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

In re:	)	Chapter 11
	)	
UAL CORPORATION, et al.,	)	Case No. 02-B-48191
	)	(Jointly Administered)
Debtors.	)	
	)	Honorable Eugene R. Wedoff
	)	
	)	Hearing Date: January 17, 2006
	)	Hearing Time: 10:30 a.m.
	)	

EMERGENCY PROVISIONAL MOTION OF TRUSTEES PURSUANT TO RULE 3018 TO ALLOW HOLDERS OF CLASS 2E-5 CLAIMS TO CHANGE VOTES RELATING TO DEBTORS' FIRST AMENDED PLAN OF REORGANIZATION [RELATES TO DOCKET NO. 13277]

U.S. Bank National Association, The Bank of New York, and Wells Fargo Bank Northwest, N.A. in their respective capacities as Trustee, Subordination Agent or Collateral Agent (the *"Trustees"*), pursuant to Rule 3018, hereby request this Court to allow holders of Class 2E-5 Claims to reconsider, and as applicable, to change their votes relating to Debtors' First Amended Plan of Reorganization (the "*Motion*"). In support of this Motion, the Trustees, on behalf of certain Public Debt Holders (the "*Public Debt Holders*"), respectfully state as follows:

INTRODUCTION[1]

After over two years of intense negotiations with the Trustees that resulted in a landmark global settlement that provided significant concessions to the Debtors, a last-minute agreement outside of the plan process between the Debtors and the Official Committee of Unsecured Creditors (the "*Committee*") threatens to scuttle this historic settlement and the Debtors' plan of reorganization. On the eve of confirmation, the Debtors and the Committee announced an

1 The Trustees incorporate herein by reference the Trustees' Objection to Confirmation of Debtors' Plan of Reorganization Based on Material Post-Balloting Changes to the Plan (the "*Objection*"), as if fully set forth herein. Undefined terms shall have the same meaning as set forth in the Objection.

unfair, discriminatory settlement whereby the entire unsecured creditor body, *except the Trustees and the Public Debt Holders they represent,* would receive a significant portion of the consideration flowing from this Court's May 11, 2005 Order Approving the United-PBGC Settlement (the "*PBGC Settlement*").[2]

Moreover, having agreed -- or even come up with the idea -- to exclude any PBGC UBL Claim distribution to the Public Debt Holders on their general unsecured claims the Committee's post-balloting agreement also seeks to amend the Plan to provide a previously undisclosed, expanded role for the Committee on the post-confirmation "Plan Oversight Committee."

By Settlement and Court Order, the Trustees' and Public Debt Holders' claims of approximately $3.1 billion in the aggregate are to be treated in Debtors' Plan as allowed, general unsecured claims. The Trustees, at the instruction of the Controlling Holders of each of the Public Debt Transactions, previously voted in favor of the Plan when it provided that the general unsecured claims of the Public Debt Holders would be treated *pari passu* with all other general unsecured creditors, consistent with the Settlements between the Debtors and the Trustees, as embodied in the Term Sheets. By law, the Debtors, with or without the Committee's consent, can not propose a Plan -- and the Court can not confirm a Plan -- that provides for different treatment for one group of general unsecured creditors.

In light of the significant last-minute changes in recovery amounts among similarly situated claimants and the Committee's last-minute effort to expand its role in the post-confirmation Plan Oversight Committee, the Trustees seek leave of the Court, pursuant to Rule 3018, to have an opportunity to change their previous votes upon direction by the Public Debt Holders they represent, should the Court fail to order a full resolicitation of the plan.

---

2 While the value of the additional distribution is somewhat difficult to estimate, based on Debtors' Disclosure Statement, the PBGC UBL Claim may be as much as $10 billion. The *pro rata* distribution to the Trustees for the Public Debt Holders -- the distribution that is to be excluded under the Committee's post-balloting agreement with Debtors -- could be $23 million to $97 million or more.

