



CREDITOR ASSOCIATION OF FLIGHT ATTENDANTS'  
OBJECTION TO DEBTORS' MOTION FOR  
ORDER AUTHORIZING ALOHA AIRLINES, INC. TO  
ASSUME CERTAIN EMPLOYMENT AGREEMENTS

Comes now, Creditor ASSOCIATION OF FLIGHT ATTENDANTS ("AFA"), by and through its attorneys, Oliver, Lau, Lawhn, Ogawa & Nakamura, and hereby submits its Objection to Debtors' Motion for Order Authorizing Aloha Airlines Inc. To Assume Certain Employment Agreements, dated June 13, 2005.

AFA joins in the Objection to Debtors' Motion filed by the INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"), and the Objection to Debtors' Motion filed by the AIR LINE PILOTS ASSOCIATION, INTERNATIONAL ("ALPA"), both of which were filed on June 29, 2005. In addition to the points and authorities raised therein, AFA objects for the following reasons.

As with the other unions, AFA's general concern is that the union employees have been compelled by the bankruptcy filing to make drastic concessions and sacrifices for the sake of the airline, with resulting decreases in pay and benefits, employee layoffs and furloughs, poorer working conditions, and low morale. Now, rather than maintaining the spirit of "shared sacrifice" that the employees were led to believe was necessary for the

survival of the airline, the Debtors seek to insulate management executives from the risks that the employees face.<sup>1</sup>

Attached to IAM's Objection is a copy of a recent decision in the US Airways bankruptcy, in which the court addressed a similar attempt by management to obtain approval of a severance and retention program for its executives. As noted in US Airways, the Debtor must establish that it has used "proper business judgment", and that the plan is "fair and reasonable."<sup>2</sup> (See Exh. "A" to IAM's Objection, at 7). In light of the sacrifices that have been made by the rank and file, AFA submits that the enhancement of executive compensation and benefits is neither fair nor reasonable.

The US Airways decision also explained that so-called Key Employee Retention Plans ("KERPs") have "something of a shady reputation", and that "there is something inherently unseemly in the effort to insulate the executives from the financial risks all other stakeholders face in the bankruptcy process."

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<sup>1</sup> Along with enduring pay cuts and decreases in benefits, employees have also recently suffered recent layoffs and furloughs (including 28 flight attendants). The employees who were laid off or furloughed did not enjoy the severance benefits that the executives seek to grant to themselves.

<sup>2</sup> As set forth in ALPA's Objection, because the Debtors are seeking to benefit insider executives, this Court should employ a more "rigorous scrutiny" than normally employed under the "business judgment test." (See ALPA's Objection at 4, fn 1 and accompanying text).

(See Exh. “A” to IAM’s Objection, at 7). Moreover, US Airways pointed out that Congress has a clear concern about the propriety of KERPs in bankruptcy cases, as it has enacted new legislation to severely limit severance and retention payments to insiders. Id. (See also, ALPA’s Objection at 4, fn 1).

In the face of Congressional concern about KERPs, as well as the overriding question of fairness to the union employees, this Court should be leery of an attempt to obtain approval of these KERPs outside the context of a Chapter 11 bankruptcy plan.

If the Court is inclined to approve these management agreements, they should be considered, if at all, only as part of a confirmed Chapter 11 plan of reorganization, and with full disclosure to all creditors and other interested parties. This was the route taken in US Airways, in which management contracts were fully disclosed, and the Court ruled that the proposed new employment contracts for executives should be approved, if at all, as part of an overall plan of reorganization, thus allowing the reasonableness of the contracts to be judged in light of the actual plan terms, and giving the creditors the opportunity to vote. (See Exh. “A” to IAM’s Objection, at 1 and 14).

Another major concern with the Debtors’ proposed management agreements, which was also addressed by the US Airways decision, is the

issue of mitigation. As explained in US Airways, the purpose of severance pay is to protect against financial hardship. It is not intended as a bonus for termination, and should not result in a windfall to a management employee who can readily find new employment. The US Airways court recognized that designing a fair and reasonable mitigation program may present administrative challenges. (See Exh. "A" to IAM's Objection, at 13-14). The mitigation issue lends further support to the proposition that the management contracts should be fully disclosed to all interested parties, and should be addressed in the context of a reorganization plan.

In light of the foregoing points and authorities, as well as those raised by the ALPA and IAM, the Debtors' Motion should be denied, and the Exhibits thereto should be unsealed.

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Of Counsel:  
OLIVER, LAU, LAWHN,  
OGAWA & NAKAMURA

/s/ Kurt K. Leong  
ROY T. OGAWA  
KURT K. LEONG  
Attorneys for Creditor  
ASSOCIATION OF FLIGHT  
ATTENDANTS