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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 05-17923 (PCB)
DELTA AIR LINES, INC., et al, . New York, New York
Debtors. . Tuesday, December 13, 2005
. 2:53 p.m.
.

TRANSCRIPT OF PRESENTMENT OF SETTLEMENT AGREEMENT
BEFORE THE HONORABLE PRUDENCE C. BEATTY
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings resume at 2:53 p.m.)

2 THE COURT: You may be seated.

3 What excitement. We only have maybe half as many
4 people here as we did the other day. We heard on the -- or
5 Susan did, heard on the computer on Sunday night that you had
6 settled, and we thought, wow, that's really interesting. On
7 the other hand, then when I saw the papers, it actually isn't
8 that you really settled.

9 MR. HUEBNER: Well, Your Honor, I think it's a little
10 bit in between. We actually considered just, you know, whether
11 to contact either of your clerks, and I decided there was no
12 point in bothering them until Monday morning.

13 THE COURT: Well, there was no point in bothering me
14 because what would I have said? Oh, isn't that nice. I mean,
15 you know ...

16 MR. HUEBNER: If I --

17 THE COURT: I have always been under the belief, and I
18 remain under the belief, that this matter will be resolved in
19 some fashion that is reasonably satisfactory to the parties,
20 whether by virtue of my decision or by virtue of your own
21 decisions. And I would think that you would prefer to do your
22 own decisions, so I've been always of the view that that was
23 the way it was likely to go; not necessarily, but everybody
24 prefers what they did themselves.

25 MR. HUEBNER: Yes, Your Honor. As I think both

1 parties told you at several junctures during the hearing, Delta
2 and ALPA had their lines of communication open, even as we were
3 here before you.

4 THE COURT: Well, that's what I knew, and --

5 MR. HUEBNER: And those negotiations --

6 THE COURT: -- I was very much of the view that you
7 could settle it a lot better than I could. I mean, I could
8 make some small comments like saying, well, your employee
9 pilots, why don't you just say they can fly twice a month and
10 stop getting involved in backwards, forwards, reverse things.
11 I mean, there are little things like that, that one could take
12 on in my position. But without having, I would say a day of
13 hearing over the box system for assigning, it would be very
14 difficult to --

15 MR. HUEBNER: Yes, Your Honor. I think one thing we
16 all learned is that there is quite a bit of arcana involved in
17 pilot-scheduling and all those kinds of things.

18 Your Honor, we're very pleased, obviously, to be here
19 today. A couple of things I wanted to point out for the Court:

20 The interim agreement that was reached with the MEC on
21 Sunday night is subject to pilot ratification, which we, I
22 think, all hope and expect will happen by the 28th of December.

23 The larger document, as Your Honor has already pointed
24 out, is not a definitive, global settlement of all issues, but
25 rather a very important interim agreement, which gives the

1 parties time, consensually, to try to reach a comprehensive
2 agreement. I think the period is about two months.

3 It also evinces a full commitment of the resources and
4 the representatives of both sides to work towards such a
5 comprehensive agreement.

6 Equally importantly from Delta's perspective, and it
7 is appreciated from the pilot -- we appreciate it from the
8 pilots very much, is that it does provide the company with
9 substantial financial relief during this interim period of
10 relief that we have said from the beginning we very much need.

11 Your Honor, as of course I trust is appropriate and
12 Your Honor appreciated, if we are able to reach a consensual
13 final comprehensive agreement, we will of course come back to
14 this Court for approval on appropriate notice to do so, since
15 it would be most likely an out-of-the-ordinary-course
16 transaction for us and would require court approval. And if --

17 THE COURT: Well, I think that's my view. After all,
18 it's not something you do every day.

19 MR. HUEBNER: It is not, Your Honor, and it is not
20 something small, either.

21 THE COURT: And moreover, I think once you do get it
22 approved by the Court, then you don't have people who can come
23 in and say, well, I never knew that.

24 MR. HUEBNER: We agree, Your Honor.

25 And there was also a point that, while we had all

1 intended it all along, the Creditors' Committee correctly asked
2 that we make it quite clear in the order, and we are, of
3 course, happy to do that.

4 Your Honor, what the order also provides is that, if
5 the parties are not able to agree on a comprehensive agreement
6 within the specified time periods, that, in part I think
7 because of the relative arcana of what's involved, the dispute
8 remaining will be submitted to an agreed panel of three third-
9 party neutrals, whose expertise lies in airline labor matters.

