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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. . Monday, December 19, 2005
. 2:39 p.m.
.

TRANSCRIPT OF OMNIBUS HEARING
BEFORE THE HONORABLE PRUDENCE C. BEATTY
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commence at 2:39 p.m.)

2 THE COURT: Okay. You may be seated.

3 What are we taking first?

4 MR. HUEBNER: Good afternoon, Your Honor. For the
5 tape, I am Marshall Huebner of Davis, Polk & Wardwell on behalf
6 of Delta Airlines.

7 We are very happy to report that other than, of course
8 as always, dealing with the Court's questions, we know of no
9 parties that have raised any issues --

10 THE COURT: Okay. Well, why don't we just go through
11 the applications, and then you'll find out whether I do or I
12 don't.

13 MR. HUEBNER: Sure, Your Honor.

14 THE COURT: Because I'm not real sure which ones
15 you're talking about.

16 MR. HUEBNER: Sure.

17 Number one on the agenda, Your Honor, is the
18 application to employ Deloitte and Touche; these are the
19 debtor's auditors, and they have been for several years. The
20 terms of their retention, we think --

21 THE COURT: Okay. And I take it that no one has a
22 problem with their other connections.

23 MR. HUEBNER: That's correct, Your Honor. We know of
24 no party, and we believe the Creditors' Committee has signed
25 off on that retention.

1 THE COURT: Okay.

2 MR. HUEBNER: Number two, Your Honor, is a motion to
3 authorize a Tampa payment.

4 Your Honor, several other airports, as you know,
5 payments have come up that are retrospective in nature. Some
6 of it is --

7 THE COURT: Well, you know, that's always a matter of
8 opinion.

9 MR. HUEBNER: Yeah. Although this, Your Honor, this
10 is not about recharacterization. This is the proration issue.

11 THE COURT: No, I know. It's always a matter of
12 opinion.

13 MR. HUEBNER: Yes. And the good news on this one --

14 THE COURT: Since the amount of money is exactly
15 identical to the payment that could be made if it was a forward
16 payment, so ...

17 MR. HUEBNER: Yes. I think the documents say that
18 it's in arrears.

19 THE COURT: I agree with you that's what it says.

20 MR. HUEBNER: But the good news is since we're happy
21 to pay it for the present under these terms, and they're fine
22 with it --

23 THE COURT: Okay.

24 MR. HUEBNER: -- off it goes.

25 THE COURT: You know, the bad news is it looks to me

1 like the thing is really tied in with the lease.

2 MR. HUEBNER: Yeah. And luckily, that is not today's
3 issue.

4 THE COURT: Good.

5 MR. HUEBNER: Number three, Your Honor, is the one
6 thing that we know you had a question on over the weekend. We
7 were able to confirm both to our satisfaction and, in fact,
8 through further conversations with counsel to DFW, that our
9 rejection of the hangar lease at issue in no way impacts our
10 ability to --

11 THE COURT: Wait, wait, wait. Wait, wait. Just wait.
12 Wait, wait, wait, wait. My next one is claims trading.

13 MR. HUEBNER: We can take that one next, Your Honor.
14 That's --

15 THE COURT: No, I don't -- I mean, I don't mind taking
16 anything, but I'm just saying that's --

17 MR. HUEBNER: Yeah. On my agenda letter, Number 3 is
18 the DFW rejection.

19 THE COURT: Well --

20 MR. HUEBNER: I apologize if there's a version
21 question.

22 THE COURT: I'm not -- I'm saying that what I actually
23 have in my book is claims trading.

24 MR. HUEBNER: Sure. I think the issue for that may
25 have been, Your Honor, that on Friday, when we delivered the

1 books to you, we were not yet sure DFW was uncontested and
2 going forward.

3 THE COURT: Well, okay. Maybe I have the book --

4 MR. HUEBNER: The good news --

5 THE COURT: -- from the day before, but at any rate

6 ...

7 MR. HUEBNER: Yeah. The good --

8 THE COURT: Okay. Where are we on the claims trading?

9 MR. HUEBNER: Fully resolved, Your Honor. We are
10 very, very happy to report, since this is an order that we very
11 much need entered by year-end, that we have thoroughly worked
12 with all parties, resolved all objections; and, not only is our
13 original claims trading motion itself fully consensual, but the
14 subsidiary issues that arose with the ESOP Trustees and the
15 investment manager are also fully consensual, and no party has
16 any issues with our proposed resolution.

17 THE COURT: Okay. What have we done about -- there
18 were two separate applications: The one with -- they were a
19 part of last time's thing. One of them was somebody who had
20 been on the committee?

21 MR. HUEBNER: No, Your Honor. That's a totally
22 different issue. MacKay Shields --

23 THE COURT: And what issue is that?

24 MR. HUEBNER: It's a coincidence, but they're not
25 actually related.

1 At the last hearing, MacKay Shields and Fidelity, in
2 their capacities as committee members, sought authority for
3 themselves as firms to trade in the debtors' securities. Your
4 Honor expressed views on the topic; those were adjourned.

5 THE COURT: Okay. Okay.

6 MR. HUEBNER: That has nothing to do with anything
7 that is on today.

8 THE COURT: You need to go through with MacKay -- I
9 don't know whether the same problem exists for Fidelity. It
10 was the way MacKay's papers were written --

11 MR. HUEBNER: Correct.

12 THE COURT: -- that sounded like, I really want to be
13 able to trade.

14 MR. HUEBNER: Yes. And then the issue came up about
15 whether or not they actually, as Your Honor pointed out,
16 whether they actually hold securities for their own account --

17 THE COURT: Yeah, okay.

18 MR. HUEBNER: -- or merely for the names of others.

19 THE COURT: Okay. So this is not --

20 MR. HUEBNER: These are -- it's coincidence that
21 Fidelity is a party to both; in fact, they're unrelated. This
22 is --

23 THE COURT: Okay, okay. Okay. I was not clear
24 whether or not what they want -- how they wanted to trade was
25 in some way different than -- okay.

1 MR. HUEBNER: No, Your Honor. This relates to our
2 ability to preserve our net operating losses --

3 THE COURT: Yes, I know that.

4 MR. HUEBNER: -- by avoiding a change of control. And
5 in this capacity, Fidelity appeared in connection with its
6 status with our --

7 THE COURT: Okay. Can you tell me whether anybody has
8 ever been successful in doing that?

9 MR. HUEBNER: In?

10 THE COURT: A big case.

11 MR. HUEBNER: In doing what, Your Honor? I apologize.

12 THE COURT: Preserving the net operating loss through
13 --

14 MR. HUEBNER: Yes, Your Honor. Absolutely.

15 THE COURT: Like who?

16 MR. HUEBNER: Well --

17 THE COURT: Give me a name, just one off the cuff.

18 MR. HUEBNER: Sure. My belief is that WorldCom had
19 substantial NOLs that it used.

20 UNIDENTIFIED: Yeah. And in going back in terms of
21 NOLs being preserved, we've got (indiscernible) and Bell (sic),
22 et cetera, so there have been a number of cases where they've
23 been preserved.

24 THE COURT: Okay. So I shouldn't assume that this is,
25 you know, a grand hope.

1 MR. HUEBNER: Not at all, Your Honor. We --

2 THE COURT: I should assume that it's, in fact,
3 possibly a real thing.

4 MR. HUEBNER: Yes, Your Honor. We have billions of
5 dollars of net operating losses and tax carry-forwards, and we
6 very much hope to be able to preserve them through the Chapter
7 11.

8 THE COURT: Well, you have 3 billion, it will be
9 knocked down by thirty-seven percent, and you have a couple
10 more million in --

11 MR. HUEBNER: Yeah. I think there might be about 9
12 billion all-in, unfortunately. We wish it weren't so, but
13 there it is.

14 THE COURT: At any rate, okay. Next.

15 MR. HUEBNER: So Agenda Item No. 4, Your Honor, we
16 have proposed orders that will resolve the NOL motion in
17 general, as well as the specific --

18 THE COURT: Wait, wait. Okay. So -- but -- that
19 motion, I have no problem with that motion.

20 MR. HUEBNER: Correct. And then the ESOP, which is
21 really a subset of the NOL motion, is also resolved. Those are
22 listed under the claims trading entry as the Fidelity motion
23 for relief from stay, and those are all resolved, as well.

24 THE COURT: Okay.

25 MR. HUEBNER: The next item on the agenda, Your Honor,

1 according to my numbering -- and I apologize if the Court's is
2 different -- is the TIMCO stipulation. Your Honor, if it would
3 be easier, I could hand up the agenda letter which I'm working
4 off of, or I could follow --

5 THE COURT: Well, it doesn't matter. I have to find
6 the thing.

7 MR. HUEBNER: Sure.

8 THE COURT: TIMCO. Okay. What was --

9 MR. HUEBNER: Yeah. TIMCO is -- in the papers, it's
10 "Triad International Maintenance Corporation."

11 THE COURT: I'll tell you what. I do think I need to
12 work off the same agenda you're working off of.

13 MR. HUEBNER: Sure. May I approach the bench, Your
14 Honor?

15 (Court and court personnel confer.)

