

**United States Bankruptcy Court  
Northern District of Illinois  
Eastern Division**

**Transmittal Sheet for Opinions for Posting**

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Bankruptcy Caption: **In re: UAL Corporation, et al.**

Bankruptcy No. **02 B 48191**

Date of Issuance: **November 24, 2009**

Judge: **Wedoff**

Appearance of Counsel:

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

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

**MEMORANDUM OF DECISION**

These Chapter 11 cases, involving United Air Lines (“United”) and related corporations, are before the Court on a motion of the Equal Employment Opportunity Commission (“EEOC”) for leave to file an amended request for payment of an administrative expense claim, pursuant to 11 U.S.C. § 503(a) and Fed. R. Bank. P. 3001. The EEOC previously filed timely requests for administrative expense payments on behalf of two individual United employees; the amended request would add a class of similarly situated United employees. Due to the length of the EEOC’s delay and its failure to offer a reasonable explanation for not filing an earlier request on behalf of the class, the EEOC’s motion will be denied.

**Jurisdiction**

Under 28 U.S.C. § 1334(a), the federal district courts have “original and exclusive jurisdiction of all cases under title 11 [the Bankruptcy Code],” but they may refer these cases to the bankruptcy judges for their districts under 28 U.S.C. § 157(a). The bankruptcy cases of United and its related corporations were referred to this court pursuant to Internal Operating Procedure 15(a) of the District Court for the Northern District of Illinois. Following such a reference, a bankruptcy judge has jurisdiction under 28 U.S.C. § 157(b)(1) to “hear and determine

... all core proceedings” arising in the case. Resolution of claims against a debtor’s estate is a core proceeding. 28 U.S.C. § 157(b)(2)(B).

### **Findings of Fact**

United filed a voluntary Chapter 11 petition on December 9, 2002. During its bankruptcy case, United was subject to the American with Disabilities Act of 1990, as amended by the Civil Rights Act of 1991 (the “Americans with Disabilities Act” or “ADA”), 42 U.S.C. §§ 12101, *et seq.*, and the corresponding rules and regulations of the EEOC.<sup>1</sup>

In 2003, during the administration of United’s bankruptcy case, two of its employees, Maria Lovell and Shelly Kia, filed “Charges of Discrimination” with the Hawaii Civil Rights Commission, alleging that they had been discriminated against on account of their disabilities. (Docket No. 17311, Ex. A.) In turn, the EEOC issued two “Determinations” to United, notifying the airline that the charges filed by Lovell and Kia had potential class impact and would be investigated. (Docket No. 17311, Ex. B, D.)<sup>2</sup> The Determinations were not filed in the bankruptcy case.

On December 6, 2004, shortly before the Determinations were issued, the EEOC did file proofs of claim on behalf of Kia and Lovell in United’s bankruptcy. (*See* Proof of Claim Nos. 43806 and 43809.) Neither of the proofs of claim stated grounds for recovery or gave the time that the claims arose, and neither asserted any right to recovery by a class.

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<sup>1</sup> The EEOC has been authorized by Congress to administer the ADA and employment discrimination provisions of the Civil Rights Act through administrative proceedings and federal court litigation. 42 U.S.C. § 12117(a); 42 U.S.C. 2000e-5; 42 U.S.C. § 1981a.

<sup>2</sup> In the Determinations, the EEOC stated that “there is reasonable cause to believe that Kia and Lovell and a class of employees were denied reasonable accommodation to their disabilities.” (Docket No. 17311, Ex. D.)

On March 23, 2005, United objected to the proofs of claim (Docket No. 10567), contending that they provided insufficient information. The EEOC filed its response to United's objection on April 13, 2005, specifying the grounds of each claim. (Docket No. 10821.) In particular, the EEOC made the following representations:

- “The proofs of claim were submitted on behalf of Shelly Kia (Claim 43806) and Maria Lovell (43809), both of whom had filed discrimination charges on the basis of disability under the Americans with Disabilities Act of 1990, as amended by the Civil Rights act of 1991.” (*Id.* at 1.)
- “Under Title VII the statutory caps permissible for compensatory and punitive damages is [sic] \$300,000. 42 U.S.C. § 1981a.” (*Id.* at 1-2.)
- “While the specific amount due Kia and Lovell has not been precisely determined, each claim can not exceed \$300,000. To date, Kia's and Lovell's Claims 43806 and 43809 have been liquidated as detailed by Exhibits ‘A’ and ‘B,’ respectively.” (*Id.* at 2.) (Pursuant to these exhibits, the total of Kia's claim was estimated as \$194,169.84, and Lovell's as \$169,004.64.)

