

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C.1985, C. C-36, AS AMENDED
AND IN THE MATTER OF UNITED AIR LINES, INC. OF THE STATE OF
DELAWARE, IN THE UNITED STATES OF AMERICA AND THE OTHER
ENTITIES LISTED ON SCHEDULE "A" APPLICATION UNDER SECTION 18.6
OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
C. C-36, AS AMENDED

AFFIDAVIT OF KAREN BADGEROW-CROTEAU
(Sworn January 28, 2005)

I, Karen Badgerow-Croteau of the City of Ottawa, in the Province of Ontario,
MAKE OATH AND SAY AS FOLLOWS:

1. I am the Managing Director of the Private Pension Plans Division of the Office of the Superintendent of Financial Institutions ("OSFI") and as such have personal knowledge, unless otherwise indicated, of the matters addressed in this affidavit.
2. My responsibilities at OSFI include regulating the conduct of employers or plan sponsors and pension plan administrators in respect of pension plans registered under the *Pension Benefits Standards Act, 1985* ("PBSA") and ensuring that the minimum standards set out in the PBSA are met.

Background

3. OSFI was created in 1987 pursuant to the *Office of the Superintendent of Financial Institutions Act* ("OSFI Act"). One of its responsibilities is the administration of the PBSA and the supervision of federally regulated private pension plans ("Plans"). Currently, OSFI regulates approximately 1200 Plans.

4. Subsection 4(2.2) of the OSFI Act provides, in part, that one of OSFI's objects in administering the PBSA is to supervise pension plans in order to determine whether they meet the minimum funding requirements and are complying with the other requirements of the Pension Benefits Standards Act, 1985 and its regulations and supervisory requirements under that legislation. In carrying out these objects under subsection 4(2.2), paragraph 4(3)(b) of the OSFI Act provides that OSFI shall strive to protect the rights and interests of members of pension plans, former members and any other persons who are entitled to pension benefits or refunds under pension plans. OSFI may order administrators to deliver various reports in order to allow OSFI to assess the viability of the Plans and may direct administrators to contribute to the Plans in order to assure that the Plans are financially viable and that there are sufficient funds available to meet the commitments under the Plans. In the event that OSFI feels that the administrator of a Plan is not complying with its obligations under the PBSA, OSFI may appoint a replacement administrator for the Plan. In addition to its other functions, OSFI's consent is required before amendments to existing Plans can be made that reduce or have the effect of reducing accrued pension benefits, pension benefit credits related to accrued benefits or immediate or deferred pension benefits.

Applicant's Pension Plans

5. United Air Lines, Inc. ("Applicant") operates an airline and as such, is a federal undertaking. In respect of its Canadian employees, the Applicant has two (2) pension plans with defined benefit provisions: United Air Lines, Inc. Canadian Management and Salaried Employees' Retirement Plan ("Salaried Plan") and the United Air Lines, Inc., Vancouver Agent Employees' Retirement Plan ("Unionized Plan"). The terms of a "defined benefit" pension plan define the amount of pension benefit to which a member will become entitled. These plans also require the employer to fund the plan so that these obligations may be met. All of these pension plans are registered and subject to the PBSA as is acknowledged in section 1.6 of the Salaried Plan and section 1.6 of the Unionized Plan. Copies of these Plans amended and restated as at January 1, 1992 are attached, respectively, as Exhibits "A" and "B" to this Affidavit.

6. Pursuant to section 7 of the PBSA and the provisions of the Plans, the Applicant is the administrator of both the Salaried Plan and of the Unionized Plan. The custodian of the funds for both Plans is RBC Global Services.

7. Section 2.2 of the Salaried Plan provides that a "Canadian Management or Salaried Employee" means "an employee of the Company who is employed by the Company in Canada in a Company-established job classification not covered by a collective bargaining agreement and is classified as a Canadian Management or Canadian Salaried Employee."

8. Section 2.1 of the Unionized Plan provides that after January 1, 1987, "each other employee of the Company who is classified (on other than a temporary basis) as a Vancouver Agent Employee (as defined below) will

become a Participant in the Plan on the first day of any calendar month on which he then meets all of the following requirements..." Section 2.2 of this Plan provides that:

...a 'Vancouver Agent Employee' is an employee of the Company who is a member of a group of employees represented by International Association of Machinists Aerospace Workers-Canadian Airways Lodge No. 764.

