for review and submission to the proper tax authorities.

### **SECTION 3. Payments to Company**

The Company shall have no beneficial interest in the principal or earnings hereunder, except as provided in Section 9(b).

### **SECTION 4. Investment Authority**

(a) The Trustee shall have the authority to manage and control the Trust assets, upon written direction from the Executive and shall follow directions with respect to the investment of the Trust Fund from the Executive or any investment advisor(s), which may include affiliates of the Trustee. In the absence of such direction, the Trustee shall invest the corpus of the Trust Fund in short term securities of the United States Government. Pursuant to such authority and subject to the terms of the Agreement, with respect to any and all property at any time held by it hereunder, and whether constituting principal or income therefrom, the Trustee shall have the following powers, in addition to those conferred by law:

(1) To retain any such property as investment without regard to the proportion which such property or property of a similar character, so held, may bear to the entire amount of the Trust in which such property is held whether or not such property is of the class in which the Trustee is authorized by law or any rule of court to invest trust funds.

(2) To sell such property at either public or private sale for cash or on credit; to exchange such property; and to grant options for the purchase thereof.

(3) To invest and reinvest in property of any character, real or personal, foreign or domestic, including, but without limiting the generality of the foregoing, bonds, notes, securities, mortgages, common and preferred stocks, partnerships, shares or interests in investment trusts and participation in any common trust fund maintained by the Trustee, and open-end and closed-end investment companies and mutual funds, including (to the extent permitted by applicable law) companies or funds to which the Trustee acts as investment advisor and/or performs other services, regardless of the purposes for which any such company or fund was created, and any partnership, limited or unlimited, joint venture and other forms of joint enterprise created for any lawful purpose.

(4) With respect to any investment of the Trust, to consent to and participate in any plan of reorganization, consolidation, merger, combination, or other similar plan, and to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to such plan.

- (5) With respect to any investment of the Trust, to deposit any such property with any protective reorganization or similar committee, to delegate discretionary power thereto, to pay part of its expenses and compensation and any assessments levied with respect to such property.
- (6) To exercise all conversion, subscription, voting and other rights of whatsoever nature pertaining to any such property and to grant proxies, discretionary or otherwise, in respect thereof.
- (7) To make loans of securities held in the Trust to registered brokers and dealers upon such terms and conditions as are permitted by applicable law and regulations, and in each instance to permit the securities so let to be registered in the name of the borrower or a nominee of the borrower, provided that in each instance the loan is adequately secured and neither the borrower nor any affiliate of the borrower has discretionary authority or control with respect to the assets of the Trust involved in the transaction or renders investment advice with respect to those assets.
- (8) To borrow money in such amounts and upon such terms, from itself individually or from others, for such purpose or purposes as it, in its discretion, may determine and in connection therewith to execute promissory notes, mortgages or other obligations and to pledge or mortgage any such property as security.
- (9) To employ agents, experts and counsel, including legal and investment counsel, and to delegate discretionary powers to, and rely upon information and advice furnished by, such agents, experts and counsel and to pay reasonable fees to such agents, experts and counsel.
- (10) To extend the time of payment of any obligation held by it and to compromise, settle or submit to arbitration upon such terms as to it may seem proper, or to release, any claim in favor of the Trust created hereunder.
- (11) From time to time to register any property in the name of its nominee or in its own name or to hold it unregistered or in such form that title shall pass by delivery and to place property in a custody or safekeeping account.
- (12) To receive additional property from any source and add it to, and mingle it with, the Trust hereunder.
- (13) To make any division or distribution in cash or in other property or undivided interests therein, or partly in cash and partly in other property or undivided interests therein.
- (14) To make executory contracts and to grant options for any purpose and upon any terms, and to make such contracts and options binding on the Trust and enforceable against any property included in the Trust estate.
- (15) To do all such acts, take all such proceedings and exercise all such rights and privileges, although not hereinbefore specifically mentioned, with relation to any such property, as if the absolute owner thereof, and in connection therewith to make, execute and deliver any instruments and to enter into any covenants or agreements binding the Trust hereunder.
- (16) Notwithstanding any powers granted to the Trustee pursuant to this Trust Agreement or by applicable law, the Trustee shall not have any power that could give this Trust the objective of carrying on a business and dividing the gains therefrom, within the meaning of Section 301.7701-2 of the Procedure and Administration Regulations promulgated under the Code.

(b) In no event may Trustee invest in securities (including stock or rights to acquire stocks) or obligations issued by the Company, or any affiliate of the Company, other than a de minimus amount held in common investment vehicles in which the Trustee invests.

## **SECTION 5. Responsibility of Trustee**

- (a) The Trustee shall prudently discharge its duties hereunder solely for the purposes set forth herein.
- (b) Persons dealing with the Trustee shall not be obligated to look to the application of any moneys or other property paid or delivered to the Trustee or to inquire into the authority of the Trustee as to any transaction. All powers granted to the Trustee shall continue until actual distribution of the property.
- (c) The Trustee shall incur no liability whatsoever by reason of any action taken or not taken pursuant to the provisions of this Agreement except for negligence, gross negligence or willful misconduct.
- (d) The Trustee may consult with legal counsel (who, with the consent of Executive, may also be counsel for the Company generally) with respect to any of its duties or obligations hereunder. The Trustee may have agents, accountants, actuaries, investment advisors, financial consultants or other professionals to assist it in performing any of its duties or obligations hereunder.

## **SECTION 6. Resignation and Removal of Trustee**

- (a) If the Trustee shall resign or cease to act for any reason, the Company shall have the power to appoint a successor trustee. Under no circumstances shall the Company act as trustee hereunder.
- (b) The Trustee may resign at any time upon sixty (60) days' prior written notice to the Company. In the event a trustee, or a successor trustee resigns, it shall be relieved of all further liability hereunder other than to account for all property received while acting as trustee and, if applicable, to turn over such property to a successor trustee.
- (c) The Company, with the approval of the Executive, may remove the Trustee at any time upon sixty (60) days' prior written notice to the Trustee, and shall appoint a successor trustee. In the event a trustee is removed it shall be relieved of all further liability hereunder other than to account for all property received while acting as trustee and, if applicable, to turn over such property to a successor trustee.
- (d) The appointment of a successor trustee by the Company shall be subject to the written consent of the Executive.
- (e) No successor trustee shall be liable or responsible in any way for the acts or defaults of any predecessor trustee, nor for any loss or expense caused by anything done or neglected to be done by any predecessor trustee, but such successor trustee shall be liable only for its own acts and defaults with respect to the Trust funds actually received by it as trustee. Every successor trustee shall be vested with all the duties, rights, titles, and powers, whether discretionary or otherwise, of the original trustee. No Trustee or successor trustee shall be required to give any bond or other security for the faithful performance of its duties as such.

