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 13th 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 **CREDITORS COMMITTEE'S OBJECTION TO PLAN CONFIRMATION AND APPROVAL OF RELATED PLAN SUPPLEMENT DOCUMENTS,** a copy of which is attached hereto and hereby served upon you.

Dated: December 13, 2005

Respectfully Submitted,
By: /s/ Fruman Jacobson

Fruman Jacobson (ARDC No. 1315846)
Robert E. Richards (ARDC No. 6199138)
SONNENSCHEIN 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)
SONNENSCHEIN 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

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

CREDITORS COMMITTEE'S OBJECTION TO PLAN CONFIRMATION AND APPROVAL OF RELATED PLAN SUPPLEMENT DOCUMENTS

Related Docket No.: 13277

The Official Committee of Unsecured Creditors (the "Committee") submits this objection (the "Objection")[1] to the confirmation of the Debtors' Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Plan"). In support thereof, the Committee states as follows:

PRELIMINARY STATEMENT

In the Disclosure Statement, the Debtors identified certain unresolved issues and concerns of the Committee with respect to the Plan, including, but not limited to, the size and terms of the Management Equity Incentive Program, the composition of the post-emergence Board of Directors and other corporate governance issues, the disposition of

[1] The Committee separately filed objections to the claims of the Pension Benefit Guarantee Corporation ("PBGC") (Docket No. 12877) and "claims" created and allowed for the SAM employees in the Plan (Docket No. 13886), which are hereby incorporated by reference. This objection supplements the Preliminary Objection of the Official Committee of Unsecured Creditors to Debtors' Proposed Management Incentive Plan (Docket No. 13767).

The Committee has raised other issues with the Debtors with respect to the Plan and Plan Supplement Documents and is also seeking additional information and documents through informal and formal discovery requests. To the extent that these issues are not resolved prior to confirmation or the Committee obtains additional information or documents relevant to the Plan through discovery, the Committee reserves the right to supplement this objection.

Plan consideration reserved by the Debtors, the treatment of executory contracts, unexpired leases and retained causes of action, and the scope of rights and remedies of a plan oversight committee.

The Debtors and the Committee have continued discussions regarding those issues. While progress has been made and is continuing, a number of the Committee's concerns, described more fully below, remain open. Accordingly, in order to preserve its right to pursue any remaining objections to the Plan at the confirmation hearing, the Committee files this formal objection. Notwithstanding this objection, the Committee fully supports the Debtors' intention to emerge from Chapter 11 in February 2006.

Specific Objections to Plan Provisions[2]

1. Management Equity Incentive Plan ("MEIP"): Under the Plan and/or Plan supplement documents, senior management proposes to give itself and up to 400 unidentified salaried employees an extraordinarily lucrative equity incentive program given the circumstances of this case. Under the MEIP, eligible management employees may receive stock options, stock appreciation rights ("SAR's"), other rights to acquire

[2] As the proponents of the Plan, the Debtors have the burden of establishing that the Plan satisfies each and every element of 11 U.S.C. § 1129(a) as a prerequisite to the Court's confirmation of the Plan. *In re Repurchase Corp.,* 332 B.R. 336, 342 (Bankr. N.D. Ill. 2005) ("when a Chapter 11 plan of reorganization is advanced, the plan's proponent has the burden of proving by a preponderance of evidence that the plan complies with statutory requirements for confirmation) (citing *United States v. Arnold & Baker Farms (In re Arnold & Baker Farms),* 177 B.R. 648, 654-55 (9th Cir. BAP 1994)); *see also In re Crowthers McCall Pattern, Inc.*, 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990) (the plan proponent bears the burden of proving that all the requirements of Code § 1129(a) have been met). This Court, in turn, has the obligation to independently assess whether the Plan proponents -- the Debtors -- have satisfied all of the elements of section 1129 of the Bankruptcy Code. *See In re Keck, Mahin &* Cate, 241 B.R. 583, 592 (Bankr. N.D. Ill. 1999) (noting that without independent judicial evaluation section 1129(a)(7) "would be a meaningless protection for dissenters"); *In re Northeast Dairy Cooperative Federation, Inc.*, 73 B.R. 239, 248 (Bankr. N.D.N.Y. 1987) (noting that the court has the independent obligation to see that the plan proponent has complied with the provisions of § 1129). This duty is imposed on the court notwithstanding an absence of objection to a plan. *In re Zaleha*, 162 B.R. 309, 313 (Bankr. D. Idaho 1993) ("Regardless of whether a valid objection to confirmation has been asserted, the Code imposes upon the Court a mandatory duty to determine whether a plan meets all the requirements for confirmation delineated in § 1129(a) of the Code").