16 THE COURT: Why don't you just go look on this one,
17 that one, and see what -- okay.

18 MR. HUEBNER: Okay. Well, if I can go backwards for a
19 minute before --

20 THE COURT: No, he showed me where I'm supposed to be.

21 MR. HUEBNER: Number 3, Your Honor, which we skipped
22 over, is the Dallas/Fort Worth hangar lease. My understanding
23 --

24 THE COURT: Okay. I have a problem with the Dallas
25 hangar lease.

1 MR. HUEBNER: And I believe we've addressed that.

2 THE COURT: I have a question about the Dallas hangar
3 lease.

4 MR. HUEBNER: Yes, Your Honor.

5 THE COURT: Okay? There is a reference in the
6 documents --

7 MR. HUEBNER: To the taxiways?

8 THE COURT: -- that deals with the Dallas hangar
9 lease, that deals with -- I don't know where it is. I knew
10 where it was last night.

11 UNIDENTIFIED: Page 4, Your Honor, the definition
12 page.

13 THE COURT: You know -- yeah. Yes. It is the --

14 MR. HUEBNER: Does this reference --

15 THE COURT: -- runway and taxiway complex.

16 MR. HUEBNER: Yes. Your Honor, I'm happy to report
17 that we clarified first in our own minds, and then by
18 confirming with the airport itself, that like Delta, we are all
19 highly confident that by rejecting this hangar lease we in no
20 way implicate, risk, or derogate from our ability to use either
21 the taxiways or the runways at the airport.

22 THE COURT: Okay. Because I mean, it was there, but I
23 couldn't find it anywhere else.

24 MR. HUEBNER: Exactly. It's sort of a reverse
25 reference, Your Honor, that if we lose the ability to use the

1 taxiways and runways, that might have implications for the
2 hangar lease, but we're all --

3 THE COURT: Well, it would be difficult to get to the
4 hangar lease.

5 MR. HUEBNER: That is exactly the point of the
6 provision, Your Honor. And the good news is that I think we're
7 all comfortable, including the airport, with whom we spoke this
8 morning --

9 THE COURT: Well, as long as you're comfortable. It
10 was like I saw that there, and I said, I can't find anything
11 else that relates to it.

12 MR. HUEBNER: Yes. We do have flights from that
13 airport, and we are able to get them down, up, and around as we
14 need to.

15 THE COURT: Okay.

16 MR. HUEBNER: Your Honor, Number 5 is the motion to
17 approve the TIMCO stipulation with Triad International
18 Maintenance Corporation.

19 Your Honor, this is an entity that is critical to our
20 business. They retrofit our wide-bodies for international
21 service. It's a pretty plain-vanilla. They had a bunch of
22 prepetition amounts that they were holding, and they are merely
23 recouping them against --

24 THE COURT: Okay. I'm hearing more slowly than you're
25 talking, so ...

1 MR. HUEBNER: I apologize, Your Honor. Let me take it
2 a little bit more slowly.

3 THE COURT: Thank you.

4 MR. HUEBNER: TIMCO is a vendor of ours that provides
5 kits that change over our wide-body aircraft, 757s --

6 THE COURT: Into narrows?

7 MR. HUEBNER: No, that would be a real trick.

8 THE COURT: That's what I thought.

9 MR. HUEBNER: Into international, which has a
10 different configuration than they do when they fly
11 domestically. They were paid for certain things in advance.

12 THE COURT: How often do you do that?

13 MR. HUEBNER: Well, as Your Honor may know, we have a
14 non-trivial reconfiguration of our route network going on right
15 now, where we are actually --

16 THE COURT: No, no. But I mean, is this something
17 that one would do on a daily basis, or is this much more
18 complicated than that.

19 MR. HUEBNER: No. No, no, no, no. No. You convert
20 the planes, and then they are international planes and intended
21 to stay that way for a while.

22 THE COURT: Okay. This is not -- this is not just
23 something we go in and do every day.

24 MR. HUEBNER: No, no, no. It's not like Thursdays
25 they fly domestic, and Fridays they fly overseas; quite to the

1 contrary.

2 THE COURT: Okay.

3 MR. HUEBNER: They were paid certain amounts in
4 advance. This merely allows them to recoup their prepetition
5 payments against their prepetition amounts owing, and allows us
6 -- although I think we could do it in any event -- to top-up
7 the amounts called for in the contracts, so they have the
8 appropriate amount of money on hand --

9 THE COURT: Okay.

10 MR. HUEBNER: -- to keep making the kits, to enable us
11 to change over the planes.

12 Your Honor, number --

13 THE COURT: What are these "kits"?

14 MR. HUEBNER: What they do is they sort of preassemble
15 the changes that are necessary, and then we can actually
16 install them more cheaply.

17 THE COURT: You mean this is like, you know, you used
18 to be able to buy houses from Sears, and they would send you
19 the house and it would be virtually put together, and it would
20 only take you a day or something, two days or something to put
21 it together?

22 MR. HUEBNER: As to certain interior functions within
23 these wide-bodies, that's actually not far off.

24 I don't know if you saw the article. They actually
25 sliced a cruise ship open and added something like sixty-seven

1 feet to the middle of it in dry dock. It was just in the
2 journal over the weekend. It's kind of an interesting
3 approach; sort of like turning narrow-bodies into wide-bodies.

4 Your Honor, Number 6, unless the Court has further
5 questions about TIMCO, is a motion filed a while ago, which is,
6 you know, what I recall, a safe harbor motion for the debtors
7 to enter into derivatives contracts. Your Honor has asked a
8 few times in the course of the proceedings about when and if
9 Delta will once again begin to hedge, as airlines with stronger
10 financial situations such as Southwest have had the great
11 benefit of doing.

12 We're happy to report that the Creditors' Committee
13 had asked for certain types of involvement and information
14 regarding our hedging programs, we have built those into the
15 order; and with those few changes that, too, is consensual, and
16 in our view ready to be entered.

17 THE COURT: Okay. And what is it that you're going to
18 buy under this derivatives contract?

19 MR. HUEBNER: The hope, Your Honor, is what is
20 essentially would be an ordinary-course transaction for a
21 company like Delta to enter into, among other things, fuel
22 hedging.

23 THE COURT: Okay. But I mean, we're not going to be
24 buying corn and wheat and --

25 MR. HUEBNER: No, Your Honor. This is not for

1 speculative financial gain.

2 THE COURT: Oh, good. Good.

3 MR. HUEBNER: This is to hedge Delta's own needs,
4 largely for fuel.

5 THE COURT: Good. Okay. I just wanted to make sure.

6 MR. HUEBNER: Yes. No, there are no soybeans, to my
7 knowledge, in our future, Your Honor.

8 THE COURT: Okay. That's good.

9 MR. HUEBNER: Number 7 on the agenda letter, or at
10 least the form of it that I am holding, is the U.S. Trustee's
11 motion to establish information-blocking procedures. And
12 perhaps I would turn the podium over to Mr. Zipes to address
13 the Court on that one, if necessary.

14 MR. ZIPES: Good afternoon, Your Honor. Greg Zipes
15 from the U.S. Trustee's Office. And with me in the room is
16 Deirdre Martini, U.S. Trustee.

17 Your Honor, the United States Trustee filed this
18 motion, it was originally returnable on November 29th, and
19 there was originally an objection filed by Pratt & Whitney.

20 The purpose of this motion is to set procedures in
21 place that will separate the committee members and the teams
22 working on the various committees as committee members in large
23 airline cases. The reason for that is to make sure --

24 THE COURT: Give me -- I don't understand. I mean,
25 honestly, I don't understand. Pratt & Whitney prices planes at

1 whatever Pratt & Whitney decides to price planes at. Pratt &
2 Whitney knows perfectly well what it's pricing planes at for
3 Delta, what it's pricing planes at for United, what it's
4 pricing planes at for any other airline in the country. I
5 mean, that's not a particularly good example to me because
6 they're selling big-ticket items, and they already know what
7 they're pricing them for.

8 MR. ZIPES: Your Honor, there might be other
9 information that committee members are exposed to, not just in
10 connection with their own business, that would be helpful and
11 might give -- might create an appearance of impropriety here.

