

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

INTERNATIONAL ASSOCIATION OF )  
MACHINISTS AND AEROSPACE WORKERS, )

and )

JOHN D. PATRICK, JR. )  
6454 West Montrose Avenue )  
Harwood Heights, IL 60706, )

and )

RUDY ASUNCION )  
104 East Camp McDonald Road )  
Prospect Heights, IL 60070, )

and )

NANCY CAMPBELL )  
367 Greystone Court )  
Schaumburg, IL 60193, )

and )

MARY BARRY )  
1275 Newcastle Lane )  
Hoffman Estates, IL 60194, )

Plaintiffs, )

v. )

Civil Action No. \_\_\_\_\_

PENSION AND WELFARE PLANS )  
ADMINISTRATION COMMITTEE OF )  
UNITED AIRLINES, INC., )

GLENN F. TILTON, )

FREDERIC F. BRACE, )

PETER D. MCDONALD, )

\_\_\_\_\_ )  
Defendants. )

## **COMPLAINT**

Plaintiffs, by and through their attorneys, O'Donoghue & O'Donoghue, LLP, Lowenstein Sandler, PC and Asher, Gittler, Greenfield & D'Alba, as and for their Complaint, respectfully allege as follows:

### **NATURE OF THE ACTION**

1. This is an action for fiduciary breach, co-fiduciary breach, and an action to enjoin the violation of the terms of employee benefit plans.

### **JURISDICTION**

2. This Court has jurisdiction of this action under Sections 404, 405, 409, and 502 of ERISA, 29 U.S.C. §§ 1104, 1105, 1109, and 1132.

### **PARTIES**

3. Plaintiff International Association of IAM and Aerospace Workers (hereinafter the "IAM") is a representative within the meaning of Section 1(6) of the Railway Labor Act, 45 U.S.C. § 151(6) and a labor organization within the meaning of Section 2(5) of the Labor Management Relations Act of 1947, (LMRA) 29 U.S.C. § 152(5) and represents participants in the United Airlines Management, Administrative and Public Contact Pension Plan (hereinafter "Public Contact Plan"), an employee pension benefit plan within the meaning of Section 3(2) of the Employee Retirement Income Security Act of 1974, (ERISA), 29 U.S.C. § 1002(2) and the United Airlines Ground Employees' Retirement Plan (hereinafter "Ground Plan"), an employee pension benefit plan within the meaning of Section 3(2) of the Employee Retirement Income Security Act of 1974, (ERISA), 29 U.S.C. § 1002(2). The IAM is located at 9000 IAM Place, Upper Marlboro, Maryland 20772.

4. Plaintiff John D. Patrick, Jr. is a member of the IAM and a participant in the Ground Plan and resides at 6454 West Montrose Avenue, Harwood Heights, IL 60706.

5. Plaintiff Rudy Asuncion is a member of the IAM and a participant in the Ground Plan and resides at 104 East Camp McDonald Road, Prospect Heights, IL 60070.

6. Plaintiff Nancy Campbell is a member of the IAM and a participant in the Public Contact Plan and resides at 367 Greystone Court, Schaumburg, IL 60193.

7. Plaintiff Mary Barry is a member of the IAM and a participant in the Public Contact Plan and resides at 1275 Newcastle Lane, Hoffman Estates, IL 60194.

8. Defendant Pension and Welfare Plans Committee of United Airlines (“Committee”) is the trustee of an employee pension benefit plans as defined in Sections 3(2) of the Employee Retirement Income Security Act of 1974, (ERISA), 29 U.S.C. § 1002(1). Upon information and belief, the Committee is the Named Fiduciary of the Public Contact and Ground Plans.

9. Defendant Glenn F. Tilton is the Chairman, President, and Chief Executive Officer of United Airlines, Inc. and, upon information and belief, resides in the State of Illinois. Upon information and belief, Tilton is a member of the Committee and is a fiduciary as to the Public Contact and Ground Plans.

10. Defendant Frederic F. Brace is the Executive Vice President and Chief Financial Officer of United Airlines, Inc. and resides in the State of Illinois. Upon information and belief, Brace is a member of the Committee and is a fiduciary as to the Public Contact and Ground Plans.

11. Defendant Peter D. McDonald is the Executive Vice President of United Airlines, Inc. and resides in the State of Illinois. Upon information and belief, McDonald is a member of the Committee and is a fiduciary as to the Public Contact and Ground Plans.

## **BACKGROUND**

12. Plaintiff IAM is signatory to a collective bargaining agreement with United Airlines, Inc. (“United” or “United Airlines”).

13. Pursuant to the Collective Bargaining Agreement, United Airlines agreed to fund a defined benefit pension plan for its employees covered by the Collective Bargaining Agreement with the IAM.

14. United employees working under the IAM collective bargaining agreement are covered by the Public Contact and Ground Plans.

