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

IN RE:	)	Chapter 11
	)	
	)	Case No. 02-B-48191
UAL CORPORATION, *et al.*,	)	(Jointly Administered)
	)	
Debtors.	)	Honorable Eugene R. Wedoff
	)	
	)	
	)	Hearing Date: January 18, 2006
	)	Hearing Time: 10:30 am
	)	Objection Deadline: December 12, 2005[1]

TRUSTEES' OBJECTION TO CONFIRMATION OF DEBTORS' PLAN OF REORGANIZATION BASED ON MATERIAL POST-BALLOTING CHANGES TO THE PLAN [RELATES TO DOCKET NO. 13277]

U.S. Bank National Association, The Bank of New York and Wells Fargo Bank Northwest, N.A., each in their respective capacities as Indenture Trustee, Pass Through Trustee, Subordination Agent or Collateral Agent, as the case may be (the "*Trustees*"), and each parties to the Settlement and Term Sheets among the Trustees, the Controlling Holders for Public Debt Aircraft and the Debtors (collectively with all related documents, the "*Term Sheets*"), which, as approved by this Court, provide for comprehensive restructurings and settlement of claims with respect to aircraft in each respective transaction, hereby object to the Debtors' Motion (the "*Motion*") seeking confirmation of the Plan of Reorganization as amended, or proposed to be amended (the "*Plan*") by a last-minute, post-solicitation agreement with the Official Committee of Unsecured Creditors (the *"Committee"*) that materially and adversely affects the interests and

1 This Objection is brought pursuant to the Trustees' timely filed Reservation of Rights with Respect to Debtors' Plan of Reorganization [Dkt. No. 13907], and based on changes to the Plan proposed on or about January 12, 2006, after the objection deadline had otherwise passed. Indeed, as of this writing, the amended plan has not yet been served.

recoveries of the Trustees and the beneficiaries of the respective Trusts (the "*Public Debt Holders*").

INTRODUCTION[2]

In an eleventh-hour deal, apparently to avoid a protracted dispute over whether United Air Lines, Inc., and its affiliated Debtors in Possession ("*Debtors*") could give 15% of the equity in reorganized Debtors to Debtors' management, the Debtors and the Committee -- purportedly acting on behalf of all unsecured creditors -- agreed to direct an additional *pro rata* distribution to all classes of unsecured creditors except one -- the holders of the Unsecured Public Debt Aircraft Claims (Class 2E-5) (as previously defined, the Public Debt Holders). The additional distribution is to come from the previously unallocated 45% Debtor-assignable portion of the PBGC unfunded benefit liability claim (the "*Unassigned UBL Claim*"). The Debtors and the Committee have agreed that the Unassigned UBL Claim distribution will be distributed *pro rata* to the "Unsecured Creditor Body" except for the Public Debt Holders.

This unjustified (and vindictive) discriminatory treatment of the Public Debt Holders materially changes the terms of the Plan, requiring, at a minimum, resolicitation of votes cast almost four weeks ago. Moreover, it violates the Term Sheets among the Debtors, the Trustees and the Public Debt Holders, giving rise to an "Unwind Event"; violates the PBGC Settlement Agreement -- which was specifically modified to address the objections of the Trustees to the further assignment of the Unassigned UBL Claim[3]; and creates a Plan that is not confirmable

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2 Unless expressly indicated otherwise herein, capitalized terms shall have the same meaning as provided in the Motion or in the Joint Motion for Order Approving Settlement and Term Sheets with Trustees and Controlling Holders for Public Debt Aircraft [Docket No. 12565]

3 The agreement between Debtors and the Committee violates the terms of the PBGC Settlement, as approved by this Court. (*See* Dkt. No. 11229 (attached in relevant part hereto as **Exhibit A**), Order Approving Agreement with PBGC at ¶ 4 and Ex. 2, "Additional Terms and Conditions," at ¶¶ 3-6 (Debtors' direction of PBGC's assignment of the 45% Debtor-assignable portion of the UBL Claim made subject to: (i) "best interests of general unsecured creditors," (ii) being made in a manner consistent with

Footnote continued.

because it unfairly discriminates against the Public Debt Holders and because the Plan, as amended, is not feasible if the Trustees and the Public Debt Holders are no longer bound to the Term Sheets as a result of the Unwind Event.