12 THE COURT: Well, try giving me a few examples.

13 MR. ZIPES: Your Honor, we provided a newspaper
14 article, and we didn't want to get into specifics; and, in
15 fact, there's only --

16 THE COURT: Well, if you don't get into the specifics,
17 I don't know how I'm supposed to know why I should do this.

18 MR. ZIPES: Well, Your Honor --

19 THE COURT: Just because you tell me, oh, Judge,
20 that's a good -- I've got a great hand here, you don't want to
21 play against me.

22 MR. ZIPES: Your Honor, in this industry we know that
23 there are definite problems, and a lot of the airline seats are
24 in bankruptcy. So the point of this motion is to anticipate
25 that there might be mergers -- although I don't think the

1 debtor in this case would say that a merger is on the immediate
2 horizon, but --

3 THE COURT: I don't think that Delta and United are
4 too likely to merge. I may be mistaken.

5 MR. ZIPES: Well, Your Honor, the idea is that they
6 are --

7 THE COURT: But what information is it that Pratt &
8 Whitney could get that they could use for some purpose that was
9 improper? Because they already know how they price their goods
10 to the two companies. I mean, they sell big-ticket items.

11 MR. ZIPES: Your Honor --

12 THE COURT: I understand they sell little parts. But
13 they do sell big-ticket items, and I really don't quite
14 understand how that can be a problem.

15 MS. MARTINI: Your Honor, Deirdre Martini, United
16 States Trustee.

17 I think Attorney Zipes has raised Pratt & Whitney as
18 an example, but I think it's really erecting an information
19 barrier as a protocol because we had two competitors file in
20 this court within minutes of one another. And for example, if
21 Northwest were to divulge its restructuring business plan in
22 the beginning of the case to its creditors, some of whom also
23 sit on the Delta Creditors' Committee, I believe that there
24 should be an information barrier between the two committees.

25 And all we're asking is that separate teams be

1 erected, so that the integrity of the information that flows
2 from Delta to its committee and Northwest as a business to its
3 committee remain separate and distinct, and that the
4 possibility of any dissemination of information would be
5 impossible.

6 I don't think that we're trying to --

7 THE COURT: Well, we've got one -- I don't think it's
8 Pratt & Whitney; it's another one that has a committee member
9 on both committees, and also on the Hawaiian Airline. Is that
10 Pratt & Whitney or is that another one?

11 MS. MARTINI: I think it was Pratt & Whitney. But
12 we've resolved whatever issue we have with Pratt & Whitney.
13 When I --

14 THE COURT: Well, but what -- but how did you resolve
15 it?

16 MS. MARTINI: The issue was with their representative
17 in Delta also sitting on the United Committee --

18 THE COURT: Yeah, I know that.

19 MS. MARTINI: -- and we resolved it --

20 THE COURT: But how did you resolve it?

21 MS. MARTINI: We resolved it by deferring the issue
22 with United until the end of January, when you --

23 THE COURT: Oh, great, great. So we resolved it by
24 not resolving it.

25 MS. MARTINI: Essentially because they're going to be

1 confirmed.

2 THE COURT: But what I'm trying to say to you is: If
3 it's a problem, it's a problem now; and if, on the other hand,
4 United is going to be able to confirm in the next month, it's a
5 nonexistent problem.

6 MS. MARTINI: I believe it's a nonexistent problem.

7 But what I would rather do as United States Trustee is
8 put up information barriers, as opposed to prosecuting
9 committee members --

10 THE COURT: Yeah. But why don't I put up information
11 barriers against a lot of other companies? I mean, the number
12 of companies that these people -- that the various people are
13 connected with is very large; and, frankly, it seems to me that
14 the -- you know, if it's Pratt & Whitney, I'm not concerned
15 about Pratt & Whitney because they're selling big-ticket items,
16 and you know --

17 MS. MARTINI: I'm not worried about Pratt & Whitney or
18 Boeing or Bombardier or Sky Chef or Gourmet Gate or any of
19 those creditors, Your Honor. What I'm concerned with is my --

20 THE COURT: Well, I'm worried about the one that I
21 don't know whether we've managed to get off the committee, who
22 is a creditor --

23 MS. MARTINI: MacKay Shields. I'd be happy to address
24 MacKay Shields in a moment.

25 What I am asking the Court to do is to authorize this

1 information barrier so I don't have to monitor these creditors,
2 I don't have to sue them.

3 THE COURT: Well, how are you going to monitor them
4 anyway? I mean, realistically, you know, you are the one
5 that's not on the committee, I'm on the committee; you know I
6 just came back from a committee meeting, and I do that. What
7 if I just told you, I told you it went really well?

8 MS. MARTINI: Your Honor --

9 THE COURT: I mean, you know, in order to tell you
10 that it went really well, it's not hard to, you know, make a
11 face, wave your hand, do anything. And I just -- I'm not clear
12 on why I should be doing this.

13 MS. MARTINI: Your Honor, I think it's -- in my view,
14 it promotes transparency, it promotes the integrity of the
15 system, keeping these committee member representatives separate
16 and distinct from one another.

17 THE COURT: Okay. I don't happen to have a list right
18 now of the committee members. Could somebody -- does somebody
19 have one?

20 (Counsel confer.)

21 THE COURT: I mean, for some reason, we got messed up,
22 in terms of what books I had and what was in them.

23 MS. MARTINI: It's Paragraph 13, Your Honor, on Page
24 4.

25 THE COURT: Of what?

1 MS. MARTINI: Of the --

2 THE COURT: I'm sorry. I have no idea what is in what
3 book for some reason. Normally -- and it's not necessarily
4 Davis Polk's fault. But what -- page what?

5 MS. MARTINI: It's in the notice of motion, Page 4,
6 Paragraph 13.

7 THE COURT: And what's the motion called?

8 MS. MARTINI: "Notice of Motion of the U.S. Trustee
9 for Order Establishing Information-Blocking Procedures."

10 THE COURT: Okay. Let's see if we can find this.

11 (Court reviews documents.)

12 THE COURT: Okay. Good. I've got this. Okay.

13 We've got U.S. National Bank and U.S. National Bank
14 Association. We've got Boeing, we've got the PBGC. We've got
15 Coca-Cola Company. That's good, I'm glad you use Coke, rather
16 than Pepsi; I don't like Pepsi. Pratt & Whitney, the ALPA,
17 MacKay Shields, Fidelity Advisor Series II, and the Bank of New
18 York as Trustee.

19 Now you seem to be concerned, basically, with Pratt &
20 Whitney and Boeing.

21 MS. MARTINI: Actually, Your Honor, there are four
22 crossover creditors: U.S. Bank National Association, the PBGC,
23 Pratt & Whitney, and ALPA. And as the Court is aware,
24 sometimes the composition of creditor committees change, where
25 they could -- a bondholder could sell their interest in the

1 debtor's bonds or creditors can resign.

2 So this is the snapshot of what we have now. That
3 situation could be fluid in the future. And that's what the
4 information-blocking procedure is supposed to impart a protocol
5 --

6 THE COURT: Okay. And who would the information-
7 blocking procedure apply to?

8 MS. MARTINI: The members of the committee.

9 THE COURT: All of them?

10 MS. MARTINI: All of them, just to erect separate
11 teams for each aviation case.

12 THE COURT: No, but -- I mean, maybe I'm just being a
13 little bit dumb. But if you block the people that are on the
14 committee from using the information, what's the point of
15 having the information?

16 (Counsel confer.)

17 MS. MARTINI: I'm sorry, Your Honor. I was listening
18 to Mr. Zipes. We're not --

19 THE COURT: I'm saying, if you block the people on the
20 committee from distributing the information to anyone, what's
21 the point of their having the information?

22 MS. MARTINI: Oh, no, I think they can, up the
23 supervisory chain in the decision-making process with each
24 company, they can certainly do that. It's sharing it with the
25 competitor who is sitting on the committee in Northwest. So if

1 I --

2 THE COURT: Yeah, but why would they share it with a
3 competitor?

4 MS. MARTINI: I hope they wouldn't. Under their
5 bylaws there are confidentiality agreements. This just
6 memorializes what's already --

7 THE COURT: Okay. So all you're saying is that
8 whatever comes in my ear in the Delta meeting should not come
9 out of my mouth in the Boeing meeting.

10 MS. MARTINI: In a Northwest meeting, yes.

11 THE COURT: In the Northwest meeting.

12 MS. MARTINI: And I may use the information I get from
13 Delta through my membership on the committee with my
14 supervisory chain ahead of me, so that I can have supervisory
15 decision-making access. But I am not to share that information
16 with my colleague Mr. Jones, also from Pratt & Whitney, who
17 sits on the Northwest committee, because there could be very
18 sensitive proprietary information that is divulged to the Delta
19 committee members that should not be shared with the Northwest
20 committee members, who have these crossover memberships.