10 THE COURT: Okay. And where did these people surface
11 from?

12 MR. HUEBNER: Both Delta and ALPA and their various
13 labor professionals have a lot of experience selecting and
14 using third-party neutrals for grievances and disputes, both
15 large and small. And after what was a bit of back-and-forth
16 about whether the panel should be one or three and who should
17 be on it, I think that they agreed rather quickly that this
18 group of three was the right mix for both sides.

19 THE COURT: Two is definitely the wrong number.

20 MR. HUEBNER: Yes, we agree.

21 THE COURT: And I don't think one, while certainly
22 they could do it -- this is maybe not quite the right way to
23 express it -- doesn't necessarily have the power behind them
24 that two -- that three do. You know, with one, you can sit and
25 talk yourself into a lot of things; with three people, it's not

1 so easy to talk yourself into things that are not really the
2 right thing to do.

3 MR. HUEBNER: Right. And the goal, of course, of the
4 entire process, sort of macro-cosmically of your point, is to
5 build consensus, and that consensus is where we very much hope,
6 along with ALPA, to end up.

7 It's also important to note for the Court and for the
8 record that the settlement that we bring before you today is
9 acceptable to the Creditors' Committee, which obviously in a
10 Chapter 11 case is of no small moment. And then --

11 THE COURT: Okay. As I see this, you want me to
12 approve some kind of settlement today, which will, in essence,
13 approve -- which will, in essence, be open to the settlement
14 that's in the future.

15 MR. HUEBNER: Yeah. I would say it a little bit
16 differently.

17 The agreement, Letter Agreement 50, which was executed
18 already, once ratified, provides for immediate substantial pay
19 cuts and some changes in other work rules and policies. So
20 part one is that it reflects an interim deal between the
21 parties that is to take effect.

22 THE COURT: Yeah, but there has been no -- there has
23 been no vote on that deal.

24 MR. HUEBNER: Correct.

25 The MEC, which is sort of the equivalent, I think, of

1 a board of directors of a pilots union, has approved it, and
2 they have pledged in the letter to use their full resources, as
3 well as those of Captain Moak --

4 THE COURT: Okay.

5 MR. HUEBNER: -- the erstwhile Chairman of the Board
6 of the Delta Pilots Union, to go out and get the votes they
7 need to get it ratified. So it's roughly analogous to
8 something that's been approved by the board and the chairman of
9 a corporation that is subject to shareholder ratification.

10 THE COURT: Okay, okay.

11 MR. HUEBNER: So the deal is really comprised of two
12 analytically different parts:

13 One is the interim deal, which is a real change
14 starting now, that is worth well in excess of \$100 million a
15 year to Delta on an annualized basis.

16 The other is the pledge -- really, three parts, I
17 would say.

18 The other is the pledge to work with full commitment,
19 with specific deadlines, towards a new, comprehensive global
20 deal, that hopefully we will be in a position to bring back to
21 this Court at a time specified in the document.

22 And then piece three is the word of "what-if piece,"
23 which is: If we are unable to reach a comprehensive deal by
24 the time lines in the document, then we will go to this third-
25 party labor airline neutral panel, and have them essentially

1 facilitate, as I think both the code and the Railway Labor Act
2 contemplate, you know, facilitate a resolution through that
3 forum.

4 So I think it's probably fair to describe it -- I
5 mean, there are lots of other sort of subparts, but from our
6 perspective, certainly under the governing legal standards, it
7 is Delta's strong view that this agreement, which settles a
8 litigation that I think we can --

9 THE COURT: Well, okay. But you're saying that I can
10 do this today, even though we haven't had more notice than
11 this?

12 MR. HUEBNER: Your Honor, I think our view is that you
13 can do it today, for a couple of reasons:

14 Number one is the fact that, as you have pointed out
15 on many occasions, this is a two-party dispute between the
16 debtors and ALPA, and they have a right to settle that, and
17 that other parties are really not appropriately at the table.
18 Obviously, we take the view that our Creditors' Committee
19 perspective is exceedingly important, and we have worked --

20 THE COURT: I didn't say they can't be heard.

21 MR. HUEBNER: Agreed, Your Honor.

22 THE COURT: Okay? Which is different than saying
23 they're not at the table.

24 MR. HUEBNER: Agreed. And I think I chose my words
25 carefully, but if I didn't, I apologize.

1 THE COURT: Oh, no, I'm just saying, you know, you get
2 to sit in the back line.

3 MR. HUEBNER: Yes. As I think you said very carefully
4 --

5 THE COURT: You know, and there certainly are
6 circumstances under which one would choose to exclude one, you
7 know, an outside party --

8 MR. HUEBNER: Yes. And frankly we --

9 THE COURT: -- because it would be disruptive.

10 MR. HUEBNER: Yes. And as I joked a little bit at the
11 first day of the trial, we and ALPA agree very strongly that
12 both 1113 and the governing labor law evinces a black-letter
13 rule that for issues like this, in fact, there really only are
14 two parties to the discussion; whether other people are also
15 allowed to be heard under 1109 is a different question, but
16 this is a contract between only two entities.