For these reasons, the Trustees object to confirmation of the amended Plan with or without resolicitation. But, at a minimum, Debtors' creditors are entitled to rethink their votes in favor of the Plan in light of the material and discriminatory amendments.[4]

PROCEDURAL HISTORY

After protracted, hard bargaining the Trustees, the Controlling Holders and the Debtors achieved workable settlements embodied in the Term Sheets (the "*Settlements*"). The Settlements saved Debtors more than $5.8 billion in the aggregate from pre-petition debt obligations. (*See* Affidavit of Michael Stern in Support of Motion to Approve Settlement, Dkt. No. 12892.) The Settlements were approved by order dated September 27, 2005, upon the Joint Motion of the Trustees and the Debtors. (Dkt. No. 12927.)

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the Bankruptcy Code (not in an unfair, discriminatory manner); (iii) on 10 business days notice to Committee and the Trustees, (iv) consultation with Committee and the Trustees and (v) notice and hearing "under best interest of creditors' test in a *de novo* review; failing United's direction otherwise consistent with the foregoing, United shall direct distribution to the unsecured creditor body.").) On January 13, 2006, without meaningful consultation or any hearing, Debtors provided what purported to be "Notice of Assignment Pursuant to PBGC Agreement," simply notifying creditors of Debtors' and the Committee's decision. (Attached hereto as **Exhibit B**.) Nothing in Debtors' eleventh hour deal with the Committee, or its purported "Notice of Assignment" is consistent with the terms of the PBGC Settlement Order, which unambiguously directs that the distribution be made to the entire unsecured creditors body (as Debtors indicated in its pre-solicitation Disclosure Statement). There is no provision allowing the Debtors, even in consultation with the Committee to exclude the Public Debt Holders in a discriminatory fashion or contrary to the provisions of the Bankruptcy Code from a distribution to the "unsecured creditor body." At this stage of the proceedings, one business day from Confirmation Hearing, the Debtors and the Committee could only do what the PBGC Settlement Order provided (and the Disclosure Statement disclosed (Discl. Stmt. at 58). That is, distribution of the Unassigned UBL Claim was to be to the entire Unsecured Creditor Body, including the "Class 2E-5 Claims," previously approved by the Court as allowed, general unsecured claims.

4 The Trustees have filed herewith their Emergency Provisional Motion Pursuant to Rule 3018 to Allow Change of Votes by the Class 2E-5 Holders.

As part of the Settlements (and compromises), the Trustees agreed to accept allowed general, unsecured claims in the aggregate amount of $3.1 billion of their claims, and the allowance of those claims was approved by the Court in the September 27, 2005. Consistent with the Term Sheets, the Debtors' First Amended Plan of Reorganization, filed October 20, 2005 (the "*Plan*"), provided that the holders of the "Unsecured Public Debt Aircraft Claims" (Class 2E-5) were to receive the same "Pro rata share of the Unsecured Distribution" as all other general unsecured creditors for these claims. (*See* Plan, Dkt. No. 13277, at 40, 53.) The general unsecured claims of Trustees for Public Debt Holders were to be *pari passu* with the claims of all other general, unsecured creditors. This was the basis on which votes were solicited and cast.

As the treatment in the Plan was in accordance with the Settlements, the controlling Public Debt Holders for each Transaction (the "*Controlling Holders*") caused the Trustees to vote in favor of the Plan which provided for equal, non-discriminatory treatment for general unsecured creditors.

On or about January 12, 2006, after solicitation and voting on the Plan concluded, in order to settle the Committee's confirmation objections to the Plan, including, among other things, the inclusion of a stock incentive plan to Debtors' management, the Debtors and the Committee agreed that the Plan would be amended. (*See* "Agreement," Exhibit A to Notice of Withdrawal of Confirmation Objection of Official Committee of Unsecured Creditors as Part of Settlement, Dkt. No. 14635.) The agreed amendments include an additional, unfairly discriminatory distribution of the unallocated portion of the Unassigned PBGC UBL Claim to the entire "Unsecured Creditor Body" except Class 2E-5, the holders of Unsecured Public Debt Aircraft Claims. (*Id.*)[5]

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5 The PBGC UBL Claim (to which the Committee as part of the agreement withdrew its objection) is proposed to be an allowed claim in excess of $10 billion. The additional distribution of the Unassigned UBL Claim to unsecured creditors is therefore a substantial sum by any measure. Pursuant to the PBGC Settlement and the Disclosure Statement, this amount was to be distributed to the entire Unsecured Creditor Body, including the "Class 2E-5 Claims" (the Trustees and the Public Debt Holders). The Trustees

Footnote continued.