## **SECTION 7. Accounting by Trustee**

Trustee shall keep accurate and detailed records of all investments, receipts, disbursements and all other transactions required to be made, including, without limitation, such specific records as shall be agreed upon in writing between the Executive and the Trustee. Within ninety (90) days after the close of each calendar year and within ninety (90) days after the removal or resignation of the Trustee, the Trustee shall deliver to the Executive (with a copy to the Company) a written account of the administration of the Trust during such year or during the period from the close of

such preceding year to the date of such removal or resignation setting forth all investments, receipts, disbursements and other transactions effected by it, including a description of all securities and investments purchased and sold with the cost or net proceeds of such purchase or sales, and showing all cash, securities, and other property held in the Trust at the end of such year or as of the date of such removal or resignation, as the case may be.

#### **SECTION 8. Compensation and Expenses of Trustee.**

- (a) The Trustee's fees for the first twelve months have been paid by the Company. Thereafter, to the extent the Trustee's fees are not paid by the Company or the Executive, the fees shall be paid from the Trust.
- (b) All of the on-going administrative expenses shall be paid from the Trust.

#### **SECTION 9. Amendment and Termination**

- (a) The Agreement and the Trust hereunder may be amended any time and to any extent by written instrument executed by the Trustee, the Executive and the Company.
- (b) The Trust shall not terminate until the date on which the corpus of the Trust has been distributed to the Executive, or forfeited in accordance with Section 2(c), in which case any assets remaining in the Trust shall be paid to the Company.

#### **SECTION 10. Miscellaneous**

- (a) Any direction of the Trustee by the Company pursuant to any of the provisions of the Agreement shall be evidenced by a written notice or written direction to such effect over the signature of any officer or other representative of the Company who shall have been certified in writing to the Trustee by the Secretary of the Company, as having such authority and the Trustee shall be fully protected in acting in accordance with such written notices or written directions. Until written notice is given to the contrary, communications to the Trustee shall be sent to it as its office at The Northern Trust Company, Attn: Scott Borton/RM for UAL, 50 South LaSalle Street, Chicago, IL 60675.
- (b) The Agreement shall inure to the benefit of and be binding upon the Company, the Executive and the Trustee and their successors and assigns.
- (c) The Executive's interest and his beneficiary's interest in income or principal hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall the Executive nor the Executive's beneficiary have the power to anticipate, encumber or change such interest, nor shall such interest, while in the possession of the Trustee, be liable for or subject to the debts, contracts, obligations, liabilities or torts of the Executive or the Executive's spouse.
- (d) Wherever necessary or appropriate, the use herein of any gender shall be deemed to include the other gender and the use herein of either the singular or the plural shall be deemed to include the other.
- (e) Any provision of the Agreement prohibited by law shall be ineffective to the extent of any such prohibition, without affecting the remaining portions hereof.
- (f) This trust is not intended to be an employee benefit plan within the intent of Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended.
- (g) The Agreement shall become effective, as of the day and year first above written, upon the execution of the Agreement by the Company, Trustee and Executive. It shall be governed and construed in all respect according to the law of the State of Illinois. Notwithstanding the application of Illinois law, the

actual administration of the Trust may be conducted in such location, and the location of the Trust Fund assets may be changed, as the Trustee, in its sole discretion, may determine from time to time.

**IN WITNESS WHEREOF**, the parties have executed this Trust Agreement as of the date first above written.

Attest:

/s/ Mary Jo Georgen

Name: Mary Jo Georgen

Title: Assistant Corporate Secretary

**UAL CORPORATION**

By: /s/ Francesca M. Maher

Name: Francesca M. Maher

Title: Senior Vice President,  
General Counsel and Secretary

Attest:

/s/ Helen M. Stirk

Name: Helen M. Stirk

Title: Senior Vice President and  
Assistant Corporate Secretary

**THE NORTHERN TRUST COMPANY**, as Trustee

By: /s/ Scott G. Borton

Name: Scott G. Borton

Title: Vice President

/s/ Glenn F. Tilton

**GLENN F. TILTON**

EXHIBIT D

**GLENN F. TILTON  
SECULAR TRUST AGREEMENT NO. 2**

This Agreement is made as of this 5th day of September, 2002, by and among UAL Corporation, a Delaware corporation (the "Company"), Glenn F. Tilton (the "Executive") and The Northern Trust Company, an Illinois corporation, as trustee (the "Trustee").

**RECITALS:**

**WHEREAS**, this Trust Agreement is being entered into pursuant to the terms of the Employment Agreement dated September 5, 2002 (the "Employment Agreement"), attached hereto, for the purpose of establishing a trust (the "Trust") in accordance therewith; and

**WHEREAS**, the Trustee agrees to receive payment from the Company to be held pursuant to the terms of this Trust Agreement (the "Agreement").