17 Your Honor, I should also note --

18 THE COURT: Well, I don't think I have any
19 disagreement with you. I certainly think people are allowed to
20 ask questions about why something is being done.

21 MR. HUEBNER: Right. And in that regard, Your Honor,
22 within literally moments, very late last night, of reaching
23 final agreement on the last few documents, the stipulation,
24 notice of presentment, we actually -- I personally e-mailed
25 them immediately to counsel for both DP3, the pilot retiree

1 group, and Captain Jim Dean Johnson, the other retiree who has,
2 you know, asked to be heard on this matter, as well as, of
3 course, the Creditors' Committee.

4 This morning, as soon as we had sign-off on the
5 document from the Creditors' Committee, we served it, as
6 contemplated by the case management orders, to the extent that
7 it went out by direct e-mail to all the core parties, and was
8 filed in the Court's ECF system to be available to everybody.
9 And so I guess there are a couple of different reasons why we
10 think we did everything we could to give it to the relevant
11 parties, to the extent that there are parties other than ALPA
12 that are relevant.

13 THE COURT: As I say, in something like this, if you
14 don't do it, somebody will mess you up. I mean, oh, you put
15 this in that, that affects this and that and the other thing.

16 MR. HUEBNER: Right. And I think it's also important
17 to note that at this stage, this agreement, at least as I read
18 it, is really about the work rules and pay of the current
19 pilots. And so, frankly, it's also hard to see who else would
20 have a legitimate voice. If we --

21 THE COURT: Well, with respect to the retirees, there
22 is a question as to whether or not they would have an interest
23 that was similar to the pilots' interest in the accident
24 policy, health and welfare, a few things of those things.

25 MR. HUEBNER: Right. And that may be a fair question

1 for debate at another hearing, where a different agreement
2 implicates --

3 THE COURT: I'm not going to debate it with you; you
4 can debate it with mister -- what's his name?

5 MR. BEAM: Well, it could be Mr. Christy if you mean
6 DP3; it could be Mr. Gloucester (phonetic) if you mean the non-
7 pilot retiree committee, or Mr. Graham, I think -- I mean --

8 THE COURT: Well, what I'm saying is I think that
9 these are things that somebody has to do some research on, I
10 think, because I -- because you're no longer going to self-
11 insure. If you're no longer going to self-insure, somebody has
12 to find a third-party insurer.

13 MR. HUEBNER: Right. And our benefits people, as I
14 hope we made clear at least during some parts of the hearing,
15 are actually hard at work exploring all those options to figure
16 out the best way to lower the cost without losing, as I think
17 someone testified, bang for the buck.

18 But again, the good news on this agreement is that --

19 THE COURT: But in a sense, you know, what you might
20 think was the best might not be what they thought was the best,
21 and it's something that you're going to have to have some
22 discussion about.

23 MR. HUEBNER: We agree, Your Honor, and we have had
24 actually rather extensive discussions to date, including in-
25 person meetings with our 1114 non-retiree committee, and I

1 think they have given, frankly, a fair amount of input into how
2 they would like us -- like to see Delta design things.

3 But the good news for today's purposes is that I don't
4 believe this agreement addresses anything about retiree
5 medical, retiree pensions that are affected at this time. This
6 is really entirely about the current, in large part, wages;
7 and, in very small part, some work rule changes, and then an
8 agreement to move towards a more comprehensive discussion that
9 may at that time in the future address those issues, which at
10 that time in the future may or may not give a voice of one type
11 or another to parties other than the debtors and ALPA. But I
12 don't see --

13 THE COURT: No, I mean, I'm just saying I think that
14 at some point you may not want to -- I mean, basically, as I
15 understand it, the company pretty much treated everybody the
16 same, with the exception of that small mechanics union, and
17 with the exception of the pilots. And their view of -- the
18 company's view throughout this proceeding has been, you know,
19 it's same that's fair, it's same that's equitable.