ARGUMENT

The fact that the Debtors and the Unsecured Creditors' Committee would agree to an "equal" treatment of all unsecured creditors, the "Unsecured Creditors Body," except for one disfavored group, the holders of Unsecured Public Debt Aircraft Claims, bespeaks a fundamental failure of the Debtors and the Committee to treat all creditors fairly and to protect the interests of all creditors in keeping with their fiduciary duties to all unsecured creditors. Moreover, such unfair disparate and discriminatory treatment of similarly situated creditors is impermissible under the United States Bankruptcy Code and applicable case law.

Because the agreed amendments will materially affect the treatment of Class 2E-5 creditors under the Plan, at the very least, votes for approval of the Plan must be resolicited. However, because the agreed amendments will result in a Plan that improperly classifies claims under § 1122 and 1123(a), and unfairly discriminates against a single group of allowed, general unsecured creditors, the Plan, as amended, can not be confirmed over the objection of the Public Debt Holders. Moreover, because the Plan, as amended, will breach the Settlements and the Term Sheets and will result in an "Unwind Event," nullifying in many respects the compromises in the Term Sheets and allowing the Public Debt Holders to repossess their aircraft collateral, the Plan, if so amended, is not feasible, and can not be confirmed.

I. Resolicitation Is Required Because the Agreed Amendments Materially Change the Terms of the Plan

It is axiomatic in bankruptcy that creditors are entitled to adequate information in voting for or against a proposed plan of reorganization. 11 U.S.C. § 1125. Any proponent of a plan modification must comply with § 1125. 11 U.S.C. § 1127. Hence, the courts have consistently

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estimate that the distribution of their shares of this additional distribution -- denied to the Unsecured Public Debt Aircraft Claims (Class 2E-5) -- could be as much as $23 million to $97 million or more.

held where any material change is made to a proposed plan after voting, new disclosure and resolicitation are required. *See, e.g., In re Concrete Designers, Inc.*, 173 B.R. 354 (Bankr.S.D.Ohio 1994); *In re American Solar King Corp.*, 90 B.R. 808 (Bankr.W.D.Tex.1988); *In re Frontier Airlines, Inc.*, 93 B.R. 1014 (Bankr.D.Colo. 1988). In deciding whether the proposed modification to the plan is "material" the question is not whether the affected creditors would change their vote, but whether the affected creditors would reconsider their vote. *In re American Solar King*, 90 B.R. at 824 ("the severity of the modification need not be such as would motivate a claimant to change their vote only that they would be apt to reconsider acceptance"). As set forth by the court in *In re Frontier Airlines, Inc.*:

> Both the change in the legislative proposal and the express language of B.R. 3019 indicate that the Court should not disenfranchise creditors from having an opportunity to vote on plan modifications based on the degree of the hurt. If the modification adversely affects the interests of a creditor who has previously accepted the plan, in more than a purely ministerial *de minimis* manner, that creditor should have the opportunity to reconsider and change his or her vote.

93 B.R. at 1023. Additionally, the *Frontier* court noted creditors' right to determine whether a change was material:

> This Court is not willing to place itself in a position of weighing whether the modification is so adverse that a creditor would be apt to reconsider acceptance. 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' interests.

Id. at 1023 FN 3.