21 THE COURT: Okay. So what you're saying to me is that
22 if a person is a member of the Delta committee, they shouldn't
23 let members of the Northwest committee have information from
24 the Delta committee, unless that person is also on the Delta
25 committee and got it through the Delta committee. Yes?

1 MS. MARTINI: No, Your Honor. I don't think -- all
2 this motion --

3 THE COURT: I mean, as I understand it, I don't know,
4 let's say there's ten people on the Northwest committee, of
5 which there are five that are overlaps. So you've got five
6 people who have the right to have information to both
7 companies' information.

8 Now are you telling me that they can't talk to each
9 other about both companies at the same time? Are you telling
10 me they can't talk to each other at all because they have
11 information about both companies? I mean --

12 MS. MARTINI: I think both. If Mr. Botter or Mr.
13 Huebner both worked for Pratt & Whitney, I would not want Mr.
14 Botter sitting on the -- for Pratt & Whitney, the Delta
15 committee and the Northwest committee. I'd like --

16 THE COURT: Well, they are. They were appointed.
17 Okay? This was the way the committee was appointed, and the
18 committee is appointed so that there are overlapping creditors.

19 Now I don't understand how I can get in one ear that
20 Delta is going to be a penny on the share, and get in the other
21 ear that Northwest is going to be five cents on the share, and
22 pretend that there's not -- that I didn't hear both of them.

23 MS. MARTINI: Well, Your Honor, when I appointed these
24 committees, I did not want to purposefully disregard some
25 committee members from membership only because Delta went

1 first, and Northwest was two days later. That would have been
2 the easier way to address this problem. I chose not to --

3 THE COURT: Well, why don't you try telling me how to
4 address the MacKay Shields problem?

5 MS. MARTINI: Okay. MacKay Shields is seeking to
6 trade in Delta debt.

7 THE COURT: Yeah, but MacKay Shields doesn't have any
8 interest of its own in any debt of the debtor.

9 MS. MARTINI: You're absolutely right, Your Honor.
10 The --

11 THE COURT: Then they should be off the committee.
12 They're not a creditor.

13 MS. MARTINI: Well, I am in negotiations and
14 discussions with them.

15 THE COURT: I don't -- you don't -- it's not a
16 negotiation. It's they're not on the committee, they're not a
17 creditor.

18 MS. MARTINI: Well, Your Honor, I --

19 THE COURT: Okay? They only want to be on the
20 committee so they can trade.

21 MS. MARTINI: Your Honor, I think they do -- MacKay
22 Shields hold Delta debt in their own name.

23 THE COURT: Then --

24 MS. MARTINI: They just were very inaccurate in how
25 they posture that.

1 THE COURT: Well, unless they hold Delta debt -- I
2 don't mean in their own name because they're using their own
3 name instead of CD or instead of whatever. That's not what I'm
4 talking about. It's not really a question of whose name the
5 stock is held in because that's a matter of simplicity for the
6 trading firm, whether they hold the stock -- whose name they
7 hold the stock in. I'm not interested in whose name the stock
8 is in; I'm interested in who owns the beneficial interest in
9 the stock. Okay?

10 And when I was told last week that there is no Delta
11 stock that MacKay holds a beneficial interest in, as opposed to
12 having its clients hold a beneficial interest in -- yes, sir.

13 MR. BOTTER: Your Honor, David Botter, Akin Gump, on
14 behalf of the committee.

15 I believe that Ms. Martini is speaking with my partner
16 Ms. Beckerman about this. But I think that Mr. Shiff from the
17 Kasowitz firm last week was incorrect in what he told the
18 Court. I think he just did not know at that point in time.
19 And I believe that MacKay does have proprietary accounts, where
20 they hold Delta debt for their own interests, so I think --

21 THE COURT: Well, let's make sure we're not talking
22 about little, tiny accounts in a great, big company. I mean,
23 after all, the point of the committee is to have the largest
24 creditors. And basically what they said in their application,
25 and what -- is, hey, we want to trade, it's worth a lot of

1 money to us to be able to trade.

2 MS. MARTINI: Your Honor, I think you hit the nail
3 right on the head. MacKay alleged that they had \$374 million
4 of bonds, which they do -- they admit, they do not hold all of
5 that on their own. And I have given them an opportunity to
6 give me a breakdown.

7 THE COURT: Okay. I don't --

8 MS. MARTINI: I think the crucial issue is, when they
9 give me that response, whether or not their interest that they
10 hold in their own name is sufficient for them to sit on the
11 committee.

12 THE COURT: Okay. And let's be clear what we mean by
13 "their own name." I mean, we used to use "CEDE," that was the
14 sort of -- everybody, you know, used CEDE because you could
15 trade tomorrow.

16 MS. MARTINI: Uh-huh.

17 THE COURT: And if they use their own name just
18 because that's easier for them, that's fine.

19 I don't know about Fidelity Advisors Series II,
20 Fidelity Advisors High Income Advantage Fund. Now they may be
21 different all together because I assume that both of those are
22 essentially mutual funds.

23 MR. BOTTER: That's correct.

24 MS. MARTINI: That's correct. That they hold in their
25 own names.

1 THE COURT: And that it is the mutual fund that owns
2 the shares.

3 MR. BOTTER: Well, it's debt, Your Honor, but that is
4 correct.

5 THE COURT: And therefore, one could take the view
6 that the creditor is the mutual fund, which actually owns the
7 debt. Okay?

8 Whereas MacKay, their papers do not give me that
9 impression from the original motion. And the original motion
10 left me with the feeling that they were talking about, well,
11 they wanted -- I had the impression that they wanted the
12 information so they could advise their clients better. But
13 maybe I was wrong.

14 MS. MARTINI: Well, I understand that's been postponed
15 until January 19th. And I will have an answer from MacKay
16 Shields --

17 THE COURT: Okay.

18 MS. MARTINI: -- by the close of business today on
19 what they hold.

20 THE COURT: Okay, okay. And I think you should remind
21 them that it's always better to withdraw than it is to get
22 knocked off.

23 MS. MARTINI: I think MacKay Shields realizes that,
24 Your Honor.

25 THE COURT: Yeah. I mean, you know --

1 MS. MARTINI: I think they're sensing that, as well.

2 THE COURT: I mean, I understand why you could get
3 yourself mixed up in this situation and not realize what it was
4 that the problem was, and think that you were the same as
5 Fidelity, but you're not.

6 MS. MARTINI: I'll certainly --

7 THE COURT: Okay. Now --

8 MS. MARTINI: -- remind them about that
9 responsibility.

10 THE COURT: Now explain to me again what it is you
11 want these creditors not to do.

12 MS. MARTINI: I don't want them to use the same
13 person, the same representative on both the Northwest and the
14 Delta committees. I don't think it's right that the same
15 businessperson sit on two different committees, who are direct
16 competitors of one another, essentially. That's what this
17 motion boils down to.

18 We have negotiated with both the Delta committee, the
19 Northwest committee, the companies. We've put, I can't tell
20 you how many hours into trying to put this together on a
21 consensual basis.

22 THE COURT: Okay. Let me ask you a question. Let me
23 just run through the list, and tell me who's on multiple
24 committees.

25 U.S. Bank National Association and U.S. Bank Trust.

1 MS. MARTINI: Correct.

2 THE COURT: They're on both?

3 MS. MARTINI: Yes.

4 THE COURT: Boeing?

5 MS. MARTINI: No.

6 THE COURT: PBGC?

7 MS. MARTINI: Yes.

8 THE COURT: Coca-Cola?

9 MS. MARTINI: No.

10 THE COURT: Oh, Pepsi got them.

11 Pratt & Whitney.

12 MS. MARTINI: Yes.

13 THE COURT: ALPA.

14 MS. MARTINI: Yes.

15 THE COURT: MacKay, we're just going to put a little
16 circle around them, anyway.

17 Fidelity Advisor Series?

18 MS. MARTINI: No, they're not on the Northwest
19 committee.

20 THE COURT: Bank of New York?

21 MS. MARTINI: No. But I think the situation with
22 MacKay --

23 THE COURT: Wait. Just wait a minute. I'm not -- I'm
24 not getting this straight. Okay. So basically the only two
25 that you have -- wait, wait. I'm sorry. I don't know whether

1 I got this straight or not.

2 Okay. Now U.S. Bank is on, Boeing is off, PBGC is on,
3 Coca-Cola is off, Pratt & Whitney is on, ALPA is on, Fidelity
4 is off, and Bank of New York is on?

5 MS. MARTINI: That's correct. And Pratt & Whitney,
6 the reason why I said they were on, they're on United, which I
7 know that is hopefully going to confirm and go effective by the
8 end of January.

9 THE COURT: Well --

10 MS. MARTINI: And so a representative -- the same
11 person for Pratt & Whitney would then not be sitting on United
12 and Delta, because that case is -- once the case is -- United
13 goes effective, the committee is disbanded.

