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

UNITES STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

In re:)	Chapter 11
)	
DELTA AIR LINES, INC., <i>et al</i> ,)	Case No. 05-17923 (ASH)
)	
Debtors.)	Jointly Administered

**MOTION TO APPOINT AN AUTHORIZED REPRESENTATIVE TO DEFEND THE
 DELTA RETIRED PILOTS' PENSION BENEFITS RIGHTS**

DP3, Inc. d/b/a Delta Pilots' Pension Preservation Organization and certain individual retired pilots("DP3"), by their undersigned attorneys, hereby move this Court to appoint an authorized representative to defend the Delta Air Lines retired pilots' rights to pension benefits, pursuant to 11 U.S.C. § 1113. In support of this motion, DP3 states as follows:

INTRODUCTION

1. Despite the Debtors' representations at prior hearings, recent announcements regarding a tentative agreement between the Air Lines Pilots Association ("ALPA") and Delta Air Lines ("Delta") indicate that Delta has or is attempting to modify or eliminate the retired pilots' pension benefits through a termination of the collective bargaining agreement without so much as discussing the matter with them or their representative, DP3. To the extent these

substantial pension benefits can be eliminated or modified in this bankruptcy proceeding, the retired pilots should have a right to participate in the process.

2. In order to modify or terminate collectively-bargained for pension benefits, Delta must follow a two-step process. In step one, Delta needs to satisfy the requirements of 11 U.S.C. § 1113 and remove any requirement from its collective bargaining agreement that prohibits Delta from terminating the pilots' pension plan. Delta has filed a motion seeking authority to terminate its collective bargaining agreement. On April 14, 2006, Delta and ALPA announced an agreement, the details of which are currently unknown to the retired pilots, but which presumably modify or eliminate the pre-existing collective bargaining agreement in material respects. In step two, Delta must satisfy ERISA's distress termination provisions. *See* 29 U.S.C. § 1341(c)(2)(B)(ii)(IV).

3. ALPA has made it clear that they do not represent the retired pilots. As a result, ALPA cannot bargain regarding the rights of retirees to receive pension or other retirement benefits. Further, none of the committees appointed in this proceeding is vested with the authority to advocate for the retired pilots' pension benefits. Currently, the retired pilots' pension rights are wholly unrepresented in the § 1113 process. Delta has not made a proposal to or attempted to negotiate with the retired pilots with respect to pension benefits. The retired pilots have essentially been cut out of an opportunity to obtain replacement benefits. Despite Delta having repeatedly stated that pensions were not the subject of their current § 1113 arbitration,¹ recent press reports indicate that Delta and ALPA may be bargaining away the pension rights of retired pilots without their participation or consent.

¹ See December 13, 2005 Hearing Transcript, pp. 12, 14, 24.

4. Delta cannot satisfy the requirements of § 1113 unless and until an authorized representative is appointed to represent the retired pilots with respect to pension benefits. The Official Section 1114 Committee of Pilot Retirees is limited to representing certain retiree benefits which do not include pension benefits. This motion seeks the appointment of an authorized representative to defend the retired pilots' rights to pension benefits in all proceedings or negotiations to terminate or modify the collective bargaining agreement. Due process requires that the retired pilots must have a voice in any proceeding in which Delta attempts to affect their right to receive the substantial vested pension benefits to which they are entitled.

FACTUAL AND LEGAL BACKGROUND

5. Delta has approximately 5,800 retired pilots, survivors and dependents who are receiving pension benefits arising from a collective bargaining agreements known as the Pilot Working Agreement ("PWA"). DP3 has 2,750 members.

6. Unlike many other legacy airlines that have a fully unionized work force, Delta is unique because the pilots are its only substantial unionized group of employees. The retired pilots are the only substantial group of Delta retirees whose retirement benefits are provided pursuant to a collective bargaining agreement. Historically, the pensions and benefits of workers present an opportunistic target for reducing debt and expenses and it is no secret that airline bankruptcies are filed because it is perceived to be easier to reject collective bargaining agreements and reduce, or eliminate, the benefits of retired workers in bankruptcy. The loss of retirement benefits can have a devastating impact on retirees and their families who are, by definition, on fixed incomes. Like United Air Lines before, it is fully expected that Delta will seek to modify or eliminate pensions by, at least in part, terminating the collective bargaining agreement and reaching an agreement with the active pilots, represented by ALPA, concerning replacement benefits.

