

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Chapter 11
UAL Corporation, *et al.*,)
Debtors.) 02 B-48191
) (Jointly Administered)
)
) Honorable Eugene R. Wedoff
)
) Hearing Date: January 17, 2006 at 10:30 a.m.

**AIR LINE PILOTS ASSOCIATION, INTERNATIONAL'S (1) OBJECTION
TO DEBTORS' MOTION IN LIMINE TO BAR EVIDENCE AND (2)
RESPONSE TO DEBTORS' OBJECTIONS TO WITNESSES AND EXHIBITS**
[Relates to Docket Nos. 14683 and 14686]

Air Line Pilots Association, International ("ALPA"), files this objection to the Debtors' Motion in Limine seeking to bar evidence related to "employee morale" or "shared sacrifice" (the "Motion in Limine") and responds to the Debtors' objections to witnesses and exhibits identified by ALPA (the "Objection") with respect to the hearing to confirm the Debtors' First Amended Joint Plan of Reorganization, ALPA's Conditional Objection to the Debtors' First Amended Joint Plan of Reorganization and Objection to the Management Equity Incentive Program ("MEIP") ("ALPA's Conditional Objection"), and respectfully states as follows:

INTRODUCTION

1. In its Motion in Limine, United objects to the introduction of evidence that United's proposed MEIP would be detrimental to employee morale and breach the principle of "shared sacrifice." United contends that such evidence would be "irrelevant to" the plan

confirmation issues. *See Motion in Limine*, pp. 8-9.¹ United also alleges (in its separate Objection) that ALPA's Exhibit 3, a resolution of the ALPA United Master Executive Council, should not be admitted because it constitutes inadmissible hearsay.² United's objections should be overruled. As to relevance, ALPA has objected to the MEIP as excessive and not reasonable under 11 U.S.C. § 1129(a)(4). United staked its Chapter 11 case on a "transformation" of its business and restructuring of its labor costs and is now poised to exit bankruptcy, to a considerable degree, based upon the financial contributions made by the pilots and other employee groups. ALPA contends that the reasonableness of the MEIP, as a payment or cost associated with the plan under 11 U.S.C. § 1129(a)(4) should be reviewed by the Court taking into consideration, among other things, the degree of economic and other sacrifices by other labor groups and the pilots' (and other employees') opposition to the MEIP. These factors affect employee morale, long recognized as an important element in a reorganization. With respect to United's hearsay objection, the MEC Resolution expresses ALPA's opposition to the MEIP through the governing body of the United pilot group, the ALPA United Master Executive Council ("MEC"). The Resolution therefore does not constitute "hearsay."

EVIDENCE OF SHARED SACRIFICE IS RELEVANT

2. Throughout the case, this Court has recognized the importance of employee cooperation and fair treatment as essential elements of the Debtors' successful

¹ ALPA listed Captain Steven Derebey as a potential witness in support of ALPA's Objection to the MEIP. United has represented in its Motion in Limine that United would be willing to enter into appropriate stipulations regarding the employee sacrifices. Accordingly, assuming ALPA and United can agree upon appropriate stipulations, Captain Derebey would not be called as a witness regarding these issues.

² Proposed Exhibit 3 was passed in October, 2005. In light of the revised MEIP in connection with the settlement reached with the Creditors' Committee, the MEC today restated its opposition to the MEIP. A copy of the restated resolution is attached hereto and has been provided to the Debtors.

reorganization. *e.g.*, *In re UAL Corp.*, 307 B.R. 80, 87 (Bankr. N.D. Ill. 2004)(appointing an examiner to resolve dispute related to Debtors' Section 1114 proceedings and noting that "fair treatment of employees is key to any successful reorganization of a debtor's business"). In the context of so-call "key employee" programs to which the MEIP can be compared, courts have viewed the adverse reaction of employees as relevant, particularly where labor cost restructuring is a principal focus of the reorganization. *See In re U.S. Airways, Inc.*, 329 B.R. 793, 799 (Bankr. E.D. Va. 2005) (bankruptcy court notes that the "most compelling" objection to management bonus and severance program is employees' objection "that it represents a betrayal of the principle of 'shared sacrifice'"); *see also In re Geneva Steel Co.*, 236 B.R. 770, 773 (Bankr. D. Utah 1999) (court declined to approve incentive and severance benefits where company proposed program without consulting with union whose support was critical to the reorganization).

3. The Debtors' objection to the introduction of evidence regarding employee morale and shared sacrifice on relevance grounds should therefore be overruled. Because the MEIP is subject to a reasonableness test under 11 U.S.C. § 1129(a)(4), the Court has wide latitude to consider the factors that are relevant to such a determination. As set forth above, courts in other reorganizations involving difficult labor cost issues, perhaps most comparably, *US Air*, have considered the employees' objections to such programs germane. Accordingly, evidence of the employees' sacrifice and reaction to the MEIP would be relevant to the Court's consideration of the reasonableness of the MEIP under § 1129(a)(4), as with other "key employee" and similar programs.