14 THE COURT: Have you talked to the PBGC about this?

15 MS. MARTINI: I have, at length.

16 THE COURT: And what did they say?

17 MS. MARTINI: They're not happy with it, but they're
18 willing to live by it because they only have a finite number of
19 actuaries that work for them. And so they've agreed to this
20 information blocking, to have separate teams in Delta and
21 Northwest, and they've agreed. And the companies have agreed
22 because they think it just makes good sense that there be
23 separate teams on both of these committees.

24 THE COURT: Well, we don't want any price-sharing with
25 respect to Coca-Cola or --

1 MS. MARTINI: And Pepsi.

2 THE COURT: -- and Pepsi.

3 MS. MARTINI: That's correct. And Coca-Cola is an
4 Atlanta-based company, as you know.

5 THE COURT: Oh, no.

6 MS. MARTINI: Yeah.

7 THE COURT: You mean just because it has a big museum
8 there, and you get to go through and watch them pretend to make
9 Coca-Cola in front of your very eyes?

10 MS. MARTINI: Exactly, Your Honor.

11 THE COURT: Do you realize that thirty or forty years
12 ago they actually would have let you watch the real machinery?

13 MS. MARTINI: I did not know that.

14 THE COURT: Because when I was a child, we were
15 allowed to go through a bread bakery, and it wasn't some -- it
16 wasn't a model bread bakery; it was the real thing. But that's
17 the safety hazards of life.

18 Then do what you want to do, and that's okay. And I
19 understand it. I'm not sure -- I mean, I think we're going to
20 have to think about this in the long run over a number of
21 cases, but maybe we won't get that many more really big cases.
22 Okay.

23 (Counsel confer.)

24 THE COURT: Okay. So that one -- that one is -- I
25 take it that there's no objection, other than --

1 MS. MARTINI: There's none.

2 THE COURT: -- the MacKay situation.

3 MS. MARTINI: Correct.

4 THE COURT: Okay. Okay. So do you want to give him
5 an order today, or do you want him to do it -- I'm going to be
6 away for a week.

7 MS. MARTINI: Thank you, Your Honor.

8 (Court and court personnel confer.)

9 THE COURT: Okay. Now what do we have?

10 MR. HUEBNER: Your Honor, Number 8 on the updated
11 agenda letter is the committee's motion to employ Houlihan,
12 Lokey, Howard & Zukin on an interim basis as their financial
13 advisor.

14 THE COURT: Okay.

15 MR. BOTTER: Good afternoon, Your Honor. David Botter
16 from Akin Gump again.

17 Your Honor, there was no objection to this interim
18 request. There was a small change to the order that was
19 discussed with the debtor, and that change -- and I can hand up
20 black line to Your Honor --

21 THE COURT: Well, why don't you just -- if it's that
22 small, you ought to be able to tell me what it is.

23 MR. BOTTER: Sure. Your Honor, rather than serving
24 all creditors on the list of creditors filed by the debtors,
25 Your Honor had indicated at one point in time during --

1 THE COURT: You know something? I think serving all
2 creditors in ninety-nine percent of the cases is totally
3 ridiculous because well over fifty percent of those people who
4 receive these documents have no clue what they are, why they're
5 receiving them, or whatever else. And they received in the
6 original notice information about how to get on to the --

7 MR. HUEBNER: ECF System, Your Honor.

8 THE COURT: Yeah. Honestly, I think that these
9 notices just scare people. Any of these notices, they just get
10 scared, they think, well, I mean, should I hire an attorney, I
11 mean, is this really going to hurt me. You know?

12 MR. BOTTER: Your Honor, we knew --

13 THE COURT: And I think that we should make the
14 decision as to whether or not this is something that they need
15 to know about because they need to be doing something about it.
16 So less is more.

17 MR. BOTTER: Your Honor, we agree. And the change
18 that we've made will provide that service will be effected
19 through the case management procedures order, and that
20 basically is ECF service, Your Honor.

21 THE COURT: Okay.

22 MR. BOTTER: Your Honor, may I approach? I have a
23 black-line order, as well as --

24 THE COURT: Well, you can give them to Carlos there.

25 MR. HUEBNER: Your Honor, to be clear for the record

1 so the Court understands, as far as we know, Delta has actually
2 broken new ground in using only ECF for service. We're
3 actually the first case we know of to actually not send
4 hundreds of pieces of paper all over the place every time a
5 motion is filed.

6 THE COURT: Okay. Let me ask you a question.

7 MR. HUEBNER: Yes, ma'am.

8 THE COURT: Have you been reading the various articles
9 in the paper about me?

10 MR. HUEBNER: Some, Your Honor.

11 THE COURT: Yeah? Well, there's one in the Atlanta
12 Constitution yesterday.

13 MR. HUEBNER: Was it good?

14 (Laughter.)

15 THE COURT: It was funny. Actually, I don't know
16 whether the reporter was waiting for me or not, but I never go
17 into Starbucks across the street --

18 MR. HUEBNER: They found you in a coffee shop?

19 THE COURT: Yeah, at ten o'clock at night. And I
20 happened to go in to get a muffin for breakfast.

21 MR. HUEBNER: Right.

22 THE COURT: Can't be sure where they're going to be
23 hiding out.

24 MR. HUEBNER: Yes. We've learned that, Your Honor.

25 THE COURT: I just -- I really think that it's just

1 really important that you not upset people by sending them
2 information that they don't understand and is really
3 meaningless to them.

4 MR. HUEBNER: Yes, to be clear, Your Honor, and to
5 give the Court as much comfort as I think we can, the only
6 thing to my knowledge that we have sent out to all creditors is
7 the notice of commencement, which is --

8 THE COURT: Well, no. I'm saying to you the reason
9 why I am of that belief is that I really don't think they do
10 understand what it's being -- I mean, so far, what order have I
11 signed that any one of them would have understood or would have
12 been meaningful to them? I mean, the one you say is, oh, oh,
13 well, the financing order. And then you go, well, how many of
14 the attorneys can read that, and you go, I don't think so. To
15 say, you know --

16 MR. HUEBNER: Yeah. And of course, Delta is a
17 reporting company, so material events are still reported
18 through --

19 THE COURT: What I'm saying is --

20 MR. HUEBNER: -- press releases in a case.

21 THE COURT: What I'm saying is, you know, if I have to
22 use 105, I will, but I mean, I really believe that the report -
23 - the noticing provisions, while they might seem to be aimed at
24 the biggest cases, are really being aimed at the smallest
25 cases.

1 MR. HUEBNER: Yes, Your Honor, that --

2 THE COURT: In the smaller cases, only by sending out
3 those notices are the creditors able to monitor the debtor
4 because they know who he is, they know that he has, you know, a
5 silver Bentley and is saying there's no -- there's nothing in
6 the business. I mean, you know?

7 MR. HUEBNER: Yeah. Your Honor, we're in violent
8 agreement. My only point is that you should actually be sort
9 of proud of us because we're actually the least --

10 THE COURT: Well, I am proud of us.

11 MR. HUEBNER: -- paper-oriented case probably ever
12 filed of this size.

13 THE COURT: I am proud of us, and I think that that's
14 good.

15 MR. HUEBNER: Save a lot of trees.

16 Your Honor, Number 9 on the agenda --

17 THE COURT: It's just there's a little more paper
18 coming into my house than sometimes I might like.

19 MR. HUEBNER: Well, Your Honor, you are one of the
20 people we need to understand what we're doing; so,
21 unfortunately, that I can't fix.

22 THE COURT: No, I know, but -- and I have to read it.
23 That's -- okay.

24 What do we have left?

25 MR. HUEBNER: Not very much, Your Honor.

1 Number 9 is the application of the 1114 committee to
2 employ their professionals. I would probably propose to have
3 Foley & Lardner present that.

4 It is a little bit unusual, as I think the Court would
5 agree, to have three separate law firms for one 1114 Committee.
6 But our Creditors' Committee has taken the lead in working with
7 them.

8 THE COURT: Oh, let's be clear. This is the asbestos
9 liability of our case. You don't get enough professionals in
10 here, man, you don't get enough money out of the asbestos
11 claims.

12 MR. HUEBNER: Right. I wouldn't want to characterize
13 that, Your Honor, but I would note that --

14 THE COURT: No. But I mean, I'm saying -- you know,
15 look, I don't -- I think that --

16 MR. HUEBNER: The good news is that we and the
17 Creditors' Committee have worked out mechanisms to ensure that,
18 like our own professionals, people are employed appropriately
19 for the discreet tasks for which they have expertise.