The Plan that the Trustees voted on provided that the Public Debt Holders' Unsecured Public Debt Aircraft Claims would be treated *pari passu* with all other general unsecured claims (the *de facto* Unsecured Creditor Class), consistent with the Settlements as approved by the Court, and consistent with general principles of equity and the Bankruptcy Code. The proposed

revisions provide that all general unsecured claims, except the Public Debtholders' Unsecured Public Debt Aircraft Claims will receive additional distributions as a result of the Committee's agreement with Debtors.[6] As noted above, based on the projections in the Disclosure Statement and market indicators, those distributions directed away from the Public Debt Holders will be substantial, roughly $23 to $97 million. It seems clear that the discriminatory changes proposed by Debtors pursuant to their agreement with the Committee are sufficiently adverse to the Public Debt Holders that such holders are apt to reconsider their votes to accept the Plan. Accordingly, the amendments to the Plan are "material" and require resolicitation under §§ 1127 and 1125 of the Code.[7]

Moreover, the agreed amendments to the Plan include provisions for the Committee to have expanded power in the "Plan Oversight Committee" which was not previously disclosed. For example, the Plan suggested that the Debtors would identify their directors at or before the Confirmation Hearing. Under the proposed amendments, among other things, the Committee is to choose five of 12 directors. This change alone is material, and should require new disclosure and resolicitation. In view of the Committee's complicity in the attempt to exclude the Public Debt Holders from the Unassigned UBL Claim Distribution, the Public Debt Holders at least will want to reconsider voting for a Plan that gives such powers to the Committee, but other creditors

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6 Indeed, the separate classification for the Public Debt Holders court-approved, general unsecured claims lacks any rational basis. Prior to this latest effort to unfairly discriminate against the Public Debt Holders, when all general unsecured claims were to be treated *pari passu,* the Debtors' categorization -- for identification purposes -- of the Pulblic Debt Aircraft Claims (Class 2E-5) separate from the Unsecured Retained Aircraft Claims (Class 2E-1) and the Unsecured Rejected Aircraft Claims (Class 2E-2) or even other allowed general unsecured claims made little difference. All were *de facto* in the same "class" within the meaning of § 1122. But, the Debtors' and the Committee's belated agreement to treat equally situated creditors differently demonstrates the unfair discriminatory nature of the proposed modification of the Plan. While plans often place claims in "classes" or "subclasses" for convenience -- in order to identify them, these claims are not "classified separately" within the meaning of § 1123(a)(1), which requires classes be designated as provided in § 1122 and such classes to be treated equally as substantially similar claims. 11 U.S.C. §§ 1122 & 1123.

7 At the very least, in light of the actions of the Creditors Committee, the Public Debt Holders will need to reconsider whether to vote for a Plan that releases all claims against the Committee. *See* Trustees' Provisional Motion to Change Vote, filed herewith.

may also want to reconsider their votes as well in light of these significant changes in the Committee's post-confirmation role.

II. The Agreed Amendments Make the Plan Unconfirmable

A. The Plan Unfairly Discriminates Against the Public Debt Holders

If the Trustees with respect to any Public Debt Transaction vote against the Plan, the Plan can not be confirmed because it unfairly discriminates against the Public Debt Holders in the non-consenting Transactions. 11 U.S.C. § 1129(b)(1). A plan may only be approved over the vote of a dissenting class of creditors (a "cram down") where such plan "does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." *Id*. One form of discrimination is the inequitable treatment of classes who would have equal rights, outside of bankruptcy, to pursue remedies and collect from unencumbered assets. *See, e.g., In re Original IFPC Shareholders, Inc.,* 317 B.R. 738, 746 (Bankr. N.D. Ill. 2004) (Cox, J.). That is, equally situated parties must be treated equally.

Here, the Trustees pre-petition claims were compromised by over $5.8 billion. As discussed above, the Court approved the Term Sheets and the provisions granting the Trustees $3.1 billion in allowed, general unsecured claims, and the Debtors committed to treat those claims as such in the Plan without distinction. Under the agreement between the Committee and the Debtors, however, those claims are to be treated differently than all other allowed, general unsecured claims. The Trustees' claims are not to receive a *pro rata* distribution of the Unassigned UBL Claim that was to go to the entire general unsecured creditor body for the "best

interest of the [unsecured] creditors," but will now go to the entire unsecured creditors body except the Public Debt Holders.[8]