In addition, a 'Toronto Customer Service Representative' is an employee who is employed (other than on a temporary basis) in the Company-established job classification of Toronto Customer Service Representative and who is a member of a group of employees covered by a collective bargaining agreement between the Company and the National Automobile, Aerospace and Agricultural Implement Workers Union of Canada and its Local 2213.

Except as otherwise provided in this document, the provisions of the Plan, as they apply to Vancouver Agent Employees, will apply in the same manner to Toronto Customer Service Representatives, and, to the extent necessary to give effect to the provisions of the Plan as they apply to Toronto Customer Service Representatives, the term 'Vancouver Agent Employee' will be read to include a 'Toronto Customer Service Representative'.

9. The members of the Salaried Plan do not make contributions to the Plan.

An amendment dated July 28, 2000 and filed with OSFI in August 2000

deleted and replaced section 14.1 of the Salaried Plan. This section sets out the

employers' funding obligations to the Plan and provides that:

"The Company will make contributions from time to time in amounts that are determined by an actuary in accordance with the Plan funding policy adopted by the Company and consistent with the provisions of the PBSA and the regulations thereunder. The actuary appointed to determine the amount of Company contributions shall be a person who is a Fellow of the Canadian Institute of Actuaries.

A Participant is not required or permitted to make contributions under the Plan."

A copy of this amendment is attached as Exhibit "C" to this Affidavit.

10. The members of the Unionized Plan do not make contributions to the Plan. An amendment dated July 28, 2000 and filed with OSFI in August 2000 deleted and replaced section 13.1 of the Unionized Plan. This

section sets out the employers' funding obligations to the Plan and provides that:

"The Company and any Affiliate shall make contributions each year with respect to the Future Coverage of employees in amounts that are:

- (a) determined by an actuary in accordance with the Plan funding policy adopted by the Company,
- (b) in compliance with required standards of solvency under the PBSA, and
- (c) not less than the normal cost of such coverage, plus an amount sufficient to liquidate:
 - (a) any initial unfunded liability created on or after October 1, 1967, in level instalments over not more than 15 years; and
 - (b) any experience deficiency as defined in the Pension Benefits Standards Act, 1985, Regulations, in level instalments over not more than 5 years.

The actuary appointed to determine the amount of Company contributions shall be a person who is a Fellow of the Canadian Institute of Actuaries. There was no initial unfunded liability with respect to Coverage for employees as of October 1, 1967.

A Participant is not required or permitted to make contributions under the Plan."

Although this amendment refers to "experience deficiency" the PBSA and The Pension Benefits Standards Regulations, 1985 ("PBSR") do not define or use the term "experience deficiency" but rather requires that a "solvency deficiency" be amortized over a period not to exceed five years. The use of the words "experience deficiency" have always been interpreted by the Applicant, their actuaries and OSFI as meaning "solvency deficiency". A copy of this amendment is attached as Exhibit "D" to this Affidavit.

Funding Requirements

11. Section 9 of the PBSA provides that a pension plan shall provide for funding, in accordance with the prescribed tests and standards for solvency, that is adequate to provide for payment of all pension benefits and other benefits required to be paid under the terms of the plan.

12. Section 8 of the PBSR provides that the funding of a plan shall be considered to meet the standards for solvency if the funding is in accordance with section 9 of the PBSR.
13. Subsection 9(7) of the PBSR provides that a plan shall be funded in each plan year by the following payments or remittances:
 - (a) a contribution equal to the normal cost of the plan;
 - (b) a special payment referred to in subsection 9(3);
 - (c) a special payment referred to in subsection 9(4); and
 - (d) a special payment established pursuant to the Pension Benefits Standards Regulations, as those Regulations read on December 31, 1986.
14. Subsection 9(14) of the PBSR sets the required timing for making the required payments or remittances to the pension fund of a plan.
15. Subsection 2(1) of the PBSR defines “normal cost” as meaning “the cost of benefits, excluding special payments, that are to accrue during the plan year, as determined on the basis of a going concern valuation”. The normal cost is often referred to as the “current service contributions” made to a pension plan by the employer. Subsection 9(14) of the PBSR requires that the normal cost shall be paid in equal instalments during the plan year and shall be paid “not less frequently than quarterly and not later than 30 days after the end of the period in respect of which the instalment is paid.”
16. Subsection 2(1) of the PBSR defines “special payment” to mean, in part, “a payment or one of a series of payments (a) that, after December 31,