20 MR. HUEBNER: I don't know that the company would
21 quite see it that way. But I think the very good news is that
22 with the consensual resolution, both we and ALPA can stop
23 strongly and passionately evincing our views of issues like
24 what is fair and what is equitable and what is the same.

25 I think as probably everyone agrees, we have always

1 understood that pilots have a very unique set of skills and
2 deserve to be compensated for those skills, and always have
3 been and always will be. The good news is, you know, sort of
4 the devil is often in the details about how to work within that
5 broader analytic construct.

6 And at least for now, it's very, very important to the
7 company, and I think to the pilots union as well, that we have
8 an understanding for the present and a framework for how to
9 move forward, both for the near term and hopefully thereafter.

10 THE COURT: Well, I mean, who knows? One might even
11 completely redesign the block system.

12 MR. HUEBNER: I think you would have a lot of fans if
13 we could do that by FIA (sic), Your Honor.

14 THE COURT: I mean, it's been in existence for what,
15 forty or fifty years?

16 MR. HUEBNER: Mr. Simon?

17 MR. SIMON: A long time, Your Honor.

18 MR. HUEBNER: Beyond my pay grade, Your Honor.

19 THE COURT: I mean, it's not clear to me from what I
20 know of it that it actually does anything constructive for the
21 debtor because of the amount of time it takes to figure it out
22 and deal with it, and deal with the salaries. But I don't
23 purport to be a pilot, and I certainly don't think that I can
24 recreate a system that I don't know how it works.

25 MR. HUEBNER: Your Honor, one other reason why I think

1 it is important to both sides that the Court enter the order
2 today, if that is the Court's pleasure, is that, in terms of
3 moving towards the pilot ratification, which is obviously
4 critical, and without which this edifice crumbles and we're
5 back, unfortunately, to trial, is that I think that it is
6 important to convey to the pilots the sense that the Court has
7 approved this document, and we are now waiting only for your
8 vote to make it effective. And given the holiday period coming
9 up and the compressed time frame that we need, I think it
10 actually is important to both sides that, if the Court were
11 comfortable entering the order in light of the fact that it
12 settles a dispute between two parties, that we be able to move
13 forward on that basis.

14 I don't know of anyone, Your Honor -- I did not get
15 any e-mail replies or really any communications at all, to my
16 knowledge, indicating that anybody has a problem with this
17 deal; in fact, my guess is that there was probably cheering
18 from many, many, many quarters, both suspected and unexpected,
19 that Delta and ALPA were able to work this out on the basis set
20 forth in the documents.

21 THE COURT: Well, I can't figure out where I'm
22 supposed to sign on these papers, so I'm going to give them to
23 Katina (phonetic), who's going to give them to you, who's going
24 to figure out how to mark them, so I know where to sign them.

25 I was, as I said before, very pleased that at least a

1 partial resolution had been reached, and that we would not be
2 seeing a strike of Delta over Christmas, notwithstanding we may
3 be seeing a strike of the MTA.

4 MR. HUEBNER: May I approach your clerk, Your Honor?

5 THE COURT: You may.

6 (Court and court personnel confer)

7 THE COURT: When do you think this case might be
8 confirmed?

9 MR. HUEBNER: Your Honor, I would note that we are
10 approximately eleven weeks into a twenty-seven-billion-dollar
11 reorganization. I don't know that I --

12 THE COURT: I thought you were going to say eleven
13 weeks into a twenty-seven-week case.

14 (Laughter.)

15 MR. HUEBNER: Well, that's what my family would like
16 to hear me say, but unfortunately, I'm not sure that that's
17 right.

18 THE COURT: Well, look, I mean, at least you won't be
19 still doing this in the summer, I would hope.

20 But no, I mean, seriously, is this something we really
21 should assume will take a year to a year and a half?

22 MR. HUEBNER: Your Honor, let me -- these are sort of
23 sensitive questions. Let me answer it as --

24 THE COURT: Well, okay, then you don't have to answer
25 them. I mean, I'll let you --

1 MR. HUEBNER: Well, I was going to give you a lawyer's
2 version of "I don't know," which is, you know --

3 THE COURT: There's only one place to sign.

4 MR. HUEBNER: -- the United case was three years;
5 three years and counting. USAir was obviously much shorter,
6 but they needed a second trip. Our goal is to do it in a way
7 that we think will obviate our need to return.