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and other valuable consideration, the Company, the Executive and the Trustee agree as follows:

**SECTION 1. Establishment of Trust**

- (a) The Company hereby pays to the Trustee \$1,500,000, which payment shall effect an irrevocable transfer and conveyance of all of the Company's legal title and ownership in and to such funds, and such funds shall become the principal of the Trust to be held, administered and disposed of by the Trustee as provided in this Trust Agreement. The property held by the Trustee hereunder shall constitute the trust fund ("Trust Fund").
- (b) The Trust Fund shall be held for the benefit of the Executive on the terms and conditions hereinafter set forth.
- (c) The Trust hereby established is irrevocable.
- (d) The Trust is intended to be taxed as a simple trust pursuant to the provisions of Section 651 of the Internal Revenue Code of 1986, as amended ("Code") and, as such, the Trust's income is required to be distributed currently to Executive at the times provided herein. The Trust's fiscal year is the calendar year.
- (e) Except for the limited and contingent right to receive payment of the Trust Fund as provided in Section 9(b) below, the Company shall have no legal or beneficial right or interest whatsoever in or to the Trust or the Trust Fund. Without limiting the generality of the foregoing, the Trust Fund and the principal and income of the Trust shall not constitute assets or property of the Company and shall not be subject to the claims of creditors of the Company in the event of the Company's insolvency or bankruptcy and in such event Company shall not assert that any portion of the Trust Fund constitutes assets of the debtor's estate.
- (f) This Trust shall terminate immediately upon distribution of the principal and earnings of Trust Fund to the Executive or, solely to the extent provided by Section 2(c), upon forfeiture.
- (g) In no event shall this Trust terminate later than 21 years after the death of the Executive and his current spouse.

**SECTION 2. Payments to or on Behalf of Executive**

- (a) The Trustee shall hold, manage, invest and reinvest the Trust Fund, collect the income therefrom and dispose of the income and principal of the Trust as provided in this Section 2.
- (b) Subject only to Section 2(c) below, Executive shall be fully vested with respect to his interest in the Trust Fund and shall have all rights, title and ownership thereof.
- (c) If, as provided in the Employment Agreement, Executive's employment is terminated by Executive other than for Good Reason and the effective date of such termination is on or before September 2, 2004, then Executive will forfeit 100% of his interest in the Trust Fund. Executive or the Company may provide written notice to the Trustee of the Executive's termination (with a copy to the other party) and stating therein whether such termination constitutes termination by the Executive for Good Reason. If the other party confirms the content of the notice, or fails to object to it within 30 days, distribution will be made in accordance with such notice and Section 2(d) below. In the event that the parties disagree with respect to the notice, the Trustee shall hold the Trust Fund and all subsequent earnings thereon until such time as the reason for termination has been resolved in accordance with the dispute resolution provisions of the Employment Agreement. In no event shall the Executive be deemed to have forfeited his interest in the Trust or the Trust Fund if his employment terminates as a result of a repudiation, rejection or similar breach of the Employment Agreement by the Company.
- (d) In the event that the Trustee has not been provided written notice, as provided in Section 2(c) above,

that there has occurred a forfeiture, or that there is a dispute with respect to a notice, the Trust Fund will be paid in full to Executive in a single lump-sum cash amount as of the first business day of January next following the earlier of September 2, 2004 or the Executive's termination of employment.

(e) If the Executive is deceased, then any amounts payable to the Executive pursuant to the Trust shall instead be paid to the Executive's beneficiary as provided for under the Employment Agreement.

(f) In the event the Executive must include in his gross income any or all of the value of his interest in the Trust (whether or not prior to the distribution of amounts from the Trust), then the Trustee, upon direction from the Company, shall withhold any federal, state and local taxes of whatever type that may be required to be withheld with respect to such inclusion of income, and shall distribute such amounts to the Company for its proper submission and reporting by the Company. Any amounts so included in the gross income of the Executive shall be treated as additional compensation from the Company on the earlier of September 2, 2004 or the Executive's termination equal to the value of the Trust principal as of such date. The computation of the amount to be withheld and submitted to the proper tax authorities shall be determined by the Company.

(g) All current earnings (within the meaning of Code section 651) arising from investment of the Trust Fund shall be distributed to the Executive prior to the last business day of January next following the date earned by the Trust. Such income shall be reported and taxed to the Executive under Code Section 652 as a trust distribution and not as additional compensation from the Company. The Trustee, or such other tax advisor as may be selected by the Executive, shall prepare the annual tax returns for the Trust and deliver such returns to the Trustee for review and submission to the proper tax authorities.

### **SECTION 3. Payments to Company**

The Company shall have no beneficial interest in the principal or earnings hereunder, except as provided in Section 9(b).

### **SECTION 4. Investment Authority**

(a) The Trustee shall have the authority to manage and control the Trust assets, upon written direction from the Executive and shall follow directions with respect to the investment of the Trust Fund from the Executive or any investment advisor(s), which may include affiliates of the Trustee. In the absence of such direction, the Trustee shall invest the corpus of the Trust Fund in short term securities of the United States Government. Pursuant to such authority and subject to the terms of the Agreement, with respect to any and all property at any time held by it hereunder, and whether constituting principal or income therefrom, the Trustee shall have the following powers, in addition to those conferred by law:

(1) To retain any such property as investment without regard to the proportion which such property or property of a similar character, so held, may bear to the entire amount of the Trust in which such property is held whether or not such property is of the class in which the Trustee is authorized by law or any rule of court to invest trust funds.

(2) To sell such property at either public or private sale for cash or on credit; to exchange such property; and to grant options for the purchase thereof.

(3) To invest and reinvest in property of any character, real or personal, foreign or domestic, including, but without limiting the generality of the foregoing, bonds, notes, securities, mortgages, common and preferred stocks, partnerships, shares or interests in investment trusts and participation in any common trust fund maintained by the Trustee, and open-end and closed-end investment companies and mutual funds, including (to the extent permitted by applicable law) companies or funds to which the Trustee acts as investment advisor and/or

performs other services, regardless of the purposes for which any such company or fund was created, and any partnership, limited or unlimited, joint venture and other forms of joint enterprise created for any lawful purpose.

(4) With respect to any investment of the Trust, to consent to and participate in any plan of reorganization, consolidation, merger, combination, or other similar plan, and to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to such plan.

(5) With respect to any investment of the Trust, to deposit any such property with any protective reorganization or similar committee, to delegate discretionary power thereto, to pay part of its expenses and compensation and any assessments levied with respect to such property.

(6) To exercise all conversion, subscription, voting and other rights of whatsoever nature pertaining to any such property and to grant proxies, discretionary or otherwise, in respect thereof.

(7) To make loans of securities held in the Trust to registered brokers and dealers upon such terms and conditions as are permitted by applicable law and regulations, and in each instance to permit the securities so let to be registered in the name of the borrower or a nominee of the borrower, provided that in each instance the loan is adequately secured and neither the borrower nor any affiliate of the borrower has discretionary authority or control with respect to the assets of the Trust involved in the transaction or renders investment advice with respect to those assets.