Once a debtor engages in discriminatory treatment, with or without the Committee's consent or impetus, the "burden is on the debtor to show that unequal treatment between classes having the same priority does not constitute unfair discrimination." *Id.* The Debtors can not meet that burden in the present case. Fairness and equity, as required by § 1129(b)(1), require that allowed, general unsecured claims such as those held by the Public Debt Holders receive the same treatment as all other general unsecured claims under a debtor's plan. *See, e.g., In re Pine Lake Village Apartment Co.*, 19 B.R. 819, 831 (Bankr. S.D.N.Y. 1982). When a debtor creates classes of unsecured claims separate from other unsecured claims and then unfairly discriminates against those similarly situated claimants, "such treatment of unsecured claims is unfairly discriminatory within the meaning of 11 U.S.C. § 1129(b)(1)." *Id.*

There is no fair and equitable basis to discriminate against the allowed, general unsecured claims of the Public Debt Holders already approved by this Court. Accordingly, if the Public Debt Holders in any Public Debt Transaction vote against the Plan, the Plan can not be confirmed by cramdown.

B. The Agreed Amendments Make the Plan Infeasible

Section 1129(a) of the Bankruptcy Code provides that the court shall confirm a plan only if all of the requirements of the section are met. 11 U.S.C. § 1129(a). Among these is the requirement set forth in Section 1129(a)(11) that the court determine that the plan is feasible – specifically that, confirmation of the plan is not likely to be followed by the liquidation, or the

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8 It should be beyond doubt that all allowed, general unsecured claims should be classified the same and treated the same under §§ 1122 and 1123(a), especially in the eyes of the fiduciaries for all general unsecured claims.

need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan. 11 U.S.C. §1129(a)(11).

a. The Committee Settlement Contravenes Court Approved Term Sheets.

(i) The Order approving the Term Sheets allows the Trustees' claims as allowed, general unsecured claims.

The Term Sheets expressly granted the Trustees allowed, general unsecured claims in agreed upon amounts (See, Term Sheet, V. I.). The Plan, as drafted and submitted to creditors generally for voting, incorporated the provisions of the Term Sheets by classifying the Trustees' claims as general unsecured claims, afforded the same treatment as all other general unsecured claims a *pro rata* share of the unsecured distribution. The Plan as proposed prior to balloting, and the applicable provisions of the PBGC Settlement, provided that the Unassigned UBL Claim would go to the Unsecured Creditor Body as a whole, including the "Class 2E-5" Claimants; and that is what the unsecured creditors, including the Public Debt Holders voted for and approved. Now, having solicited votes upon that treatment, and with voting now complete, the Debtors (purportedly at the request and demand of the Committee) and the Committee are attempting to unilaterally alter that treatment. The Committee Settlement expressly and unabashedly diverts recoveries away from the Trustees and the Securityholders to other unsecured creditors.

(ii) A Plan inconsistent with the Term Sheets gives rise to an Unwind Event under the Term Sheets.

The Trustees' agreement to enter into the Term Sheets on behalf of the Public Debt Holders was expressly conditioned upon the restructurings set forth therein constituting a final deal, binding upon the Debtors and the Trustees and all other parties in interest. The Debtors, in fact, cited the need for finality in the Joint Motion, stating that "[t]he Term Sheets will bring finality to the disposition of the Public Debt Aircraft, allowing the Debtors to move forward with its business plan and ultimately to exit from bankruptcy". (Dkt. No. 12565 at ¶ 36.)

To that end, the Term Sheets provide that the financings and the transactions subject to the Term Sheets shall not be subject to different treatment in any plan of reorganization. See, (Term Sheet, Section V.(A)). To give effect to this requirement, the Term Sheets provide that the filing of any plan of reorganization by the Debtors which contains provisions that are inconsistent with the provisions of the Term Sheets or the Transaction Documents, or that prohibit the payment of amounts contemplated to be paid thereunder, and where such provision has not been clarified, corrected or resolved to the reasonable satisfaction of the respective Trustee prior to the conclusion of the disclosure statement hearing, constitutes a "Plan Filing Default" under the Term Sheets. A "Plan Filing Default" in turn constitutes a "Term Sheet Default" under the Term Sheets. (See Term Sheet, Section V.(A)(c)). Upon the occurrence of a "Term Sheet Default," the respective Trustee may declare an Unwind Event by written notice to United. Following the occurrence of an Unwind Event, the agreements of the parties contained in the Term Sheets, subject to certain exceptions, terminate as of the date of the Unwind Event and thereafter are not binding on any party to the Term Sheets or the Debtors' estates. Essentially, the occurrence of the Unwind Event not only will set the Debtors' back to square one in their efforts to negotiate a settlement with the Trustees and the the Public Debt Holders they represent, but will also, among other things, revive all claims of the Trustees compromised under the Term Sheets and reinstate the rights of the Trustees under Section 1110(c) to repossess aircraft.

b. Without the Agreement of the Trustees on Behalf of the Public Debt Holders, Debtors' Plan Is Not Feasible and Should Not be Confirmed.