stock, and/or restricted stock awards from a reserve of 15% or 18,750,000 shares of the issued and outstanding new common stock of reorganized UAL. This equity reserve would be valued at approximately $285,000,000 based on the $1,900,000,000 total equity value upon emergence projected by the Debtors' financial advisors.[3] The Debtors propose to grant 10,000,000 shares (approximately 8% or $152,000,000 in estimated value) in some form upon emergence.[4] The MEIP, as structured by the Debtors, also permits concurrent grants of the remaining 7% share reserve to members of the same group. Neither the emergence grants nor the additional grants are based on any performance measures, whether tied to achieving management's business plan, the performance of the UAL shares against a comparative industry stock basket (such as is used in other industry equity plans) or any other reasonable performance measures. Moreover, none have a well-designed vesting schedule to ensure continued loyalty to the post-emergence United.

A similar equity emergence program (10% of the equity for 500 employees) with some performance metric proposed by the debtors in the Delphi Corporation (Bankr. S.D.N.Y. Case No. 05-44481) drew the objection of every creditor constituency. The objectors argued, *inter alia*, that the grant to the senior management and salaried employees could be detrimental to the morale of those employees while the debtors seek substantial concessions in the Section 1113 and 1114 process,[5] the emergence bonuses

---

[3] Based on the equity value indicated by claims trading in a range double the Debtors' estimated recovery range, the MEIP reserve may be worth as much as $580 million.

[4] Although the MEIP does not identify specific recipients or the size of their respective grants, the Debtors' compensation consultants described a potential grant to one executive of $38.4 million in stock that might vest over a three year period and another $33.6 million over an unknown period of time, for a total equity package of $72 million.

[5] Citing *In re Geneva Steel Co*., 236 B.R. 770, 773 (Bankr. D. Utah 1999) (debtors failure to gain the support of the unionized workforce for executive compensation program grounds for disapproval); *In re*

were not reasonable and fair to creditors and the estate,[6] the proposed grant was not in keeping with the new direction of conservatism, restraint and transparency with respect to executive pay,[7] and the debtors had failed to deliver sufficient detail regarding the proposed payouts or aggregate compensation for eligible employees to determine whether the proposed program was reasonable.[8] The objections are equally applicable here.

The Debtors must meet a heightened standard under Section 363 of the Bankruptcy Code which provides authority for debtors to implement employee incentive programs such as the MEIP. The section provides that the "[debtor-in-possession] after notice and a 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); *see In re Aerovox,* 269 B.R. 74 (Bankr. D. Mass. 2001) (discussing section 363(b) in ultimately approving a proposed key employee retention motion). While motions under section 363 generally only require demonstration of a debtor's business judgment, any transaction involving insiders - such as the Debtors' officers and directors - are subjected to a heightened scrutiny. *See Regensteiner*, 122 B.R. at 326. The *Regensteiner* court rejected the business judgment test in evaluating an executive compensation program reasoning that officers and directors of a corporate debtor-in-possession are also fiduciaries to both the debtor and its

---

U.S. Airways, 329 BR 793, 797 (Bankr. E.D. Va. 2005) (declining to approve severance and retention package for senior executives on the ground that the programs were a "betrayal of shared sacrifice championed by the company").

[6] Citing *In re Regensteiner Printing Co*., 122 B.R. 323 (N.D. Ill. 1990) (reversing approval of employment agreements with senior executives for failure to scrutinize the insider transactions to ensure that the proposed transaction were fair); *In re America West Airlines, Inc.*, 171 B.R. 674, 678 (Bankr. D. Ariz. 1995)

[7] *See e.g*. Section 503 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8§331 (2005); *U.S. Airways*, 329 B.R. at 797 ("[T]here is something inherently unseemly in the effort to insulate the executives from financial risks all other stakeholders face in the bankruptcy process").

[8] It appears that Delphi Management, including the Chief Executive Officer Robert S. "Steve" Miller, is heeding the outrage from its creditor constituency. Jeffrey McCracken & John D. Stoll, *Delphi to Revise Proposal to Union*, Wall Street Journal, Dec. 10, 2005, at A3.

creditors. *Id.* at 326 (citing *Wolf v. Weinstein*, 372 U.S. 633, 642-45 (1963)).

Accordingly, the court found that any transaction between insiders and a debtor must be examined to determine that the transaction is fair to the estate and its creditors. *Id*. The Debtors must show (other than by mere conclusory allegations) that the current officers will not continue to serve in their capacities unless the MEIP is approved, and that the Reorganized Debtors will be unable to attract better or comparable talent without granting the extraordinary levels set forth in the MEIP. *Regensteiner*, 122 B.R. at 326. The Court must also look at the facts of the case and determine whether the costs of the proposed incentive plans are justified by the projected benefit to creditors. *In re Fleming Packaging Corp*., No. 03-82408, 2005 WL 2205703, at *6 (Bankr. C.D. Ill. Aug. 26, 2002)(fiduciary must show the "entire fairness" of the transaction); *Regensteiner*, 122 B.R. at 326 (noting nominal payments to creditors and the lack of an independent trustee as factors to requiring scrutiny of the proposed transaction)(citing *In re Club Dev. & Mgmt. Corp*., 27 B.R. 610, 612 (9th Cir. 1982)).