7. Delta has made no secret of the fact that reduction of labor and retiree costs will be the cornerstone of its reorganization. Thus, the burden of this reorganization is likely to fall disproportionately on labor, rather than on other creditors. It is likely that the interests of the retirees may be adverse to the interests of the Pension Benefit Guaranty Corporation (“PBGC”), particularly if Delta, as did United Air Lines, makes a deal with the PBGC to orchestrate an “involuntary” distress termination of its pension plans. The result could be that substantial funds are diverted from retirees to the general coffers of the PBGC.

8. Delta has filed Debtor’s Motion for Authority to Reject their Collective Bargaining Agreements Pursuant to Section 1113(c). In this motion, Delta states that it is “committed to attempting to negotiate agreements with its unions” but that, in the event agreements cannot be reached, it seeks authority to reject its collective bargaining agreement with ALPA. Although the motion states that Delta will seek to obtain “the removal of any requirement in the collective bargaining agreements that Delta maintain any defined benefit pension plans,” the motion fails to contain any explanation regarding how Delta’s actions will affect Delta’s retired pilots. Delta’s motion does not distinguish between pilots’ qualified and non-qualified pension benefits or state whether Delta believes non-qualified pension benefits will be at issue during any upcoming termination proceedings.

9. During the hearing on Delta’s § 1113 motion, Delta and ALPA reached Letter of Agreement # 50 dated December 13, 2005 in which they agreed to “seek to reach agreement on the terms and conditions that would be implemented if the pilot defined benefit plan is terminated.” (Section 6.D). Pursuant to the Stipulation and Consent Order Under Bankruptcy Rule 9019, ALPA and Delta have participated in an arbitration proceeding to determine, pursuant to § 1113, whether to approve Delta’s proposed rejection of the PWA. The retired

pilots' pension benefits are provided for and arise out of the PWA. The retired pilots, however, were not permitted to participate in the arbitration or any negotiations between ALPA and Delta.

10. On April 14, 2006, just one day prior to the deadline for a ruling by the arbitrators, ALPA and Delta announced an agreement, the details of which are still unknown to the retired pilots. The retired pilots are concerned that the "agreement" impacts their pension benefits. If the United bankruptcy is any indication, their concerns are well-founded.

DELTA'S RETIRED PILOTS ARE ENTITLED TO PARTICIPATE IN ALL PROCEEDINGS IN WHICH DELTA ATTEMPTS TO AFFECT THEIR RIGHT TO PENSION BENEFITS

11. Outside of bankruptcy, an employer cannot modify a retired employee's vested retirement benefits without the retiree's consent. See Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co., 404 U.S. 157, 182 n. 20, 92 S.Ct. 383, 399 n. 20 (1971) (Court held that employer could negotiate the modification of retiree benefits directly with individual retirees and also stated that "[u]nder established contract principles, vested retirement rights may not be altered without the pensioner's consent"); Bidlack v. Wheelabrator Corp., 993 F.2d 603, 607 (7th Cir. 1993) citing Litton Financial Printing Division v. NLRB, 501 U.S. at 207, 111 S.Ct. at 2226 (1991) ("Rights which accrued or vested under the [collective bargaining] agreement will, as a general rule, survive termination of the agreement."); International Union, United Automobile, Aerospace and Agricultural Implement Workers of America v. Yard-Man, Inc., 716 F.2d 1476 (6th Cir. 1982) (although retirees may negotiate directly with their former employer regarding the modification of their vested retirement benefits, such benefits may not be unilaterally changed by the employer).