(8) To borrow money in such amounts and upon such terms, from itself individually or from others, for such purpose or purposes as it, in its discretion, may determine and in connection therewith to execute promissory notes, mortgages or other obligations and to pledge or mortgage any such property as security.

(9) To employ agents, experts and counsel, including legal and investment counsel, and to delegate discretionary powers to, and rely upon information and advice furnished by, such agents, experts and counsel and to pay reasonable fees to such agents, experts and counsel.

(10) To extend the time of payment of any obligation held by it and to compromise, settle or submit to arbitration upon such terms as to it may seem proper, or to release, any claim in favor of the Trust created hereunder.

(11) From time to time to register any property in the name of its nominee or in its own name or to hold it unregistered or in such form that title shall pass by delivery and to place property in a custody or safekeeping account.

(12) To receive additional property from any source and add it to, and mingle it with, the Trust hereunder.

(13) To make any division or distribution in cash or in other property or undivided interests therein, or partly in cash and partly in other property or undivided interests therein.

(14) To make executory contracts and to grant options for any purpose and upon any terms, and to make such contracts and options binding on the Trust and enforceable against any property included in the Trust estate.

(15) To do all such acts, take all such proceedings and exercise all such rights and privileges, although not hereinbefore specifically mentioned, with relation to any such property, as if the absolute owner thereof, and in connection therewith to make, execute and deliver any instruments and to enter into any covenants or agreements binding the Trust hereunder.

(16) Notwithstanding any powers granted to the Trustee pursuant to this Trust Agreement or by applicable law, the Trustee shall not have any power that could give this Trust the objective of carrying on a business and dividing the gains therefrom, within the meaning of Section 301.7701-2 of the Procedure and Administration Regulations promulgated under the Code.

(b) In no event may Trustee invest in securities (including stock or rights to acquire stocks) or obligations issued by the Company, or any affiliate of the Company, other than a de minimus amount held in common investment vehicles in which the Trustee invests.

## **SECTION 5. Responsibility of Trustee**

(a) The Trustee shall prudently discharge its duties hereunder solely for the purposes set forth herein.

(b) Persons dealing with the Trustee shall not be obligated to look to the application of any moneys or other property paid or delivered to the Trustee or to inquire into the authority of the Trustee as to any transaction. All powers granted to the Trustee shall continue until actual distribution of the property.

(c) The Trustee shall incur no liability whatsoever by reason of any action taken or not taken pursuant to the provisions of this Agreement except for negligence, gross negligence or willful misconduct.

(d) The Trustee may consult with legal counsel (who, with the consent of Executive, may also be counsel for the Company generally) with respect to any of its duties or obligations hereunder. The Trustee may have agents, accountants, actuaries, investment advisors, financial consultants or other professionals to assist it in performing any of its duties or obligations hereunder.

## **SECTION 6. Resignation and Removal of Trustee**

(a) If the Trustee shall resign or cease to act for any reason, the Company shall have the power to appoint a successor trustee. Under no circumstances shall the Company act as trustee hereunder.

(b) The Trustee may resign at any time upon sixty (60) days' prior written notice to the Company. In the event a trustee, or a successor trustee resigns, it shall be relieved of all further liability hereunder other than to account for all property received while acting as trustee and, if applicable, to turn over such property to a successor trustee.

(c) The Company, with the approval of the Executive, may remove the Trustee at any time upon sixty (60) days' prior written notice to the Trustee, and shall appoint a successor trustee. In the event a trustee is removed it shall be relieved of all further liability hereunder other than to account for all property received while acting as trustee and, if applicable, to turn over such property to a successor trustee.

(d) The appointment of a successor trustee by the Company shall be subject to the written consent of the Executive.

(e) No successor trustee shall be liable or responsible in any way for the acts or defaults of any predecessor trustee, nor for any loss or expense caused by anything done or neglected to be done by any predecessor trustee, but such successor trustee shall be liable only for its own acts and defaults with respect to the Trust funds actually received by it as trustee. Every successor trustee shall be vested with all the

duties, rights, titles, and powers, whether discretionary or otherwise, of the original trustee. No Trustee or successor trustee shall be required to give any bond or other security for the faithful performance of its duties as such.

## **SECTION 7. Accounting by Trustee**

Trustee shall keep accurate and detailed records of all investments, receipts, disbursements and all other transactions required to be made, including, without limitation, such specific records as shall be agreed upon in writing between the Executive and the Trustee. Within ninety (90) days after the close of each calendar year and within ninety (90) days after the removal or resignation of the Trustee, the Trustee shall deliver to the Executive (with a copy to the Company) a written account of the administration of the Trust during such year or during the period from the close of such preceding year to the date of such removal or resignation setting forth all investments, receipts, disbursements and other transactions effected by it, including a description of all securities and investments purchased and sold with the cost or net proceeds of such purchase or sales, and showing all cash, securities, and other property held in the Trust at the end of such year or as of the date of such removal or resignation, as the case may be.

## **SECTION 8. Compensation and Expenses of Trustee.**

- (a) The Trustee's fees for the first twelve months have been paid by the Company. Thereafter, to the extent the Trustee's fees are not paid by the Company or the Executive, the fees shall be paid from the Trust.
- (b) All of the on-going administrative expenses shall be paid from the Trust.

## **SECTION 9. Amendment and Termination**

- (a) The Agreement and the Trust hereunder may be amended any time and to any extent by written instrument executed by the Trustee, the Executive and the Company.
- (b) The Trust shall not terminate until the date on which the corpus of the Trust has been distributed to the Executive, or forfeited in accordance with Section 2(c), in which case any assets remaining in the Trust shall be paid to the Company.

