

**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
)	
)	Response Deadline: September 23, 2011
)	Hearing Date: October 11, 2011
)	Hearing Time: 10:00 a.m.
)	

NOTICE OF MOTION

To: Daniel E. Cohen
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PLEASE TAKE NOTICE that on October 11, 2011, at 10:00 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 **Reorganized Debtors' Motion for Order Holding Plaintiffs in Contempt of Court for Proceeding with Litigation in Violation of the Discharge Injunction**, a copy of which is hereby served upon you.

Dated: September 9, 2011

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

/s/ Michael B. Slade

James H.M. Sprayregen

David R. Seligman

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FOR THE NORTHERN DISTRICT OF ILLINOIS
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**REORGANIZED DEBTORS' MOTION FOR ORDER HOLDING PLAINTIFFS IN
CONTEMPT OF COURT FOR PROCEEDING WITH LITIGATION IN VIOLATION
OF THE DISCHARGE INJUNCTION**

United Pilots for Justice, Inc. and more than 700 individual plaintiffs (collectively, the “Plaintiffs”), have filed and are prosecuting litigation against UAL Corporation, UAL Loyalty Services, and their former board members (collectively, “United”) in the United States District Court for the District of Columbia in violation of the United States Bankruptcy Code, United’s Plan of Reorganization (the “Plan”), and this Court’s Order confirming United’s Plan (the “Confirmation Order”). Plaintiffs’ evasion of the Bankruptcy Code, the Plan, and the Confirmation Order has caused United to incur substantial costs, which continue to accrue as United defends against the discharged claims.

For the reasons described in detail below, United respectfully requests that this Court enter an order: (a) holding Plaintiffs and any counsel who assisted them in pursuing discharged claims in contempt of court; and (b) requiring Plaintiffs and their counsel to reimburse United for all costs and expenses associated with defending against Plaintiffs’ discharged lawsuit, reopening these chapter 11 cases, and prosecuting this motion. The affidavit required by Local Bankruptcy Rule 9020-1 is attached as Exhibit A. A proposed order is attached as Exhibit B.

Factual Background

I. United's Bankruptcy Case

1. United filed its Chapter 11 petition on December 9, 2002 (the "Petition Date"). *See* Plan of Reorganization, Docket No. 14829, Exhibit A, at 25. As of the Petition Date, United had approximately 58,000 employees, 80 percent of whom were represented by various unions. *See* Disclosure Statement for United's Plan of Reorganization, Docket No. 13279, at 24.

2. As of the Petition Date, all of United's employees were covered by one of four defined benefit pension plans: the Pilot Plan, the Flight Attendant Plan, the Ground Plan and the Management, Administrative and Public Contact Employee Plan. *Id.* at 46. Although United had made all required contributions to these pension plans prior to bankruptcy, they were significantly underfunded, and "[a] major impediment to United exiting bankruptcy [was] its pension liability, which total[ed] about \$4.5 billion for the next four years." *In re UAL Corp.*, 428 F.3d 677, 680 (7th Cir. 2005).

3. In an attempt to stave off bankruptcy, United had applied to the Air Transportation Stabilization Board (the "ATSB") on June 21, 2002 for a federal loan guarantee.¹ *See* Disclosure Statement, Docket No. 12642, at 34. The ATSB denied United's initial application on December 4, 2002. *Id.* In denying United's application, the ATSB noted its "concern[] about United's ability to generate sufficient cash flows to meet its pension funding obligations concurrent with other obligations, including repayment of the guaranteed loan." But the ATSB also left open the possibility of an updated application in the future after United restructured its operations. *Id.*

¹ Congress created the ATSB in the wake of September 11, 2001. Among other powers, the ATSB had the authority to issue \$10 billion in loan guarantees to U.S. airlines. Air Transportation Safety and System Stabilization Act, Pub. L. No. 107-42, §§ 101-02, 115 Stat. 230, 230-32 (2001).