20 THE COURT: Well, that's good. That's good, that's
21 good.

22 MR. HUEBNER: Let me turn the podium over, if I may.

23 THE COURT: You may.

24 MR. WANG: Good afternoon, Your Honor. Peter Wang of
25 Foley & Lardner. And as Mr. Huebner said, this is the

1 application to employe Farella, Braun & Martel; Townsend and
2 Townsend and Crew; and Foley & Lardner, purely as local
3 counsel, with respect to representation of the 1114 Committee.

4 THE COURT: Okay. Let me ask you a question.

5 MR. WANG: Yes, Your Honor.

6 THE COURT: Are they going to come and be in court, or
7 is it just that they are supposedly the paper drop?

8 MR. WANG: Foley & Lardner?

9 THE COURT: Yeah.

10 MR. WANG: I think it depends. For example, Your
11 Honor, here I am today. I think it depends on what the
12 application is and what work is needed.

13 THE COURT: Okay, okay.

14 MR. WANG: What we certainly will do is not, as part
15 of --

16 THE COURT: Okay. So you're not just the paper drop,
17 but you're not the main Big Kahuna.

18 MR. WANG: The Big Kahuna will be residing in San
19 Francisco, Your Honor. But as needs develop, if it's more
20 efficient or more appropriate for Foley to do the work, rather
21 than the Kahunas on the west coast, we will step into the
22 breach.

23 THE COURT: No, that's fine. I just wanted to make
24 sure that I understand what was what.

25 MR. WANG: Yeah. What we've agreed -- and this is

1 with the Creditors' Committee, as well as with the debtor, as
2 well as with the U.S. Trustee -- is that there will be no
3 overlap. And of course, the ultimate control on that, as I'm
4 sure Your Honor is aware, will be the sharp pencil and sharp
5 eyes of the U.S. Trustee and the various constituencies.

6 THE COURT: Well, I mean, there will naturally have to
7 be a certain amount of overlap because how is the person from
8 the west coast going to know that they should come to the east
9 coast.

10 MR. WANG: You're correct. The necessary overlap.

11 THE COURT: Right.

12 MR. WANG: But no unnecessary overlap, Your Honor.

13 THE COURT: Yeah. You know, well, I mean, I am not
14 opposed to interoffice meetings; I'm opposed to constant
15 interoffice meetings. I think that there are times when you
16 really need to have two heads, rather than one to think about
17 what you're going to do and the order in which you want to do
18 it and whatever. So I just think you're going to have to keep
19 it down.

20 MR. WANG: We shall, Your Honor.

21 THE COURT: Okay.

22 MR. WANG: Thank you, Your Honor.

23 MR. HUEBNER: Your Honor, the last item on the agenda
24 is actually the simplest. Ms. Beatrice Hairston moved for
25 relief from the stay; and, according to an order that Your

1 Honor signed on the first day which gave us authority to enter
2 into stipulations with insured claimants, to allow them --

3 THE COURT: Okay. I have no problem with that except,
4 in this particular instance -- is her attorney here today?

5 MR. HUEBNER: I would be --

6 THE COURT: Yes? Can you come forward, please? I
7 feel like I can't talk to you, you're too far away.

8 MR. TASSO: Okay?

9 THE COURT: No. You can come a little closer here.
10 And that's just about perfect. That's just about perfect.

11 (Laughter.)

12 MR. TASSO: Lorenzo Tasso.

13 THE COURT: Okay. I would normally not do this, but
14 because Delta is such a well-known entity, I would like the
15 order to provide that, either no reference will be made to -- I
16 don't want somebody to go in, as I saw the one time I got
17 called for jury duty, and they got to questioning -- and you
18 want to know how bad I was? I started asking questions of the
19 people that they were asking questions of. And one of the
20 questions that the other side objected to was a question that
21 implied that the other side was out of business.

22 And I think that the jurors needed to be instructed
23 that -- they either need to be instructed that Delta's Chapter
24 11 is irrelevant to the case, or it needs to be made sure --
25 made clear that, if for some reason it comes up, that the judge

1 makes that -- and that the judge be told in advance that,
2 because of the insurance, Delta's Chapter 11 is not material or
3 relevant to the outcome of the case.

4 MR. TASSO: We agree with that.

5 MR. HUEBNER: Your Honor, this litigation --

6 THE COURT: What? What?

7 MR. TASSO: We agree with that, yes, Your Honor.

8 MR. HUEBNER: This litigation is pending in New York
9 State Supreme Court.

10 THE COURT: Well, I know where it's pending. The poor
11 lady fell on the snow or ice, maybe, and -- I mean, I assume
12 she did, and I assume she, you know, had an ambulance that took
13 her there, and she -- she has comminuted fractures of the left
14 leg and, you know, right-turn fractures of her right leg, and
15 quite a few other things.

16 MR. HUEBNER: Yes. My --

17 THE COURT: And the question is: Whose responsibility
18 was it to keep the sidewalks clear of ice and snow? I don't
19 know.

20 But I don't want the jury to think that, because
21 you're in bankruptcy, they need to award her \$10 million
22 because she isn't going to get all of her money. I want to
23 make sure that, to the extent that the issue comes up, the jury
24 is assured that --

25 MR. HUEBNER: Sure. And, Your Honor, let me make a

1 point that's important to us, and I hope will be important to
2 you.

3 The way these stipulations work is that the plaintiffs
4 have agreed, as the price of lifting the stay, to go after and
5 get recovery only from the insurance proceeds. The --

6 THE COURT: Well, I understand that. But I'm bringing
7 up a -- it's a different issue. It's an issue that had come
8 up, as I say, in which they were voir diring the jury, in which
9 the question implied that the other side's client was out of
10 business.

11 MR. HUEBNER: Yeah. No, my point was a much more
12 narrow one, which is only that insurance companies are rarely
13 known for sitting on their hands at trials.

14 THE COURT: I understand. But it's this very subtle
15 point, it can come up. You don't know that the jurors might
16 think they know something about bankruptcy, you know, they've
17 read something about it. I mean, it's just -- I've not had a
18 case where I thought that it was necessary before, but I
19 thought it would be -- it needed to be made clear to the judge
20 that they don't know that much about bankruptcy.

21 MR. HUEBNER: Yeah. No, look, you're trying to
22 protect us. My only point is I don't know -- there may be
23 state law that governs when you're allowed to mention the
24 existence of insurance policies, their amount.

25 THE COURT: But I'm trying to say to you it's not

1 mentioning insurance that's relevant.

2 MR. HUEBNER: Right.

3 THE COURT: It's mentioning that Delta's financial
4 condition is not relevant.

5 MR. HUEBNER: Sure. We'll work something out in the
6 stipulation, Your Honor.

7 THE COURT: Actually, I don't believe you can mention
8 insurance, but the other party can obtain -- it's just a
9 question of just making sure that the judge is aware that it
10 would be very easy for someone to think they knew something
11 that they didn't know.

12 MR. HUEBNER: Sure, Your Honor. Why don't we work
13 with counsel and see what language we can figure out.

14 THE COURT: Yeah. I just have not had a case where
15 I've had, you know, such a, you know, big company involved in
16 something where it would be so easy -- you know, I don't even
17 know whether you're responsible for the sidewalks.

18 MR. HUEBNER: Sure. I hope we're not. Right.

19 But your concern is that some juror says, we better
20 give them fifteen times as much because they're only going to
21 get three cents on the dollar, and then there's an inflated
22 judgment.

23 THE COURT: Right, because look at what I read in the
24 newspaper.

25 MR. HUEBNER: Absolutely, Your Honor. Again, let's

1 work with counsel. You're protecting us, so I certainly won't
2 argue about it.

3 THE COURT: Yeah, okay, okay. I'm just saying to you
4 I have not had it come up in my head before, but I just could
5 see somebody saying whatever. Okay?

6 MR. HUEBNER: Yes, Your Honor. So we will not submit
7 that one today on the disk with the others.

8 THE COURT: Yeah. That's what I'm saying, it's just -
9 - I mean, there's no question that she's entitled under the
10 rules to have a priority being the age of seventy.

11 MR. TASSO: That's what I -- yes.

12 THE COURT: And so I would like to get this taken care
13 of. I mean, you know --

14 MR. TASSO: Well, she is seventy-five and -- if I may,
15 and I do -- there is urgency in my mind that we try to resolve
16 this as soon as possible. I understand your concern because I
17 --

18 THE COURT: Well, I mean -- yeah. What?

19 MR. TASSO: Because I was told there was insurance,
20 and I did get a representation that there was coverage.

21 THE COURT: I believe -- and I have no reason to
22 believe that's not true.

23 MR. TASSO: So I'd like to proceed --

24 THE COURT: And you presumably -- I mean, I don't know
25 whether the other party that you sued has coverage or not.

1 MR. HUEBNER: The Port Authority? One would certainly
2 hope so.

3 THE COURT: No, it wasn't Port Authority, was it?

4 MR. TASSO: Yes.

5 THE COURT: Yeah, I think you have -- I think they
6 have coverage.

7 MR. TASSO: Now -- but I did get a preference and the
8 case is on the trial calendar. In fact, it was scheduled for
9 trial September 26th of this year.