1986, is determined in accordance with section 9 for the purpose of liquidating an initial unfunded liability or solvency deficiency,..or". Subsection 9(3) of the PBSR requires that an initial unfunded liability be funded first, by the amount by which the going concern assets of the plan exceed the going concern liabilities of the plan and second, by special payments "sufficient to liquidate the remaining amount of the initial unfunded liability by equal annual payments over a period not exceeding 15 years from the date on which the initial unfunded liability emerged." Pursuant to subsection 9(4) of the PBSR, a solvency deficiency emerging after December 31, 1986 shall be funded by "special payments sufficient to liquidate the solvency deficiency by equal annual payments over a period not exceeding five years from the date on which the solvency deficiency emerged."

17. Subsection 9(14) of the PBSR requires that special payments shall be paid "not less frequently than quarterly and not later than 30 days after the end of the period in respect of which the instalment is paid."
18. Although some correspondence in this matter refers to the payments of the Applicant being due on July 31, 2004, pursuant to subsection 9(14) of the PBSR the 2004 second quarter payments were due on July 30, 2004.
19. Paragraph 9(2)(c) of the PBSR provides that "the date of emergence of a solvency deficiency is the date as of which the valuation that identified the deficiency was performed." Paragraph 9(2)(a) provides for the date of emergence of an initial unfunded liability and includes the effective date of the plan, effective date of the amendment, the date as of which certain prescribed changes were made and the date as of which a going concern valuation that identified the experience loss was performed.

20. In respect of a defined benefit plan, the valuation of a plan and the determination of the value of a plan's liabilities and assets is performed by an actuary who is a Fellow of the Canadian Institute of Actuaries. OSFI requires that an actuarial report be filed on a triennial basis, unless otherwise specified by the Superintendent, in respect of a plan whose assets exceed the liabilities as determined as if the plan were terminating. Where a plan's assets are less than its liabilities as determined as if the plan were terminating, an actuarial report must be filed on an annual basis. OSFI requires that an actuarial report be prepared as at the beginning of a plan year. Subsection 2(1) of the PBSR defines "plan year" as meaning "a calendar year, unless otherwise specified in the plan". Section 1.5 of the Salaried Plan provides that its plan year is the calendar year. Section 1.5 of the Unionized Plan also provides that its plan year is the calendar year.

Salaried Plan's 2004 Actuarial Report

21. An actuarial valuation or report as at January 1, 2004 was prepared by Towers Perrin in respect of the Salaried Plan and filed with OSFI in accordance with subsection 12(3) of the PBSA. A copy of this report is attached as Exhibit "E" to this Affidavit.
22. The actuarial valuation or report referred to in paragraph 21 of this Affidavit shows that as at January 1, 2004 the Salaried Plan had an unfunded solvency liability of \$222,026 (i.e., the plan's deficit or the amount by which the plan's liabilities would exceed its assets if the plan was terminating). The going concern or unfunded actuarial liability as at January 1, 2004 was \$486,644. The going concern or unfunded actuarial liability is determined based upon a valuation that assumes that the plan is not expected to be terminated or wound up. Current standards require

that this valuation be based upon the assumed assets and liabilities of the plan during the next fifteen years. The Canadian Institute of Actuaries sets the standards used for valuing a plan on a going concern basis. A going concern liability means that, based upon a going concern valuation, it is projected that the liabilities will exceed the assets.

