

**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)
Reorganized Debtor.	)	Honorable Eugene R. Wedoff
	)	
	)	
	)	
	)	
	)	

---

**NOTICE OF MOTION**

To: Daniel E. Cohen  
Paul D. Cullen, Sr.  
David A. Cohen  
The Cullen Law Firm, PLLC  
1101 30th Street NW, Suite 300  
Washington, DC 20007

Kevin McBride  
McBride Law, PC  
609 Deep Valley Drive, Suite 300  
Rolling Hills Estates, CA 90274

PLEASE TAKE NOTICE that on June 21, 2011, at 9:30 a.m., or as soon thereafter as counsel may be heard, we shall appear before the Honorable Eugene R. Wedoff or any Judge sitting in his stead, in Courtroom 744, 219 South Dearborn Street, Chicago, Illinois, and shall then and there present the attached **Motion to Reopen Chapter 11 Cases of UAL Corporation and UAL Loyalty Services, Inc. for the Limited Purpose of Enforcing this Court's Prior Orders, Including the Confirmed Plan, Confirmation Order and Discharge Injunction**, a copy of which is hereby served upon you.

Dated: June 7, 2011

**UAL CORPORATION AND UAL LOYALTY  
SERVICES, INC.**

/s/ Michael Slade

James H.M. Sprayregen

David R. Seligman

Michael B. Slade

KIRKLAND & ELLIS LLP

300 North LaSalle Street

Chicago, Illinois 60654

(312) 862-2000 (telephone)

(312) 862-2200 (facsimile)

Counsel for the Reorganized Debtors

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

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>UAL CORPORATION, et al.,</b>	)	<b>Case No. 02 B 48191</b>
	)	<b>(Jointly Administered)</b>
<b>Reorganized Debtors.</b>	)	<b>Honorable Eugene R. Wedoff</b>
	)	

**MOTION TO REOPEN CHAPTER 11 CASES OF UAL CORPORATION  
AND UAL LOYALTY SERVICES, INC. FOR THE LIMITED PURPOSE  
OF ENFORCING THIS COURT’S PRIOR ORDERS, INCLUDING THE CONFIRMED  
PLAN, CONFIRMATION ORDER AND DISCHARGE INJUNCTION**

---

UAL Corporation and UAL Loyalty Services (collectively, “United” or the “Reorganized Debtors”) hereby move to reopen the chapter 11 cases of UAL Corporation and UAL Loyalty Services for the limited purpose of enforcing the Reorganized Debtors’ confirmed Plan of Reorganization (the “Plan”), this Court’s Order confirming it (the “Confirmation Order”), and the discharge injunction provided by the Plan, Confirmation Order, and 11 U.S.C. § 1141.

United’s emergence from Chapter 11 protection was a seminal event in the company’s history—it completed a four-year process of restructuring the company’s operations and balance sheet, resolving billions of dollars in legacy liabilities, and ultimately achieving a largely consensual plan covering the rights and obligations of United and tens of thousands of creditors. Accordingly, United does not take lightly its request to reopen these cases, and is only doing so out of necessity. More than seven hundred former creditors (many of whom who actively participated in United’s Chapter 11 cases) have filed a lawsuit in the United States District Court for the District of Columbia that is—in addition to being factually and legally baseless—clearly discharged and contrary to multiple orders entered during the course of these Chapter 11 cases. More importantly, the lawsuit would (if successful) fundamentally alter the deal struck between United and its many thousands of creditors in the confirmed Plan.

In support of this motion, the Reorganized Debtors respectfully state as follows:

**Jurisdiction**

1. This Court has jurisdiction over this motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief requested herein are section 350 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Rules 3022 and 5010 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”).

**Background**

3. On December 9, 2002, UAL Corporation, United Air Lines, Inc., and 26 other direct or indirect wholly-owned subsidiaries (including United Loyalty Services, LLC) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The chapter 11 cases were administratively consolidated as case no. 02-48191 in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the “Court”).

