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**Hearing Date & Time: May 1, 2006 at 9:30 a.m.**  
**Objection Deadline: April 24, 2006**

-and-

C. Taylor Ashworth (AZ Bar #010143)  
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Proposed Counsel for the Official Committee of Retired Pilots

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

In Re:

DELTA AIR LINES, INC., et. al.,

Debtors.

Chapter 11

Case No. 05-17923 (ASH)

(Jointly Administered)

**MOTION FOR ENTRY OF AN ORDER DECLARING THAT THE PENDING  
SECTION 1113 ARBITRATION PROCEEDINGS DO NOT PREJUDICE ANY  
BENEFITS OF DELTA'S RETIRED PILOTS**

The Official Section 1114 Committee of Pilot Retirees (the "Retired Pilots Committee"), by its proposed undersigned counsel, moves the Court for entry of an Order declaring that the pending arbitration proceedings between the Airline Pilots Association International ("ALPA") and the Debtors over Debtors' proposed rejection of a collective bargaining agreement pursuant to 11 U.S.C. § 1113 will not prejudice the benefits of retired Delta pilots, their spouses and dependents whose interests have not been represented by ALPA, or any other entity, in the Section 1113 process, including the arbitration.

1. The Retired Pilots Committee was appointed pursuant to this Court's Order of March 17, 2006. Proposed counsel was contacted as of March 30, 2006, and met with the Committee for the first time on April 4, 2006. The approximately 5,800 constituents whose interests under Section 1114 are represented by the Retired Pilots Committee are Delta's retired pilots, their spouses and dependents (the "Pilot Retirees"). All of the benefits to which the Pilot Retirees are entitled flow from the collective bargaining agreements negotiated between Debtors and ALPA. The most recent such collective bargaining agreement was executed on November 11, 2004, as supplemented and amended (collectively the "Pilot Working Agreement" or "PWA").

2. Commencing March 13, 2006 (under procedures adopted before the change in judges in this case, and before the Retired Pilots Committee was appointed), pursuant to the Stipulation and Consent Order Under Bankruptcy Rule 9019 Between Delta Air Lines, Inc., and the Air Line Pilots Association, International, dated December 13, 2005, and Letter of Agreement #50 attached thereto, Debtors and ALPA have participated in binding arbitration proceedings (the "Arbitration") to determine, pursuant to 11 U.S.C. § 1113, whether to approve Debtors' proposed rejection of the PWA. The arbitrators are required to issue a decision by April 15, 2006.

3. The Pilot Retirees are entitled to substantial and important benefits pursuant to the Pilot Working Agreement, including, but not necessarily limited to, medical, surgical, or hospital care benefits, and benefits in the event of sickness, accident, disability, or death ("Benefits"). Benefits are treated at some length in the Pilots Working Agreement. For example, Section 25, pages 253-279, expressly deals with both "Pre-Retirement Medical and Dental Benefits" (Section 25(A), pages 253-254) and "Post-Retirement Medical and Dental Benefits" (Section

25(B), pages 254-257). Section 25(C), pages 258-259, provides for “Survivors Medical and Dental Insurance Coverage.” The “General” provisions of Section 25(G), pages 261-262, are a mix of provisions applicable to both current pilots and Pilot Retirees, including, among other things, disability and survivor benefits, and the coverages to be offered to Pilot Retirees depending on their dates of retirement. Section 26, “Retirement, Basic Life Insurance, Disability and Survivor Benefits,” covers pages 280-291. The extensive November, 2004 amendment to the Pilots Working Agreement by Letter Agreement #46 includes changes to Sections 25 and 26 that alone take up eight pages. Quite simply, the PWA is the source of the Pilot Retirees’ Section 1114 benefits.

4. Despite the fact that Benefits are woven into the Pilots Working Agreement at length, the Pilot Retirees were not permitted to be represented in the Arbitration, either by ALPA (which has expressly declined to represent their interests) or by any other representative. This is very similar to the situation retired pilots found themselves faced with in *In re UAL Corporation*, \_\_\_ F.3d \_\_\_, 2006 WL 827307 (C.A.7 (Ill.)). The Seventh Circuit found that the retirees in fact had an interest that the court should have taken into account in making its decision, although ultimately, because it could not quantify the effect representation of that interest would have had, the court refused to unwind United Airlines’ plan and denied the retirees relief. *Id.* at \*6. Unlike *UAL Corp.*, no plan has yet even been proposed here, let alone confirmed. Although this case is seven months old and the Retired Pilots Committee has just been formed, there is no reason to perpetuate the error identified in *UAL Corp.* by denying Pilot Retirees due process with respect to matters that directly affect them, including the fate of the Pilot Working Agreement from which all their benefits flow.

5. In light of the Pilot Retirees' exclusion from the Arbitration, the Retired Pilots Committee asserts that the rights of Pilot Retirees to Benefits should not be prejudiced or affected by a decision in the Arbitration. It appears from their arguments at the hearing on February 6, 2006, that Debtors agree:

MR. KAMINETZKY: Yeah, 1113 is what you have to deal with if you want to reject or modify an existing collective bargaining agreement. Once you're talking about retiree health benefits, 1114 displaces completely 1113.