15. On December 9, 2004, United Airlines, Inc. filed for protection from its creditors under Chapter 11 of the Bankruptcy Code

16. On or about April 10, 2003, United Airlines and the IAM negotiated modifications to their Collective Bargaining Agreement pursuant to Section 1113 of the Bankruptcy Code. While the IAM made significant concessions in work rules and wages in the amount of \$2.6 Billion, the parties agreed that United would make no changes to the Public Contact Plan or the Ground Plan.

17. Upon information and belief, Defendants Tilton, Brace, and McDonald entered into negotiations with various financial institutions to obtain financing for United Airlines, Inc.

18. Upon information and belief, these negotiations concluded with United Airlines, Inc. reaching an agreement with the financial institutions to provide financing to United Airlines on the condition that United’s legally required pension obligations would not be paid.

19. On or about July 14, 2004, United announced that it had deferred a decision as to whether to fund its defined benefit pension plans.

20. On July 23, 2004, United announced that it would make no further payments to its defined benefit pension plans, including the Public Contact Plan and Ground Plan while it remained in bankruptcy and because its lenders had prohibited it from making any further pension payments.

### **FIRST CLAIM FOR RELIEF**

21. Plaintiffs hereby adopt, incorporate and restate paragraphs 1 through 20.

22. Under ERISA § 404(a)(1)(D), a fiduciary with respect to a plan is required to discharge his or her duties to the plan in accordance with the documents and instruments governing the plan.

22. Upon information and belief, the documents of the Public Contact and Ground Plans require that United Airlines, Inc. make contributions in order to fund the defined benefit plans of its employees in accordance with the Internal Revenue Code and ERISA.

23. The failure to fund a defined benefit pension is a violation of the Internal Revenue Code and ERISA.

25. By failing to compel United Airlines, Inc. to meet its obligation to make contributions in accordance with the governing documents of the Public Contact and Ground Plans and the law, Defendants Tilton, Brace, and McDonald have breached their fiduciary duty in violation of ERISA § 409 to operate the Public Contact and Ground Plans in accordance with the documents and instruments governing those Plans and failed to comply with the law.

26. As a result of their fiduciary breach, the participants and beneficiaries of the Public Contact and Ground Plans have suffered damages from the underfunding of their defined benefit pensions.

### **SECOND CLAIM FOR RELIEF**

27. Plaintiffs hereby adopt, incorporate and restate paragraphs 1 through 26.

28. ERISA § 404 requires a plan fiduciary to discharge his or her duties for the sole and exclusive benefit of the participants and beneficiaries of the employee benefit plan.

29. Defendants Tilton, Brace, and McDonald are fiduciaries with respect to the Public Contact and Ground Plans.

30. On or about June 2004, Defendants Tilton, Brace, and McDonald participated in negotiations seeking financing for United Airlines, Inc. with various financial institutions.

31. Upon information and belief, these negotiations concluded with United Airlines, Inc. reaching an agreement with the financial institutions to provide financing to United Airlines conditioned on United's agreement not to fund its pension obligation to its defined benefit plans, including the Public Contact and Ground Plans.

32. In continuing their participation in the negotiations for financing for United Airlines, Inc. on these terms, Defendants Tilton, Brace, and McDonald breached their fiduciary duty to the participants and beneficiaries of the Public Contact and Ground Plans by continuing to participate in negotiations with various financial institutions without regard to their duty of loyalty to the participants and beneficiaries of the Public Contact and Ground Plans.

33. By failing to act in the sole and exclusive interest of the Public Contact and Ground Plans, Defendants Tilton, Brace, and McDonald violated ERISA § 404 and § 409 and breached their fiduciary duty to the participants and beneficiaries of the Public Contact and Ground Plans.

34. As a result of this breach of their fiduciary duty by the Defendants Tilton, Brace, and McDonald, the Public Contact and Ground Plans and their participants and beneficiaries have suffered damages.

### **THIRD CLAIM FOR RELIEF**

35. Plaintiffs hereby adopt, incorporate and restate paragraphs 1 through 34.

36. Under ERISA § 405, a fiduciary with respect to a plan is liable for the breach of duty of another fiduciary if the fiduciary knowingly participates in a fiduciary breach, enables another fiduciary to commit a breach or has knowledge of the other fiduciary's breach and does not take reasonable efforts to remedy the breach.

37. Upon information and belief, the Defendant Committee, Tilton, Brace, and McDonald had knowledge that the decision to not fund the defined benefit plans of United violated the terms of the Ground Plan and the Public Contact Plan.

38. Upon information and belief, none of the Defendants took any steps to remedy the breach caused by the failure of Defendants Tilton, Brace, and McDonald to operate and administer the Public Contact and Ground Plans in accordance with the plan documents governing those Plans.

39. As a result of their collective failure to act, the participants and beneficiaries of the Public Contact and Ground Plans have suffered damages and all of the Defendants are liable to the participants and beneficiaries for those breaches of fiduciary duty caused by the breach of each individual fiduciary of the Public Contact and Ground Plans.