The Debtors have explicitly acknowledged, in pleadings to this Court, that the feasibility of its Plan depends on the successful implementation of the restructuring set forth in the Term Sheets. In urging the Court to approve the Term Sheets, Debtors emphasized that "no remotely feasible, timely, or affordable alternative exists." (Joint Motion, Dkt. No. 12565, at ¶ 6.) Indeed, the Debtors called the settlement reached under the Term Sheets "one of the most important transactions in these cases," the absence of which would "imperil its reorganization." (*Id*. at ¶¶

35-36.) The Debtors described the Term Sheets as "the only feasible alternative" if the Debtors were to move forward with its restructuring and exit from chapter 11. (*Id*. at ¶ 39.) Specifically, the Debtors argued forcefully to this Court of its "pressing need for virtually all of the remaining Public Debt Aircraft" the loss of which would "cast grave doubt on United's emergence from chapter 11." (*Id*. at ¶¶ 4 and 6.) The Debtors stated to the Court that its exit plan is predicated on operating a fleet which has the Public Debt Holders' wide body aircraft at its core, and that it does not have "planes to spare." (*Id*. at ¶ 20.) The Debtors admitted that it "does not have the ability to mitigate its losses if the [Public Debt Holders] repossessed the …Public Debt Aircraft", and "it is not feasible for United to obtain replacement aircraft." (*Id*. at ¶ 24.) In their own words, the loss of the Public Debt Aircraft would "render[ing] United's business plan unachievable." (*Id*. at ¶ 23.)

Because the Trustees would have the right to unwind the Settlements if so directed by the Controlling Holders in each Transaction, giving rise to the potential to repossess the aircraft, the projections upon which the Plan is based, including Debtors' fleet size and projected revenue are in doubt. As a result, the Plan is not feasible absent the Settlements, and can not be approved over the Trustees or the Public Debt Holders' Objections.

C. The Trustees Object to the Committee's Post-Reorganization Oversight and Corporate Governance Provisions.

The Committee's brazen attempt to disenfranchise the Public Debt Holders to the benefit of a favored subset of unsecured creditors constitutes a blatant disregard of its fiduciary duties to members of its constituency. Yet, in the same proposed settlement in which it seeks to favor other unsecured creditors and throw the Public Debt Holders under the proverbial bus, it also seeks the right to designate 5 of 12 United Board members, which would give it considerable power, and fiduciary responsibilities, over literally hundreds of thousand of stakeholders in the reconstituted Debtors', including members of the Public Debtholder Group.

The Committee's continuing conduct, apparently driven by its unremitting opposition toward the Public Debt Holders for their defense of their clear legal rights in this case, renders it uniquely unqualified to protect creditors and other stakeholders going forward.[9]

CONCLUSION

For all the foregoing reasons, the Court should deny Debtors' Motion for Confirmation of the Plan as amended pursuant to agreement with the Unsecured Creditors Committee, or enter and continue Debtors' Motion for Confirmation and order a new disclosure and solicitation of votes based on the material changes in the Plan, and grant the Trustees such other relief as the Court deems fair and just.

Dated: January 15, 2006

RESPECTFULLY SUBMITTED:

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

By /s/ Ann E. Acker
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9 Courts have consistently held that a Committee's duty is to the entire body of creditors it represents, and can not act in the interest of some creditors over others, and have not hesitated to take action to rectify unfair discriminatory action by Committees. *See, e.g.*, *In re Thrifty Oil Co.*, 205 B.R. 1009, 1020 (N.D. Cal. 1997) ("The OCC had a fiduciary duty to act in the best interest of all creditors and should not have used the vehicle of the draft [competing] plan to advance the interest of certain creditors.")

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