Following the EEOC's response, United withdrew its specificity objection. (Docket No. 10903.)

United's Second Amended Joint Plan of Reorganization (the “Plan”) was confirmed on January 20, 2006. (*See* Docket No. 14829.) Article XI.D of the Plan provides that, with respect to governmental units (such as the EEOC), the deadline for filing requests for payment of administrative claims was July 1, 2006, unless a tardily filed request is permitted “for cause.” Any party, including the EEOC, failing to file an administrative claim by the deadlines set forth in the Plan would have its claims “disallowed automatically without the need for any objection

by [the debtors]” (Plan, Art. XI.D), and United would be discharged from any liability related to those claims. (Plan, Art. X.B.)

On September 28, 2006, the EEOC filed a complaint against United on behalf of Kia and Lovell in the United States District Court for the Western District of Washington (the “Seattle Litigation”),<sup>3</sup> asserting that United violated the ADA with respect not only to these two individuals but also to an entire class of United employees. The EEOC sought injunctive and compensatory relief on behalf of the class and most recently estimated the class to include at least 184 individuals. (*See* Docket No. 17322, Ex. 6.) Sometime during the summer of 2008, United informed the EEOC that it believed class compensatory relief was largely barred in the Seattle Litigation because, with the exceptions of Kia and Lovell, the EEOC had failed to timely file administrative claims in United’s bankruptcy case on behalf of the members of the class. Thus, United asserted, the Plan discharged it from any liability arising before plan confirmation for the claims of class members other than Kia and Lovell.

On June 5, 2009, the EEOC responded by filing the pending motion. (Docket No. 17311.) Characterizing the motion as a clarification that its proofs of claim were “claims for all the relief sought in the [Seattle Litigation], including claims for equitable remedies and damages” on behalf of the entire class of United employees, the EEOC requested leave to amend those claims to state this scope explicitly.<sup>4</sup> United filed its objection to the motion on July 7, 2009, the EEOC replied on July 13, and the parties presented oral argument.

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<sup>3</sup> *EEOC v. United Airlines, Inc.*, No. C 06-01407 TSA (W.D. Wash.).

<sup>4</sup> In its motion, the EEOC stated that it recently became aware that certain federal government agencies are holding funds owed to United and that the United States will set off

## Conclusions of Law

The EEOC's motion for leave to amend its administrative expense requests raises the question of finality in bankruptcy cases. In nonbankruptcy cases, amendments to pleadings are generally allowed if the amended claim "relates back" to the original filing, Fed. R. Civ. P. 15(c), and under this standard the EEOC's amendment might be appropriate. However, in bankruptcy cases, late-filed claims, particularly those filed after substantial consummation of a Chapter 11 plan, upset the orderly distribution of estate assets and impede a debtor's efforts to reorganize. Accordingly, even an amendment appropriate under Rule 15(c) may be prohibited in bankruptcy. *See In re Stavriotis*, 977 F.2d 1202, 1206 (7th Cir. 1992).

The history of the EEOC's requests in this case indicates that the policy of finality should control.

*Relation back.* In *In re Unroe*, 937 F.2d 346 (7th Cir. 1991), the Seventh Circuit determined that a request to amend a proof of claim should be analyzed under Federal Rule of Civil Procedure 15. *Unroe*, 937 F.2d at 349. Subsection (c) of that rule provides that an amended claim relates back to the original claim "whenever the claim . . . in the amended pleading [arises] out of the conduct, transaction, or occurrence set forth . . . in the original pleading." The EEOC argues that its proposed amendment should be allowed because it relates back to its timely proofs of claim involving discriminatory conduct alleged by Lovell and Kia.

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those amounts against the amounts owed to the EEOC on account of its class administrative expense claims. United objected to what it characterized as the EEOC's request for an advisory opinion, arguing that the EEOC cannot set off current amounts owed to United against amounts that might possibly be owed to the EEOC at some undetermined time in the future. Because the EEOC's request for leave to amend its claims will be denied, the setoff issue need not be reached.