4. As the Court undoubtedly recalls, many of United’s legacy liabilities were addressed, hotly litigated, and ultimately resolved during the course of these Chapter 11 cases. One of those liabilities was a series of pre-petition defined benefit pension plans covering United’s unionized employees. Indeed, as the Seventh Circuit accurately remarked, “[a] major impediment to United exit from bankruptcy [was] its pension liability, which total[ed] \$4.5 billion for the next four years.” *In re UAL Corp.*, 428 F.3d 677, 679 (7th Cir. 2005). Ultimately, all of United’s defined benefit pension plans were terminated by the Pension Benefit Guarantee Board (“PBGC”), in proceedings that were appealed and affirmed by the Seventh Circuit.<sup>1</sup>

---

<sup>1</sup> See, e.g., *In re UAL Corp.*, 468 F. 3d 444, 449 (7th Cir. 2006); *Pension Benefit Guaranty Corporation v. United Air Lines, Inc.*, 436 F. Supp. 2d 909, 910 (N.D. Ill. 2006).

5. In addition to issuing findings of fact and conclusions of law that led to the final order confirming PBGC's pension termination, this Court also approved several settlement agreements bearing directly on the defined benefit pension plans. First, over fierce opposition from (among others) many retired pilots, this Court approved a settlement agreement between United and the Air Line Pilots Association ("ALPA"), in which ALPA agreed (among other things) not to challenge the termination of the defined benefit pension plan covering United pilots (the "Pilot Plan"). Case No, 02-48191, Docket No. 9933. Among other things, the ALPA Settlement Agreement provided that if the Pilot Plan was terminated by the PBGC, United would propose in its Plan of Reorganization that ALPA receive \$550 million in unsecured notes for distribution to its members. The ALPA-United agreement was appealed, but this Court's Order approving the agreement was affirmed by the district court and the Seventh Circuit. *See In re UAL Corp.*, 443 F.3d 565, 572 (7th Cir. 2006)

6. Second, this Court approved a settlement between United and the PBGC. Case No. 02-B-48191, Docket No. 11229. The PBGC Settlement Agreement contemplated the termination of United's defined benefit pension plans. *Id.* In exchange, PBGC received a \$10.3 billion pre-petition claim against United's estate based on the termination of all of United's pension plans. In addition, the agreement required United as part of the Plan of Reorganization to provide the PBGC with \$500 million in senior notes, \$500 million in contingent notes, and \$500 million of preferred stock, in addition to whatever new UAL common stock PBGC would receive under United's Plan of Reorganization. *Id.* The PBGC Settlement Agreement released United—on behalf of the PBGC and the pension plans—from any and all liability having to do with United's pension plans. And the PBGC Settlement Agreement was approved by this Court,

the District Court, and the Seventh Circuit. *See Ass'n of Flight Attendants v. United Air Lines, Inc.*, 333 B.R. 436 (N.D. Ill. 2005), *aff'd* 428 F.3d 677 (7th Cir. 2005).

7. On January 20, 2006, the Court entered the Confirmation Order, confirming the Plan effective February 1, 2006. *See* Case No. 02-B-12191, Docket No. 14829. United's Plan explicitly incorporated the settlement agreements on which it was based, including the PBGC Settlement Agreement and the ALPA Settlement Agreement. United served notice of the occurrence of the Effective Date on all of their creditors, including all of their current and former employees, each of their unions (including the Air Line Pilots Association), and all of the retired pilots, including those who had challenged the termination of the Pilot Plan in multiple ways as part of the United Retired Pilots Benefits Protection Association (also known as "URPBPA"). On the Effective Date, United made the payments required by the Plan, releasing billions of dollars in notes and stock based on the termination of the Pilot Plan and the other transactions on which the Plan was based.