4. After fundamentally restructuring the Company, United again sought loan guarantees from the ATSB in December 2003 based on a proposed business plan that would have preserved each of United's pension plans. *See* Disclosure Statement, Docket No. 12642, at 46-47. But the ATSB again concluded that United's loan guarantee application was insufficient and issued a final denial of the application in June 2004. *Id.* at 50. United thus had no choice but to reexamine every aspect of its cost structure, including its pension obligations, and in July 2004 it suspended making minimum funding contributions to its pension plans. *Id.*

5. On November 14, 2004, United filed a motion for authority to reject its collective bargaining agreements pursuant to 11 U.S.C. § 1113, indicating that to emerge from Chapter 11 protection, it required the termination and replacement of *all* pension plans and an additional \$725 million in average annual labor savings. *See* Debtors' Mot. to Reject their Collective Bargaining Agreements (Docket No. 8814); Mem. in Support (Docket No. 9257); Debtors' Motion to Reject their Collective Bargaining Agreements and for Voluntary Distress Termination of their Defined Benefit Pension Plans (Docket No. 10808); Supplemental Memorandum in Support (Docket No. 10809); and Exhibits in Support (Docket No. 10810). United made clear that its pension plans were not affordable and needed to be terminated. *See* Docket No. 9257 at 31-66. And as part of those proceedings, United created detailed analyzes discussing the impact that pension termination would have on the benefits provided to each of its employee groups. By United's calculations, active pilots would lose on average 33% of their retirement benefits, and 56% of retired pilots would see their benefits reduced. *Id.* at 121-23.²

² Plaintiffs (through URBPBA) agreed with this analysis prior to confirmation, arguing that the PBGC settlement agreement would have a "drastic" impact on them by eliminating on average 34% of their pension benefits. *See* URBPBA Objection to Debtors' Emergency Mot. to Approve Agreement with PBGC (Docket No. 11166) at 2.

6. United, PBGC, and many of its creditor groups performed a massive amount of diligence on United's assets to identify any alternative to termination of United's pension plans. Among other things, United's Official Committee of Unsecured Creditors (the "OCUC") had retained counsel,³ financial advisors,⁴ investment bankers,⁵ and several special strategy advisors,⁶ to investigate United's assets and liabilities with a fine-toothed comb. The PBGC was a member of the OCUC and was thus privy to *all* of that diligence, but it also hired its own outside counsel⁷ and financial advisors⁸ to perform detailed reviews of United's assets and liabilities. No alternative solution or massive untapped pool of assets was located by any party.

7. In December 2004, United and ALPA reached an agreement to modify their collective bargaining agreement. *See* Order Approving Agreement Modifying Debtors' Collective Bargaining Agreement (Docket No. 9933). In addition to making wage and work-rule concessions, ALPA agreed that it would waive any argument that termination of the Pilot Plan violated the parties' collective bargaining agreement. *See United Retired Pilots Benefit Protection Ass'n v. United Airlines, Inc. (In re UAL Corp.)*, 443 F.3d 565, 572 (7th Cir. 2006). In exchange, United agreed that if the Pilot Plan was ultimately terminated, United would provide ALPA with, among other things, \$550 million of convertible notes. *Id.* at 568.

³ Sonnenschein, Nath, and Rosenthal (Docket No. 1463)

⁴ KPMG LLP (later Mesriow Financial Consulting, LLC) (Docket Nos. 1464 and 8790)

⁵ Saybrook Restructuring Advisors, LLC (Docket No. 2136)

⁶ Cognizant Associates, Inc. (Docket No. 3399); GCW Consulting LLC (Docket No. 10526); Parthenon Group, LLC (pension advisors) (Docket No. 12050); Watson Wyatt (actuarial advisors) (Docket No. 14366).

⁷ Kelley, Drye, and Warren

⁸ Greenhill & Co.

8. United's settlement with ALPA was challenged by many. Among others, a group of retired pilots coalesced as the "United Retired Pilots Benefits Protection Association" ("URPBPA"), and hired the Meckler Bulger, & Tilson firm to represent them in United's Chapter 11 case and fight termination of the Pilot Plan.⁹ URPBPA had access to the diligence mentioned above and retained financial experts, including The Segal Company, to review United's finances and evaluate any potential alternatives to pension termination. On behalf of those individuals, URPBPA challenged this Court's approval of the ALPA Agreement. URPBPA lost: on March 31, 2006, the Seventh Circuit affirmed the ALPA Agreement, holding that there was no feasible remedy, including compensation for the termination of the Pilot Plan, that a court could now provide these individuals. *UAL Corp.*, 443 F.3d at 572.