The Debtors have not publicly disclosed as required by Sections 1129(a)(4) and (5) of the Bankruptcy Code or made available to the Committee their proposal for the total compensation packages for the senior-level executives, taking into account salary, bonuses, KERPs and other benefits in addition to the proposed equity allocation in the MEIP.[9] The lack of disclosure makes it impossible to evaluate whether the MEIP can be justified. On its face, however, the size and the structure of the MEIP appear contrary to

[9] The MEIP is only one feature, albeit an extremely significant one, of the benefits created or preserved for the senior executive and salaried employees (including in certain instances former employees) under the Plan. These benefits include reaffirmation of benefit and bonus programs, $1 billion SAM Claim and $56 million SAM Note, and significant distributions under the Debtors' now extinguished long term incentive plan or LTIP.

the interests of the creditors who are the future shareholders of the company, at odds with the comprehensive cost reductions characterizing this bankruptcy case, out of keeping with the industry standards, and as a result, at odds with the confirmation requirements set forth in Sections 1129(a)(4), (5) and 1129(a)(1) which incorporates Section 363 of the Bankruptcy Code.[10]

2. <u>Board Composition</u>: The Plan provides for unsecured creditors in various classes, union employees, and retirees to receive 100% of the common stock of the Reorganized UAL, subject to dilution on the conversion of certain notes and after a reserve for a reasonable management incentive program. Despite the allocation of the new stock, the Debtors have declined to provide fair board representation to the new shareholders. As a result, the Plan fails at this point to meet the standards of disclosure and corporate process embodied in the confirmation requirements of Sections 1129(a)(5) and 1129(a)(1) incorporating Section 1123(a)(7).

"Section 1129(a)(5) requires a host of disclosures and approvals with regard to the post-confirmation management of the revested debtor." 7 *Collier on Bankruptcy*, ¶ 1129.03[5] (Lawrence P. King, *et al*., eds. 15th ed. 1997). Under Section 1129(a)(5)(A)(i), the Debtors must disclose the identity and affiliations of post-confirmation management. Under Section 1129(a)(5)(B), the Debtors must disclose the identity and compensation of any insider that the reorganized debtors will employ or retain. Disclosure satisfies only one purpose of Section 1129(a)(5), i.e., to allow the court to determine whether the employment of particular insiders is consistent with public

[10] As part of its preliminary objection to the MEIP, filed December 7, 2005, the Committee sent discovery on the Debtors to elicit appropriate disclosure.

policy and the best interest of the creditors. *See In re Beyond.com Corp*., 289 B.R. 138, 145 (Bankr. N.D. Cal. 2003) ("[W]ithout adequate disclosure, the court cannot conduct an intelligent analysis of whether the continuance of those parties in their roles is consistent with the interests of creditors and equity security holders and with public policy"). It does not satisfy the main purpose, i.e., to permit creditors to weigh the merits of keeping existing management in charge of the reorganized company. 7 *Collier on Bankruptcy*, ¶ 1129.03[5] at 1129-42 ("[O]ften prepetition management bears some of the responsibility for the debtor's filing, and creditors and equity security holders are entitled to know that history will not necessarily repeat itself."). *See In re Rusty Jones, Inc*., 110 B.R. 362 (Bankr. N.D. Ill. 1990) (confirmation denied under section 1129(a)(5) on the grounds that the continuation in office of the officers and directors was not consistent with the interests of creditors because debtors continued to operate in red as a result of their expenditures and governance); *In re Sunflower Racing, Inc*., 219 B.R. 587 (Bankr. D. Kan. 1998) (refusal to confirm plan on the grounds, among others, that the debtors failed to satisfy Section 1129(a)(5) by providing full detail with respect to the post emergence officers and directors); *In re M.S.M. & Assocs., Inc*., 104 B.R. 312 (Bankr. D. Haw. 1989) (confirmation denied on the basis of failure to disclose officers, directors and employees particularly where there were disputes among the shareholders).