8 THE COURT: Well, I am very much of the "let's do it
9 once" variety.

10 MR. HUEBNER: Once is painful enough, Your Honor. We
11 certainly hope to never have to do it twice.

12 THE COURT: I mean, I think that it isn't even a
13 question of time, whether or not it works the first time. It's
14 a question of what good things are you doing --

15 MR. HUEBNER: Yeah, I mean, Your Honor, as --

16 THE COURT: -- and what things are you just sort of
17 overlooking and saying, oh, that won't matter.

18 MR. HUEBNER: Correct. And as I think you have heard
19 at some length from us, Delta's very strong view is that,
20 unless and until it gets the cost structure and the capital
21 structure within which it can be competitive in an area where
22 many of its competitors have already used Chapter 11 and other
23 tools to get down, it will not yet be in fighting shape to go
24 out from under the protections of the Court. And so we do need
25 to, I think, look and continue to look --

1 THE COURT: Well, see, I think that what I've heard is
2 that the first USAir was pushed a little too hard by both the
3 lenders and the Judge.

4 MR. HUEBNER: Yes. I mean, nine months for a company
5 of that size -- and that company is a great deal smaller than
6 Delta -- is certainly an extraordinarily fast track. But
7 again, you know, I'm aware of the fact that --

8 THE COURT: Yes. But you have to understand
9 something: Judges give themselves gold stars on their forehead
10 when they can get cases through quickly.

11 MR. HUEBNER: Not if they have to come back to the
12 same judge less than a year later and do it again.

13 THE COURT: No, I know. But I think that judges
14 somehow think -- a lot of them think that they have a better
15 idea about when a case should be confirmed than the debtor
16 does.

17 MR. HUEBNER: Yeah. Your Honor, we make no bones
18 about the fact that we have a tremendous amount of both very
19 hard work to do and, frankly, very complicated work to do to
20 right-size and use the protections of --

21 THE COURT: I think selling those new uniforms are
22 going to be really hard on you.

23 MR. HUEBNER: I don't have to wear them, Your Honor.

24 THE COURT: Well, look, I think baby blue would look
25 nice on all of the pilots.

1 (Laughter.)

2 THE COURT: Well, that's not been a point of
3 negotiation yet.

4 MR. HUEBNER: Your Honor, to my knowledge, the color
5 schemes of the pilot uniforms has not been a part of our
6 proposal, nor a part of the union's counter. Is that correct?

7 THE COURT: Okay. Do you have anything you would like
8 to say?

9 MR. SIMON: Just to thank the Court for helping us to
10 move this expeditiously, and we look forward to the next stage.

11 Mr. Huebner is quite correct. What this does is give
12 the parties an opportunity over the next couple of months to do
13 the very hard work to create the comprehensive agreement that
14 will provide a platform for an earlier, rather than later
15 emergence from the Chapter 11. That's very much our strong
16 desire, having been through any number of these. We realize
17 the longer it goes is not necessarily the better it goes.

18 THE COURT: No. But the shorter it goes is not
19 necessarily the better it goes, either.

20 MR. SIMON: We agree with that, as well, Your Honor,
21 having been through a number of Chapter 22s.

22 THE COURT: It requires, you know, sort of a -- you
23 got to just keep remembering: Are you doing something
24 constructive? As long as you're doing something constructive,
25 it's moving at a reasonable pace.

1 MR. HUEBNER: It doesn't matter where you are on the
2 ladder; it matters which direction you're going.

3 THE COURT: On a plane, I'd be going up.

4 MR. HUEBNER: Unless there are further questions, Your
5 Honor, we did not have --

6 THE COURT: I don't know. There seems to be somebody
7 who thinks he has something to say. Yes?

8 MR. GRAHAM: Your Honor, Jason Graham with DP3. May I
9 be heard briefly?

10 THE COURT: Certainly.

11 MR. GRAHAM: DP3 just poses a very limited objection
12 to Paragraph 8 of the stipulation, which seems to presume a
13 legal question that's in dispute, which the Court will decide
14 at a later time, which is whether the pilot working agreement
15 has been assumed by operation of law.

16 THE COURT: Wait, wait, wait. Wait, wait. This is
17 the stipulation. Which is it that --

18 MR. GRAHAM: Paragraph 8, at the top of Page 4.

19 (Court reviews documents.)

20 MR. GRAHAM: It is DP3's position that the pilot
21 working agreement was assumed by operation of law on 1113.
22 That's an issue that the Court doesn't have to hear today or
23 decide today; it's just something that we plan on arguing later
24 for the Court to decide at a later time.

25 THE COURT: And --

1 MR. GRAHAM: Paragraph 8 seems to presume that the
2 pilot working agreement has not been assumed.

3 THE COURT: Okay. And your presumption is related to
4 the fact that the time period expired? I mean, why do you have
5 this view that the earlier letter agreement and other agreement
6 has been assumed?