**The Plan Discharged All Pre-Confirmation Claims Against United**

8. The Plan discharged all claims against United that arose before the entry of the Confirmation Order. In relevant part, the Plan provides as follows:

Pursuant to Section 1141(d) of the Bankruptcy Code . . . the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release . . . of Claims and Causes of Action of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, whether known or unknown, against, liabilities of, liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims, rights, and Interests, including, without limitation, demands, liabilities, and Causes of Action that arose before the Confirmation Date . . . and all debts of the kind specified in Sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not (i) a Proof of Claim or Interest based upon such debt, right, or Interest is Filed or deemed Filed pursuant to Section 501 of the Bankruptcy Code, (ii) a Claim or Interest based upon such debt, right, or Interest is allowed pursuant to Section 502 of the

Bankruptcy Code, or (iii) the Holder of such a Claim, right, or Interest has accepted the Plan . . . Plan, Art. X.B.

9. The Plan also specifically enjoined any action against the Reorganized Debtors on account of claims that were released or settled under the Plan. The Plan provides that:

Except as otherwise expressly provided in the Plan or for obligations issued pursuant to the Plan, all Entities who have held, hold, or may hold Claims against or Interests in the Debtors or against the Released Parties and Exculpated Parties are permanently enjoined, from and after the Effective Date, from: (i) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claim against or Interest in the Reorganized Debtors, the Exculpated Parties, the Released Parties, any statutory committee or members thereof, and the employees, agents, and professionals of each of the foregoing (acting in such capacity); . . . and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claim against or Interest in the Reorganized Debtors, the Released Parties, the Exculpated Parties, any statutory committee or members thereof, and the employees, agents, and professionals of each of the foregoing (acting in such capacity) released or settled pursuant to the Plan. Plan, Art. X.J.

10. All entities are barred from commencing actions against United relating to any claim that was covered by the Plan's discharge. *See* Confirmation Order. In addition, the Bankruptcy Code permanently enjoins all entities from collecting from a reorganized debtor any debt discharged pursuant to a chapter 11 plan. *See* 11 U.S.C. § 524(a)(2) ("A discharge in a case under this title operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived."). Thus, upon the Effective Date, the discharge injunction absolutely and completely protects United against any actions against it to recover claims based on conduct that pre-dated February 1, 2006. The termination of the Pilot Plan pre-dated Plan confirmation, and United did not provide any information to the PBGC post-confirmation; thus, there is no good faith argument to circumvent United's discharge with any "new" claims based on the termination of the Pilot Plan.

11. Pursuant to the Plan, this Court maintained jurisdiction to resolve matters relating to the chapter 11 proceedings. In particular, the Court retained jurisdiction to:

Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunction, and other provisions contained in Article IX of the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunction, and other provisions;

Hear and determine matters arising out of, related to, or concerning the Section 1113 Restructuring Agreements and any related documents, the distributions and consideration called for in the Section 1113 Restructuring Agreements and any related documents, or the Debtors' restructuring of their labor and pension costs.

Plan, Art. XIV.

**Plaintiffs' Asserts Pre-Confirmation Claims Against The Reorganized Debtors.**

12. On December 29, 2010, 466 members of the Pilot Plan and their representative, United Pilots for Justice, Inc. (collectively, the "Plaintiffs"), filed an action (the "Complaint") against UAL Corporation, United Loyalty Services, LLC, the board of directors of UAL Corporation, for alleged violations of §§ 4062, 4069 and 4042 of the Employment Retirement Income Security Act of 1974 ("ERISA") relating to the termination of the Pilot Plan. The Plaintiffs have since amended the Complaint twice, and have added approximately 250 additional plaintiffs (to a total of more than 700). United is currently analyzing the most recent list of Plaintiffs, but it appears that the majority (approximately 60%) were members of URPBPA during United's Chapter 11 cases. Others were likely members of ALPA during that time period.<sup>2</sup>

---

<sup>2</sup> Attached as Exhibit B is a copy of Plaintiffs' Original Complaint. Attached as Exhibit C is a copy of Plaintiffs' Second Amended Complaint. United can provide the Court with a copy of its Motion to Dismiss and its Motion to Transfer if the Court either at the hearing on this motion or after the D.C. District Court rules on United's Motion to Transfer.