10 THE COURT: Well, okay. Well, try -- go back again
11 and work it out. But I'm saying to you, I certainly have no
12 problem with your trying it as early as possible, and I just
13 would like to make sure that no one inadvertently decides that
14 Delta's Chapter 11 somehow is material to this situation, which
15 it's not. I mean, the accident occurred what, two years ago?

16 MR. TASSO: Yes.

17 MR. HUEBNER: Okay. We'll try to figure something
18 out, Your Honor.

19 THE COURT: Okay? Now do we have anything else?

20 MR. TASSO: Well, do we know when -- well, do we know
21 when this will be on? I'm sorry to -- because I do have this
22 pressing my client --

23 THE COURT: Well, what -- I --

24 MR. TASSO: When will it be on, the next motion date?

25 THE COURT: It's on today. I just did it. Now all I

1 need is the order.

2 MR. TASSO: Oh, okay. All right. Thank you, Your
3 Honor.

4 MR. HUEBNER: Yeah. We'll work it out, we'll advise -
5 -

6 MR. TASSO: I apologize.

7 THE COURT: Okay? I mean, you know, the motion is
8 fine. I just want the order to be a little different.

9 MR. TASSO: Okay.

10 MR. HUEBNER: So we'll just -- we'll fix it and send
11 it into chambers for entry, Your Honor.

12 THE COURT: Okay. Are we taking anything more today?

13 MR. HUEBNER: Just to say happy holidays and have a
14 nice vacation.

15 THE COURT: Okay. We're not taking all of this mess
16 on the 2004 exams?

17 MR. HUEBNER: No, Your Honor. I'm very happy to
18 report that that has been resolved for the moment. We have
19 agreed to provide certain documents to some of the
20 representatives of the individual retired pilots and/or the ad
21 hoc group DP3; and, with that, those will be essentially
22 resolved for the present. And if they feel that they still
23 need something that they're not getting from us, they'll come
24 back on proper notice.

25 THE COURT: Okay. And they have determined that they

1 no longer need the names and addresses and e-mail numbers and
2 telephones and --

3 MR. HUEBNER: Yeah. I think what we've worked out for
4 now, Your Honor, with a couple of different constituencies, is
5 that under specified, agreed circumstances, we've agreed to do
6 a mailing on their behalf that will allow people to know --

7 THE COURT: Okay. I don't happen to like the terms of
8 your mailing, but that's neither here nor there. We can fix
9 it.

10 MR. HUEBNER: Yeah.

11 THE COURT: One of the reasons I don't like it is DP3
12 has put in a six-hundred-dollar charge for joining the
13 organization to cover attorneys' fees.

14 MR. HUEBNER: Yes. And their counsel is here, Your
15 Honor, if you'd like to speak to him.

16 THE COURT: Well, that's fine. I'm just saying, you
17 know, I would not -- I would put more in the notice, rather
18 than less, but --

19 MR. HUEBNER: Yeah. To be clear --

20 THE COURT: But the other reason why I even got
21 involved with DP3 was because they represented such a high
22 percentage of -- or represented that they represented such a
23 high percentage of the retired pilots, that it seems to me they
24 ought to be able to do anything they needed to with the number
25 that they represented.

1 MR. HUEBNER: Yeah. And that's why, again, Your
2 Honor, what we're doing is we're sort of stuffing envelopes
3 kind of on their behalf, sending out a mailing. And if people
4 want to join the group in even greater numbers, it will be
5 their option to do so.

6 THE COURT: Well, I know. But I think the notice
7 ought to say that they have sought a six-hundred-dollar charge
8 for attorneys' fees, and that you should not feel that joining
9 this is necessary to preserve your rights.

10 MR. HUEBNER: Sure, Your Honor. Well, obviously that
11 --

12 THE COURT: I mean, it was my thought that -- I mean,
13 they represented that they knew what the various health, et
14 cetera, policies were; that they already knew what they were.
15 And it was my thinking that, since they already knew what they
16 were, that was great; and that what we needed was to see -- I
17 mean, I'm not sure what ERISA allows you to do with respect to
18 the retirees. I mean, I don't know whether you can change
19 things or you can't.

20 MR. HUEBNER: Some and some, Your Honor.

21 THE COURT: Can you change the health benefits?

22 MR. HUEBNER: In large part, the answer is yes.

23 THE COURT: Okay. So what my thinking was that they
24 could be the person that was thinking through some other
25 options and thinking about why they would be more attractive or

1 less attractive to retirees.

2 MR. HUEBNER: Yeah. And, Your Honor, as you'll hear
3 about, I think on January 5, at our next hearing, the issue
4 about moving forward on the 1114 point in general will be back
5 before you, including with DP3 renewing its motion to serve as
6 a separate committee.

7 THE COURT: Are those separate pilots the same people
8 are as the board of DP3?

9 MR. HUEBNER: Yes. Certain -- again, most of these
10 questions really are not for me, but --

11 THE COURT: Well, okay. Here he is. He can come
12 right up here and tell me.

13 MR. HUEBNER: Yes. I think that --

14 MR. CHRISTY: Good afternoon, Your Honor.

15 THE COURT: Okay. Those group of separate pilots are
16 the ones that are also the board of DP3?

17 MR. CHRISTY: Yes, Your Honor. John Christy,
18 representing DP3 and James Gray, and a number of other
19 individual pilots who are also trustees of DP3.

20 THE COURT: Okay. But why are they proceeding in two
21 different ways?

22 MR. CHRISTY: Your Honor, there was a question that
23 was raised early on by the Court concerning the standing of
24 DP3; and so, to the extent there is any question about
25 standing, these individuals are certainly recipients of --

1 THE COURT: Yeah, but you see, you don't -- well,
2 let's go back to: What is a "judicial question"? A "judicial
3 question" is a fighting position. Okay? I fight you; you
4 fight me back. Okay?

5 I mean, I don't know who DP3 is. I don't know why I
6 should let them do something. And I expect that you will come
7 back and explain to me why I should do it. I mean, DP3 sounds
8 like R2D2.

9 (Laughter.)

10 THE COURT: I mean, and it wasn't that -- I mean, in
11 fact, the individuals represent nobody other than themselves;
12 whereas, the enterprise -- one of the question is like: Well,
13 what is the charter of the enterprise? You know, when was it
14 set up? I mean, it's more -- it was one of those, you know, I
15 don't know who you are, so why don't you tell me who you are,
16 so I can decide whether or not there's any reason to put you
17 out. But those individuals are representing nobody but
18 themselves and are really not, you know, doing anything
19 terribly useful.

20 MR. CHRISTY: Well, Your Honor, they are
21 representative, of course, of the retired pilots. But it had -
22 - we have resolved many of the issues as we've gone along. We
23 had Mr. Gray, who is the Chairman of DP3, who could give
24 testimony concerning the questions -- or answers to questions
25 you've asked. And also, his affidavit is in the record, which

1 goes on to explain the formation of DP3, the number of members,
2 its mission, its purpose, and its organization. So there is
3 information in the record concerning DP3. But to the extent
4 there was any --

5 THE COURT: Yeah. But I think at the time that we had
6 that particular conversation, there was either too much stuff
7 for me to have read or it might not have gotten much past your
8 own application. I mean, I'm saying the individuals, they're
9 not certified as a class.

10 MR. CHRISTY: That's correct.

11 THE COURT: And what I'm looking for from DP3 is
12 really to be able to backstop the retired pilots in handling
13 the choices that the debtor may make for programs that it
14 believes it can change under ERISA. And, you know, I --

15 MR. CHRISTY: Well, Your Honor, I think that what
16 you've said -- the points you've raised very eloquently set the
17 stage for January the 5th, and why possibly a committee of the
18 pilots is necessary because you're right. Who is speaking for
19 the pilots? What organized, recognizable group is there that
20 speaks for retirees?

21 I would take exception to what Mr. Huebner said
22 concerning modifying retiree benefits. I think 1114 of the
23 code speaks to what a debtor can modify, when it can, and under
24 what circumstances it can. And that is a very large element of
25 this case. And to the extent that there needs to be a group

1 that speaks officially and authoritatively for the retired
2 pilots, that speaks for why an 1114 Committee is necessary, so
3 these groups can be organized --

4 THE COURT: Yeah. Well, I mean, it --

5 MR. CHRISTY: -- as opposed to DP3, which there may be
6 questions raised by the debtor or others concerning its formal
7 standing to represent and speak for everyone.