7 MR. GRAHAM: Your Honor, it's our position that the
8 pilot working agreement by operation of law was assumed when it
9 was not rejected, and not being --

10 THE COURT: But not rejected when?

11 MR. GRAHAM: The -- this is kind of a complicated
12 legal issue we have pages and pages of briefs on, but --

13 THE COURT: Well, you know --

14 MR. GRAHAM: The --

15 THE COURT: You know, this is it. If it's too
16 complicated, it doesn't exist; and, therefore, I'd suggest you
17 try to figure out how to make me the simplest agreement.

18 Okay. This case was filed what?

19 MR. GRAHAM: September 14th.

20 THE COURT: Okay. Okay. So --

21 MR. GRAHAM: It is our position, based primarily upon
22 the Fourth Circuit case of Adventure Resources, that 1113 did
23 away with the purgatory that executory contracts -- other
24 executory contracts are in when they're not assumed or
25 rejected; and that 1113 sets up a system where the collective

1 bargaining agreement is assumed by operation of law until it is
2 rejected.

3 THE COURT: Well --

4 MR. GRAHAM: That's something we'll argue extensively
5 in our briefs. We don't really need to get into it today.

6 THE COURT: Well, let me just say this. I don't see
7 how 1113 could have the effect that you think it is has when it
8 contains the language that it does about when the hearing --
9 how many days after the hearing starts the Court has to finish
10 the hearing. I mean, that seems to me to say that 1113 exists
11 until such time that order is entered; and, if the order is
12 entered in the debtor's favor, then 1113 continues to exist --
13 then the agreement continues to exist.

14 MR. GRAHAM: It is our position that the portion of --
15 the language of 1113 that you are talking about deals
16 exclusively with rejection. The statute says:

17 "This is an exclusive means to assume or reject a
18 contract."

19 It then goes on to talk exclusively about rejection.
20 We argue in the briefs --

21 THE COURT: Well, no, it doesn't talk exclusively
22 about rejection. It talks about assumption; it says, you know,
23 if I don't do this by a certain period of time, then -- I mean,
24 the fact is most of the time the debtor wants to assume it.
25 But --

1 MR. GRAHAM: Your Honor, the sole point of this very
2 limited objection is just to preserve the right to argue this
3 later.

4 THE COURT: I don't think you can preserve rights to
5 argue things later. They either exist to be argued later or
6 not. I mean, it's clear that I can provide that rejection will
7 not occur.

8 MR. SIMON: Yes, Your Honor.

9 THE COURT: If I can do that, then it doesn't -- then
10 obviously there isn't an automatic rejection contained in the
11 section. But I don't know how you can write much on that.

12 MR. HUEBNER: Your Honor, can I respond just for one
13 minute?

14 THE COURT: Certainly.

15 MR. GRAHAM: Well, I just had one other thing to say,
16 if I could get it out of the way, which is that, you know, we
17 agree that the stipulation and settlement is between Delta and
18 ALPA. Mr. Huebner has noted that it does not involve pensions
19 or retirement benefits.

20 I just note that the retired pilots do not waive their
21 right to have any such issues determined by the Court, as
22 opposed to arbitration. We're not parties to the settlement,
23 we're not agreeing to the arbitration provisions.

24 THE COURT: Well, I think that's totally correct. I
25 think the arbitration provisions, you know, actually somehow

1 seem to come after I do something, but maybe I misread that. I
2 think they relate solely to the Railroad whatever-it-is Act
3 that permits mediators.

4 MR. HUEBNER: Your Honor, if I can briefly take Mr.
5 Graham's points in order.

6 I think the operative language that is quite critical
7 is 1112(a), which expressly says that a Court -- that the
8 debtor-in-possession may assume or reject the CBA, only in
9 accordance with this section. Mr. Graham's interpretation
10 that, in fact, debtors have no authority to assume or reject
11 because they're automatically deemed assumed is obviously at
12 direct odds with the very text of 1113, the tableau on which we
13 are here today and in this proceeding generally.

14 I would also suggest that people who are concerned
15 about Adventure Resources take a careful look at Footnote 4 of
16 that decision, which makes it perfectly clear, which many
17 commentators and litigants have missed, that the case had, in
18 fact, become a liquidation by the time the Fourth Circuit
19 ruled; and that the dichotomy in that case, which was critical,
20 was that the debtor lost the ability to assume or reject the
21 contract, by the time the Second Circuit (sic) issued its
22 opinion because the case had already converted to Chapter 7.
23 And once you're in Chapter 7, you can no longer assume or
24 reject contracts.

