

solicitation as a result of the preliminary injunction, it will forfeit the benefits it would have received under the Memorandum of Understanding with United Air Lines, Inc. (\$68 million); will lose net income from Plaintiff's operation as an United Express carrier (\$309 million); will miss out on operational savings from the combination of Plaintiff's and Defendant's operations (\$206 million); and will forfeit all of its expenses incurred to date in connection with the consent solicitation (\$1.5 million). Defendant also contends that it has already suffered losses from the recent decline in Plaintiff's stock price, of which Defendant held 1.6 million shares (\$2.4 million).

Rule 65(c) provides:

No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

Given the magnitude of the potential merger between Plaintiff and Defendant, the ephemeral nature of such a deal, and the lucrative terms of the MOU with United, Defendant certainly will suffer damages if it is later determined that the preliminary injunction was entered in error.

However, the bond amount sought by Defendant is excessive because most of its claimed losses are "not certain[.]" Def. Br. at 6. These losses are conditioned on a successful consent solicitation; the new, independent board of directors approving the exchange offer or maintaining Plaintiff's regional air carrier relationship with United consistent with the terms of the MOU; and United and Plaintiff transforming the MOU into a binding contract.¹

The Court determines that ten million dollars (\$10,000,000.00) is an appropriate amount

¹United announced in a press release on December 22, 2003, that it was ending the MOU with Defendant.

for a bond in this case. This amount will adequately compensate Defendant should the preliminary injunction later be deemed erroneous and will not pose an unreasonable burden on Plaintiff, which purports to have over \$200 million in cash on hand. Accordingly, pursuant to Federal Rule of Civil Procedure 65(c) and Local Civil Rule 65.1.1, Plaintiff is directed to post a security bond in the amount of ten million dollars (\$10,000,000.00) no later than 4:00 p.m. on January 9, 2004.

SO ORDERED.

Dated: December 30, 2003

/s/

Rosemary M. Collyer
United States District Judge