8 THE COURT: Right. I understand that, and it is not,
9 I think, that common to have two committees. But again, the
10 pilots' interests are different than that of the non-union
11 parties.

12 MR. HUEBNER: Your Honor, let me just help for a
13 minute to be clear. The class action --

14 (Counsel confer.)

15 MR. HUEBNER: The class action is not about 1114 at
16 all; it's about the pension issues, and --

17 THE COURT: I never said -- I'm sorry. You
18 misunderstood what I was saying.

19 MR. HUEBNER: Understood.

20 THE COURT: What I was saying was that the pilots'
21 action that they started with the non-pilots, I said it's not a
22 class action.

23 MR. HUEBNER: Right. That's about pensions, and we'll
24 be ready to talk about that, as well.

25 THE COURT: Well, no. But it's about whatever it is

1 that the retired people get --

2 MR. HUEBNER: No, it's actually only about pensions,
3 and that's very important. It is not governed by 1114, and we
4 all agree on that and --

5 THE COURT: I don't want to argue with you.

6 MR. HUEBNER: Sure.

7 THE COURT: It's not working.

8 MR. HUEBNER: Again, the good news is it's not for
9 today. Today is entirely consensual, Your Honor, and we'll be
10 back on the 5th.

11 THE COURT: Well, that's good once in a while.

12 MR. HUEBNER: Yes. We try whenever we can.

13 MR. CHRISTY: We're pleased, Your Honor, that, you
14 know, we've reached a temporary accommodation, at least with
15 respect to sharing information concerning the identities of the
16 retirees. Delta has consistently resisted providing that
17 information, so ...

18 THE COURT: See, I don't understand what you need them
19 for.

20 MR. CHRISTY: Well, Your Honor, Delta -- one of the
21 reasons -- and we've -- as I said, we've resolved that through
22 Delta going and sending out a notice or a mailing -- is Delta
23 does communicate with retired pilots; if you recall, at the
24 beginning of the case, had sent out a notice -- a letter
25 saying, we're going to cut off your benefits. No one else can

1 speak -- communicate with this group. Delta has press, Delta
2 has the ability to contact these people at will and send
3 notices out to them or communications without even having a
4 response.

5 THE COURT: Well, maybe one possibility is that we say
6 to Delta, Delta, you can't send out a notice before you tell us
7 that you're going to do it, and then we can decide whether you
8 need to send a second notice.

9 MR. HUEBNER: Your Honor, to be clear -- and this is
10 not really something I was particular prepared to address
11 today, but I'm happy to -- we need to communicate as a matter
12 of law with our retirees all the time.

13 THE COURT: Would you --

14 MR. HUEBNER: For example --

15 THE COURT: Would you just not defend something that
16 is simply an idea that I'm putting out there for you to
17 consider until we get to the 5th, which is how to accomplish
18 certain things? How can we deal with certain things? What
19 things should we maybe be doing? I don't know.

20 MR. HUEBNER: Right. But, Your Honor, the good news
21 is, between the parties, we've agreed fully as to exactly how
22 to proceed in a way that has made everybody happy.

23 This is not the only attorney for pilot-retirees
24 that's seeking to have us do mailings on their behalf. And
25 we've worked out a deal that is agreeable to everybody about

1 doing certain mailings for them, to accommodate needs that we
2 don't always agree with by any stretch of the imagination. But
3 in order to avoid burdening the Court with these facts about --

4 THE COURT: Okay. But how many communications have
5 you had with the retired pilots since this case was filed?

6 MR. HUEBNER: Your Honor, to be clear, they get their
7 health insurance from Delta, they get their pensions from
8 Delta.

9 THE COURT: Okay. But I don't consider those
10 "communications."

11 MR. HUEBNER: Well --

12 THE COURT: I mean, I'm not -- I mean, you're not
13 sending them letters that say, oh, and Merry Christmas, too.

14 MR. HUEBNER: No, Your Honor. The only --

15 THE COURT: I mean, you're just sending them a check.
16 I mean, I think everybody -- I mean --

17 MR. HUEBNER: Well, that's not quite right. For
18 example, right now, we're in the middle of open enrollment
19 period, where people have to make choices about what type of
20 insurance they want for the next calendar year, just as active
21 employees would have to do. And there are a lot of mailings
22 that go back and forth on that topic, in terms of, I want an
23 HMO, I want a PPO, I want a point-of-service plan, I want to
24 pay such-and-such a premium, I no longer have dependents. It's
25 a very complicated thing to --

1 THE COURT: I'm not saying it's not, but I am trying
2 to get at figuring out what type of communications you are
3 making that are ones where there could be a desire that should
4 be met, that another communication should be made.

5 MR. HUEBNER: Sure. Your Honor, I think the answer
6 is: Probably none, since they're pretty noncontroversial, and
7 they are workday benefit communications.

8 THE COURT: Yeah, but you got up and told me, but
9 we're sending out all of these -- all of these communications.
10 And I'm saying to you, I don't consider the forms for your new
11 health insurance selection to be the kind of communication that
12 we're talking about, unless what we're doing is changing the
13 nature of your health benefits.

14 MR. HUEBNER: Right. And again, Your Honor, then I
15 don't think we have an issue, because I don't think that we are
16 sending out any of the --

17 THE COURT: Well, that's what I'm trying to say to
18 you.

19 MR. HUEBNER: I was trying to --

20 THE COURT: And you were trying to say to me, you
21 know, I was wrong.

22 MR. HUEBNER: No. I was trying to explain, and I
23 apologize for angering you. I was trying to --

24 THE COURT: It's not making me angry; it's just that
25 you told me the wrong thing, you gave me the wrong answer.

1 MR. HUEBNER: I was trying --

2 THE COURT: You didn't give me the answer that favors
3 your client.

4 MR. HUEBNER: I was trying to explain the types of
5 communications we send out, to make sure that I provided as
6 much information as you wanted.

7 THE COURT: I know. What we were talking about was
8 the letter that went out at the very beginning of the case.

9 MR. HUEBNER: Right. Which, in fact, as it happened,
10 had not gone out yet, and it was always going to say something
11 like what we discussed on the record, that it is Delta's view
12 that, and that was the only one that's been controversial, and
13 it was already fixed.

14 THE COURT: Okay. Well, we'll have our fun day after
15 --

16 MR. HUEBNER: On the 5th.

17 THE COURT: -- the first of the year.

18 MR. HUEBNER: Yes. We will rest up and drink eggnog
19 in its preparation.

20 THE COURT: Yes.

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

22 THE COURT: Okay? And I guess we will have to decide
23 how to spike it.

24 (Laughter.)

25 MR. HUEBNER: I have some ideas, Your Honor.

1 THE COURT: What?

2 MR. HUEBNER: I said, I have some ideas.

3 THE COURT: You have some ideas?

4 MR. HUEBNER: I do.

5 THE COURT: Well, what's your ideas?

6 MR. HUEBNER: I think we all deserve a bit of a break
7 and a good spiking and a nice holiday season.

8 THE COURT: Yeah. But what are you going to spike it
9 with?

10 (Laughter.)

11 MR. HUEBNER: Well, Your Honor, I will not be spiking
12 it, for example, with Pepsi, as I learned earlier today.

13 THE COURT: Well, try. Try telling me what you're
14 going to spike it with.

15 MR. CHRISTY: Everclear. That's the answer, Marshall.

16 MR. HUEBNER: Well, I'm not much of a drinker, Your
17 Honor, I have to confess.

18 THE COURT: Well, I mean, you know, I mean, what would
19 you spike it with?

20 MR. CHRISTY: Everclear.

21 UNIDENTIFIED: Bacardi.

22 (Counsel confer.)

23 THE COURT: What's in -- what's that?

24 MR. HUEBNER: Your Honor, let me check with --

25 MR. CHRISTY: Everclear, a hundred percent alcohol,

1 something we used to make punch out of.

2 THE COURT: Yeah. And what would you spike it with?

3 MR. HUEBNER: Let me check with my clients, please.

4 UNIDENTIFIED: I only drink vodka, Your Honor.

5 THE COURT: Well, okay. Well, give me some -- give me
6 some other answer.

7 UNIDENTIFIED: Your Honor, jet fuel.

8 MR. HUEBNER: Your Honor, I've checked with Delta, and
9 I believe the preference is to spike it with rum, if that
10 pleases the Court.

11 (Laughter.)

12 MR. HUEBNER: Thank you, Your Honor. Have a good
13 holiday season.

14 (Laughter.)

15 (Proceedings concluded at 3:49 p.m.)

16 CERTIFICATION

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

20

21

December 20, 2005

22 _____
Coleen Rand
23 Certified Court Transcriptionist/Agency Director
24
25