

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:	
In re	:	
	:	Chapter 11 Case No.
AMR CORPORATION, et al	:	
	:	
Debtors,	:	<u>11-15463 (SHL)</u>
.....	:	(Jointly Administered)
	:	
KAREN ROSS and STEVEN EDELMAN,	:	
on behalf of themselves	:	
and all others similarly situated,	:	
	:	
Plaintiffs,	:	Adversary Proceeding
	:	
v.	:	No. _____
	:	
AMR CORPORATION and AMERICAN	:	
AIRLINES, Inc.,	:	
	:	
Debtors.	:	<u>CLASS ACTION ADVERSARY</u>
_____	x	<u>PROCEEDING COMPLAINT</u>

CLASS ACTION ADVERSARY PROCEEDING COMPLAINT

Plaintiffs Karen Ross and Steven Edelman (“Plaintiffs”), on behalf of themselves and all others similarly situated, by and through their attorneys, Krislov & Associates, Ltd., bring this claim as a class action adversary proceeding under Fed. R. Bankr. P. 7023 and Fed. R. Civ. P. 23, against AMR Corporation and American Airlines, Inc. (collectively “Debtors”), and in support thereof, upon personal knowledge as to themselves and upon information and belief as to all other matters, allege the following:

I. NATURE OF THE ACTION

1. This is a class action adversary proceeding arising from Debtors' unlawful conduct regarding frequent-flier airline miles. Over the course of three decades – and as recently as July 2012 – Debtors have promised their most loyal customers that valuable miles earned in the 1980s would remain valuable. Instead, Debtors have radically reduced the value of these miles in two discrete ways. First, Debtors have unilaterally changed the terms of its program to make all miles earned prior to July 1, 1989 – miles continuously identified by Debtors as “Miles With No Expiration” – subject to expiration. Second, Debtors will no longer allow customers to redeem their old miles under the award structure that was in place when they earned those miles; the miles will have to be redeemed under a newer, far more restrictive award structure. These actions make the miles significantly less valuable and injure customers who for years relied on the promises Debtors have now broken. The breach of these promises and reduction of the value of miles earned prior to July 1, 1989 is unlawful. Because the violations occurred post-petition, Plaintiffs' claim is entitled to the status of administrative-expense claim in the bankruptcy case.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157.

3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

III. PARTIES

4. Plaintiff Karen Ross is a citizen of the State of Connecticut. She has been an AAdvantage member since 1982, and currently possesses 202,927 “Miles With No Expiration” earned before July 1, 1989.

5. Plaintiff Steven Edelman is a citizen of the State of Oregon. He has been an AAdvantage member since around 1983, and currently possesses 82,971 “Miles With No Expiration” earned before July 1, 1989.

6. Debtor AMR Corporation is a Delaware corporation with its principal place of business in Fort Worth, Texas. Debtor American Airlines, Inc. is a principal subsidiary of AMR Corporation. Together, these corporations do business as American Airlines. On Nov. 29, 2011, Debtors filed with this Court a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code.

IV. FACTUAL ALLEGATIONS

7. Debtors operate American Airlines.

8. Debtors since 1981 have marketed and administered a frequent-flier reward program called AAdvantage.

9. AAdvantage members earn miles when they fly on Debtors’ airlines; they accumulate miles and eventually may redeem them for free or discounted tickets, or service-class upgrades.

10. During its early days in the 1980s, AAdvantage was a relatively small program designed to win the commercial loyalty of Debtors’ most frequent customers and to obtain market share from its competitors. Members earned miles primarily, if not exclusively, by flying on Debtors’ planes, and used the rewards only to buy or upgrade plane tickets. These miles were redeemed under what Debtor now calls the “Regular” or

original award structure. For example, under the “Regular” award structure, 30,000 miles could be redeemed for a “30A” award for two certificates good for upgrades from Coach Class to First Class. Additionally, miles earned prior to July 1, 1989 could be redeemed for any available seat on any flight, and for First Class upgrades on discounted fares. The “Regular” award structure did not impose so-called capacity controls; meaning, a person using pre-July 1, 1989 miles to purchase a ticket or obtain an upgrade to First Class was given the same opportunity to do so as someone who was making the same purchase with cash.