Transcript of 2/6/06 hearing ("Tr. 2/06/06") at page 110, ll. 16-19. Debtors' counsel went on to quote Judge Lifland's analysis in *In re Ionosphere Clubs*, 134 B.R. 515 (Bankr. S.D.N.Y. 1991): "1114 is the exclusive provision relating to modification or termination of retiree benefits. 1114 specifically and unequivocally addresses retiree issues that are otherwise generally covered by 1113." *Id.* at 519; *see* Tr. 2/06/06 at p. 110, l.24 to p.111, l.2.

6. Debtors have not yet even made a proposal under 11 U.S.C. § 1114, although they have indicated that one will be forthcoming. The formal and required process under Section 1114 has not been commenced to modify retirement benefits. Since Debtors appear to concede that Section 1114 "displaces" Section 1113 as to Section 1114 benefits, Debtors should not be troubled by this Motion. On the most fundamental due process grounds, no proposed Benefit modifications under Section 1114 may be predicated on any argument based on the rejection of the Pilot Working Agreement in proceedings from which the Pilot Retirees were excluded. The Committee requests this Court declare that Debtors may not argue that any actions which have resulted from the Section 1113 proceedings to date have any affect or result in any prejudice to Benefits for Pilot Retirees. Any other result fundamentally "strips" the protections Congress intended by passing Section 1114.

7. In an effort to avoid having to file the present Motion, the Retired Pilots Committee requested on April 12, 2006, that Debtors execute the Stipulation attached hereto as Exhibit A, which provides that “the rights of the Pilot Retirees to Benefits under the Pilot Working Agreement shall not be prejudiced or affected by any determination that the Pilot Working Agreement may be rejected, so that for purposes of determining the Pilot Retirees’ rights under 11 U.S.C. § 1114, those rights shall be treated in all respects as if the Pilot Working Agreement had not been rejected.” Debtors declined to execute the Stipulation, asserting that it “goes well beyond the framework of Section 1114” – even though it is expressly limited to determination of Pilot Retirees’ rights under 11 U.S.C. § 1114, and even though Debtors also assert that “any change to the collective bargaining agreement may not directly modify ‘retiree benefits’ (as defined in section 1114).” See letter from Thomas Ogden to Christopher Graver dated April 13, 2006, copy attached hereto as Exhibit B.

8. Debtors’ carefully worded rejection of the proposed Stipulation is instructive: retreating from the position they espoused on February 6<sup>th</sup>, Debtors now agree only that they may not “directly” modify Section 1114 benefits. This, of course, is precisely the danger the Retired Pilots Committee seek to avoid, and is precisely the protection Section 1114 is supposed to provide. If there is any change to the Pilot Working Agreement that affects benefits protected by Section 1114, either directly or indirectly, the Pilot Retirees should have a say in it. If they are excluded from the process, as is the case thus far, they should not be affected by it.<sup>1</sup>

WHEREFORE, for the foregoing reasons, the Retired Pilots Committee respectfully requests that the Court enter an Order declaring that the pending Arbitration between ALPA and the Debtors pursuant to 11 U.S.C. § 1113 will not prejudice or affect the Benefits of the Pilot

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<sup>1</sup> Because this Motion presents no novel issues of law and the authorities relied upon by the Retired Pilots Committee are set forth herein, it is respectfully requested that the Court waive the requirement for the filing of a separate memorandum of law in support of this Motion pursuant to Local Bankruptcy Rule 9013-1(b).

Retirees whose interests have not been represented by ALPA, or any other entity, in the Section 1113 process, so that for purposes of determining the Pilot Retirees' rights under 11 U.S.C. § 1114, those rights shall be treated in all respects as if the Pilot Working Agreement had not been rejected.

DATED this 14th day of April, 2006.

**STINSON MORRISON HECKER LLP**

By: /s/ Alisa C. Lacey

C. Taylor Ashworth

Alisa C. Lacey

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Proposed Attorneys for the Official Committee  
of Pilot Retirees

TO: ALL PARTIES ON THE  
ATTACHED CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

Mark G. Ledwin, an attorney duly admitted to practice before this Court, hereby certifies that on the 14th day of April, 2006, I caused true and correct copies of the foregoing Motion to be served via the Court's ECF system and by United States mail, postage prepaid, upon each of the persons set forth on the attached non-ECF Service List.

Dated: April 14, 2006

/s/ Mark G. Ledwin  
Mark G. Ledwin (ML-6873)

## SERVICE LIST

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# **EXHIBIT A**

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Proposed Counsel for the Official Committee of Retired Pilots

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re

Chapter 11 Case No.

**DELTA AIR LINES, INC., et al.,**

Case No. 05-17923 (PCB)

**(Jointly Administered)**

Debtors.