The EEOC’s argument finds support in *Paskuly v. Marshall Field & Co.*, 494 F. Supp. 687 (N.D. Ill. 1980), *aff’d* 646 F.2d 1210 (7th Cir. 1981), *cert. denied*, 454 U.S. 863 (1981). There, a plaintiff filed a sexual discrimination suit against her employer and subsequently sought to amend her complaint to include discrimination claims on behalf of all similarly situated individuals. The district court held that the central question was “whether the defendant had such notice of the added claim at the time the action was commenced that relation back of the added claim will not cause defendant undue prejudice.” 494 F. Supp. at 688. The court found no prejudice to the defendant in *Paskuly* on the grounds that the class amendment would “only slightly affect the size of the putative class,” and that the original complaint alleged routine discrimination against women—the same factual issue forming the basis of the putative class members’ claims. *Id.* at 689-90. On appeal, the Seventh Circuit affirmed the district court’s decision to allow the amendment, further determining that the defendant had never been “‘put off’ notice” of the potential for a class action. 646 F.2d at 1211.

The EEOC’s proposed amendment here would accomplish a result much like that in *Paskuly*—expanding a single plaintiff’s action to allow all of those allegedly injured by an employer’s conduct to participate in a class claim. It might also be said that Kia and Lovell’s claims—particularly as considered in the Determinations—put United on notice that class relief was possible under the ADA. Thus, the EEOC amendment might well have been allowed in a nonbankruptcy context, as relating back to the original pleading under Rule 15(c).<sup>5</sup>

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<sup>5</sup> There are, however, at least two distinctions between this case and *Paskuly* that might have resulted in denial of the amendment even in a nonbankruptcy proceeding. First, the proposed amendment would not “only slightly affect the size of the putative class,” but would instead expand it from two to at least 184 individuals, with a correspondingly large increase in the

*Bankruptcy limitations.* However, in *Holstein v. Brill*, 987 F.2d 1268 (7th Cir. 1993), the Seventh Circuit held that bankruptcy changes the ordinary rule on amendments and that “relation back” is an insufficient basis for allowing a creditor to amend its proof of claim. *Id.* at 1270 (“That an amendment would relate back to the original pleading does not make it appropriate for the court to permit the amendment.”). In *Holstein*, a creditor sought to increase the amount of his proof of claim after confirmation of the debtor’s plan. The court began its analysis by noting that, while amendments should be freely allowed early in the proceedings, passing of certain “milestones” weigh against permitting them. *Id.* The first such milestone is the claims bar date. After this deadline, bankruptcy courts retain relatively broad discretion to allow or deny proposed amendments and amendments increasing the amounts of claims may still be appropriate. *Id.* The next milestone, however, confirmation of a plan, greatly limits the circumstances in which amendments will be allowed:

Confirmation of the plan of reorganization is . . . equivalent to final judgment in ordinary civil litigation. Once that milestone has been reached, further changes should be allowed only for compelling reasons. Confirmation automatically discharges all debts other than those provided for in the plan, and each claimant gets a “new” claim, based upon whatever treatment is accorded to it in the plan itself. Modification of a confirmed and substantially consummated plan is forbidden except to the limited extent 11 U.S.C. § 1127 permits. Post-confirmation amendments make an end run around these provisions and may throw monkey wrenches into the proceedings, making the plan infeasible or altering the distributions to remaining creditors.

*Id.* at 1271 (internal citations and quotations omitted). The court emphasized that the nature of plan confirmation demands finality, even in the absence of harm to other parties:

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potential damages. Second, unlike the defendant in *Paskuly*, United was “put off notice” of a potential class claim by the EEOC’s response to United’s claim objection, which clearly stated that the EEOC was asserting damage-limited claims on behalf of only two individuals.

[W]hether or not late-breaking claims affect third parties' entitlements, they assuredly disrupt the orderly process of adjudication. To every thing there is a season, and the season for stating the amount of a debt is before the confirmation of a plan of reorganization.

*Id.* at 1271.

Against this backdrop, the court focused its inquiry on the reason for the creditor's delay. Noting that the creditor had received notice of the claims bar date, had all of the relevant documents and information prior to that deadline, and did not allege that the debtor had somehow hindered his effort to file an accurate claim, the court concluded that, at best, "there is nothing but the equivalent of: 'Whoops, my mistake.'" *Id.* at 1271. Accordingly, the Seventh Circuit reversed the bankruptcy court's decision to allow the amendment and strongly cautioned against allowing post-confirmation claim amendments absent "compelling" and "cogent" reasons. *Id.* at 1270-71.