The Plan currently also fails to meet the requirements of 11 U.S.C. §1123(a)(7) which requires that a plan "contain only those provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director or trustee under the plan and any successor to such officer, director or trustee." This provision "directs the scrutiny of the

court to the methods by which the management of the reorganized corporation is to be chosen, so as to ensure, for example, adequate representation of those whose investments are involved in the reorganization." *See In re Machne Menachem, Inc.*, 304 B.R. 140, 142 (Bankr. M.D. Pa. 2003).[11] According to the court, "[t]he provision was originally suggested by the Securities and Exchange Commission and was intended to make certain…that provision will be made in the plan for the selection--or at least for the mechanics or means of selecting—the management which will carry forward the reorganization in the interest of the parties." *Id.* (citing *Hearings on H.R. 6439*, 75th Cong., 143 (1937)). *See also In re Wabash Valley Power Ass'n, Inc.*, No. 85-2238-RWV-11, 1991 Bankr. LEXIS 2213 (Bankr. S.D. Ind. Aug. 7, 1991) (confirmation denied under section 1123(a)(5) for failure to meet state law with respect to dissolution of company and shareholder election of directors); *In re Mahoney*, 80 B.R. 197, 202 (Bankr. S.D. Cal. 1987) (confirmation denied in part as a result of the debtor's attempt to control selection of directors in violation of California Corporations Code); *In re Washington Group, Int'l*, No. BK-N-01-31627, 2001 Bankr. LEXIS 2150, at *22-23 (Bankr. D. Nev. Dec. 21, 2001) (approving the selection by creditors of a board majority as consistent with Section 1123(a)(5) and Delaware law.)

In sum, the confirmation requirements are intended to ensure an active participation in the selection of the post emergence Board by the new shareholders.

[11] Citing 7 *Collier on Bankruptcy* ¶ 1123(a)(7) n. 14-15 (Lawrence P. Summers, *et al*., eds. 15th ed. 2003) (citing S. Rep. No. 1916, 75th Cong., at 35 (1938)) (this quotation is from the Senate Report accompanying the Chandler Act, and was stated with respect to section 216(11) of the 1898 Bankruptcy Act—the predecessor of 1123(a)(7)).

3. Additional Consideration: The Debtors' settlement with the PBGC provided that the PBGC would assign to the Debtors 45% of the recovery on its allowed claim. The Debtors committed to the Committee at the time of the PBGC settlement that part of the 45% giveback would be allocated to unsecured creditors if not allocated pursuant to approved deals. The Committee consented to the APG Settlement under which a portion of the 45% giveback (up to a $100 million cap) would be given to the APG. Aside from the APG deal, the Committee believes the Debtors must now commit that the remainder of the 45% giveback to the other unsecured class and employee distributees.

Similarly, the Debtors are holding in reserve the recovery on approximately $1 billion in debentures that were repurchased pre petition, but not cancelled. The Debtors have kept these bonds in effect to distribute consideration on a discriminatory basis to favored parties without any oversight or objection. Rather than allowing a private cache for management to use to further discriminate against general unsecured creditors, the recovery on these debentures should simply be redistributed. The giveback feature of the PBGC settlement and the notes held in treasury give the Debtors substantial plan consideration that they can gift as they see fit without regard to the Bankruptcy Code's priority scheme or the requirement of equal treatment of similarly situated creditors. However, the use of plan consideration as a gift in bankruptcy case law has not been approved or addressed in a published decision in either this District or the Seventh Circuit.[12] The gifting doctrine has been rejected or significantly restricted in other

[12] In the Seventh Circuit there is law that collusive arrangement to convert estate assets available for all creditors generally to assets available for selected creditors favored by the Debtors may be viewed as a fraudulent transfer as to the disfavored creditors who no longer have access to such assets. See e.g. The Nostalgia Network, Inc. v. Lockwood, 315 F.3d 717 (7th Cir. 2002); 11 U.S.C. § 544 and 548.

jurisdictions. S*ee In re Armstrong World Industries, Inc.*, 2005 WL 428523 (D. Del. Feb. 23, 2005); *In re CGE Shattuck, LLC*, 254 B.R. 5 (Bankr. D. N.H. 2000) (noting that the requirements of the Code cannot be avoided by private agreement and denying a secured creditor's efforts to gain approval of commitment to share proceeds with certain designated unsecured creditors); *In re Scott Cable Communications*, 227 B.R. 596 (Bankr. D. Conn. 1998) (denying confirmation of pre-packaged plan intended to pay creditors with the exception of tax claims); *In re Sentry Operating Co. of Texas, Inc.*, 264 B.R. 850, 862-5 (Bankr. S.D. Tex. 2001) (gifting which discriminated between unsecured creditors denied because senior creditor could not "without any reference to fairness, decide which creditors get paid and how much those creditors get paid."). None of the gifting cases involve the Debtors' use of plan consideration as the Debtors reserve the right to use it here.