9. On December 30, 2004, while United's motion for relief under 11 U.S.C. § 1113 and a distress termination of its pension plans was pending, PBGC filed a complaint seeking to terminate the Pilot Plan effective that day. *E.g.*, Adversary No. 05A481, Docket No. 148 (October 25, 2005); *PBGC v. United Air Lines, Inc.*, 436 F. Supp. 2d 909, 913 (N.D. Ill. 2006). But even prior to that filing, United and the PBGC had begun to discuss the future of United's pension plans. *See* Disclosure Statement (Docket No. 12642) at 57-58. The elephant in the room was the Pilot Plan, the most expensive of United's plans and the one which most obviously could not be maintained. Based on all of the diligence PBGC had done on the company, it determined that the Pilot Plan needed to be terminated effective December 30, 2004; the only questions were what PBGC would get from United when the Pilot Plan was actually terminated.

⁹ Attached as Exhibit C are a series of statements filed in the chapter 11 cases by Meckler Bulger, & Tilson, the law firm representing URPBPA, pursuant to Federal Rule of Bankruptcy Procedure 2019. For ease of reference, United has highlighted in yellow the pilots represented by URPBPA and Meckler Bulger in the chapter 11 cases who are also now Plaintiffs and members of "United Pilots for Justice."

10. Those discussions ultimately bore fruit: United and PBGC executed a global settlement (the “PBGC Settlement Agreement”) that resolved all of the issues between the parties, including what PBGC would receive for Pilot Plan termination. *See* Order Approving Debtors’ Emergency Mot. to Approve Agreement with PBGC (Docket No. 11229). Plaintiffs conceded as much in their original complaint in this lawsuit. *See* Plaintiffs’ Compl. (filed December 30, 2010) ¶ 31 (“UAL Corp. and PBGC agreed to distress termination of the Pilot Plan by Agreement dated April 22, 2005 . . .”).

11. As this Court likely recalls, the PBGC Settlement Agreement, executed in 2005, confirmed *exactly* what PBGC would receive from United as a result of plan termination. Those assets included a \$10.3 billion pre-petition, unsecured claim against United’s estate, \$500 million in senior notes, \$500 million in contingent notes, and \$500 million of preferred stock. *See* PBGC Settlement Agreement (Docket No. 11229, Ex. 1) ¶¶ 2, 7.¹⁰ The PBGC also—on behalf of itself and the pension plans—*released* United and everyone associated from United from any further liability with respect to the pension plans and provided that PBGC could not under any circumstances receive additional funds due to pension plan termination. *Id.* ¶ 7(d).

12. On May 10, 2005, this Court approved the PBGC Settlement Agreement over the objections of many, including URPBPA, which argued that United had sufficient assets to maintain the Pilot Plan in whole or in part. Appeals of the order approving the PBGC Settlement Agreement failed. *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).

¹⁰ The PBGC also received \$500 million in contingent notes that would be triggered upon the occurrence of certain financial conditions. Those conditions were triggered in July 2011, requiring United to issue additional notes to PBGC beginning in 2012.

13. This Court's approval of the PBGC Settlement Agreement effectively ended United's role with respect to the Pilot Plan. The PBGC had decided to terminate the Pilot Plan, and PBGC and United had agreed on: (A) the compensation PBGC would receive from United's estate; and (B) the fact that United would be released from any additional liability—on behalf of PBGC or the Pilot Plan itself. *See* PBGC Settlement Agreement (Docket No. 11229, Ex. A) ¶ 7(d); Pls. Compl. ¶¶ 31, 45-46, 51-52, 61. As the Seventh Circuit later ruled, while this Court's October 26, 2005, termination of the Pilot Plan was later temporarily reversed post-confirmation on jurisdictional grounds, the issue in the later termination proceedings "was not whether United's plan will terminate" but "what the effective day of that termination would be." *In re UAL Corp. (Pilots' Pension Plan Termination)*, 468 F.3d 444, 451 (7th Cir. 2006).

14. Under the PBGC Settlement Agreement, United had no further obligations to provide additional information to PBGC. And, in fact, United provided *nothing* to PBGC about the value of United's assets after execution of the PBGC Settlement Agreement because its settlement determined the compensation that PBGC would receive. Indeed, even *if* United had provided information to PBGC about the value of its assets after May 2005, the information could not conceivably have been germane; PBGC's recovery on account of pension plan termination had been set by an agreement that had been approved by this Court.