23. The actuarial report for the Salaried Plan showed that there was no solvency deficiency as at January 1, 2004 as defined and calculated in accordance with the PBSA and PBSR but rather a statutory solvency excess of \$4,559. A solvency excess is not synonymous with a surplus in the plan. Previous actuarial reports showed solvency deficiencies and/or going concern liabilities and, as a result, therefore the funding schedules were required to include special payments so that these deficiency or liability would be amortized over the maximum period set by the legislation (a solvency deficiency must be amortized over 5 years and a going concern liability must be amortized over 15 years). A subsequent valuation or actuarial report includes the scheduled payments previously established. In determining a "solvency deficiency", all special payments due to be paid into the fund over the next five years are included as being assets of the plan. If these assets are less than the liabilities determined as if the plan were terminating, the plan has a newly emerged solvency deficiency. If these assets are greater than the liabilities, the plan has a "solvency excess" or "experience gain".
24. The actuarial report for the Salaried Plan provides that the rule for computing the employer's normal actuarial cost (i.e., the cost to meet the liabilities that in accordance with the terms of the plan have accrued in a year) is 12.04% of payroll. The pension benefits formula for the Salaried Plan is based upon Final Earnings as described in section 4 of the Plan

text. A member's accrued benefit amount is calculated using the formula set out in section 5 of the Plan text, as amended in 2001. A copy of this amendment is attached as Exhibit "F" to this Affidavit. Based on the plan membership used for the valuation, the normal actuarial cost for the next three years was estimated to be \$255,484 for 2004, \$268,258 for 2005 and \$281,671 for 2006.

25. The actuarial report for the Salaried Plan also provides that based on previously established amortization schedules that establish special payments owed by the employer to the fund, the Applicant is required to remit annual payments of \$13,379 until December 2008 and \$38,932 until December 2008. The solvency ratio (i.e., the ratio of the assets of the Plan to its liabilities where both the assets and the liabilities are determined as if the plan was terminating) of the Salaried Plan as at January 1, 2004 was 0.865.
26. For the 2004 plan year, the Applicant is required to make quarterly payments in the amount of \$76,948 per quarter to the Salaried Plan.

Unionized Plan's 2004 Actuarial Report

27. An actuarial valuation or report as at January 1, 2004 was prepared by Towers Perrin in respect of the Unionized Plan and filed with OSFI in accordance with subsection 12(3) of the PBSA. A copy of this report is attached as Exhibit "G" to this Affidavit.
28. The actuarial valuation or report referred to in paragraph 27 of this Affidavit shows that as at January 1, 2004, the Unionized Plan had an unfunded actuarial liability of \$1,377,378, an unfunded solvency liability of \$1,159,234 (i.e., the plan's deficit or the amount by which the plan's

liabilities would exceed its assets if the plan was terminating), and a statutory solvency deficiency of \$202,088.

29. A statutory solvency deficiency is not synonymous with a plan's unfunded solvency liability (i.e., solvency deficit). A "solvency deficiency" arises where the assets, as set out in the PBSR, are less than the liabilities of the plan. The liabilities are calculated as if the plan was terminating but the assets include not only the value of the plan's assets but also all special payments scheduled to be paid into the plan over the next five years. The report showed that the Unionized Plan's statutory solvency deficiency had to be amortized by annual payments of \$46,654.

30. The rule for computing the employer's normal cost (i.e., the cost to meet the liabilities that in accordance with the terms of the plan have accrued in a year) is \$2,916 per active member per year and over the next three years was estimated as being \$338,200 for 2004, 2005 and 2006. Pursuant to section 4 of the plan text for the Unionized Plan, a member's accrued benefit is described in section 5 and is based upon the member's participation, as set out in section 4, and upon his age at the date as of which the accrued benefit is being determined. Section 5 provides that the "accrued benefit" depends upon "the then current negotiated schedule of benefit rates which is applicable to the bargaining unit to which the Participant belongs, as set out in Table A or Table B below." In 2001, amendments to the Tables were made by the Applicant and filed with OSFI. A copy of this amendment is attached as Exhibit "H" to this Affidavit.

31. The total amount of annual amortization payments was identified as being \$344,525, which includes those payments based on previously

established amortization schedules that establish special payments owed by the employer to the fund. The solvency ratio of the Unionized Plan as at January 1, 2004 was 0.815.

32. For the 2004 plan year, the Applicant is required to make quarterly payments in the amount of \$170,681 per quarter to the Unionized Plan.