25 I would suggest -- and we're happy to argue this at

1 great length -- but this very novel theory that a stray Fourth
2 Circuit case somehow overrides the text of 1113 and the juris
3 prudence that's pretty much everywhere else in the entire
4 country is going to be dealt with rather effectively, not only
5 by the rest of the country and the statute, but by the fact
6 that when you actually read Adventure Resources's footnotes,
7 you understand the secret to the mystery, which is that it was
8 a Chapter 7 case by the time the Court ruled, and 1113 was no
9 longer applicable.

10 In terms of the other point, Your Honor, again, we
11 think the stipulation is straightforward. We think this is a
12 two-party issue, as it always has been, and we and ALPA need to
13 be free to work out our issues in accordance with the document.

14 So we're happy to address --

15 THE COURT: Nor do I quite understand why you would
16 want that result to begin with. After all, contracts are
17 separate from each other.

18 I realize I've had a debate over the subject of
19 whether or not the retirement agreement is or is not part of
20 the --

21 MR. HUEBNER: CBA?

22 THE COURT: Yeah. But I haven't had -- never had
23 reviewed the contract and --

24 MR. HUEBNER: Yeah. I think it's fair to note, Your
25 Honor -- and today is probably not the right date for this --

1 but I believe it's Paragraph 4 of the agreed stipulation with
2 everybody actually says the pension plan is incorporated by
3 reference into the CBA. And so, in fact, I actually think it
4 probably --

5 THE COURT: I'm not saying that it's not. I'm simply
6 saying to you I have not gone through it, and we did have a
7 discussion that there are multiple ways to draft those types of
8 agreements.

9 MR. HUEBNER: Agreed. And I think everyone's fervent
10 hope is that we will be able to spare Your Honor the pain of
11 ever having to go through those things. But obviously, the
12 notion that --

13 THE COURT: See, now I'm not convinced that you
14 couldn't have a rejection under 1113, but the union
15 representative be the person in charge under 1114.

16 MR. HUEBNER: Well, Your Honor, I think, as you've
17 already noted and we certainly agree with, 1114 is very
18 expressly limited to retiree health and medical and cannot be
19 read and is not read, certainly, by courts to apply to pension
20 issues at all. And so the view of the vast majority of courts
21 that have addressed the issue; in fact, all of them, is that
22 the union, in fact, is the appropriate representative for these
23 issues, as well.

24 But as I think we've noted before, if it were ever to
25 come to pass that the decision were made, and it were necessary

1 to seek to terminate the pilot qualified pension plan, that
2 would be a litigation before Your Honor under Section 4041 of
3 ERISA; and, at that point, people like Mr. Graham -- or 4042 of
4 ERISA, depending on the approach used. And people like Mr.
5 Graham could come in and say their piece.

6 My guess is we and ALPA, were that fact pattern ever
7 to come to pass, would have very strong views about who else is
8 allowed to participate as a party, as we did at the
9 commencement of the main 1113 trial. But the --

10 THE COURT: Yeah, like, you'd have just as soon not
11 had a judge.

12 MR. HUEBNER: No, Your Honor. We -- we --

13 (Laughter.)

14 MR. HUEBNER: Your Honor, we actually filed for
15 Chapter 11, unfortunately, because we think we need a judge,
16 and we need the protections of Chapter 11.

17 But the notion that the contract was accidentally
18 assumed is contrary to so much Second Circuit law, it's just --

19 THE COURT: No, I agree with you. It doesn't happen
20 that way. And frankly, I think that the biggest problem that
21 the non-union people have is the fact of whether or not there's
22 any contractual basis for requiring you to make any payments.

23 MR. HUEBNER: Yeah. And to be clear, Mr. Graham's
24 clients, being retired pilots, also were in the union. So he's
25 not here to talk about Delta's non-union employees.