15. The PBGC Settlement Agreement served as springboard for United's emergence from Chapter 11 protection. *See* Disclosure Statement, Docket No. 14825, at 58. United's Plan incorporated the PBGC Settlement Agreement, provided for no further contributions to any of its defined benefit pension, and treated all claims related to pension plan termination. With respect to the Pilot Plan in particular, this Court had already "determined that PBGC had met its burden with respect to termination of the Pilot Plan," the Plan provided for treatment of the PBGC's

claim as a result of plan termination, and the Debtors had “filed objections to all individual claims based on the termination of qualified pension benefits,” which were scheduled for hearing. *See* Disclosure Statement, Docket No. 14829, at 56, 57-58.¹¹

16. Ultimately, on January 20, 2006, this Court entered an order confirming United’s Plan. *See* Order Confirming Debtors’ Second Amended Joint Plan of Reorganization (Docket No. 14829). United’s Plan was premised on the PBGC Settlement Agreement, the termination of all of United’s pension plans—including the Pilot Plan—and on the fact that United would have no ongoing obligations to any pre-petition defined benefit pension plans. *See In re UAL Corp.*, 468 F.3d at 449. The Plan was also premised on new collective bargaining agreements for each of United’s unions which did *not* include obligations to maintain a defined benefit pension plan.

17. United’s Plan of Reorganization went effective February 1, 2006, resulting in the discharge of more than \$20 billion of debt—held by over 100,000 creditors—and triggering a cascade of literally thousands of transactions and other events that cannot now be unwound. Among other things, United entered into a \$3 billion exit financing facility. United issued (among other things) \$500 million in convertible preferred stock and \$500 million in senior subordinated notes to PBGC, along with a massive unsecured claim that was converted to equity in reorganized UAL under the terms of the Plan, satisfying United’s obligations under the PBGC Settlement Agreement. Moreover, United issued \$550 million in convertible notes to ALPA to assist pilots who lost the Pilot Plan in recouping some of the benefits they had lost.

¹¹ United’s disclosure statement explicitly noted that “a number of individuals have asserted that they do not believe that the PBGC Settlement Agreement should be implemented in connection with Confirmation of the Plan. More generally, these individuals disagree with the Debtors’ restructuring of their pension liabilities in the Chapter 11 cases.” Disclosure Statement, Docket No. 14829, at 60. Some of the specific people named—whose objections were overruled by the Court—are Plaintiffs in this discharged lawsuit. *Id.* (identifying UPFJ members Allan L. Holmes, Bill Mullin, Diana Raymond, Lawrence Becker, Jerry Summers, and Bruce Munroe as among those objecting to the restructuring of United’s pension obligations in connection with the Plan).

18. The Plan also contained standard protections for United. Among other things, the Plan discharged all claims against United that arose before the entry of the Confirmation Order:

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 . . . *See* Plan (Docket No. 14829, Ex. A) at Art. X.B.

19. Further, the Plan also specifically enjoined any action against United or any other Exculpated Party, on account of claims that were released or settled under the Plan:¹²

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. *See* Plan (Docket No. 14829, Exhibit A) at Art. X.J.

¹² “Exculpated Party” includes, among others, the Debtors’ officers and directors. Plan, Art. I.D. p. 90.

20. Thus, under the straightforward language of United’s Plan and Confirmation Order—not to mention the Bankruptcy Code itself—all entities are barred from commencing actions or proceedings relating to any claim that was covered by the Plan’s discharge. *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.”). Hence, upon the occurrence of the Effective Date, the discharge injunction protected United against the commencement of any actions against it to recover claims based on pre-confirmation conduct.