4. Plan Committee Powers and Duration: Under the Plan, the Debtors reserve sole and absolute discretion after the effective date to object to or allow claims in all classes, including cure claims (whether filed after the applicable bar date), pursue or settle a broad range of retained causes of action, reject or assume pre petition contracts, to determine when to begin distributions and how to dispose of large blocks of shares—all of which could materially impact the value of stock held by unsecured creditors. In Article XV.D., the Plan provides for creation of a post-confirmation oversight committee (the "Plan Committee") which is nominally the successor to the Committee and the proffered balance to the broad discretion the Debtors have reserved for themselves in the Plan as reorganized debtors. The Plan Committee, however, has virtually none of the Committee's powers. In several critical areas, the Reorganized Debtors merely report to

the Plan Committee regarding proposed actions, but the Plan Committee has no standing to challenge the proposed actions. Moreover, the Debtors propose to dissolve the Plan Committee long before the Plan is fully implemented, thereby leaving material issues affecting unsecured creditors without any committee representation whatsoever.

In sum, the Debtors have extended the powers and rights of debtors in the Bankruptcy Code for themselves post-emergence, but they have not provided the concomitant oversight and authority of a committee for the protection of creditors. The Debtors cannot operate the business and administer the estate post-confirmation with the benefits of the Bankruptcy Code provisions for debtors free of the protections granted to creditors under the Bankruptcy Code. *See Hansen, Jones & Leta, P.C. v. Segal*, 220 B.R. 434, 473 (D. Utah 1998) (improper for debtors to operate post-confirmation free of protections granted to creditors under the Bankruptcy Code).

The Committee proposal for the Plan Committee is annexed hereto as Exhibit A.

5. Executory Contracts and Leases: The Plan provides for the improper preservation of the Debtors' ability to defer assumption or rejection of certain executory contracts and unexpired leases post-confirmation. Section 365(d)(2) expressly provides: "the trustee [debtor-in-possession] may assume or reject an executory contract or unexpired lease … at any time before the confirmation of a plan"). 11 U.S.C. §365(d)(2).[13] The Supreme Court has also made abundantly clear that "[i]n a Chapter 11 reorganization, a debtor-in-possession has until a reorganization plan is confirmed to decide whether to accept or reject an executory contract, although a creditor may request

[13] The time may be extended post confirmation where there is a pending motion on confirmation pursuant to the court's retention of jurisdiction. *See e.g., In re Kroh Bros. Dev. Co.,* 100 B.R. 480, 484 (Bankr. W.D. Mo. 1989).

the Bankruptcy Court to make such a determination within a particular time." *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 529 (1984) (superseded in part by statute on other grounds). *See also In re Travelot Co*., 286 B.R. 462, 466 (Bankr. S.D. Ga. 2002) (citing *Data-Link Sys. Inc. v. Whitcomb & Keller Mortgage Co*. (*In re Whitcomb & Keller*), 715 F.2d 375, 379 (7th Cir. 1983); *In re Resource Tech. Corp.*, 254 B.R. 215 (Bankr. N.D. Ill 2000). Section 365 and the caselaw are clear: a debtors' chapter 11 plan may not elect to assume or reject executory contracts or unexpired leases after the confirmation date, and the fact that the Debtors propose to retain this authority in violation of section 365(d)(2) renders their plan unconfirmable pursuant to section 1129(a) of the Bankruptcy Code.

6. Retained Causes of Action: The Plan provides for a release by the Debtors to a number of parties including the Committee's members, their individual attorneys and the professionals retained by the Committee and a typical exculpation of the same parties, along with the Debtors, their professionals and others. As part of their Plan Supplement, however, the Debtors filed a nearly 500 page list of "Retained Causes of Action." This list includes certain Committee professionals and professionals retained by individual Committee members to represent their particular interests in these cases. The retention of these actions, which are implausibly and vaguely described, eviscerates both the release and exculpation provisions.[14]

[14] The Committee professionals named in the Retained Causes of Action list include: Sonnenschein Nath & Rosenthal LLP, Leaf Group LLC, Saybrook Restructuring Advisors, KPMG, Heidrick & Struggles, and Sperling & Slater PC. Advisors to individual Committee members who were named include: Dorsey & Whitney (counsel for U.S. Bank), Lowenstein Sandler (counsel for the IAM), Kelley Drye & Warren (counsel to the PBGC), Gardner Carton & Douglas (counsel to HSBC), Kaye Scholer (counsel to Stark Investments) and Greenburg Traurig (counsel to the City of Chicago). The Debtors seek to retain a cause of action against Sonnenschein for breach of contract and indemnification, among other actions.

The retention of far fetched causes of action against Committee professionals and members is intended to chill the acts and conduct of the Committee. The Committee objects to any alleged reservation of a cause of action against its professionals, the professionals retained by individual committee members or the members themselves in their capacity as committee members for the purpose of these cases. These reservations are not necessary and the alleged "Retained Causes of Action" against these parties should be expunged from the Plan Supplement.