*Holstein* is not alone in attaching special significance to a creditor's reason for failing to file a proof of claim timely. An earlier decision, *In re Stavriotis*, 977 F.2d 1202 (7th Cir. 1992), affirmed a bankruptcy court's denial of the IRS's amendment of a tax claim. The decision was based, in part, on the large increase in the claim amount proposed by the amendment. *Stavriotis*, 977 F.2d at 1205 (citing *In re Kolstad*, 928 F.2d 171, 13-74 (5th Cir. 1991) for the rule that filing deadlines are intended "to enable the debtor and his creditors to know, reasonably promptly, what parties are making claims and in what general amounts"). But the principal basis for the ruling was that the IRS had shown no good ground for failing to amend its claim earlier. *Id.* at 1206.

Similarly, in *In re Kmart Corp.*, 381 F.3d 709 (7th Cir. 2004), the Seventh Circuit analyzed a creditor’s request to allow a late-filed claim under Bankruptcy Rule 9006(b)(1), for which courts have employed a four-part “excusable neglect” test: inquiring as to the reason for delay, the length of delay, the creditor’s good faith, and any prejudice resulting from the delay. *Kmart*, 381 F.3d at 713 (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993)). In applying this test, the *Kmart* court found that the reason for delay was “immensely persuasive,” even though the creditor in *Kmart* filed its claim only one day after the bar date, due to a mistaken choice of delivery methods. *Id.* at 715. The court termed this a “poor” reason and therefore upheld the bankruptcy court’s decision denying the creditor’s request to have the claim deemed timely filed. *Id.* See also *In re Musicland Holding Corp.*, 356 B.R. 603, 608 (Bankr. S.D.N.Y. 2006) (“As *Kmart* shows, neglect is not excusable where the party knows the filing deadline, but fails to file in time due to lack of oversight or inattention.”).<sup>6</sup>

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<sup>6</sup> Although *Holstein*, *Stavriotis*, and *Kmart* involved prepetition claims, they are all relevant to the EEOC’s request to amend its postpetition administrative claims. The emphasis on the need for finality in bankruptcy and, in particular, the need for creditors to amend their claims timely is equally applicable to all types of claims. A postconfirmation amendment to an administrative claim—which must be paid in full and in cash pursuant to § 1129(a)(9)(A)—will disrupt the orderly process of bankruptcy at least as much as a late amendment to a prepetition claim. In addition, although § 503(a) of the Bankruptcy Code and Article XI.D of the Plan permit administrative claims to be filed tardily “for cause” while Bankruptcy Rule 9006(b)(1) allows prepetition claims to be filed late upon a showing of “excusable neglect,” nearly all of the courts considering a request for leave to file a late administrative claim under § 503(a) have applied the excusable neglect standard. See *In re PT-1 Comm’n’s, Inc.*, 403 B.R. 250, 259-60 (Bankr. E.D.N.Y. 2009); *In re Gurley*, 235 B.R. 626, 632 (Bankr. W.D. Tenn. 1999); *In re Aargus Polybag Co., Inc.*, 172 B.R. 586, 589-91 (Bankr. N.D. Ill. 1994); *Candelario v. Centennial Healthcare Corp. (In re Centennial Healthcare Corp.)*, No. 02-B-74974, 2005 WL 634985, at \*6-7 (Bankr. N.D. Ga. Dec. 28, 2005); *Hall v. Kmart Corp.*, No. 04-C-6240, 2005 WL 634983, at \*2 (N.D. Ill. Aug. 25, 2005); *W. Delta Oil Co. v. Hof (In re W. Delta Oil Co.)*, No. Civ. 01-1163, 2002 WL 506814, at \*4 (E.D. La. Mar. 28, 2002). And even if a court were inclined to create a new standard in evaluating “cause” for untimely amendments to administrative claims, one factor

In the present case, the EEOC has failed to offer any compelling or cogent reason for failing to amend its claims timely. The EEOC contends that an amendment was unnecessary over the last three years “because the claims have not substantively changed since they were filed.” (EEOC Reply, Docket No. 17329.) During oral argument, counsel for the EEOC elaborated on this rationale—contending that the EEOC believed that it had properly filed class claims at the outset, and brought the pending motion simply to make class status clear. This contention is unsupportable in light of the representations the EEOC made in its response to United’s claims objection. In particular, if the EEOC had been operating under the assumption that the two administrative expense claims sought class-wide relief, it could not have stated that the claims were brought solely on behalf of two individuals or, more significantly, that the amount of the claims was statutorily capped at \$300,000 each rather than an uncapped amount of over \$55 million.<sup>7</sup> Moreover, the EEOC did file claims seeking class-wide relief on behalf of other United employee work groups (*see* Proof of Claim No. 43293), and thus itself distinguished between individual and class claims.<sup>8</sup> Accordingly, even if the EEOC mistakenly believed it had filed class claims despite making express representations to the contrary, the unreasonableness of this belief

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to be considered—if not the most important factor—would be the moving party’s reason for failing to act sooner.