13. The thrust of the Plaintiffs' Complaint is that the PBGC's decision to enter into the PBGC Settlement Agreement and to terminate the Pilot Plan was the result of fraud during United's Chapter 11 reorganization. Plaintiffs' theory is that United somehow tricked *all* of its creditors, lenders, unions, the PBGC, the Bankruptcy Court, the District Court, and the Seventh Circuit about the value of its assets. Plaintiffs claim that United "hid" from all of these sophisticated entities the value of its Mileage Plus® program, and assert that had United informed PBGC of the "true" value of Mileage Plus®, either United somehow could have emerged from Chapter 11 with the Pilot Plan intact, or the PBGC would have achieved a better recovery in the PBGC Settlement Agreement on account of Pilot Plan termination.

14. On June 7, 2011, United filed motions with the United States District Court for the District of Columbia: (1) to dismiss; and (2) to transfer of the Complaint to the United States District Court for the Northern District of Illinois. Once transferred to the Northern District of Illinois, the Complaint would be automatically referred to this Court as part of the District's Internal Operating Procedures.

#### **Relief Requested**

15. United seeks entry of an order reopening the chapter 11 cases of UAL Corporation and UAL Loyalty Services, Inc. for the limited purpose of enforcing the discharge injunction in the Plan, the Confirmation Order and the Bankruptcy Code in connection with the Complaint. Reopening these chapter 11 cases would permit the Plaintiffs' complaint, upon its transfer to the Northern District of Illinois, to be referred to this Court pursuant to 28 U.S.C. § 157(a) and Internal Operating Procedure 15(a) of the U.S. District Court for the Northern District of Illinois. United would then ask this Court to rule on its Motion to Dismiss, and for any other applicable relief.

## Argument

16. The Bankruptcy Code provides that “[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.” 11 U.S.C. §350(b). One of the “other causes” recognized for reopening a bankruptcy is the need to enforce a confirmed plan, confirmation order, or associated discharge injunction. *See, e.g., Redmond v. Fifth Third Bank*, 624 F.3d 793, 798 (7th Cir. 2010) (“A bankruptcy court may, for example, reopen a case for the correction of errors, amendments necessitated by unanticipated events that frustrate a plan's implementation, and the need to enforce the plan and discharge.”) (citing *In re Zurn*, 290 F.3d 861, 864 (7th Cir. 2002)).

17. This Court has discretion, and may consider a number of factors in determining whether to reopen, including: (1) the length of time that the case has been closed; (2) whether the debtor would be entitled to relief if the case were reopened; and (3) the availability of other courts, such as state courts, to entertain the claims. *Redmond*, 624 F.3d at 798. All of these factors soundly favor reopening the United cases at this time.

18. **First**, a final decree was entered in United’s Chapter 11 cases in December 2009. These Chapter 11 cases lasted seven years and they have only been closed for 18 months. If Plaintiffs had any viable claims against the Defendants (and they do not), those claims accrued well prior to the entry of a final decree by this Court. The Plaintiffs should not be able to avoid this Court merely by waiting so long to pursue their discharged claims that a final decree in one of the largest Chapter 11 cases in history had been entered in the interim. Moreover, United sought reopening promptly after learning of the need to enforce the Plan’s discharge injunction. Indeed, United sought to reopen this case as part of filing its responsive pleading to the Plaintiffs’ Complaint.

19. **Second**, while United’s motion to dismiss will describe in more detail the bases for dismissal, the Reorganized Debtors are clearly entitled to enforce the discharge injunction set forth in the Plan, in the Confirmation Order and afforded to them under sections 524(a) and 1141(d) of the Bankruptcy Code. Case law soundly supports reopening a chapter 11 case to enforce a discharge under section 524 of the Bankruptcy Code. For instance, in *Texaco Inc. v. Sanders*, the bankruptcy court reopened a similarly large chapter 11 case—of Texaco Inc.—to exercise jurisdiction over Texaco’s motion asserting that certain respondents were in violation of the discharge injunction in the confirmation order and the Bankruptcy Code. *In re Texaco*, 182 B.R. 937, 944 (Bankr. S.D.N.Y. 1995); *see also In re Kiker*, 98 B.R. 103, 103-04 (Bankr. N.D. Ga. 1988) (a debtor’s motion to reopen a chapter 13 case to enforce the discharge provided by section 524 is a core proceeding).