**STIPULATION AS TO EFFECT OF PENDING SECTION 1113  
ARBITRATION  
PROCEEDINGS ON BENEFITS TO DELTA RETIRED PILOTS**

THIS STIPULATION is entered into this \_\_\_\_ day of April, 2006, by and between Debtor Delta Air Lines, Inc., and the Official Committee of Pilot Retirees (the “Pilot Retiree Committee”). The parties stipulate and agree as follows:

1. Commencing March 13, 2006, pursuant to the Stipulation and Consent Order Under Bankruptcy Rule 9019 Between Delta Air Lines, Inc., and the Air Line Pilots Association, International, dated December 13, 2005, and Letter of Agreement #50 attached thereto, Debtors and the Airline Pilots Association International (“ALPA”)

participated in binding arbitration proceedings (the "Arbitration") to determine, pursuant to 11 U.S.C. 1113, whether to approve Debtors' proposed rejection of their collective bargaining agreement executed on November 11, 2004, as supplemented and amended (collectively the "Pilot Working Agreement"). The arbitrators are required to issue a decision by April 15, 2006.

2. Retired Delta pilots, their spouses and dependents (the "Pilot Retirees") are entitled to certain benefits pursuant to the Pilot Working Agreement, including, but not necessarily limited to, medical, surgical, or hospital care benefits, and benefits in the event of sickness, accident, disability, or death ("Benefits").

3. The Pilot Retirees were not represented, either by ALPA or by any other representative, in the Arbitration.

4. The parties hereby stipulate that the rights of the Pilot Retirees to Benefits under the Pilot Working Agreement shall not be prejudiced or affected by any determination that the Pilot Working Agreement may be rejected, so that for purposes of determining the Pilot Retirees' rights under 11 U.S.C. §1114, those rights shall be treated in all respects as if the Pilot Working Agreement had not been rejected.

5. This Stipulation is subject to approval by the Bankruptcy Court.

DATED this \_\_\_\_ day of April, 2006.

**DAVIS POLK & WARDWELL**

**STINSON MORRISON HECKER LLP**

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Attorneys for Official Committee of Pilot  
Retirees

COPY of the foregoing sent this \_\_\_\_ day of  
April, 2006, to:

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# **EXHIBIT B**

# DAVIS POLK & WARDWELL

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April 13, 2006

Re: **In re Delta Air Lines, Inc., et al.**

By Email & Regular Mail

Christopher Graver, Esq.  
Stinson Morrison Hecker LLP  
1850 North Central Avenue, Suite 2100  
Phoenix, AZ 85004

Dear Mr. Graver:

I write with regard to the proposed stipulation you sent yesterday, and the concerns you raised on April 10 in a call with my partner Ben Kaminetzky as to participation of the Section 1114 pilot retiree committee in the pending arbitration between Delta and ALPA.

As provided in the recently agreed to Amended Protocol Governing Section 1114 Pilot Retiree Committee, information provided by Delta will be used by committee members "solely in connection with § 1114 benefits." Under Section 1114, "retiree benefits" do not include pension benefits, and do not otherwise relate to negotiations between Delta and ALPA.

Indeed, because the pilot retiree committee is not a party to the collective bargaining agreement between Delta and ALPA, the committee has no right to participate in negotiations over modification of the agreement. As *In re UAL Corp.*, 408 F.3d 847, 851 (7th Cir. 2005) explains: "Labor and management are free to change their agreements without any complaint by individual workers or pensioners – or for that matter by other third-party beneficiaries, including pension fiduciaries." See, e.g., *In re UAL Corp.*, No. 05-3121, slip op. at 8, 11-12 (7th Cir. March 31, 2006) (debtor need not negotiate with retirees in order for bankruptcy court to approve agreement with union relating to termination of pension plan).

On the other hand, any change to the collective bargaining agreement may not directly modify "retiree benefits" (as defined in Section 1114) for current

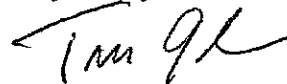
retirees, since Section 1114 trumps whatever ability the parties to a collective bargaining agreement might otherwise have to alter such benefits.

Your proposed stipulation, however, goes well beyond the framework of Section 1114 by seeking to eliminate whatever impact rejection of the Pilot Working Agreement might have on "the rights of the Pilot Retirees to Benefits under the Pilot Working Agreement . . . so that for purposes of determining the Pilot Retirees' rights under 11 U.S.C. § 1114, those rights shall be treated in all respects as if the Pilot Working Agreement had not been rejected." Delta is unwilling to enter into such a sweeping and uncertain agreement.

Without diminishing the duties of a Section 1114 committee, Delta expects the pilot retiree committee and its advisers to keep their estate-financed activities within the "retiree benefits" scope of the statute, and will, as necessary, object to expenses that fall outside that scope.

As Judge Hardin emphasized at the February 6 oral argument on the motion for a separate pilot retiree committee: "[T]he role of these [Section 1114] committees, as opposed to the Creditors' Committee, is very limited, isn't it? . . . For example, one wouldn't expect a great deal of time to be run up by the existing 1114 committee unless and until there's a proposal to modify benefits of some sort." (2/6/06 Trans. at 151-52; see 3/15/06 Trans. at 32-33 (conference regarding pilot retiree committee protocol) (Court notes that expenditures outside the scope of Section 1114 would not be tolerated)).

Very truly yours,



Thomas P. Ogden