11. Today, AAdvantage is a massive, multifaceted marketing program. Miles are earned not just flying on airplanes but also by making purchases from third-party marketing partners who have purchased mileage credits from Debtors. According to documents filed by Debtors with the U.S. Securities and Exchange Commission (“SEC”), there are currently 69 million AAdvantage members. These members earn their miles from Debtors as well as from more than 1,000 of Debtors’ marketing partners. Debtors have told the SEC there are currently 591 billion unredeemed miles. The vast majority of these miles – miles earned on or after July 1, 1989 – cannot be redeemed under the “Regular” award structure. AAdvantage miles earned on or after July 1, 1989 are deemed “Miles Subject to Expiration.” These miles will expire if the AAdvantage member does not redeem them or earn more miles in an 18-month period. Additionally, these miles cannot be redeemed under the “Regular” award structure. As such, they are worth far less than “Miles With No Expiration.”

12. According to the program terms, AAdvantage miles earned before July 1, 1989 are permanent miles, described by Debtors as “Miles With No Expiration.” These

miles do not expire. These miles are much more valuable than post-July 1, 1989 miles because they can be redeemed under the “Regular” award structure.

13. In or around May 1988, Debtors imposed capacity controls on “Miles With No Expiration.” This resulted in a class action titled *Wolens v. American Airlines, Inc.*, being filed in the Circuit Court of Cook County, Illinois.

14. AAdvantage members in or around August and September 1989 received a letter from Debtors confirming that miles earned before July 1, 1989 would not expire and could be redeemed under the “Regular” award structure.

15. In or around February 2000, a settlement was reached in the *Wolens* class action. A “Notice of Class Action Lawsuit and Proposed Settlement” (“*Wolens* Notice”) was sent to members of a class defined as all AAdvantage members who had at least 35,000 unredeemed miles as of Dec. 1, 1988. Class members who did not opt out of the settlement received their choice of additional miles or miles-off certificates for future travel. In exchange, class members in part agreed to allow Debtors to impose capacity controls. However, the *Wolens* Notice specifically told class members: “You may still claim Old Awards using the Old Miles.”

16. Plaintiffs are AAdvantage members. They earned “Miles With No Expiration” prior to July 1, 1989, and still possess those miles.

17. On or about July 13, 2012, Debtors announced that effective November 1, 2012 all “Miles With No Expiration” will be automatically converted to “Miles Subject to Expiration.”

18. Debtors informed AAdvantage members they will receive a 25 percent mileage bonus for the “Miles With No Expiration” that will be unilaterally, retroactively changed to “Miles Subject to Expiration” on November 1, 2012.

19. Furthermore, Debtors announced on its website that beginning November 1, 2012, no miles will be eligible for redemption under the “Regular” award structure. Beginning November 1, 2012, all miles – even those that Debtors promised could be redeemed under the “Regular” award structure – must be redeemed under the current award structure.

20. The communication from Debtors promised that AAdvantage members with “Miles With No Expiration” may redeem those miles under the “Regular” award structure up until the November 1, 2012 deadline (a so-called “tail period”). But since announcing the upcoming change, Debtors in fact have not allowed members to redeem “Miles With No Expiration” under the “Regular” award structure. For instance, under the “Regular” award structure a “30A” award allows an AAdvantage member to redeem 30,000 miles for “[t]wo certificates each good for an upgrade on any individual Coach Class ticket to First Class on **AA** (Not applicable to/from Hawaii).” Under the original awards structure, these certificates were good for one year and the tickets acquired once a member redeemed the certificates were also good for a year; therefore, a member had up to two years after the date the certificates were issued to complete travel. AAdvantage members, however, are not being afforded any of the aforementioned benefits. Debtors are not permitting members to upgrade to First Class on three-cabin airplanes from a Coach fare (i.e., planes providing First, Business and Coach classes). Debtors are also not permitting members to upgrade to First Class from **any** Coach fare, instead allowing

only certain high priced Coach fares such an upgrade. Furthermore, Debtors have refused to honor carrier partnership agreements in place under the “Regular” award structure. For example, it was possible under the “Regular” award structure to redeem AAdvantage miles to fly to Australia on Qantas Airways. Debtors now refuse to allow AAdvantage members to use their “Miles With No Expiration” to fly to Australia on Qantas Airways or any other airline.

21. Despite Debtors’ July 2012 promise to honor the “Regular” awards structure until November 1, 2012, Debtors are refusing to permit AAdvantage members with “Miles with No Expiration” to take advantage of the “Regular” awards even during this tail period.

22. Moreover, even if Debtors were currently allowing AAdvantage members to utilize the “Regular” award structure, as a practical matter members with large amounts of “Miles With No Expiration” would not be able to redeem their miles under that structure in the few months remaining before the deadline.

