IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
TRANS WORLD AIRLINES, INC., et al.,	)	CASE NO: 01-00056 (PJW)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	**Hearing Date: March 21, 2002**
	)	**at 1:30 p.m.**
	)	

OBJECTIONS OF AIRLINES CLEARING HOUSE, INC., AIR JAMAICA, LTD., AIRLINES REPORTING CORP., AIRLINE TARIFF PUBLISHING CO., AIRTRAN AIRWAYS, INC., AIR TRANSPORT ASSOCIATION OF AMERICA, INC., ALASKA AIRLINES, INC., ALOHA AIRLINES, INC., BAHAMASAIR HOLDINGS LTD., MIDWAY AIRLINES CORP., NATIONAL AIRLINES, INC., AND UNIVERSAL AIR TRAVEL PLAN, INC. TO CONFIRMATION OF DEBTORS' AMENDED JOINT LIQUIDATING PLAN OF REORGANIZATION

Airlines Clearing House, Inc. ("ACH") and the ACH participants listed below (the "Objecting ACH Participants") hereby jointly submit the following objections to confirmation of the Debtors' Amended Joint Liquidating Plan of Reorganization. 1/ The Objecting ACH Participants are: Air Jamaica, Ltd., Airlines Reporting Corp.,

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1/ These Objections are being filed late pursuant to the Debtors' agreement to a one-week extension of the time for filing. The version of the Debtors' plan referred to and cited in these Objections is the Second Amended Joint Liquidating Plan of Reorganization (the "Plan"), reproduced as Exhibit A to the Second Amended Disclosure Statement (the "Disclosure Statement"), as distributed pursuant to the Court's January 17 "Order (A) Approving Disclosure Statement . . . ." On or about February 15, the Debtors filed a Third Amended Joint Liquidating Plan of Reorganization. The provisions of the Plan that are the focus of these Objections remain unchanged in the Third Amended Plan.

Airline Tariff Publishing Co., AirTran Airways, Inc., Air Transport Association of America, Inc., Alaska Airlines, Inc., Aloha Airlines, Inc., Bahamasair Holdings Ltd., Midway Airlines Corp., National Airlines, Inc., and Universal Air Travel Plan, Inc. ACH and the Objecting ACH Participants are hereinafter collectively referred to as the "ACH Objectors." 2/

In support of their Objections, the ACH Objectors would show the Court as follows:

JURISDICTION

1. This Court has jurisdiction to consider these Objections pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b).

BACKGROUND

2. ACH is a not-for-profit Delaware corporation formed as a clearing agency through which participating airlines and related entities can settle their recurring obligations to one another under a wide range of airline industry agreements, including interline passenger and freight agreements (which facilitate transportation arrangements involving more than one airline), the Universal Air Travel Plan (under which participating airlines issue and honor air travel cards as a form of payment for airline tickets and other travel services) and miscellaneous

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2/ Capitalized terms used and not otherwise defined in these Objections have the meanings set forth in Article I of the Plan.

agreements (e.g., ground handling, maintenance, catering and other arrangements under which airlines and related entities support one another's operations).

3. Each of the Objecting ACH Participants settles accounts through ACH and is party to the ACH Settlement Agreement (i.e., the Agreement Relating to the Settlement of Interline Accounts Through Airlines Clearing House, Inc., dated as of February 1, 1948). 3/ ACH is, and Trans World Airlines, Inc. ("TWA") was, also party to the ACH Settlement Agreement. Each of the Objecting ACH Participants was also party to one or more bilateral or multilateral agreements with TWA giving rise to obligations settled through ACH.

4. Pursuant to the Executory Contract Order, TWA assumed and assigned to TWA Airlines, LLC ("LLC") the ACH Settlement Agreement and other executory contracts between TWA and the ACH Objectors. 4/ Payment obligations incurred under those contracts prior to their assignment to LLC remain in dispute and are the

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3/ Midway Airlines Corporation ("Midway") is a Chapter 11 debtor and debtor-in-possession in a case proceeding in the United States Bankruptcy Court for the Eastern District of North Carolina. At the time TWA incurred the obligations that are the subject of Midway's administrative expense claim, Midway was participating in ACH settlements. Midway is not currently participating in ACH settlements.

National Airlines, Inc. ("National") is a Chapter 11 debtor and debtor-in-possession in a case proceeding in the United States Bankruptcy Court for the District of Nevada. National's First Amended Plan of Reorganization was approved on March 4, 2002.

4/ The ACH Settlement Agreement and many of the other agreements between TWA and the ACH Objectors had already been assumed (but not assigned) by TWA pursuant to the "Order Authorizing the Debtors to Assume Executory Contracts

subject of a pending adversary proceeding, *TWA Airlines, LLC v. Air Canada, et al.*, Adversary No. 01-4785. *See* Disclosure Statement Art. IV.B.3.c.iii at 17-19.