ARGUMENT

Federal Rule of Bankruptcy Procedure 3018(a) provides that "[f]or cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection" of a proposed plan of reorganization. FED. R. BANKR. P. 3018(a). Under very similar circumstances, the bankruptcy court in *In re Frontier Airlines, Inc.*, held that a creditor may reconsider its acceptance when its interest is adversely affected by subsequent modifications. 93 B.R. 1014 (Bankr.D.Colo. 1988). In that case, the court noted that "In this Court's view *it is the creditors' inherent right* to make that baseline decision if the modification to the plan results in a change which is adverse to the creditors' interest[]" and that "[i]f the modification adversely affects the interests of a creditor who has previously accepted the plan, in more than a purely ministerial manner, that creditor should have the opportunity to reconsider and change his or her vote." *Id.* at 1023 (emphasis added). Moreover, as a general rule, "[t]he test for determining whether cause has been shown should not be a difficult one to meet. As long as the reason for the vote change is not tainted, the change of vote should usually be permitted." *In re MCorp Financial, Inc.*, 137 B.R. 237, 238 (Bankr.S.D.Tex. 1992) (noting that absent a suspicion of improper motivation such as vote buying, votes can be changed "in order to allow the voting entity to intelligently express its will.")

This view accords with the post-1991 amendment to Rule 3018, which amended the rule to allow the court to permit a creditor to change or withdraw an acceptance or rejection for cause shown whether or not the time fixed for voting has expired. FED.R.BANKR.P. 3018 ADVISORY COMMITTEE'S NOTE-1991 AMENDMENT.

In this case, it is an unfortunate circumstance forced upon the Trustees by the last-minute agreement between the Debtors and the Committee that compels the Trustees to seek leave to change their votes so that they can seek further direction from their Public Debt Holders. The eleventh-hour agreement between the Debtors and the Committee improperly seeks to allocate significant plan consideration away from the Trustees and into the hands of all other unsecured creditors without any valid justification. Futher, the Committee, with its demonstrated inability

to safeguard the interests of the Trustees and the Public Debt Holders, as unsecured creditors, now demands an expanded opportunity to participate in the post-confirmation "Plan Oversight Committee," including the right to appoint five of 12 board members for the reorganized Debtors. This raises substantial concerns of fairness and treatment of the rights of the Trustees and the Public Debt Holders post-confirmation.

Moreover, the Public Debt Holders may want to change their vote in light of this belated disregard of their rights. Pursuant to the Debtors' First Amended Joint Plan of Reorganization (the "*Plan*"), parties voting in favor of the plan may forego any recourse for material and adverse actions taken by the Debtors or the Committee. The Plan expressly provides a bar to those voting for, or abstaining in voting on, the Plan:

> Releases by Holders of Claims and Interests: Except as otherwise specifically provided in the Plan, on and after the Effective Date, Holders of Claims and Interests (a) voting to accept the Plan, or (b) abstaining from voting on the Plan and electing not to opt out of the release contained in this paragraph (which by definition, does not include Holders of Claims and Interests who are not entitled to vote in favor of or against the Plan and in fact do not so vote) shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged the Released Parties from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever…

(Plan at 110, ¶ H.) In light of this discriminatory eleventh-hour initiative by the Committee and the Debtor to disenfranchise the Public Debt Holders and the questions it raises regarding the treatment of the rights of the Trustees and the Public Debt Holders going forward, the holders whom the Trustees represent will, at the least, need to reconsider whether to vote for a plan that provides for such releases, or the releases must be eliminated or modified.

The Trustees' request for an opportunity to change votes is based upon significant post-balloting changes to the Plan, and not on any improper purpose. Therefore, "good cause" within the meaning of Rule 3018 is shown. Moreover, as noted above, it is the Trustees' inherent right to determine whether the proposed modification results in a significant enough change to cause them to consider changing their vote.