## **SECTION 10. Miscellaneous**

- (a) Any direction of the Trustee by the Company pursuant to any of the provisions of the Agreement shall be evidenced by a written notice or written direction to such effect over the signature of any officer or other representative of the Company who shall have been certified in writing to the Trustee by the Secretary of the Company, as having such authority and the Trustee shall be fully protected in acting in accordance with such written notices or written directions. Until written notice is given to the contrary, communications to the Trustee shall be sent to it as its office at The Northern Trust Company, Attn: Scott Borton/RM for UAL, 50 South LaSalle Street, Chicago, IL 60675.
- (b) The Agreement shall inure to the benefit of and be binding upon the Company, the Executive and the Trustee and their successors and assigns.
- (c) The Executive's interest and his beneficiary's interest in income or principal hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall the Executive nor the Executive's beneficiary have the power to anticipate, encumber or change such interest, nor shall such interest, while in the possession of the Trustee, be liable for or subject to the debts, contracts, obligations, liabilities or torts of the Executive or the Executive's spouse.
- (d) Wherever necessary or appropriate, the use herein of any gender shall be deemed to include the other

gender and the use herein of either the singular or the plural shall be deemed to include the other.

(e) Any provision of the Agreement prohibited by law shall be ineffective to the extent of any such prohibition, without affecting the remaining portions hereof.

(f) This trust is not intended to be an employee benefit plan within the intendment of Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended.

(g) The Agreement shall become effective, as of the day and year first above written, upon the execution of the Agreement by the Company, Trustee and Executive. It shall be governed and construed in all respect according to the law of the State of Illinois. Notwithstanding the application of Illinois law, the actual administration of the Trust may be conducted in such location, and the location of the Trust Fund assets may be changed, as the Trustee, in its sole discretion, may determine from time to time.

**IN WITNESS WHEREOF**, the parties have executed this Trust Agreement as of the date first above written.

Attest:

/s/ Mary Jo Georgen

Name: Mary Jo Georgen

Title: Assistant Corporate Secretary

**UAL CORPORATION**

By: /s/ Francesca M. Maher

Name: Francesca M. Maher

Title: Senior Vice President,  
General Counsel and Secretary

Attest:

/s/ Helen M. Stirk

Name: Helen M. Stirk

Title: Senior Vice President and  
Assistant Corporate Secretary

**THE NORTHERN TRUST COMPANY**, as Trustee

By: /s/ Scott G. Borton

Name: Scott G. Borton

Title: Vice President

/s/ Glenn F. Tilton

**GLENN F. TILTON**

EXHIBIT E

**GLENN F. TILTON  
SECULAR TRUST AGREEMENT NO. 3**

This Agreement is made as of this 5th day of September, 2002, by and among UAL Corporation, a Delaware corporation (the "Company"), Glenn F. Tilton (the "Executive") and The Northern Trust Company, an Illinois corporation, as trustee (the "Trustee").

**RECITALS:**

**WHEREAS**, this Trust Agreement is being entered into pursuant to the terms of the Employment Agreement dated September 5, 2002 (the "Employment Agreement"), attached hereto, for the purpose of establishing a trust (the "Trust") in accordance therewith; and

**WHEREAS**, the Trustee agrees to receive payment from the Company to be held pursuant to the terms of this Trust Agreement (the "Agreement").

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and other valuable consideration, the Company, the Executive and the Trustee agree as follows:

### **SECTION 1. Establishment of Trust**

- (a) The Company hereby pays to the Trustee \$1,500,000, which payment shall effect an irrevocable transfer and conveyance of all of the Company's legal title and ownership in and to such funds, and such funds shall become the principal of the Trust to be held, administered and disposed of by the Trustee as provided in this Trust Agreement. The property held by the Trustee hereunder shall constitute the trust fund ("Trust Fund").
- (b) The Trust Fund shall be held for the benefit of the Executive on the terms and conditions hereinafter set forth.
- (c) The Trust hereby established is irrevocable.
- (d) The Trust is intended to be taxed as a simple trust pursuant to the provisions of Section 651 of the Internal Revenue Code of 1986, as amended ("Code") and, as such, the Trust's income is required to be distributed currently to Executive at the times provided herein. The Trust's fiscal year is the calendar year.
- (e) Except for the limited and contingent right to receive payment of the Trust Fund as provided in Section 9(b) below, the Company shall have no legal or beneficial right or interest whatsoever in or to the Trust or the Trust Fund. Without limiting the generality of the foregoing, the Trust Fund and the principal and income of the Trust shall not constitute assets or property of the Company and shall not be subject to the claims of creditors of the Company in the event of the Company's insolvency or bankruptcy and in such event Company shall not assert that any portion of the Trust Fund constitutes assets of the debtor's estate.
- (f) This Trust shall terminate immediately upon distribution of the principal and earnings of Trust Fund to the Executive or, solely to the extent provided by Section 2(c), upon forfeiture.
- (g) In no event shall this Trust terminate later than 21 years after the death of the Executive and his current spouse.

### **SECTION 2. Payments to or on Behalf of Executive**

- (a) The Trustee shall hold, manage, invest and reinvest the Trust Fund, collect the income therefrom and dispose of the income and principal of the Trust as provided in this Section 2.
- (b) Subject only to Section 2(c) below, Executive shall be fully vested with respect to his interest in the Trust Fund and shall have all rights, title and ownership thereof.
- (c) If, as provided in the Employment Agreement, Executive's employment is terminated by Executive other than for Good Reason and the effective date of such termination is on or before September 2, 2005, then Executive will forfeit 100% of his interest in the Trust Fund. Executive or the Company may provide written notice to the Trustee of the Executive's termination (with a copy to the other party) and stating

therein whether such termination constitutes termination by the Executive for Good Reason. If the other party confirms the content of the notice, or fails to object to it within 30 days, distribution will be made in accordance with such notice and Section 2(d) below. In the event that the parties disagree with respect to the notice, the Trustee shall hold the Trust Fund and all subsequent earnings thereon until such time as the reason for termination has been resolved in accordance with the dispute resolution provisions of the Employment Agreement. In no event shall the Executive be deemed to have forfeited his interest in the Trust or the Trust Fund if his employment terminates as a result of a repudiation, rejection or similar breach of the Employment Agreement by the Company.

(d) In the event that the Trustee has not been provided written notice, as provided in Section 2(c) above, that there has occurred a forfeiture, or that there is a dispute with respect to a notice, the Trust Fund will be paid in full to Executive in a single lump-sum cash amount as of the first business day of January next following the earlier of September 2, 2005 or the Executive's termination of employment.

(e) If the Executive is deceased, then any amounts payable to the Executive pursuant to the Trust shall instead be paid to the Executive's beneficiary as provided for under the Employment Agreement.