2003 Funding Obligations

33. The Applicant had previously filed actuarial valuation reports in respect of both Plans as at January 1, 2003.
34. As provided in the Applicants' initial filing under the *Companies Creditors' Arrangement Act* ("CCAA"), on December 11, 2002, Mr. Justice Wedoff made an order pursuant to Chapter 11 of the United States *Bankruptcy Code* ("Chapter 11 Proceedings") authorizing the Applicants to continue operating their businesses while they formulated a restructuring plan and implementing an automatic stay of proceedings against the Applicants and their property.
35. On May 14, 2003, the Applicants filed an application for an order under the CCAA:
 - declaring that the Applicants are entities to which section 18.6 of the CCAA applies;
 - recognizing the Chapter 11 Proceedings as being determinative of all such claims;
 - staying and enjoining any claims, rights, liens or proceedings against or in respect of the Applicants;
 - staying all proceedings against the Applicants, the directors and officers of the Applicants and the Applicants' property;

- restraining the right of any person or entity to assert, enforce or exercise any right, option or remedy arising as a result of the making or filing of this proceeding, the Chapter 11 Proceedings or any allegation made in this proceeding or in the Chapter 11 Proceedings;
 - recognizing the U.S. claims bar order;
 - authorizing the Applicants, by written consent of their counsel of record, to waive protections contained in the order;
 - authorizing the Applicants to apply, if necessary, for further and other relief; and
 - authorizing any interested person to apply for variation or rescission of the order on proper notice to the Applicants and other interested parties.
36. I have been informed by Gordon Mosher, Senior Supervisor at OSFI who has been assigned to monitor the Applicant's pension plans in Canada that during the 2003 plan year the Applicant remitted or paid to the pension funds all of its required contributions, including normal cost and special payments. These remittances or payments included those that were required to be paid into the pension fund after May 14, 2003.

Remittances for 2004

37. In respect of the 2004 plan year, the Applicant caused Towers Perrin Inc., to prepare an actuarial valuation report that was subsequently filed with OSFI. I have also been informed by Gordon Mosher and believe that the Applicant had remitted to the funds of its Pension Plans its required payments for the first quarter of 2004. These payments were due to be remitted to the funds by April 30, 2004. These payments included normal cost and special payments, as set out in the filed actuarial valuation report. However, the Applicant did not remit to the funds the 2004 second or third

quarter payments or contributions that were required to be made by July 30, 2004 and October 30, 2004, respectively.

38. By letter dated September 14, 2004, the custodian of the pension funds for both Plans, RBC Global Services, informed OSFI that as at July 31, 2004, the contributions required to be made by the Applicant had not been remitted to the funds. The total amount owed to both Plans as at July 31, 2004 was \$192,273. A copy of this letter is attached as Exhibit "I" to this Affidavit. I have been informed by Gordon Mosher that the Applicant has also not remitted to the funds the 2004 third quarter payments or contributions that were due to be paid or remitted to the fund by October 30, 2004. The amount of each 2004 quarterly payment in respect of the Salaried Plan is \$76,948 and the amount of each 2004 quarterly payment in respect of the Unionized Plan is \$170,681.
39. On August 18, 2004, I wrote to the Applicant indicating, that due to their failure to make the required remittances or payment, they were not in compliance with the PBSA, that this situation demanded their immediate attention and that OSFI would be available to meet to discuss this matter. A copy of this letter is attached as Exhibit "J" to this Affidavit.

Correspondence with the Applicant

40. By letter dated August 25, 2004, Marian M. Durkin, Vice President, Deputy General Counsel and Assistant Secretary of United Air Lines Inc., responded to my letter of August 18th. The letter explained that the "decision to cease making pension contributions was based on our need for additional liquidity as we continue our restructuring work and pursue exit financing without a federal loan guarantee." As a result, the contributions due to the Plans as at July 30, 2004 were not made, and I understood that the Applicant would evaluate its options and advise OSFI as soon as a final

decision was reached. A copy of this letter is attached as Exhibit "K" to this Affidavit.