21. On December 29, 2010, more than 700 individual former United pilots, along with their newly created and self-titled group, “United Pilots for Justice” (which overlaps approximately 60% with URPBPA) filed an action (the “Complaint”) against United, ULS, and 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). The “Pilots for Justice” have amended their complaint twice, adding and subtracting plaintiffs for no apparent reason and subtly changing some of the allegations, but the Plaintiffs’ basic theory has not changed.¹³

22. The thrust of Plaintiffs’ theory is that United fraudulently induced the PBGC into executing the PBGC Settlement Agreement. Plaintiffs allege that United “hid” the value of its Mileage Plus® program from the PBGC, retired pilots, and other creditors; they assert that had United informed PBGC of the “true” value of Mileage Plus®, United could have emerged with

¹³ Plaintiffs’ original and second amended complaints have already been provided to the Court. *See* Docket No. 17435, Exhibits B (the “Complaint”) and C (the Second Amended Complaint or “2AC”). In an effort to not burden the record, United will not attach additional copies, although they can be provided upon request.

the Pilot Plan intact, or the PBGC would have received a better recovery under the PBGC settlement agreement. In addition, Plaintiffs contend that the only information United gave PBGC on Mileage Plus® was a copy of its bankruptcy schedule identifying ULS as having a negative “book value.” As compensation, Plaintiffs seek the restoration of their full benefits under the Pilot Plan. All of the alleged “fraud” occurred prior to confirmation.

23. On June 7, 2011, United filed motions: (1) to dismiss Plaintiffs’ Complaint; and (2) to transfer the Complaint to the U.S. District Court for the Northern District of Illinois. Plaintiffs continue to prosecute discharged claims against United.¹⁴

Argument

I. This Court Has Jurisdiction to Enforce the Discharge Injunction

24. This Court has already confirmed its ongoing jurisdiction to enforce the discharge injunction and the Confirmation Order:

A discharge injunction is 100 percent within the core jurisdiction of bankruptcy. It’s one of the reasons for bankruptcy, is to obtain a discharge of pre-petition indebtedness. And if someone takes action to collect a pre-petition debt that was discharged in a bankruptcy, the only place to go to enforce that injunction is in the court that issued it. Exhibit D, Hrg. Transcript August 17, 2011, at 3-4.

25. The Court’s expressed reasoning is entirely correct for any number of reasons. For one thing, a court has the equitable power to enforce its own lawful orders. *E.g., Underwood v. Hilliard (In re Rimstat, Ltd.)*, 98 F.3d 956, 965 (7th Cir. 1996). And it is well-settled that bankruptcy courts retain post-confirmation jurisdiction to interpret and enforce their own orders, particularly confirmation orders. *In re Chicago, Milwaukee, St. Paul & Pac. Ry. Co.*, 6 F.3d 1184, 1194 (7th Cir. 1993) (“the reorganization court should not abstain from interpreting its

¹⁴ Both sides’ briefing on United’s Motion to Dismiss has already been provided to the Court, *see* Docket No. 17446, Exhibits A and B and No. 17447, Exhibit A. United incorporates its memorandum and reply memorandum in support of its motion to dismiss by reference.

own consummation order absent extraordinary circumstances”); *In re Conseco, Inc.*, 330 B.R. 673, 683 (Bankr. N.D. Ill. 2005) (“when the question involves a central bankruptcy right like the discharge, the court has core jurisdiction.”); *In re Kewanee Boiler Corp.*, 270 B.R. 912, 917 (Bankr. N.D. Ill. 2002) (same).¹⁵ Moreover, the contempt power inheres in courts; it ensures obedience to their commands. *E.g.*, *In re Andrus*, 184 B.R. 311, 312 (Bankr. N.D. Ill. 1995) (“United States Bankruptcy Judges have authority as well as core jurisdiction under the Bankruptcy Code and the United States Constitution to enter orders of civil contempt.”).

26. The terms of United’s confirmed Plan and Confirmation Order confirm this result. The Plan explicitly provides that this Court retains jurisdiction to “[r]esolve any cases, controversies, suits, disputes, or Causes of Action with respect to the . . . injunction . . . and enter such orders as may be necessary or appropriate to implement such injunction.” *See* Docket No. 14829, Exhibit 1 (Plan), Art. XIV.II. And under the Confirmation Order, this Court retains jurisdiction “with respect to all matters arising from or related to the implementation of” the Confirmation Order. *See* Docket No. 14829, Confirmation Order ¶ 5.