(f) In the event the Executive must include in his gross income any or all of the value of his interest in the Trust (whether or not prior to the distribution of amounts from the Trust), then the Trustee, upon direction from the Company, shall withhold any federal, state and local taxes of whatever type that may be required to be withheld with respect to such inclusion of income, and shall distribute such amounts to the Company for its proper submission and reporting by the Company. Any amounts so included in the gross income of the Executive shall be treated as additional compensation from the Company on the earlier of September 2, 2005 or the Executive's termination equal to the value of the Trust principal as of such date. The computation of the amount to be withheld and submitted to the proper tax authorities shall be determined by the Company.

(g) All current earnings (within the meaning of Code section 651) arising from investment of the Trust Fund shall be distributed to the Executive prior to the last business day of January next following the date earned by the Trust. Such income shall be reported and taxed to the Executive under Code Section 652 as a trust distribution and not as additional compensation from the Company. The Trustee, or such other tax advisor as may be selected by the Executive, shall prepare the annual tax returns for the Trust and deliver such returns to the Trustee for review and submission to the proper tax authorities.

### **SECTION 3. Payments to Company**

The Company shall have no beneficial interest in the principal or earnings hereunder, except as provided in Section 9(b).

### **SECTION 4. Investment Authority**

(a) The Trustee shall have the authority to manage and control the Trust assets, upon written direction from the Executive and shall follow directions with respect to the investment of the Trust Fund from the Executive or any investment advisor(s), which may include affiliates of the Trustee. In the absence of such direction, the Trustee shall invest the corpus of the Trust Fund in short term securities of the United States Government. Pursuant to such authority and subject to the terms of the Agreement, with respect to any and all property at any time held by it hereunder, and whether constituting principal or income therefrom, the Trustee shall have the following powers, in addition to those conferred by law:

(1) To retain any such property as investment without regard to the proportion which such property or property of a similar character, so held, may bear to the entire amount of the Trust in which such property is held whether or not such property is of the class in which the Trustee is authorized by law or any rule of court to invest trust funds.

- (2) To sell such property at either public or private sale for cash or on credit; to exchange such property; and to grant options for the purchase thereof.
- (3) To invest and reinvest in property of any character, real or personal, foreign or domestic, including, but without limiting the generality of the foregoing, bonds, notes, securities, mortgages, common and preferred stocks, partnerships, shares or interests in investment trusts and participation in any common trust fund maintained by the Trustee, and open-end and closed-end investment companies and mutual funds, including (to the extent permitted by applicable law) companies or funds to which the Trustee acts as investment advisor and/or performs other services, regardless of the purposes for which any such company or fund was created, and any partnership, limited or unlimited, joint venture and other forms of joint enterprise created for any lawful purpose.
- (4) With respect to any investment of the Trust, to consent to and participate in any plan of reorganization, consolidation, merger, combination, or other similar plan, and to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to such plan.
- (5) With respect to any investment of the Trust, to deposit any such property with any protective reorganization or similar committee, to delegate discretionary power thereto, to pay part of its expenses and compensation and any assessments levied with respect to such property.
- (6) To exercise all conversion, subscription, voting and other rights of whatsoever nature pertaining to any such property and to grant proxies, discretionary or otherwise, in respect thereof.
- (7) To make loans of securities held in the Trust to registered brokers and dealers upon such terms and conditions as are permitted by applicable law and regulations, and in each instance to permit the securities so let to be registered in the name of the borrower or a nominee of the borrower, provided that in each instance the loan is adequately secured and neither the borrower nor any affiliate of the borrower has discretionary authority or control with respect to the assets of the Trust involved in the transaction or renders investment advice with respect to those assets.
- (8) To borrow money in such amounts and upon such terms, from itself individually or from others, for such purpose or purposes as it, in its discretion, may determine and in connection therewith to execute promissory notes, mortgages or other obligations and to pledge or mortgage any such property as security.
- (9) To employ agents, experts and counsel, including legal and investment counsel, and to delegate discretionary powers to, and rely upon information and advice furnished by, such agents, experts and counsel and to pay reasonable fees to such agents, experts and counsel.
- (10) To extend the time of payment of any obligation held by it and to compromise, settle or submit to arbitration upon such terms as to it may seem proper, or to release, any claim in favor of the Trust created hereunder.
- (11) From time to time to register any property in the name of its nominee or in its own name or to hold it unregistered or in such form that title shall pass by delivery and to place property in a custody or safekeeping account.
- (12) To receive additional property from any source and add it to, and mingle it with, the

Trust hereunder.

(13) To make any division or distribution in cash or in other property or undivided interests therein, or partly in cash and partly in other property or undivided interests therein.

(14) To make executory contracts and to grant options for any purpose and upon any terms, and to make such contracts and options binding on the Trust and enforceable against any property included in the Trust estate.

(15) To do all such acts, take all such proceedings and exercise all such rights and privileges, although not hereinbefore specifically mentioned, with relation to any such property, as if the absolute owner thereof, and in connection therewith to make, execute and deliver any instruments and to enter into any covenants or agreements binding the Trust hereunder.

(16) Notwithstanding any powers granted to the Trustee pursuant to this Trust Agreement or by applicable law, the Trustee shall not have any power that could give this Trust the objective of carrying on a business and dividing the gains therefrom, within the meaning of Section 301.7701-2 of the Procedure and Administration Regulations promulgated under the Code.

(b) In no event may Trustee invest in securities (including stock or rights to acquire stocks) or obligations issued by the Company, or any affiliate of the Company, other than a de minimus amount held in common investment vehicles in which the Trustee invests.

#### **SECTION 5. Responsibility of Trustee**

(a) The Trustee shall prudently discharge its duties hereunder solely for the purposes set forth herein.

(b) Persons dealing with the Trustee shall not be obligated to look to the application of any moneys or other property paid or delivered to the Trustee or to inquire into the authority of the Trustee as to any transaction. All powers granted to the Trustee shall continue until actual distribution of the property.

(c) The Trustee shall incur no liability whatsoever by reason of any action taken or not taken pursuant to the provisions of this Agreement except for negligence, gross negligence or willful misconduct.