41. By letter dated September 3, 2004, OSFI's legal counsel, Carol Taraschuk wrote to Marian M. Durkin raising matters that should be considered in the Applicant's evaluation of its options with respect to the Plans. The letter presented OSFI's position that the amounts that were not remitted as at July 30, 2004 were due to the funds and therefore, pursuant to section 8 of the PBSA, were subject to a deemed trust and that these payments should be remitted as soon as possible. A copy of this letter is attached as Exhibit "L" to this Affidavit.
42. By letter dated September 8, 2004, I again wrote to the Applicant reiterating that the payments to Plans were due on July 31, 2004 but had still not been made and expressing OSFI's concern about the effect of the non-remittances on the Plans. In addition, the Applicant was informed that, since in the opinion of the Superintendent, any transfers out of the Plans would impair the solvency of the Plans, that transfers out of the Plans pursuant to subsection 26(4) of the PBSA (i.e., portability entitlements), could not occur unless consented to by the Superintendent. A copy of this letter is attached as Exhibit "M" to this Affidavit.
43. At OSFI's request, on September 13, 2004 representatives of OSFI, including myself, held a conference call with representatives of the Applicant. The Applicant did not make a commitment to resume contributions.
44. On September 16, 2004, the Applicant applied for and was granted an amendment to the initial order issued on May 14, 2003 allowing it to cease its contributions to the Plans. OSFI agreed to the order provided that it

was issued without prejudice to a motion being brought by any interested person or to any deemed trust that might exist under the PBSA. It is OSFI's position that a deemed trust exists where amounts are owed, due or have accrued to a pension plan.

45. In a letter dated September 28, 2004, Hugh O'Reilly, legal counsel for the International Association of Machinists and Aerospace Workers ("IAMAW") informed the Canadian legal counsel for the Applicant, Scott Bomhoff, that on the basis of the collective agreement, the provisions of the PBSA and the facts in this instance, the Applicant did not have legal authority to suspend contributions to the Unionized Plan. The letter also expressed the opinion that because of the provisions of the PBSA, the Applicant has an ongoing obligation to make contributions to the Unionized Plan and that the legal authority of OSFI is unaffected by the CCAA. The letter also informed Mr. Bomhoff that the IAMAW demands that the Applicant commence making its contributions to the Unionized Plan. OSFI's legal counsel was copied on this correspondence. A copy of this letter is attached as Exhibit "N" to this Affidavit.

46. By letter dated October 14, 2004, Scott Bomhoff responded to Mr. O'Reilly's letter of September 28, 2004. This letter stated that the Applicant took its position because of a "substantial change of circumstances in the operations of United as result of a decision by the Air Transportation and Stabilization Board on June 28, 2004", the Applicant had to reexamine its restructuring plan and all aspects of its business operations and that the fact that contributions had been made while operating under a CCAA order did not waive their right to take further actions in furtherance of the restructuring efforts or to seek further relief from the court. He also expressed the view that OSFI's legal authority was affected by the May 16, 2003 order of Mr. Justice Farley. OSFI's legal

counsel was copied on the correspondence. A copy of this letter is attached as Exhibit "O" to this Affidavit.

47. By letter dated October 27, 2004, Carol Taraschuk, OSFI's legal counsel, delivered a response to Mr. Bomhoff's letter. The letter clarified some points raised in Mr. Bomhoff's letter and reiterated OSFI's position that the Applicant's obligation to remit the outstanding contributions still existed, that such amounts are subject to a deemed trust and that OSFI, as regulator, is not stayed from taking any actions with respect to the administration of the Plans. A copy of this letter is attached as Exhibit "P" to this Affidavit.

48. On November 30, 2004, representatives of OSFI, IAM, CAW and the Applicant met at the offices of the Applicant's Canadian legal counsel. The purpose of the meeting was to determine the Applicant's intent with respect to the Canadian pension plans and clarify the positions of the unions and OSFI. At the meeting, OSFI emphasized the need for the Applicant to keep all beneficiaries informed of the present and any future position of the Applicant with respect to the Plans. OSFI noted that neither the retirees or the Salaried Plan members had separate representation and cautioned that separate representation may be required if changes to the Plans are proposed that would have an impact on their interests. The Applicant reiterated the position set out in their October 14th letter and confirmed that bankruptcy protection had not been sought in other jurisdictions, only in the United States and Canada. The Applicant stated that in mid-January 2005 critical motions would be heard in respect of the Chapter 11 Proceedings after which time they would have a better sense of the situation in the United States. However, the Applicant would not commit to a time line.