12. Section 1113 prohibits employers reorganizing under Chapter 11 from terminating the provisions of collective bargaining agreements that affect the rights or diminish

the benefits of retirees unless the employer satisfies the requirements of § 1113. In re Century Brass Products, Inc., 795 F. 2d 265, 275 (2nd Cir. 1986) While retirees are “generally capable of being represented by the union as their ‘authorized representative,’” during § 1113 proceedings, courts have also recognized that “it may not always be appropriate for a union to represent both active and retired workers in modification proceedings.” Id. See also Pittsburgh Plate Glass, 404 U.S. at 173, 92 S.Ct. at 394 (although an employer and union may agree to bargain over the modification of retiree benefits, forcing a union to represent both active employees and retirees can “create the potential for severe internal conflicts” and create the risk that “union representatives may see fit to bargain for improved wages or other conditions favoring active employees at the expense of retirees’ benefits”).

13. In Century Brass, Century Brass filed a Chapter 11 petition and initiated discussions with its union, the UAW, wherein Century Brass proposed a series of changes to its collective bargaining agreement, including the termination of its existing pension plan and changes to insurance benefits for retirees and active employees. UAW told Century Brass that because it was not the "authorized representative" for retirees, the company would have to negotiate directly with retirees regarding any modifications to the retirees' vested retirement benefits. Century Brass refused to remove issues related to retiree benefits from its proposal and, as a result, UAW rejected the company's proposal to modify the collective bargaining agreement. Id.

14. After Century Brass filed a motion pursuant to § 1113 of the Bankruptcy Code, the bankruptcy court granted the motion and the district court affirmed. The Second Circuit reversed the rulings of the two lower courts and held that Century Brass failed to satisfy the procedural and substantive requirements of § 1113 because the company "failed to meet its

threshold burden of negotiating with a representative of the company's retired employees covered by" the collective bargaining agreement. Id. at 276.

15. The Second Circuit held in Century Brass that, in order to promote the policies of flexibility and equity built into the Bankruptcy Code, retirees should be deemed to be “employees” for purposes of applying § 1113. Id. at 274-75. The court held that if “retiree benefits are subjects of bargaining between the union and the employer, and no modification can occur absent the retirees' consent, those retirees must be represented in the negotiations.” Id. at 274 (emphasis added).

16. The court stated that, while the appointment of an authorized representative for retirees in Section 1113 negotiations and proceedings “departs somewhat from a literal reading of § 1113, well-established precedent for an appointment of this sort is found in other areas of the law.” Id. The Second Circuit then reversed the bankruptcy court's § 1113 ruling and remanded the case “with instructions to the bankruptcy court to appoint a representative for the retired employees of the debtor, and for such further proceedings under § 1113 as are appropriate.” Id. In re Unimet Corp., 842 F.2d 876, 880 (6th Cir. 1988) (reversing “the judgment of the district court to the extent that it held that 11 U.S.C. § 1113's protection does not apply to retirees covered by provisions of a collective bargaining agreement” and emphasized that § 1113(f), which states “[n]o provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions or a collective bargaining agreement prior to compliance with the provisions of this section” protects both employees and retirees).

17. Century Brass applies directly to this case. Delta is apparently attempting to modify vested retiree benefits without negotiating with the retired pilots. No one is representing Delta's retired pilots with respect to the ongoing § 1113 negotiations and, because ALPA has

declined to represent its retirees, it cannot negotiate with Delta regarding the pension benefits that are being received by Delta's retired pilots. Because an authorized representative has not been appointed to represent Delta's retired pilots' interests in their pension plans in connection with Delta's pending § 1113 proceeding, this Court should appoint an authorized representative to do so.

18. Until an authorized representative is appointed to represent the retired pilots' right to pension benefits, no order should be entered that affects those rights. It would be unjust, and contrary to law, for Delta to continue to take pension benefits away from its retired pilots when those benefits are not being protected by an authorized representative.