5. Each Objecting ACH Participant holds at least one timely filed administrative expense claim against TWA, based on TWA's assumption of executory contracts with such Objecting ACH Participant. Those claims range in amount from approximately $13,000 to approximately $2.8 million. More than 25 other ACH participants have filed similar administrative expense claims. *See* Disclosure Statement Art. V.B.2 at 51.

6. The Plan provides that, in general, Allowed Administrative Expense Claims will be paid pro rata in a series of periodic distributions that will continue until the claims have been paid in full or "all Post Confirmation Estate Assets have been exhausted." Plan Art. III.A at 16. As the Disclosure Statement underscores, "**THERE CAN BE NO ASSURANCE THAT THERE WILL BE SUFFICIENT AVAILABLE CASH TO SATISFY ALL ADMINISTRATIVE EXPENSE CLAIMS.**" Disclosure Statement at 3 (emphasis in original). The Debtors' Estimated Distribution Analysis shows that in a "'low recovery' scenario" the Debtors may be able to pay only 83% of Allowed Administrative Expense Claims. *See* Disclosure Statement Art. VIII.B.4 at 99; Disclosure Statement Exhibit C.

Relating to Interline and Clearinghouse Agreements . . ." entered by Judge Robinson on January 10, 2001.

7. The Plan singles out two categories of administrative expense claims for more favorable treatment. Administrative expense claims qualifying as Executory Contract Cure Reserve Claims are payable (or have already been paid) in full from the Executory Contract Cure Reserve established pursuant to the Executory Contract Order. 5/ The Plan also provides that Paid Administrative Claims "shall be final and not subject to disgorgement," Plan Art. III.E at 17, thus assuring that the recipients of tens of millions of dollars of professional fees and other administrative expenses

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5/ The ACH Objectors recognize that based on the Executory Contract Order and related undertakings made by the Debtors, Allowed Executory Contract Cure Reserve Claims should be paid from the Executory Contract Cure Reserve. The ACH Objectors, however, take exception to the arbitrary manner in which some administrative expense claims have qualified as Executory Contract Cure Reserve Claims while other, substantially identical claims have not qualified. As initially described in the Debtors' "Motion for an Order Authorizing the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases . . . " (the "Executory Contract Motion") and the Executory Contract Order, the Executory Contract Cure Reserve was intended to provide an assured source of funds for payment of cure amounts that were subject to dispute as of April 9, 2001 (the date of entry of the Executory Contract Order, which was also the date of closing of the sale of TWA's assets to LLC). *See* Executory Contract Order ¶ 5 at 5; Transcript of Friday, April 6, 2001 5:30 p.m. ("April 6 Tr.") at 148-50. The cure amounts identified by the Debtors in their Executory Contract Motion were determined as of February 28, 2001, but the Debtors undertook to update those amounts, following the closing of the asset sale, in order "to reflect additional payments made or charges incurred after February 28, 2001." Executory Contract Motion ¶ 18 at 6; *see also* April 6 Tr. at 177-178. All or most of the administrative expense claims of the Objecting ACH Participants relate to obligations that were incurred or became due after February 28. Had the Debtors updated their cure cost calculations as provided in the Executory Contract Motion, these claims would be eligible to be treated as Executory Contract Cure Reserve Claims, payable promptly and in full. (Some of them might already have been paid.) Because the Debtors failed to update the cure amounts, the claims of the Objecting ACH Participants have not been recognized as cure amounts. Thus, under the Plan they will be eligible only for delayed, pro rata payments that may never add up to full payment.

previously paid by the Debtors will not be required to relinquish any of their recoveries in order to assure equal treatment of all Administrative Expense Claims in the event that the Debtors are administratively insolvent.

8. Although it does not provide for full payment of Allowed Administrative Expense Claims, the Plan nevertheless provides for distributions to unsecured creditors. Under Article IV.B.4, the Plan Administrator will be required to "pay to the holders of Allowed Other Unsecured Claims [*i.e.*, Class 4A claims] on a pro rata basis 3.33% of Preference Action Recoveries." Plan at 19. These distributions are not conditioned on prior full payment of Allowed Administrative Expense Claims.