27. The procedure invoked here—a contempt motion in United’s bankruptcy case—is the appropriate mechanism for securing compliance with the Court’s order. *See In re Consolidated Indus.*, 360 F.3d 712, 716 (7th Cir. 2004) (“[A]n adversary proceeding is not the proper vehicle to present a contempt claim, as civil contempt is a method of enforcing a court order, not an independent cause of action. The proper vehicle to enforce a court order is a motion in the original case.”); *Cox v. Zale Delaware, Inc.*, 239 F.3d 910, 917 (7th Cir. 2001) (same).

¹⁵ *See generally Travelers Ins. Co. v. Bailey*, 129 S. Ct. 2195, 2205 (2009) (“the only question left is whether the Bankruptcy Court had subject-matter jurisdiction to enter the Clarifying Order. The answer here is easy: as the Second Circuit recognized, and respondents do not dispute, the Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders. What is more, when the Bankruptcy Court issued the 1986 Orders it explicitly retained jurisdiction to enforce its injunctions.”).

II. Plaintiffs Are Pursuing Discharged Claims.

28. There is no serious doubt that Plaintiffs' claims—that United fraudulently induced PBGC to enter into the PBGC Settlement Agreement—are discharged. Indeed, the PBGC's decision to terminate the Pilot Plan, all of PBGC's diligence on United, all negotiations of the consideration PBGC would receive from United due to pension plan termination, and the PBGC Settlement Agreement itself, all took place prior to confirmation. As of confirmation, Pilot Plan participants knew that they would receive less than their promised retirement benefits because the PBGC Settlement Agreement did not give PBGC a sufficient recovery to retain plan benefits. In fact, URPBPA fought termination of the Pilot Plan, approval of the PBGC Settlement Agreement, their treatment during United's bankruptcy case, and confirmation of United's Plan, precisely *because* United pilots would lose benefits as an outcome of United's bankruptcy. Because all of United's conduct with respect to the PBGC and the Pilot Plan occurred prior to confirmation, Plaintiffs' claims are discharged pursuant to 11 U.S.C. § 1141(d)(1).

29. This conclusion is inescapable, from a basic, straightforward review of the Bankruptcy Code. The Code defines a "claim" broadly and includes any:

right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

11 U.S.C. § 101(5)(A). This definition is "designed to ensure that 'all legal obligation of the debtor,' no matter how remote or contingent, will be able to be dealt with in the bankruptcy case." *Cal. Dep't of Health Servs. v. Jensen (In re Jensen)*, 995 F.2d 925, 929 (9th Cir. 1993); *see also In re Energy Co-op, Inc.*, 832 F.2d 997, 1001 (7th Cir. 1987) (same) (quoting S. Rep. No. 95-989, at 22 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5808; H.R. Rep. No. 95-595, at 309 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6266)). This broad definition:

performs a vital role in the reorganization process by requiring, in conjunction with the bar date, that all those with a potential call on the debtor's assets, provided the call in at least some circumstances could give rise to a suit for payment, come before the reorganization court so that those demands can be allowed or disallowed and their priority and dischargeability determined.

Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp., 266 B.R. 575, 580 (S.D.N.Y. 2001). Thus, if the conduct supporting an alleged claim occurred prior to the date a plan of reorganization is confirmed, it is discharged by confirmation. *See* 11 U.S.C. § 1141.

30. Here, United's Plan clearly discharged *all* claims based on events prior to Confirmation. Article X.B of the Plan states that:

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 ...

See Plan, Article X.B. The breadth of this provision is not surprising—indeed it parallels Section 1141 and its grant to debtors of a discharge for all pre-confirmation conduct. *In re Benjamin Coal Co.*, 978 F.2d 823, 827 (3rd Cir. 1992) (“discharge of all existing claims . . . upon confirmation of a Chapter 11 plan is unambiguous . . . in the Bankruptcy Code.”).

31. The discharge injunction in both United's Plan and the Confirmation Order — guided by Section 1141 of the Bankruptcy Code—is equally unambiguous:

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.

See Plan, Article X.J; Confirmation Order, ¶ 4(e) (emphasis added).

32. Plaintiffs' complaint repeatedly emphasizes that the PBGC Settlement Agreement, termination of the Pilot Plan and United's bankruptcy took place at the same time. *E.g.*, 2AC ¶¶ 3, 5 (stock was "rendered valueless in UAL Corp's bankruptcy that occurred coincident with termination of the Pilot Plan"), ¶ 66 (same). And the reality is that all of the conduct about which Plaintiffs complain took place prior to the confirmation of United's Plan—at which time the PBGC, the Plaintiffs, and all of United's employees and other creditors already knew *precisely* what United assets would go to PBGC due to the termination of the defined benefit pension plans previously covering United employees.