7. Blank Check Preferred: The Plan provides for an amendment to the Charter of the reorganized company to authorize the issuance of no series or blank check preferred stock. The Committee learned that the Charter provision is intended, among other things, to allow the Debtors to implement a poison pill. The Committee objects to the Charter provision for the following reasons. First, the intention to arm the Debtors with a poison pill is material and should have been set forth in detail in the Disclosure Statement. Second, poison pills adopted without stockholder approval are highly disfavored by institutional investors who are the likely purchasers of the new common stock, thus, the ability to implement a poison pill without shareholder ratification will depress the value of the stock in the market.[15] Third, the blank check preferred could be

[15] *See* Soren Lindstrom, *Shareholder Activism Against Poison Pills: An Effective Antidote?*, 9 No. 2 Wallstreetlawyer.com: Sec. Elec. Age 17 (July 2005) (a company with a poison pill in place suffers a significant downgrade in Institutional Shareholder Services' ratings system (Corporate Governance Quotient); Fidelity also dislikes poison pills); Morton A. Pierce, Michael J. Aiello & Matthew J. Gilroy, *Taking a Hard Look at 'Poison Pills': Criticism of Shareholder Rights Plans Gains Momentum*, 234 N.Y.L.J. 9 (Nov. 7, 2005) ("Standard & Poor's generally deduct points automatically for any company with a [poison pill] that has not been approved by its shareholders"); s*ee also Amanda Acquisition Corp. v. Universal Foods Corp.*, 877 F.2d 496, 501 (7th Cir. 1989) ("[s]tock of firms adopting poison pills falls in price, as does the stock of firms that adopt most kinds of anti-takeover amendments to their articles of incorporation."); *News Corp. Investors Sue Over 'Poison Pill' Extension*, Bloomberg.com, Oct. 7, 2005, *available at* http://www.issproxy.com/pressroom/inthenews/100705bloomberg.htm (on the heels of News Corporation's decision to extend a poison pill without a shareholder vote, its "Class A shares fell 12 cents to $14.98, a 52 week low. . .shares have fallen 20 percent this year").

issued by management to block a threatening acquisition to the detriment of the common shareholders. The Committee has proposed restrictions on the issuance of the blank check preferred that comports with current corporate policy and shareholder enfranchisement.

CONCLUSION

Based upon the above, the Committee objects to confirmation of the Plan.

Dated: December 13, 2005

Respectfully Submitted,

SONNENSCHEIN NATH & ROSENTHAL, LLP

By: Fruman Jacobson
Fruman Jacobson (ARDC No. 1315846)
Robert E. Richards (ARDC No. 6199138)
8000 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6404
312-876-8000 (telephone)
312-876-7934 (facsimile)

-and-

Carole Neville (CN/733)
Mark Fink (MF/8665)
SONNENSCHEIN NATH & ROSENTHAL LLP
1221 Avenue of the Americas
24th Floor
New York, New York 10020-1089
212-768-6700 (telephone)
212-768-6800(facsimile)

Attorneys for the Official Committee of Unsecured Creditors

CERTIFICATE OF SERVICE

I, Fruman Jacobson, an attorney, certify that on the 13th day of December 2005, I caused to be served, a true and correct copy of the foregoing **CREDITORS COMMITTEE'S OBJECTION TO PLAN CONFIRMATION AND APPROVAL OF RELATED PLAN SUPPLEMENT DOCUMENTS**, on: (i) the Core Group by facsimile and electronic mail; and (ii) the 2002 Service List by electronic mail.

Dated: December 13, 2005

/s/ Fruman Jacobson
Fruman Jacobson

Fruman Jacobson, Esq. (ARDC No. 1315846)
SONNENSCHEIN NATH & ROSENTHAL LLP
8000 Sears Tower
Chicago, Illinois 60606
(312) 876-8000

EXHIBIT A

2. Plan Oversight Committee

a. Plan Oversight Committee Existence: On the Effective Date, the Creditors' Committee shall be dissolved, all existing members of the Creditors' Committee shall be released and discharged from office, and there shall be created the Plan Oversight Committee, which shall be deemed a successor-in-interest to the Creditors' Committee for all purposes and which shall be subject to the jurisdiction of the Bankruptcy Court.

b. Plan Oversight Committee Membership

(i) The Plan Oversight Committee shall consist of three members, who previously were members of the Creditors' Committee, selected by the Creditors' Committee. The Creditors' Committee shall notify the Debtors, in writing, of the identities of the three members of the Plan Oversight Committee at least five (5) business days prior to the Confirmation Hearing.