1 THE COURT: No.

2 MR. HUEBNER: But, you know, that's where we are for
3 today. If that day ever comes, obviously, we will be amply
4 ready to argue the doctrine of implicit assumption and
5 Adventure Resources. But fortunately, that day is --

6 THE COURT: Well, okay, but --

7 MR. GRAHAM: I'll reserve argument on the merits until
8 procedurally appropriate.

9 THE COURT: Thank you.

10 I think that, before -- the 1st is a holiday, so we're
11 starting on the 2nd of January.

12 MR. HUEBNER: In other words, you're saying if the
13 pilots do not ratify and --

14 THE COURT: Well, I mean, if the pilots ratify, is
15 there no hearing? I mean, I really -- honestly, I've read this
16 thing three times, and I can't decide when there's a hearing,
17 who's having the hearing --

18 MR. HUEBNER: Sure. Let me --

19 THE COURT: -- and when it should be had, if it was
20 going to be had.

21 MR. HUEBNER: Sure. And I apologize. Let me unpack
22 it just for a minute.

23 THE COURT: Go ahead.

24 MR. HUEBNER: If the pilots ratify on or before
25 December 28th, as we very much hope they will, the 1113 hearing

1 will, in essence, be indefinitely suspended, and we will spend
2 the next few months trying to reach a comprehensive deal.

3 If the pilots fail to ratify by December 28th, which
4 we all hope will not be the case, this stipulation and the
5 Letter of Agreement 50 essentially crumble into the void, and
6 we would need to resume the 1113 proceeding as if the
7 stipulation had not been reached with a couple of technical
8 caveats --

9 THE COURT: Now try that one on me again, just one
10 more time.

11 MR. HUEBNER: If the pilots ratify --

12 THE COURT: Then we --

13 MR. HUEBNER: -- then 1113 is off, probably forever,
14 because we will spend the next few months trying to work out a
15 consensual, comprehensive agreement. And if we fail to do
16 that, we will go use the services of this three-person airline
17 expert panel to work it out.

18 THE COURT: Okay.

19 MR. HUEBNER: If the pilots do not ratify, everything
20 you're holding basically goes in the shredder, and we need to
21 go back to trial commencing the week of January 2nd, with the
22 technical tweaks to that restart that we agree that the
23 statutory deadline under 1113(d)(2) is just kicked by a like
24 number of days for this tolling period.

25 THE COURT: Okay. But what do we do about the

1 testimony we've already taken? We just pick up where we were?

2 MR. HUEBNER: Yes. If the pilots fail to ratify --

3 THE COURT: Because you've given me fewer days after
4 it than before, and that wouldn't work if I had to start over
5 again.

6 MR. HUEBNER: Yeah. I think that -- again, we all
7 very much hope, and I think we certainly hope and expect that
8 this will not ever be relevant. But I would note that the
9 debtors are done with their affirmative case, we're up to
10 cross-examination of our last witness. And although Mr. Simon
11 has, I think, fifteen or sixteen witnesses, he did say that
12 many of them would be in the ten-to-fifteen-minute variety, and
13 I think that we would be able to address the procedural issues,
14 in the unlikely event that January --

15 THE COURT: Okay. Okay. But if they accept it, I
16 don't have anything to do with it anymore, for a long time.

17 MR. HUEBNER: And probably ever.

18 THE COURT: If they reject it, then we start again on
19 January 2.

20 MR. HUEBNER: And we will be very -- yes.

21 THE COURT: And then I get to rule, unless the night
22 before I'm going to rule, you people stay up all night and
23 decide you don't want to take the chance on how I might rule,
24 and reach another agreement.

25 MR. HUEBNER: That's correct, Your Honor. And that's

1 where we are.

2 THE COURT: Well, that's what judges do: Try to keep
3 the attorneys from guessing which way they're going.

4 MR. HUEBNER: Next time, we're going to let them go
5 first.

6 THE COURT: No, it doesn't matter. I mean, you know -
7 - I mean, there are occasional cases where you just tell the
8 parties, well, you know, there's just no point because it's so
9 obvious that X or Y or Z is going to happen.

10 Okay. So now somebody is going to let me know whether
11 or not we got --

12 MR. HUEBNER: Ratification?

13 THE COURT: Yeah.

14 MR. HUEBNER: Yes, Your Honor, of course.

15 THE COURT: What is it, a majority, or is it -- is it
16 three-quarters?

17 MR. HUEBNER: I believe it is a simple majority, Your
18 Honor, of active pilots.

19 THE COURT: So that would be 2,500 people -- no, 3,000
20 people.

21 MR. HUEBNER: Yeah, about 3,000.

22 THE COURT: Okay.

23 MR. HUEBNER: So I think that your entry of the order
24 today will be an important building block for us to secure such
25 ratification through ALPA.

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THE COURT: Okay.

MR. HUEBNER: Thank you very, very much, Your Honor.

THE COURT: Thank you.

THE COURT OFFICER: All rise.

(Proceedings concluded at 3:35 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

December 13, 2005

Coleen Rand
Certified Court Transcriptionist/Agency Director