33. Perhaps most obviously fatal to Plaintiffs' theory is the core premise that United should have identified what Plaintiffs contend to be the "fair market value" of its assets "prior to entering a settlement with PBGC"¹⁶—which occurred in April 2005. What Plaintiffs claim should have been disclosed to PBGC was (according to Plaintiffs) known to United in 2004, at the latest during hearings on pension termination which took place in "May 2005." 2AC ¶ 82. Accordingly, there is no doubt that even *if* United committed fraud by failing to inform PBGC of the alleged value of Mileage Plus® (and there was no such fraud), that took place prior to the PBGC Settlement Agreement and clearly prior to confirmation. Any claims are thus discharged as a matter of law.

¹⁶ Docket No. 14774, Exhibit A (Plaintiffs' Opposition to United's Motion to Dismiss) at 13-14.

34. United, ULS, and United's former board members are also protected by the exculpation provisions in United's Plan. Third party releases and exculpation clauses are commonplace in Chapter 11 plans; both are enforceable and binding. *E.g., In re Specialty Equip. Cos.*, 3 F.3d 1043 (7th Cir. 1993); *Deutsche BankAG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 145 (2d Cir. 2005); *In re PWS Holding Corp.*, 228 F.3d 224, 245 (3d Cir. 2000). The release provisions are sufficient alone to defeat the claims of most Plaintiffs but, even if they were not, Plaintiffs do not plead any facts remotely approaching the gross negligence or willful misconduct necessary to circumvent exculpation as to any individual officer or director. *See PWS*, 228 F. 3d at 246-247.

35. Plaintiffs' apparent theory for escaping discharge—that its claims for lost accrued pension benefits did not arise until after confirmation—has no basis. Indeed, if Plaintiffs' theory is correct, then the PBGC did not have a claim in United's bankruptcy, since that claim would only arise in the event that a pension plan guaranteed by PBGC was terminated. But the PBGC clearly had a "claim" as it is defined by the Bankruptcy Code at all times, and it was allowed as part of the PBGC Settlement Agreement.¹⁷ If the PBGC were to sue United, six years later, claiming that it was fraudulently induced into entering into the PBGC Settlement Agreement and should be able to recover amounts sufficient to pay full benefits previously guaranteed by the Pilot Plan, its claim would be dismissed summarily—indeed it would violate Rule 9011 by filing such a claim. Plaintiffs are in no different position; their claims are (at best) derivative of the PBGC's. There is no analytical or legal basis to exempt them from discharge at this late date.

¹⁷ Also, recall that *on October 26, 2005*, this Court entered a decree terminating the Pilot Plan effective December 30, 2004. *See* Adversary No. 05-A-481, Docket No. 148; *In re UAL Corp.*, 2005 WL 2840266 (Bankr. N.D. Ill. Oct. 25, 2005). While that order was—*after* confirmation, *see In re UAL Corp.*, 337 B.R. 904 (N.D. Ill. 2006)—temporarily reversed on jurisdictional grounds, there is no question that this Court's October 2005 decree gave rise to a "claim" prior to confirmation order even if one had not arisen earlier (which it had).

36. The bottom line is that Plaintiffs cannot raise claims against United, ULS, or the board members of United “in 2004-05” (2AC ¶ 1), based on activities that “coincided with United’s bankruptcy” (2AC ¶ 66). All such claims were treated in United’s Plan of Reorganization, and many of the Plaintiffs actually participated in litigation related to the Plan. The confirmation of a plan of reorganization in general, and United’s particular Plan (which incorporated the terms of the PBGC Settlement Agreement) bars Plaintiffs from raising these claims now. 11 U.S.C. § 1141(d); *see also Corbett v. MacDonald Moving Servs., Inc.*, 124 F.3d 82 (2d Cir. 1997) (claims for withdrawal liability against non-debtor are barred by the release provisions of the debtor’s plan); *Bosigner v. US Airways, Inc.*, 510 F.3d 442 (4th Cir. 2007) (claims for misconduct in pension termination barred by discharge).