It is important to note that the revoting process will not be easy or fast. The holders must

vote to direct the Trustees' votes on the Plan. The Trustees' and the Debtors' signficant cooperation in a difficult and elaborate process to solicit the votes of the Public Debt Holders for the prior Plan is a matter of record. The solicitation required that disclosure materials be sent to Depository Trust Company ("DTC") for distribution to the DTC Participants, then down -- sometimes several levels through nominees, custodians, etc. -- to the beneficial holders for voting (the "*DTC Solicitation Process*"). Then, the votes of the beneficial holders (the Public Debt Holders) must return, to direct the Trustees. The same DTC Solicitation Process would be required to resolicit the votes of the Public Debt Holders based on the post-balloting change in the Plan. Nonetheless, the Public Debt Holders have an absolute right to change their votes under the circumstances presented.

BASIS FOR EMERGENCY RELIEF

The Trustees and the Public Debt Holders they represent stand to suffer irreparable harm if they are prohibited from changing their votes under the circumstances. The emergency relief sought in this Motion is necessitated purely by the post-balloting, eleventh-hour plan amendments and the resulting unfair and improper discriminatory reallocation of plan consideration in favor of other parties. As such, the Trustees must move to protect the interests of the holders they represent by filing this motion. To the extent that this Court does not require new disclosure and full resolicitation of the Plan prior to considering the Debtors' Motion to Confirm the Plan, the Trustees must be permitted an opportunity to reconsider their votes on behalf of the Class 2E-5 Claim holders pursuant to Rule 3018 for good cause shown.

WHEREFORE, for all the reasons set above and in the Trustees' Objection to Confirmation, which is incorporated herein by reference as if fully set forth herein, the Trustees respectfully request that this Court: (i) grant the Trustees leave, pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure, the right to change their votes with respect to Debtors' Plan of Reorganization; (ii) enter and continue the Motion to Confirm for an adequate period to allow the Trustees to solicit votes from the Public Debt Holders, including the resolicitation of the Public Debt Holders through the DTC Solicitation Process; (iii) modify, or allow Debtors to modify, the Plan bar provision, as to the Trustees and Public Debt Holders such that a vote in favor of or against the Plan does not bar claims, if any, attributable to the discriminatory treatment of their claims; and (iv) grant such other and further relief that this Court may deem just and proper.

Dated: January 15, 2006

U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE, AS AFORESAID

By:_____/s/ Ann Acker_____
One of Its Attorneys

James E. Spiotto (ARDC #2690721)
Ann Acker (ARDC # 0007838)
Franklin H. Top, III (ARDC # 6199260)
Jeffrey G. Close (ARDC# 6224679)
James Heiser (ARDC# 6280191)
CHAPMAN AND CUTLER LLP
111 West Monroe Street
Chicago, Illinois 60603
Telephone: (312) 845-3000

Richard Hiersteiner
Jeanne P. Darcey
EDWARDS, ANGELL, PALMER & DODGE LLP
111 Huntington Ave. at Prudential Center
Boston, MA 02199-7613
Telephone: (617) 239-0326

THE BANK OF NEW YORK AS TRUSTEE AND COLLATERAL AGENT

By:_____/s/ Ann Acker_____
One of Its Attorneys

James E. Spiotto (ARDC #2690721)
Ann Acker (ARDC # 0007838)
Franklin H. Top, III (ARDC # 6199260)
Jeffrey G. Close (ARDC# 6224679)
James Heiser (ARDC# 6280191)
CHAPMAN AND CUTLER LLP
111 West Monroe Street
Chicago, Illinois 60603
Telephone: (312) 845-3000

Edward P. Zujkowski
EMMET, MARVIN & MARTIN LLP
120 Broadway
New York, New York 10271
Telephone: (212) 238-3000

WELLS FARGO BANK NORTHWEST N.A., AS TRUSTEE

By:_____/s/ Ann Acker_____
One of Its Attorneys

James E. Spiotto (ARDC #2690721)
Ann Acker (ARDC # 0007838)
Franklin H. Top, III (ARDC # 6199260)
Jeffrey G. Close (ARDC# 6224679)
James Heiser (ARDC# 6280191)
CHAPMAN AND CUTLER LLP
111 West Monroe Street
Chicago, Illinois 60603
Telephone: (312) 845-3000