49. To date I am not aware of any separate legal counsel representing the beneficiaries, including the retirees, of the Salaried Plan or of any separate legal counsel representing the retirees and the deferred vested former members of the Unionized Plan.

Pension Plans in the United States as of Mid-January 2005

50. On January 19, 2005, the Wall Street Journal reported that in the United States the Applicant reached a tentative deal with its pilots union on January 18, 2005. It was reported that the agreement postponed the issue of pension plan termination for 90 days and that the Applicant had warned in a letter to the union that "it intends to ask Judge Wedsoff to schedule a trial on pension terminations in early May." A copy of the electronic version of the Wall Street Journal article is attached as Exhibit "Q" to this Affidavit.
51. In its January, 2005 Report on Status of Reorganization that was filed in the Chapter 11 Proceedings on January 20, 2005, the Applicant reported that they had reached interim savings from the union, IAM, International Association of Machinists and Aerospace Workers, and the SAM (i.e., salary and management), employee wage and general administrative support cost reductions, and had reached tentative agreements on permanent labour cost reductions with the following unions: AFA, AMFA, ALPA, PACFA and TWU. However, these tentative agreements (other than the one with ALPA) "do not resolve the difficult pension issues United face." With respect to the pension issues the report states: "These pension issues are crucial because United strongly believes that the termination of each of its defined benefit pension plans and their replacement with defined contribution plans is a necessary and important element of United's reorganization and its effort to secure exit financing." A copy of this report is attached as Exhibit "R" to this Affidavit.

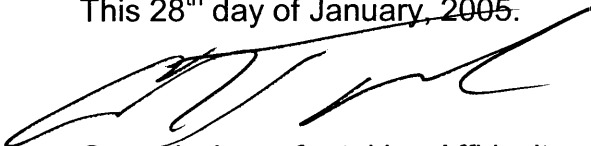
OSFI's Position

52. The Applicant has not approached OSFI concerning its plans for the Plans since these tentative agreements with the various unions in the United States. If the Applicant intends to wait until May 2005 before it makes a decision on the Plans, not only will it owe contributions or payments due as at July 30, 2004 and October 30, 2004 but also contributions owed as at January 30, 2005 (i.e., the fourth quarter payments for 2004) and April 30, 2005 (the first quarter payments for 2005). This will adversely impact the funded status of the Plans, which currently have deficiencies.
53. The Applicant has failed to remit or pay the contributions in respect of the second quarter 2004 payments which were due July 30, 2004, before the order described in paragraph 35 was issued. The third quarter payments for 2004 were also not remitted. These payments were due by October 30, 2004. The last quarter payments for the 2004 plan year are due to be paid or remitted to the Plans by January 30, 2005.
54. It is OSFI's position that pursuant to subsections 8(1) and (2) of the PBSA the amounts owed to the Plans in respect of the third quarterly remittances or payments by the Applicant are due and owing. Moreover, it is OSFI's position that until such time as these amounts are paid, they are subject to a statutory "deemed trust" in favour of the plan members, former members, and any other persons entitled to pension benefits or refunds under the pension plans and as such these amounts do not form a part of the assets of the Applicants and are not available to the Applicants to effect the restructuring and should not be subject to the filing of a claim under the Chapter 11 Proceedings.

55. In light of the position taken by the Applicants that the provisions in the Initial Order issued on May 14, 2003 and the amendments to that order issued on September 16, 2004 prohibit OSFI from enforcing the PBSA in order to assure the continued viability of the Plans and is prohibited from requiring the Applicants as employers and/or administrators to comply with their obligations under the Plans, even in respect of payments required to be made prior to the order allowing the Applicant to cease making contributions to its Plans, OSFI supports the motion of the IAMAW to amend the Initial Order (Amended).

56. I make this affidavit in support of the motion to amend the Initial Order (Amended) and for no improper purpose or delay.

SWORN BEFORE ME at the City of
Ottawa, in the Province of Ontario
This 28th day of January, 2005.



Commissioner for taking Affidavits

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KAREN BADGEROW-CROTEAU