III. Plaintiffs Should Be Held In Civil Contempt

37. To prevail on a motion for civil contempt, the movant must prove that: (1) there was a valid court order that the alleged contemnor disobeyed; and (2) the alleged contemnor had knowledge or notice of the order. *See Wessley Jessen Corp. v. Bausch & Lomb, Inc.*, 256 F. Supp. 2d 228 (D. Del. 2003); *In re Reed*, 11 B.R. 258, 268 (Bankr. D. Utah 1981).

38. The Plan and Confirmation Order are clear on their faces, and the majority of the individual plaintiffs were active participants in these chapter 11 cases who objected to the ALPA Agreement, PBGC Settlement Agreement, confirmation of United’s Plan of Reorganization. They fought hard during United’s Chapter 11 case to ensure that the Pilot Plan was not terminated unless absolutely necessary. But they lost, because termination was necessary. And PBGC did everything in its power to ensure that it got a fair and equitable recovery for itself and plan participants on account of plan termination. There is simply no good faith basis for Plaintiffs to have filed this lawsuit, five years after what the Seventh Circuit called “water under

the bridge,” *In re UAL Corp. (Pilots’ Pension Plan Termination)*, 468 F. 3d at 451, seeking to reinstate full pension benefits that were promised to them in the pre-petition Pilot Plan.

39. United has filed a motion to dismiss the Plaintiffs’ Complaint, in part, based on the discharge and Plaintiffs’ violation of the injunction. Nonetheless, Plaintiffs continue to prosecute the Complaint. And Plaintiffs apparently predicted prior to filing their lawsuit that United would raise exactly the same arguments that United is raising—they are obvious grounds for dismissal. On their internet Website, when describing United’s Motion to Dismiss, Plaintiffs and their lawyers told UPFJ members that United’s arguments were “more or less the legal attacks we expected from UAL.” *See* Exhibit E, UPFJ Website.

40. United should not have to bear the expense of defending this claim, which is frivolous as a matter of fact and law. And holding the offending parties and their attorneys in contempt, and requiring the reimbursement of attorneys’ fees spent defending a discharged claim, are “standard remedies in cases of civil contempt.” *Zale Delaware*, 239 F.3d at 916; *see also Andrus*, 184 B.R. at 316 (“The second category of remedy [for violating a discharge injunction] is compensatory, whose purpose is to reimburse an injured party for losses and expenses incurred because of the adversary's noncompliance.”); *Behrens v. Woodham Ass’n*, 87 B.R. 971, 976 (Bankr. N.D. Ill. 1988) (“The appropriate sanction on the facts and circumstances of this bankruptcy case is actual damages and attorney's fees.”); *see generally Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002) (“Civil contempt is the normal sanction for violation of the discharge injunction. 4 Collier on Bankruptcy ¶ 524.02[2][c] (15th ed. 1999). Here, as Wells Fargo acknowledges, compensatory civil contempt allows an aggrieved debtor to obtain compensatory damages, attorneys fees, and the offending creditor's compliance with the discharge injunction.”).

41. United's attorneys' fees incurred to date are described in the Local Rule 9020-1 Affidavit attached hereto as Exhibit A. The United States Trustee has informed United that UST fees will also be assessed while the case is reopened to address the discharged nature of Plaintiffs' lawsuit, and those should be directed to the Plaintiffs, not United.

Notice

42. 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. United submits that such notice is appropriate under the circumstances and that no other or further notice is required.

Conclusion

For the reasons described in this motion, United respectfully requests that the Court enter an order holding Plaintiffs and their counsel in contempt, and requiring them to reimburse United for fees paid to United's counsel defending against Plaintiffs' claims in derogation of the Court's Confirmation Order.

Dated: September 9, 2011

UAL CORPORATION AND UAL LOYALTY SERVICES, INC.

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CERTIFICATE OF SERVICE

I, Michael B. Slade, an attorney, hereby certify that on September 9, 2011, I caused a true and correct copy of the foregoing **Reorganized Debtors' Motion for Order Holding Plaintiffs in Contempt of Court for Proceeding with Litigation in Violation of the Discharge Injunction** to be served via the CM/ECF system and overnight mail on the following counsel:

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