9. Confirmation of the Plan would directly, adversely affect the Objecting ACH Participants and the other ACH participants that have filed Administrative Expense Claims, by failing to provide for timely payment of Allowed Administrative Expense Claims, by impermissibly discriminating among Administrative Expense Claims, and by providing for distributions to unsecured creditors when full payment of Allowed Administrative Expense Claims is not assured. Confirmation of the Plan would also have indirect adverse consequences for more than 25 other ACH participants that have not filed their own Administrative Expense Claims but face payment demands from LLC that are linked to the Administrative Expense Claim filed by LLC and American Airlines. *See* Disclosure Statement at 17-18. Finally, confirmation of the Plan would adversely affect ACH and the ACH settlement process, as well as the Universal Air Travel Plan, by denying appropriate treatment of the claims of dozens of ACH participants (including claims arising under the

Universal Air Travel Plan) and by prolonging the costly and disruptive disputes among TWA, LLC and other ACH and Universal Air Travel Plan participants that are the subject of *TWA Airlines, LLC v. Air Canada, et al.*

OBJECTIONS

I. The Plan Does Not Comply With Bankruptcy Code Section 1129(a)(9)

10. The ACH Objectors object to confirmation of the Plan because it does not comply with the express requirements of Bankruptcy Code Section 1129(a)(9). Under Section 1129(a), the Court may confirm the Plan only if all of the requirements of Sections 1129(a)(1)-(13) are met. Section 1129(a)(9) requires that —

> Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that —
>
> > (A) With respect to a claim of a kind specified in section 507(a)(1) or 507(a)(2) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim.

11. The Objecting ACH Participants are holders of claims "of a kind specified in section 507(a)(1)" (*i.e.*, administrative expense claims allowable under section 503(b)), and the Objecting ACH Participants have not agreed to any "different treatment" of their claims. The Plan does not provide for the Objecting ACH Participants to receive payments equal to the allowed amounts of such claims. Thus, the Plan plainly fails to meet the requirements of Section 1129(a)(9) and also fails to

meet the requirement of Section 1129(a)(1) that "[t]he plan complies with the applicable provisions of this title."

II. The Plan's Proposed Treatment of Administrative Expense Claims Disregards Basic Bankruptcy Distribution Principles

12. Under Bankruptcy Code Section 1123(a)(4), a plan must "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." Although the Plan does not purport to classify Administrative Expense Claims, it effectively treats them as an impaired class — but without attendant Chapter 11 protections. By treating Administrative Expense Claims less favorably than Executory Contract Cure Reserve Claims and Paid Administrative Claims the Plan impermissibly discriminates among similar claims, in violation of the equal treatment principle embodied in Sections 1123(a)(4) and 1129(b)(1) (authorizing cram-down if, among other things, a plan "does not discriminate unfairly"). 6/

6/ The Plan's discriminatory treatment of Administrative Expense Claims is especially offensive as it relates to the claims of the Objecting ACH Participants, because most of those claims arise under agreements which the Debtors themselves characterized as "an essential part of the airline business . . . vital to TWA's ability to do business." Debtors' Motion for an Order Authorizing the Debtors to (A) Assume Executory Contracts Relating to Interline Agreements and Clearinghouse Agreements, and (B) Honor Prepetition Obligations Related to Computer Reservation Service Agreements, Code Sharing, Travel Agency Agreements, Cargo Agreements, Aviator Agreements, UATP Agreement and ATPCO Agreement in the Ordinary Course of Business (filed Jan. 10, 2001) ¶ 42 at 16 (emphasis added). The Debtors expressly undertook to pay their obligations under these agreements in the ordinary course of business, in order to induce the Objecting ACH Participants (among other

13. The Plan also offends the "absolute priority" rule embodied in Section 1129(b)(2)(B)(ii), by providing for partial distributions to holders of Other Unsecured Claims (Class 4A) without regard to whether Allowed Administrative Expense Claims are paid in full.

14. For the same reasons that unequal, discriminatory treatment of similar claims and disregard of the absolute priority rule is impermissible for classified claims, they are impermissible for Administrative Expense Claims. Having failed to provide for full payment of Allowed Administrative Expense Claims and in effect relegated them to the status of classified, impaired claims, the Plan adds insult to injury by disregarding the equal treatment and priority protections that apply to impaired claims.

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counterparties) to provide essential post-petition services. *See* "Order Authorizing the Debtors to Assume Executory Contract Relating to Interline and Clearinghouse Agreements . . . " and "Interim Order Authorizing the Honoring of Certain Executory Credit Card Agreements and Certain Notice Procedures Relating Thereto" (each entered by Judge Robinson on January 10, 2001). Now, having failed to honor that undertaking, the Debtors propose to treat the resulting administrative expense obligations less favorably than tens of millions of dollars of other administrative claims.

CONCLUSION

For the foregoing reasons, the ACH Objectors urge the Court to deny confirmation of the Plan.

Dated: March 7, 2002

RESPECTFULLY SUBMITTED,

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