<sup>7</sup> The EEOC has most recently identified 184 members of the potential class. Title VII statutorily caps compensatory and punitive damages for each member of the class at \$300,000, 42 U.S.C. § 1981a, and thus the maximum amount of class compensatory and punitive damages could be \$55.2 million.

<sup>8</sup> Along the same lines, there would have been no need for the EEOC to file two separate claims (on behalf of Kia and Lovell) if one claim had actually sought relief on behalf the entire class.

and the EEOC's apparent carelessness weigh against excusing its mistake. *See Holstein*, 987 F.2d at 1271 (“A litigant’s inattention [or] error . . . is not good cause by any standard.”).

Notwithstanding its failure to timely file a class administrative claim or previously attempt to amend its claims, the EEOC asserts that United will not be prejudiced by the nearly three year delay because it has actively participated in the Seattle Litigation, has been aware of the basis for the EEOC’s class claims, and only recently asserted that class compensatory relief is unavailable to the EEOC.<sup>9</sup> However, United’s litigation strategy is not the issue. *See In re Nat’l Steel Corp.*, 316 B.R. 510, 518 (Bankr. N.D. Ill. 2004) (“[I]t was [the creditor’s] responsibility to explore, investigate and file a proof of claim against the Debtors, not the other way around. The Debtors’ actions or inactions are irrelevant.”). Rather, allowing a creditor to drastically increase the amount of its claims after confirmation, without a cogent reason, is an unacceptable treatment of the other parties in the bankruptcy case, as the Seventh Circuit has made clear:

If the government had an unqualified right after the bar date to amend proofs of claim dramatically for any reason or for no reason at all, the bar date in bankruptcy proceedings would be meaningless. Under that view, every creditor

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<sup>9</sup> The EEOC also argues that neither United nor its unsecured creditors will be prejudiced because (i) administrative expenses are paid out of the reorganized debtor’s operating budget and allowing the amended class claim therefore will not affect distributions to other creditors, and (ii) the deadline for filing administrative expense claims was after confirmation of the Plan, and so United could not have relied on the stated amounts of Kia and Lovell’s claims in formulating the Plan. (Docket No. 17329 at 6.) The EEOC’s arguments are unpersuasive. First, in satisfaction of their claims, unsecured creditors received shares of stock in the reorganized debtor; thus, any increased expenses for the reorganized debtor will reduce the potential value of that stock. Second, in conducting its business during the three years since confirmation and in planning its future operations, the reorganized debtor (as would any business) would have to make projections about its future cash flow and expenses, and an unexpected \$55 million increase in expenses would necessarily cause some prejudice.

could file grossly misleading proofs of claim and later amend those claims as of right at their leisure, whenever they decided to calculate the extent of actual debt claimed to be owed.

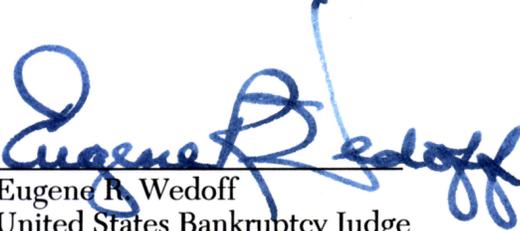
*Stavriotis*, 977 F.2d at 1206.

Finally, although the EEOC correctly notes that there is no bright-line rule for determining how much delay is too much, it offers no authority excusing its failure to act for nearly three years. Here, given that the claims bar date was long ago, United's plan already has been consummated, and a final decree closing these Chapter 11 cases will soon be entered, it is apparent that the EEOC has waited too long to seek to amend its claims.

### **Conclusion**

Because the EEOC has not offered a compelling reason for failing to amend its administrative claims in a timely fashion, its motion to allow an untimely amendment will be denied. A separate judgment will be entered to this effect.

Dated: November 24, 2009

  
Eugene R. Wedoff  
United States Bankruptcy Judge