19. This Court should act now to protect the interests of the retired pilots in their pension benefits. In In re UAL Corporation, 2006 WL 827307 (7th Cir. March 31, 2006), United filed a Section 1113 motion to reject the collective bargaining agreement. Id. at 3. While the Section 1113 proceeding was going on, United and ALPA reached an agreement ("Letter Agreement") to modify the collective bargaining agreement by eliminating the pension plans, compensating the active pilots \$550 million, and creating a defined-contribution plan in exchange for a "no-fight" agreement from ALPA. Id. Prior to reaching the Letter Agreement, the retired pilots moved the bankruptcy judge to appoint an "authorized representative" to participate in the negotiations. The bankruptcy court denied this request. Id. The bankruptcy court then approved the Letter Agreement under Section 363(b)(1) and, in a subsequent ruling, the termination of the pension plans. Id. at 4-5.

20. The Seventh Circuit recognized the continued viability of Century Brass. Id. at 8. Because of the advanced stage of the proceedings and "to avoid the unraveling of the [termination of the plans] and perhaps the entire bankruptcy", however, the court declined to

reverse the bankruptcy court for not permitting the retired pilots to participate in the negotiations leading up to the Letter Agreement because “there is no longer any feasible remedy that a court could order.” Id. at 12.

21. Unlike the Seventh Circuit facing the issue in the United case, this Court is able to and should provide a feasible remedy to the retired pilots at this time by appointing an authorized representative to defend and negotiate the retired pilots’ pension benefits before it is too late.

THE COURT SHOULD APPOINT DP3 AS THE AUTHORIZED REPRESENTATIVE OF THE RETIRED PILOTS

22. DP3 is ready, willing, and able to serve as the authorized representative to defend the retired pilots’ pension benefits and should be appointed because it is knowledgeable about the facts and is willing to undertake the task.

23. DP3 is a Delaware not-for-profit corporation that was incorporated in October, 2003 to protect the pension, medical, dental, and other retirement benefits of Delta’s retired pilots, survivors and dependants – all of which are currently provided by Delta pursuant to the terms of a collective bargaining agreement. DP3 currently has approximately 2,750 members (out of approximately 5,800 retired pilots, survivors and dependants who receive pilot retiree medical benefits). All retired pilots were invited and are welcome to participate in DP3. No retired pilots were excluded from DP3 or from seeking to be members of its Board of Trustees.

24. Based upon the experience of DP3’s Board of Trustees, and their long involvement and familiarity with Delta’s benefit programs, it is both logical and appropriate to designate DP3 as the “authorized representative” on behalf of Delta’s retired pilots receiving pension benefits pursuant to a collective bargaining agreement. Their experience will lead to a more efficient evaluation of the issues in the case and will ensure that the rights of Delta’s retired pilots to pension benefits will be adequately protected.

25. The existing Section 1114 Retiree Benefit Committee (“1114 Committee”) has filed a 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 retired pilots have the same concerns as the 1114 Committee with respect to pension benefits. If Delta is negotiating agreements that directly or indirectly affect existing pension benefits, Delta should not be able to use the exclusion of the retired pilots from the negotiating process against them. If Delta has not negotiated an agreement that affects pension benefits, then the Court should enter an order similar to that requested by the 1114 Committee holding that the pending arbitration proceedings, the continuation of any part of the 1113 process or any agreement reached without the consent of the retired pilots do not prejudice the rights of the retired pilots with respect to pension benefits.

26. In as much as the relevant legal authorities are set forth herein and no novel issues of law are raised, DP3 respectfully requests that the Court waive the requirement of Local Bankruptcy Rule 9013-1(b) for the filing of a separate memorandum in support of this motion.

WHEREFORE, DP3, Inc. d/b/a Delta Pilots’ Pension Preservation Organization and certain retired pilots respectfully request that this Court appoint an authorized representative for Delta Air Lines, Inc.’s retired pilots, survivors and dependents, to defend their rights to pension benefits; or in the alternative, that the Court enter an order declaring that the pending arbitration proceedings, the continuation of any part of the 1113 process or any agreement reached without the consent of the retired pilots has not in any way prejudiced the retired pilots’ pension benefits; and grant such further relief as it deems equitable under the circumstances of this case.

This 17th day of April, 2006.

Respectfully submitted,

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