(d) The Trustee may consult with legal counsel (who, with the consent of Executive, may also be counsel for the Company generally) with respect to any of its duties or obligations hereunder. The Trustee may have agents, accountants, actuaries, investment advisors, financial consultants or other professionals to assist it in performing any of its duties or obligations hereunder.

#### **SECTION 6. Resignation and Removal of Trustee**

(a) If the Trustee shall resign or cease to act for any reason, the Company shall have the power to appoint a successor trustee. Under no circumstances shall the Company act as trustee hereunder.

(b) The Trustee may resign at any time upon sixty (60) days' prior written notice to the Company. In the event a trustee, or a successor trustee resigns, it shall be relieved of all further liability hereunder other than to account for all property received while acting as trustee and, if applicable, to turn over such property to a successor trustee.

(c) The Company, with the approval of the Executive, may remove the Trustee at any time upon sixty (60) days' prior written notice to the Trustee, and shall appoint a successor trustee. In the event a trustee is removed it shall be relieved of all further liability hereunder other than to account for all property received while acting as trustee and, if applicable, to turn over such property to a successor trustee.

(d) The appointment of a successor trustee by the Company shall be subject to the written consent of the Executive.

(e) No successor trustee shall be liable or responsible in any way for the acts or defaults of any predecessor trustee, nor for any loss or expense caused by anything done or neglected to be done by any predecessor trustee, but such successor trustee shall be liable only for its own acts and defaults with respect to the Trust funds actually received by it as trustee. Every successor trustee shall be vested with all the duties, rights, titles, and powers, whether discretionary or otherwise, of the original trustee. No Trustee or successor trustee shall be required to give any bond or other security for the faithful performance of its duties as such.

#### **SECTION 7. Accounting by Trustee**

Trustee shall keep accurate and detailed records of all investments, receipts, disbursements and all other transactions required to be made, including, without limitation, such specific records as shall be agreed upon in writing between the Executive and the Trustee. Within ninety (90) days after the close of each calendar year and within ninety (90) days after the removal or resignation of the Trustee, the Trustee shall deliver to the Executive (with a copy to the Company) a written account of the administration of the Trust during such year or during the period from the close of such preceding year to the date of such removal or resignation setting forth all investments, receipts, disbursements and other transactions effected by it, including a description of all securities and investments purchased and sold with the cost or net proceeds of such purchase or sales, and showing all cash, securities, and other property held in the Trust at the end of such year or as of the date of such removal or resignation, as the case may be.

#### **SECTION 8. Compensation and Expenses of Trustee.**

(a) The Trustee's fees for the first twelve months have been paid by the Company. Thereafter, to the extent the Trustee's fees are not paid by the Company or the Executive, the fees shall be paid from the Trust.

(b) All of the on-going administrative expenses shall be paid from the Trust.

#### **SECTION 9. Amendment and Termination**

(a) The Agreement and the Trust hereunder may be amended any time and to any extent by written instrument executed by the Trustee, the Executive and the Company.

(b) The Trust shall not terminate until the date on which the corpus of the Trust has been distributed to the Executive, or forfeited in accordance with Section 2(c), in which case any assets remaining in the Trust shall be paid to the Company.

#### **SECTION 10. Miscellaneous**

(a) Any direction of the Trustee by the Company pursuant to any of the provisions of the Agreement shall be evidenced by a written notice or written direction to such effect over the signature of any officer or other representative of the Company who shall have been certified in writing to the Trustee by the Secretary of the Company, as having such authority and the Trustee shall be fully protected in acting in accordance with such written notices or written directions. Until written notice is given to the contrary, communications to the Trustee shall be sent to it as its office at The Northern Trust Company, Attn: Scott Borton/RM for UAL, 50 South LaSalle Street, Chicago, IL 60675.

(b) The Agreement shall inure to the benefit of and be binding upon the Company, the Executive and the Trustee and their successors and assigns.

(c) The Executive's interest and his beneficiary's interest in income or principal hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall the Executive nor the Executive's beneficiary have the power to anticipate, encumber or change such interest, nor shall such interest, while in the possession of the Trustee, be liable for or subject to the debts, contracts, obligations, liabilities or torts of the Executive or the Executive's spouse.

(d) Wherever necessary or appropriate, the use herein of any gender shall be deemed to include the other gender and the use herein of either the singular or the plural shall be deemed to include the other.

(e) Any provision of the Agreement prohibited by law shall be ineffective to the extent of any such prohibition, without affecting the remaining portions hereof.

(f) This trust is not intended to be an employee benefit plan within the intendment of Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended.

(g) The Agreement shall become effective, as of the day and year first above written, upon the execution of the Agreement by the Company, Trustee and Executive. It shall be governed and construed in all respect according to the law of the State of Illinois. Notwithstanding the application of Illinois law, the actual administration of the Trust may be conducted in such location, and the location of the Trust Fund assets may be changed, as the Trustee, in its sole discretion, may determine from time to time.

**IN WITNESS WHEREOF**, the parties have executed this Trust Agreement as of the date first above written.

Attest:

/s/ Mary Jo Georgen

Name: Mary Jo Georgen

Title: Assistant Corporate Secretary

**UAL CORPORATION**

By: /s/ Francesca M. Maher

Name: Francesca M. Maher

Title: Senior Vice President,  
General Counsel and Secretary

Attest:

/s/ Helen M. Stirk

Name: Helen M. Stirk

Title: Senior Vice President and  
Assistant Corporate Secretary

**THE NORTHERN TRUST COMPANY**, as Trustee

By: /s/ Scott G. Borton

Name: Scott G. Borton

Title: Vice President

/s/ Glenn F. Tilton

**GLENN F. TILTON**



# **EXHIBIT 5**

**[REDACTED]**

# **EXHIBIT 6**

**[REDACTED]**

# **EXHIBIT 7**

**[REDACTED]**

# **EXHIBIT 8**



1 MR. RONALD R. PETERSON  
on behalf of KBC Bank;

2  
3 MR. HENRY EFROYMSON  
on behalf of the Indianapolis Airport Authority;

4 MR. ANDREW ROSENMAN  
on behalf of UAL Loyalty Services;

5  
6 MR. HILLARD STERLING  
on behalf of OurHouse;

7 MR. MIKE TERRIEN  
8 MR. DAVID SANDERS  
on behalf of Air Wisconsin;

9 MR. FRUMAN JACOBSON  
on behalf of the committee;

10  
11 MR. ROBERT CLAYMAN  
on behalf of the Association of Flight Attendants,  
CWA, AFA;

12  
13 MR. JOHN MENKE  
on behalf of the PBGC;

14 MR. ERIC NEWMAN  
on behalf of the retired pilots.

15  
16 ALSO PRESENT:

17 MR. DANIEL MILLER.

18

19

20

21

22

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25

1 MR. SPRAYREGEN: Thank you, Your Honor.

2 Your Honor, that gets us back to items  
3 five and six. And Mr. Dimitrief is going to address  
4 those for the debtors.