### **FOURTH CLAIM FOR RELIEF**

40. This Court has jurisdiction of this action under §§ 502(a)(3), (f), (g) ERISA of 1974, 29 U.S.C. §§ 1132(a) (3), (f), (g). This is an action to enjoin violations of the terms of an employee benefit plan.

41. Plaintiffs hereby adopt, incorporate and restate paragraphs 1 through 40.

42. United, pursuant to the plan documents establishing the Public Contact and Ground Plans, agreed to make timely contributions to those Plans in the amounts and on the dates

required by ERISA § 302 and Internal Revenue Code § 412 in order to maintain the plan of benefits provided through the Public Contact and Ground Plans.

43. United, acting through the Defendants Committee, Tilton, Brace, and McDonald, has failed to meet its funding obligation to the Public Contact and Ground Plans in violation of the requirements of the aforementioned plan documents of the Public Contact and Ground Plans.

WHEREFORE,

(1) Plaintiffs demand judgment on their First Claim for Relief against Defendants Tilton, Brace, and McDonald for a Court Order requiring the Defendants Tilton, Brace, and McDonald to administer the Public Contact and Ground Plans, including the funding obligation, in accordance with the documents governing the Public Contact and Ground Plans and ERISA and the Internal Revenue Code; to have an Injunction requiring the Defendants Tilton, Brace, and McDonald to take all necessary steps to secure funding from any available source for the Public Contact and Ground Plans in order for those Plans to meet their funding obligations under the Internal Revenue Code and ERISA; to have judgment against Defendants Tilton, Brace, and McDonald for the amount determined as contributions owed by United Airlines, Inc. pursuant to the documents and instruments governing the Public Contact and Ground Plans to those Plans, plus liquidated damages, interest from the date of any nonpayment until the date of payment, costs and reasonable attorneys' fees pursuant to Section 29 U.S.C. § 1132(g).

(2) Plaintiffs demand judgment on their Second Claim for Relief against Defendants Tilton, Brace, and McDonald for a Court Order requiring the Defendants Tilton, Brace, and McDonald to administer the Public Contact and Ground Plans, including the funding obligation, in accordance with the documents governing the Public Contact and Ground Plans and ERISA and the Internal Revenue Code; to have an Injunction requiring the Defendants Tilton,



Brace, and McDonald to take all necessary steps to secure funding from any available source for the Public Contact and Ground Plans in order for those Plans to meet their funding obligations under the Internal Revenue Code and ERISA; to have judgment against Defendants Tilton, Brace, and McDonald for the amount determined as contributions owed by United Airlines, Inc. pursuant to the documents and instruments governing the Public Contact and Ground Plans to those Plans, plus liquidated damages, interest from the date of any nonpayment until the date of payment, costs and reasonable attorneys' fees pursuant to Section 29 U.S.C. § 1132(g).

(3) Plaintiffs demand judgment on their Third Claim for Relief against Defendants Committee, Tilton, Brace, and McDonald for a Court Order requiring the Defendants Committee, Tilton, Brace, and McDonald to administer the Public Contact and Ground Plans, including the funding obligation, in accordance with the documents governing the Public Contact and Ground Plans and ERISA and the Internal Revenue Code; to have an Injunction requiring the Defendants Committee, Tilton, Brace, and McDonald to take all necessary steps to remedy the breach of fiduciary duty by any and all individual fiduciaries to the Public Contact and Ground Plans and secure funding from any available source for the Public Contact and Ground Plans in order for those Plans to meet their funding obligations under the Internal Revenue Code and ERISA; to have judgment against Defendants Committee, Tilton, Brace, and McDonald for the amount determined as contributions owed by United Airlines, Inc. pursuant to the documents and instruments governing the Public Contact and Ground Plans to those Plans, plus liquidated damages, interest from the date of any nonpayment until the date of payment, costs and reasonable attorneys' fees pursuant to Section 29 U.S.C. § 1132(g).

(4) Plaintiffs demand judgment on their Fourth Claim for Relief for a Court Order enjoining violations of the terms of the Public Contact and Ground Plans and requiring Defendants Committee, Tilton, Brace, and McDonald to administer the Public Contact and Ground

Plans, including the funding obligation, in accordance with the documents governing the Public Contact and Ground Plans and ERISA and the Internal Revenue Code.

(5) Granting such other relief as the Court may deem just and proper.

Dated: July \_\_\_\_\_, 2004

Respectfully submitted,

O'DONOGHUE & O'DONOGHUE, LLP

By: \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Complaint has been served by certified mail, as required by 502(h) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(h) this \_\_\_ day of \_\_\_\_\_, 2004 on the following:

Secretary of the Treasury  
Internal Revenue Service  
P.O. Box 13163  
Baltimore, MD 21203

Attention: Employee Plans

Secretary of Labor  
200 Constitution Ave., N.W.  
Washington, DC 20210

Attention: Assistant Solicitor for  
Plan Benefits Security

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Marvin Gittler