(ii) In the event any member of the Plan Oversight Committee assigns all or substantially all of its Claim or releases the Debtors from any further distribution on its Claim, such assignment or release shall constitute the resignation by such member from the Plan Oversight Committee, unless otherwise agreed to by the Reorganized Debtors and each remaining member of the Plan Oversight Committee. In the event of a resignation or removal of a member of the Plan Oversight Committee for any reason, a replacement shall be designated by the remaining members of the Plan Oversight Committee. If the Reorganized Debtors object to the selection of the initial or replacement members of the Plan Oversight Committee, they may apply to the Bankruptcy Court for appropriate relief, and pending a determination by the Bankruptcy Court, the proposed members shall not be given access to additional confidential or proprietary information concerning the Reorganized Debtors.

c. Plan Oversight Committee Governance: The Plan Oversight Committee shall have the power to adopt rules of procedure and may choose one of its members to act as chairman. The Plan Oversight Committee shall act by majority vote of its members.

d. Plan Oversight Committee Standing in the Bankruptcy Case: The Plan Oversight Committee, post-Effective Date, has standing to participate in the following Bankruptcy Court proceedings:

(i) any appeal from or motion related to the Confirmation Order;

(ii) matters related to proposed modifications or amendments to the Plan;

(iii) all applications for allowance of compensation to professional persons;

(iv) any action to enforce, implement or interpret the Plan, to compel the Debtors to make distributions under the Plan, or to adjust the New UAL Stock Reserve;

(v) any appeal from a material matter in the Chapter 11 Cases, to the extent that (A) the Plan Oversight Committee has moved to estimate or objected to such Claim pursuant

ARTICLE XV.D.2.e(ii) below; or (B) the Committee has moved to estimate or objected to such Claim prior to the Effective Date, and the Plan Oversight Committee's position in such estimation or objection proceeding is materially different from the position of the Reorganized Debtors;

(vi) any Avoidance Actions, to the extent that the Plan Oversight Committee's position is materially different from the position of the Reorganized Debtors;

(vii) claims objections originally filed by the Committee, including, without limitation, objections to the PBGC claim, TIA and SAM Distribution and SAM Note or claims objected to by the Committee pursuant to ARTICLE XV.D.2e(ii) below;

(viii) disputes regarding liquidation and administration of the Retiree Convenience Class Stock;

(ix) disputes regarding a decision to change a rejection decision to assumption or to make a change of control payment where (i) the payment exceeds $1,000,000 or (ii) the payment is being paid to a current or former member of management;

(x) disputes regarding prosecution, settlement or decisions not to prosecute retained causes of action involving amounts over $50 million;

(xi) any damages or similar claim or lawsuit, including, without limitation, based on antitrust laws, asserted against the Debtors by Independence Air and/or its affiliates or successors, either in these cases or in some other forum; or

(xii) such other matters as may be agreed upon in advance and in writing by the Reorganized Debtors in their reasonable discretion and the Plan Oversight Committee.

e. Claims Objections, Avoidance Actions, and Other Matters

(i) Every month for the first six months after the Effective Date and periodically as appropriate thereafter (but no less than quarterly), the Reorganized Debtors shall report to and consult with the Plan Oversight Committee concerning:

(A) the status of reconciliations, estimations, objections, resolutions, allowance and settlement of Claims (including without limitation administrative and cure claims) and procedures therefor, and any distributions on account of disputed Claims;

(B) reserves established on account of such Claims;

(C) distributions on account of such Claims;

(D) administration and planned sales of stock in connection with distributions to Holders of Convenience Class Claims;

(E) payments of withholding taxes, if any, in connection with distributions under the Plan;

(F) the status of any Avoidance Actions; and

(G) appeals of material matters in the Chapter 11 Cases.

(ii) The Plan Oversight Committee may request that the Debtors or Reorganized Debtors, as appropriate, estimate or object to any particular Claim (or category of similar types of claims) with an estimated or with a face amount in excess of $1,000,000, failing which the Plan Oversight Committee, for good cause shown and after giving the Debtors or Reorganized Debtors a reasonable period of time and opportunity, but in no event less than thirty (30) days, object to such Claim, may file a motion seeking to commence such an objection or estimation on behalf of the estate, and the Debtors or Reorganized Debtors shall cooperate in all reasonable respects in connection with the foregoing; provided, however, that the Plan Oversight Committee shall not object to any Claim (A) previously settled between the Debtors or Reorganized Debtors and the respective Creditor pursuant to Court order, or (B) to which the Reorganized Debtor, in their reasonable business judgment, have determined that it is not appropriate to object. The Plan Oversight Committee shall have no liability to any party for any action or omission to act with respect to Claims.