23. In sum, AAdvantage members in the 1980s earned “Miles With No Expiration” that could be redeemed under the “Regular” award structure. Debtors told AAdvantage members in 1989 that “Miles With No Expiration” would not expire and could be redeemed under the “Regular” award structure. Debtors in 2000 told AAdvantage members of the *Wolens* class that their “Miles With No Expiration” could be redeemed under the “Regular” award structure. Debtors in July 2012 told AAdvantage members that “Miles With No Expiration” could be redeemed under the “Regular” award structure up until Nov. 1, 2012 – but Debtors have not allowed AAdvantage members to do so.

V. CLASS ACTION ALLEGATIONS

24. Plaintiffs bring this action pursuant Fed. R. Bankr. P. 7023 and Fed. R.

Civ. P. 23 on behalf of the following class:

All persons or entities in the United States who possess
AAAdvantage “Miles With No Expiration” earned before July 1,
1989.

Excluded from the class is Debtors; the officers, directors and employees of Debtors; any entity in which Debtors have a controlling interest; the affiliates, legal representatives, attorneys, heirs, and assigns of Debtors.

25. **Numerosity**. Upon information and belief, there are nearly one million members of the class throughout the United States. Accordingly, the members of the class are so numerous that their individual joinder would be impracticable.

26. **Commonality**. There are numerous questions of law and fact that are common to Plaintiffs and all members of the class, including, but not limited to the following:

- a) whether Debtors breached their contractual obligations to Plaintiffs and the class;
- b) whether Debtors breached an implied covenant of good faith and fair dealing;
- c) whether Debtors anticipatorily breached their contractual obligations to Plaintiffs and the class;
- d) whether Debtors made promises to Plaintiffs and class members that Plaintiffs and class members reasonably relied on to their detriment;
- e) whether Debtors have been unjustly enriched;

- f) whether Plaintiffs and class members have suffered damages; and
- g) whether Plaintiffs and class members are entitled to equitable and/or injunctive relief.

27. **Typicality**. Plaintiffs are members of the class and have claims that are typical of all members of the class. Plaintiffs' claims and all of the class members' claims arise out of the same uniform course of conduct by Debtors and may be remedied under the same legal theories.

28. **Adequacy**. Plaintiffs will fairly and adequately represent the interests of the members of the class. Plaintiffs have no conflicts of interest with or interests that are any different from those of the other class members. Plaintiffs have retained competent counsel experienced in class actions, bankruptcy and other complex litigation.

29. **Predominance**. Common questions of law and fact predominate over questions affecting only individual class members, and the court, as well as the parties, will spend the vast majority of their time working to resolve these common issues.

30. **Superiority**. A class action is superior to all other feasible alternatives for the resolution of this matter. Individual litigation of multiple cases would be highly inefficient, a gross waste of the resources of the court and of the parties, and potentially could lead to inconsistent results that would be contrary to the interests of justice.

31. **Manageability**. This case is well suited for treatment as a class action and can easily be managed as a class action because evidence of both liability and damages can be adduced, and proof of liability and damages can be presented, on a class-wide basis, while the allocation and distribution of damages to class members would be essentially a ministerial function.

32. Debtors have acted on grounds generally applicable to Plaintiffs and class members by uniformly taking away their bargained-for benefits. Accordingly, injunctive relief, as well as legal and/or equitable monetary relief (such as disgorgement and/or restitution), along with corresponding declaratory relief, are appropriate with respect to the class as a whole.

VI. CAUSES OF ACTION

COUNT I Breach of Contract

33. Plaintiffs incorporate the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

34. Plaintiffs and members of the class have a contractual relationship with Debtors. Plaintiffs and members of the class purchased airline tickets from Debtors. In return, Debtors provided Plaintiffs and members of the class with “Miles With No Expiration” that could be redeemed under the “Regular” award structure.

35. The contractual relationship was supported by consideration by and for all parties.

36. Plaintiffs and members of the class performed all of their obligations under the contractual relationship.

37. Debtors did not perform their obligations. First, Debtors breached their obligations by unilaterally making “Miles With No Expiration” subject to expiration. Second, Debtors breached their obligations by stating that on November 1, 2012 they would no longer honor the “Regular” award structure. Third, Debtors breached their obligations by failing to allow AAdvantage members “Miles With No Expiration” to

redeem those miles under the “Regular” award structure prior to November 1, 2012 as promised by Debtors in July 2012.