5 MR. DIMITRIEF: Your Honor, Alex Dimitrief  
6 on behalf of the debtors. May I approach and hand up  
7 a notebook with exhibits to which I may be referring  
8 during our argument?

9 THE COURT: Mr. Dimitrief, the question I  
10 have for you is basically whether you would be  
11 entitled to relief even if everything you've put in  
12 your motion is true. I see a basic problem in the  
13 motion that you're presenting that is really separate  
14 from the facts that you've asserted. As I see it,  
15 what you're asking for is a cancellation of a major  
16 provision in an amended collective bargaining  
17 agreement that you entered into during the course of  
18 this case which involves substantial concessions from  
19 the AFA, and the rationale that you give for  
20 cancelling that provision of the agreement is the  
21 very rationale that's being asserted by the AFA.

22 To explain, the AFA relies on the  
23 provision in the amended collective bargaining  
24 agreement requiring the debtors to treat all of their  
25 employees on a ratable basis in terms of sacrifices

1 made to allow the reorganization to go forward. The  
2 AFA contends that United has not done that with  
3 respect to its salary and managerial employees. And  
4 contending that that ratable treatment has not been  
5 given, the AFA asks that its agreement with United be  
6 terminated. Now, United responds that it has treated  
7 its salaried and managerial employees ratably.

8 MR. DIMITRIEF: Yes, sir.

9 THE COURT: Well, if that's the case, then  
10 the agreement won't be terminated. What would happen  
11 is that United would establish in an arbitration  
12 proceeding that it's provided the ratable treatment  
13 of its salaried and administrative employees in  
14 conformity with its agreement with the AFA and,  
15 having established its case in arbitration, the  
16 agreement will remain in effect.

17 What United is asking to do is to  
18 eliminate the need for that hearing by saying that if  
19 the AFA were to have its agreement terminated, then  
20 the AFA would not be sharing ratably and the  
21 sacrifices made by all of the employee groups, and  
22 the other employee groups would, therefore, have a  
23 reason to terminate their agreements. The problem  
24 with that is that the AFA could only terminate its  
25 agreement if United had not been acting ratably with

1 respect to the salaried and administrative personnel.

2           Moreover, if United could stop the AFA  
3 from going forward with termination without a showing  
4 that, in fact, it's acting ratably, why couldn't  
5 United take that same approach with respect to any  
6 other union that might say United had not acted  
7 ratably with respect to the AFA, just modify their  
8 agreements and prevent them from terminating it. I  
9 don't understand the basic underpinning of the  
10 argument.

11           MR. DIMITRIEF: Yes, sir. If I could give  
12 it a try and start, and then answer any questions  
13 that come up. The difference between what AFA has  
14 done and the hypothetical situation that Your Honor  
15 posed with respect to other unions is that they  
16 served this notice of termination on the Friday  
17 before our long-scheduled deadline for a distress  
18 termination and a Section 1113(c) motion to be  
19 renewed. There is a 20-day string pursuant to which  
20 United has an opportunity to cure. We've told the  
21 AFA we don't know how to cure because we've already  
22 committed to everything that you're asking us to do.

23           THE COURT: Right. That's the point I was  
24 making. United's position espoused in the brief is  
25 that it is in full compliance with its obligations to

1 AFA to treat all of its employee groups ratably.

2 MR. DIMITRIEF: Yes, sir.

3 THE COURT: So there is nothing to cure.

4 MR. DIMITRIEF: And there is nothing to  
5 cure. But as we understand it, what the AFA is  
6 saying, pursuant to the terms of the agreement, is  
7 that if you don't cure to our satisfaction, which is  
8 a given right now because we're saying we don't know  
9 what else to do to cure the concerns that they've  
10 expressed, the agreement is done on April 28th and  
11 you revert to the --

12 THE COURT: But that may be their position.  
13 But you don't have to accede to that position. You  
14 have the right if, as you say, you've treated all the  
15 employee groups ratably to reject their position, to  
16 go to arbitration, and to establish that you've done  
17 what you were required to do.

18 MR. DIMITRIEF: Yes, sir. And were we not  
19 over two years into the case with a long-awaited  
20 trial set for May 2005 that is supposed to provide a  
21 definitive resolution once and for all of the issues  
22 that have been on the table now for nearly eight  
23 months, since last summer when we began to discuss  
24 pensions -- let me just finish because I think it  
25 gets to why we did what we did. That may be the

1 ordinary course of proceeding.

2           The problem, Your Honor, is best  
3 exemplified by the most recent arbitration that took  
4 place. As the court will recall, there was an  
5 arbitration about the AFA's claim that the CBA itself  
6 required United to make the minimum funding  
7 contributions.

8           THE COURT: Yes.

9           MR. DIMITRIEF: And that was an expedited  
10 proceeding. And everyone agrees that that went about  
11 as fast as these things possibly can, given the need  
12 to have the procedure, to have the hearing. Then you  
13 have to get the transcript. Then you do the briefs.  
14 You have to find a good arbitrator. The arbitrator  
15 takes some time to rule. That started in July and  
16 didn't finish until January 2005 --

17           THE COURT: Okay.

18           MR. DIMITRIEF: -- over five months.

19           THE COURT: All right.

20           MR. DIMITRIEF: So I guess what we're  
21 asking is under the circumstances, what we're saying  
22 is, given the pending trial date, given the  
23 importance of finality to these issues in May, what  
24 we are saying is, "You know what, AFA? If you're  
25 saying that you don't want the interim agreement,