THE RESOLUTIONS ARE ADMISSIBLE

4. With respect to the Debtors' Objection to ALPA Exhibit 3 (and what would now be Exhibit 5), copies of which are attached hereto, the Resolutions are not hearsay. The Resolutions express ALPA's position in opposition to the MEIP. For example, the statement that the MEIP is "far in excess of any level that could possibly be considered fair, equitable, or even normal and customary at the exit of bankruptcy" expresses ALPA's strong view that the MEIP is excessive. The Resolution's expression is not intended to prove the truth of a specific quantitative analysis of the MEIP. *See Fed.R.Evid. 801(c)* (hearsay is a statement "offered in evidence to prove the truth of the matter asserted"). ALPA Exhibits 3 and 5 are offered as the recorded opinions of ALPA, as the pilots' collective bargaining representative. It is probative of how strongly the pilots' elected representation opposes the MEIP. As such, it is non-hearsay, and is akin to an out-of-court statement offered to show the declarant's then existing state of mind. *See Fed.R.Evid. 803(3)*.³

³ Although the Resolutions should not be considered hearsay under Fed.R.Evid. 802, even if they were considered as such, then they are comparable to a "business record" under Rule 803(6) of the Federal Rules of Evidence. They are each a "record" of the MEC's opinions regarding the MEIP and generated "in the course of [ALPA's] regularly conducted business activity," *i.e.*, its scheduled MEC meeting. *See Fed.R.Evid. 803(6)*. *See, e.g., N.L.R.B. v. Local 40, Int'l Ass'n of Heat and Frost Insulators and Asbestos Workers, AFL-CIO*, 451 F.2d 119, 121 (2d Cir.1971) (minutes of union's board meeting admissible under "business-entries" exception to the hearsay rule); *Commodity Futures Trading Com'n v. Standard Forex, Inc.*, Case No. CV-93-0088 (CPS), 1996 WL 435440, *14 (E.D.N.Y. July 25, 1996) (organizational resolutions adopted by board of directors are admissible as business records).

CONCLUSION

For the foregoing reasons, the Debtors' Motion in Limine to exclude evidence regarding employee morale and shared sacrifice, and the Debtors' Objection to Exhibit 3 should be overruled.⁴

Dated: January 16, 2006

Respectfully submitted,

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⁴ The Debtors have also objected to the proposed testimony of ALPA's financial advisor, Stephen Presser, to the extent of any expert testimony "because no such [expert] testimony has been disclosed in accordance with Federal Rule 26." Objection, p. 1. ALPA listed Mr. Presser in connection with various contract matters contained in its Conditional Objection and not to provide testimony as an expert witness. In any event, based upon ALPA's continued discussions with United regarding these matters, the parties have agreed to defer the Objection to Mr. Presser's testimony and to ALPA Exhibit 4 unless the efforts to resolve the remaining open issues fail and the parties determine that they must be resolved during the confirmation hearing.

EXHIBIT 3

FM 1044 - 10/21/05

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"WHEREAS, the pilots of United Airlines have provided significant financial leadership when compared to both management and other labor groups in order to save United Airlines from potential liquidation, and

WHEREAS, this pilot group has provided over \$3 billion dollars in contractual sacrifices, in addition to the decimation of our retirement expectations, and

WHEREAS, this pilot group will receive significantly LESS than management's proposed 15% stock allocation for all our "shared sacrifices," and

WHEREAS, this proposed windfall is FAR in excess of any level that could possibly be considered fair, equitable, or even normal and customary at the exit of bankruptcy, and

THEREFORE BE IT RESOLVED, that the UAL-MEC opposes, in the strongest possible terms, the egregious and gluttonous attempt by UAL management to seize 15% of the post bankruptcy equity in our new United Airlines."

EXHIBIT 5

WHEREAS, the United MEC on October 21, 2005 passed a unanimous resolution opposing the proposed UAL management stock allocation upon exit from bankruptcy;

WHEREAS, in response to opposition from a number of objecting parties, including ALPA and the General Unsecured Creditors Committee (“GUCC”), management has reduced its demands to a level which now has been deemed acceptable to the GUCC;

AND WHEREAS, it is the desire of this body, notwithstanding the agreement between UAL and the GUCC, to restate and reaffirm our opposition to the reduced management equity program, expressed then as follows:

WHEREAS, the pilots of United Airlines have provided significant financial leadership when compared to both management and other labor groups in order to save United Airlines from potential litigation, and

WHEREAS, this pilot group has provided over \$3 billion dollars in contractual sacrifices, in addition to the decimation of our retirement expectations, and,

WHEREAS, the pilot group will receive significantly LESS than management's proposed 15% stock allocation for all our “shared sacrifices”, and

WHEREAS, this proposed windfall is FAR in excess of any level that could possibly be considered fair, equitable, or even normal and customary at the exit of bankruptcy;

THEREFORE BE IT RESOLVED, that the UAL-MEC opposes, in the strongest possible terms, the egregious and gluttonous attempt by UAL management to seize 15% of the post bankruptcy equity in our new United Airlines.

THEREFORE BE IT RESOLVED that the UAL-MEC reaffirms its opposition notwithstanding the proposed reduction in the amount from 15% to 8%.