20. In any event, it is appropriate for the Court to hear the Complaint because it relates closely to the Court-approved ALPA and PBGC Settlement Agreements and to the Plan and the Confirmation Order. *See Texaco*, 182 B.R. at 947 (“[a] bankruptcy court is undoubtedly the best qualified to interpret and enforce its own orders including those providing for discharge and injunction and, therefore, should not abstain from doing so.”); *In re Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 6 F.3d 1184, 1194 (7<sup>th</sup> Cir. 1993) (“the reorganization court should not abstain from interpreting its own consummation order absent extraordinary circumstances”). Indeed, Plaintiffs’ Original and Second Amended Complaints explicitly refer to the ALPA and PBGC Settlement Agreements and to multiple orders entered during the course of United’s Chapter 11 cases, including the Confirmation Order. Ex. A, Compl. ¶¶ 8, 31-32; Ex. B, Second Amended Compl. ¶¶ 48-51, 54-55, 58, 65. Because the Complaint implicates this Court’s jurisdiction to interpret the Plan and its orders, this Court should reopen the chapter 11 cases.

21. **Third**, while Plaintiffs' Complaint should be dismissed regardless of where it is heard, this is by far the most efficient and effective forum in which this suit should be litigated and Plaintiffs' claims deemed discharged. United intends to seek sanctions against the Plaintiffs for violations of the discharge injunction. Such claims could only be brought to this Court upon reopening of these Chapter 11 cases. *See Cox v. Zale Delaware, Inc.*, 239 F.3d 910, 917 (7th Cir. 2001) (“[A]ffirmative relief can be sought only in the bankruptcy court that issued the discharge. In such a case the proper procedure would indeed be to reopen the bankruptcy proceeding, since the debtor would be seeking to enforce the order of discharge issued in that proceeding. A court retains jurisdiction to enforce its injunctions.”).

#### **Notice**

22. Notice of this motion has been given to: (a) the Office of the United States Trustee for the Northern District of Illinois; and (b) the Plaintiffs, through their counsel. The Reorganized Debtors submit that such notice is appropriate under the circumstances and that no other or further notice is required.

WHEREFORE, United respectfully requests that the Court enter an order, substantially in the form of Exhibit A hereto, reopening the cases of UAL Corporation and UAL Loyalty Services, and granting such other and further relief as the Court deems appropriate.

Dated: June 7, 2011

**UAL CORPORATION AND UAL LOYALTY  
SERVICES, INC.**

/s/ Michael Slade

James H.M. Sprayregen

David R. Seligman

Michael B. Slade

KIRKLAND & ELLIS LLP

300 North LaSalle Street

Chicago, Illinois 60654

(312) 862-2000 (telephone)

(312) 862-2200 (facsimile)

Counsel for the Reorganized Debtors

**CERTIFICATE OF SERVICE**

I, Michael B. Slade, an attorney, hereby certify that on June 7, 2011, I caused a true and correct copy of the foregoing **Motion to Reopen Chapter 11 Cases of UAL Corporation and UAL Loyalty Services, Inc. for the Limited Purpose of Enforcing this Court's Prior Orders, Including the Confirmed Plan, Confirmation Order and Discharge Injunction** to be served via the CM/ECF system on the following counsel:

Daniel E. Cohen  
Paul D. Cullen, Sr.  
David A. Cohen  
The Cullen Law Firm, PLLC  
1101 30th Street NW, Suite 300  
Washington, DC 20007

Kevin McBride  
McBride Law, PC  
609 Deep Valley Drive, Suite 300  
Rolling Hills Estates, CA 90274

*/s Michael B. Slade*  
\_\_\_\_\_  
Michael B. Slade