38. As a result of Debtors’ breach, Plaintiffs and members of the class have been damaged.

COUNT II
Breach of Implied Covenant of Good Faith and Fair Dealing

39. Plaintiffs incorporate the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

40. A covenant of good faith and fair dealing is implicit in every contractual relationship.

41. Debtors have a duty to not commit acts that would improperly deprive Plaintiffs and members of the class of the benefit of the contractual relationship.

42. A principal benefit for which Plaintiffs and members of the class contracted was the non-expiration of their miles.

43. By unilaterally changing the terms of the AAdvantage program to allow the “Miles With No Expiration” to expire, Debtors have breached the implied covenant of good faith and fair dealing.

44. Likewise, by unilaterally changing the program terms to no longer allow “Miles With No Expiration” to be redeemed under the “Regular” award structure, Debtors have breached the implied covenant of good faith and fair dealing. Debtors further breached the covenant by telling Plaintiffs and class members in July 2012 that they could redeem “Miles With No Expiration” under the “Regular” award structure and failing to allow them to do so.

45. As a result of this breach, Plaintiff and members of the class have been damaged.

COUNT III
Anticipatory Breach of Contract

46. Plaintiffs incorporate the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

47. Debtors' July 2012 communication to Plaintiffs constitutes a positive and unequivocal manifestation of its intent to breach the contractual relationship between the parties.

48. Plaintiffs and members of the class have already performed their obligations under the contractual relationship.

49. As a result of Debtors' anticipatory breach of the contractual relationship, Plaintiffs and members of the class have suffered and will continue to suffer damages.

COUNT IV
Promissory Estoppel

50. In 1989, Debtors unambiguously promised Plaintiffs and members of class that "Miles With No Expiration" would not expire and could be redeemed under the "Regular" award structure. In 2000, Debtors unambiguously promised members of the *Wolens* class that "Miles With No Expiration" could be redeemed under the "Regular" award structure. In July 2012, Debtors unambiguously promised Plaintiffs and class members that "Miles With No Expiration" could be redeemed under the "Regular" award structure up until Nov. 1, 2012.

51. Plaintiffs and members of the class reasonably relied on Debtors' promises.

52. Plaintiffs' and class members' reliance on Debtors' promises was expected and foreseeable by Debtors.

53. Plaintiffs and members of the class relied on Debtors' promises to their detriment.

COUNT V
Unjust Enrichment

54. Plaintiffs incorporate the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

55. Debtors have been enriched and benefited from Plaintiffs' and class members' purchases of airline tickets.

56. Plaintiffs and members of the class expected to receive "Miles With No Expiration" in exchange for purchasing airline tickets.

57. Intentionally and in bad faith, Debtors have refused to provide the bargained-for benefit of "Miles With No Expiration" to Plaintiffs and members of the class.

58. As a result of this unlawful conduct, Debtors have been unjustly enriched at the expense of Plaintiffs and members of the class.

59. It would be inequitable and unconscionable for Debtors to retain the profit, benefit and other compensation they obtained from the unlawful conduct described herein.

VII. PRAYER FOR RELIEF

60. Plaintiffs, on behalf of themselves and members of the class, respectfully request that this Court:

- a) Certify the class as requested herein, appoint Plaintiffs as Class Representatives and their selection of counsel as Class Counsel, and order class-wide relief;
- b) Adjudge and decree that Debtors have engaged in the conduct alleged herein;
- c) Enjoin and restrain Debtors and their officers and agents from continuing or engaging in similar conduct as alleged herein;
- d) Order that Debtors specifically perform pursuant to the terms of the “Regular” awards program;
- e) Allow a priority administrative expense claim pursuant to 11 U.S.C. § 503(b)(1)(A) in an amount equal to the compensatory and punitive damages suffered by Plaintiffs and members of the class.
- f) Allow a priority administrative expense claim pursuant to 11 U.S.C. § 503(b)(1)(A) for the reasonable attorneys’ fees and costs and disbursements the Plaintiffs incur in prosecuting this action.
- g) Order that Debtors pay interest on the monies wrongfully obtained from the date of collection through the date of entry of judgment in this action;
- h) Order Debtors to identify victims of its unlawful conduct;
- i) Order that Debtors are financially responsible for notifying all members of the class of the unlawful conduct set forth herein;
- j) Grant all other such relief as the Court deems necessary and proper.

Dated: Sept. 7, 2012

Respectfully submitted,

/s/ Clinton A. Krislov

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