(iii) The Debtors or Reorganized Debtors, as appropriate, shall report to and consult with the Plan Oversight Committee regarding their decision to (A) alter the treatment (i.e., from assume to reject and vice versa) of an executory contract or unexpired lease (or category of related or similar contracts) after the Confirmation Date or (B) pay a late asserted cure claim, in either event if the cure Claim or rejection damage Claim exceeds $1,000,000.

(iv) The Debtors or the Reorganized Debtors, as appropriate, shall give the Committee advance notice if the Effective Date is later than sixty (60) days after the Confirmation Date.

(v) The Debtors or Reorganized Debtors, as appropriate, shall give the Plan Oversight Committee advance notice if the Distribution Date is later than sixty (60) days after the Effective Date.

(vi) Prosecution, settlement or decisions not to prosecute retained causes of action involving amounts over $50 million.

f. Plan Oversight Committee Compensation, Expense Reimbursement, and Professional Representation

(i) Plan Oversight Committee Member Expense Reimbursement: The members of the Plan Oversight Committee shall serve without compensation, but they shall be reimbursed by the Reorganized Debtors for their reasonable and necessary out of pocket expenses incident to the performance of their duties within thirty (30) days of their submission of a detailed invoice, without further order of Court. In the event that the Reorganized Debtors or the Plan Oversight Committee objects to the amount of expenses requested by a member to be reimbursed, the

Reorganized Debtors shall pay any undisputed portion and the objecting party shall file an objection to the balance with the Bankruptcy Court, which shall determine the amount to be paid.

(ii) Professional Compensation: The Plan Oversight Committee may retain such attorneys, accountants and other professionals as are reasonable and necessary to assist the Plan Oversight Committee in the performance of its duties; provided, however, that the Plan Oversight Committee shall provide the Reorganized Debtors with five (5) business days advance notice of any such retention. Such professionals shall be compensated and reimbursed by the Reorganized Debtors for their reasonable fees and necessary out of pocket expenses on written invoice within thirty days of their submission of such invoice, without further order of Court. In the event that the Reorganized Debtors or the Plan Oversight Committee objects to the amount of fees and/or expenses sought by Committee's professionals, the Reorganized Debtors shall pay any undisputed portion and the objecting party shall file an objection to the balance with the Bankruptcy Court, which shall determine the amount to be paid.

g. Exculpation of Post Confirmation Committee: Except for their own gross negligence or willful misconduct, the members of the Post Confirmation Committee shall not be liable to, and shall be exculpated under the Plan for any liability to, any person or entity for any act taken or omitted by them and may, in good faith, exercise or fail to exercise any of their rights, duties, obligations or powers, nor shall the Committee's agents (in their capacity as such) be responsible for any recitals, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of the Plan, the Disclosure Statement or any exhibit thereto or be liable to any person or entity for any action taken or omitted by them in the Chapter 11 Cases or otherwise in connection with their duties.

h. Plan Oversight Committee Duration: The Plan Oversight Committee shall be dissolved and its members discharged and released by order of the Bankruptcy Court at the earlier of (a) upon completion of the functions assigned the Plan Oversight Committee, (b) upon approval of its own application to the Bankruptcy Court, or (c) once 85% of the total equity reserved for the unsecured creditor body under the Plan has been distributed to such creditors; provided, however, that notwithstanding the foregoing, upon notice to the Plan Oversight Committee and a hearing at any time after the First Distribution Date, the Reorganized Debtors may apply to the Bankruptcy Court for the dissolution of the Plan Oversight Committee for good cause shown.

i. Rights and Powers of the Plan Oversight Committee:

(i) Notwithstanding anything contained in the Plan to the contrary, the rights and powers of the Plan Oversight Committee are strictly limited to those matters expressly enumerated in ARTICLE XV.D., and such rights and powers may only be exercised in a matter consistent with the terms and conditions set forth therein. Accordingly, nothing in ARTICLE XV.D. of the Plan (nor in any other section of the Plan) shall confer on the Plan Oversight Committee the right to intervene in the claims objection, avoidance action, or other proceedings in any way related to the Plan or the administration of the Post-Confirmation Estate under Section 1109 of the Bankruptcy Code, Bankruptcy Rule 7024, or otherwise. The Plan Oversight Committee may not seek leave of court to expand its role beyond that set forth in ARTICLE

XV.D. of the Plan without the prior written consent of the Reorganized Debtors, which may be withheld in the Reorganized Debtors' sole or absolute discretion.

(ii) Except as otherwise expressly and specifically provided in the Plan or as agreed to by the Reorganized Debtors, (A) the Plan Oversight Committee is bound by the terms of the Plan and cannot seek to modify, terminate, alter, or amend any terms of the Plan, and (B) the Plan Oversight Committee is bound by any and all order(s) entered in the Chapter 11 Cases and cannot seek to modify, terminate, alter, amend, appeal, or vacate any such orders.