

Objection Deadline: September 30, 2005 @ 5:00 p.m.¹
Hearing Date: October 6, 2005 @ 1:30 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)	
)	Chapter 11
DELTA AIR LINES, INC., <i>et al.</i> ,)	05-17923 (PCB)
)	(Jointly Administered)
Debtors.)	

RESPONSE OF AIR LINE PILOTS ASSOCIATION IN SUPPORT OF MOTION TO
COMPEL PAYMENT OF PENSION CONTRIBUTIONS AND PENSION BENEFITS

[Relates to Docket No. 396]

The Air Line Pilots Association (“ALPA”), by its undersigned counsel, submits this response to the motion of the Delta Pilots’ Pension Preservation Organization (“DP3”) to compel the continued payment of minimum funding contributions to the pilots’ defined benefit pension plan and the payment of non-qualified pension benefit payments (“DP3 Motion”) and states for its response as follows:

1. ALPA is the exclusive collective bargaining representative under the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, of the craft or class pilots employed by Delta Air Lines, Inc. (“Delta”). ALPA and Delta are parties to a collective bargaining agreement, known as the Delta Pilots Working Agreement (“PWA”), which establishes the terms of the pilots’ compensation, including retirement and other benefits. The DP3 Motion seeks to compel the payment of certain retirement plan contributions and the continued payment of non-qualified pension benefits to retired pilots. The retirement plans that are the subject of the DP3 Motion are the Delta Pilots Retirement Plan, as Amended and Restated Effective as of July 1, 1996, as

¹ By agreement, ALPA’s response deadline was extended to October 4, 2005.

further amended (the “Retirement Plan”), the Delta Pilots Bridge Plan As Amended and Restated Effective July 1, 1996, as further amended (the “Bridge Plan”), and the Delta Pilots Supplemental Annuity Plan Effective July 1, 1996, as amended (the “Supplemental Plan”) (collectively the “Plans”). The Retirement Plan is a tax-qualified defined benefit pension plan, while both the Bridge Plan and the Supplemental Plan are non-qualified plans that pay benefits above the limits payable by tax-qualified plans. The PWA incorporates all three Plans and, with exceptions not relevant here, prohibits modifications to the Plans except by agreement between Delta and ALPA.²

2. For the reasons set forth in the Response, Memorandum of Law and Request for Determination of Priority of Fiduciary Counselors Inc., to the DP3 Motion (“Fiduciary Counselors Response”) [Docket No. 533], and to the extent set forth therein,³ ALPA supports the DP3 Motion with respect to the payment of minimum funding contributions to the Retirement Plan.

3. ALPA also supports the continued monthly payment of non-qualified benefits to the retired pilots. Delta is obligated to make such payments under the PWA and cannot modify that obligation except in accordance with the provisions of Section 1113. *See* 11 U.S.C. § 1113 (f). Like Delta’s required contributions to the Retirement Plan, or the obligation to pay the compensation of active pilots, the obligation to pay nonqualified benefits is not an

² Section 26 C. of the PWA provides: “Irrespective of any contrary provisions of the [...Plans], the Company agrees that the Plans will not be amended, changed, varied, modified, or voluntarily discontinued during the term of this PWA and thereafter until the date the parties have been released to exercise self-help after exhaustion of the dispute resolution procedure of the Railway Labor Act, except as agreed by the pilots in the service of Delta Air Lines, Inc., as represented by the Air Line Pilots Association, International, and the Company, or except as otherwise required by law.”

³ Fiduciary Counselors states that it is currently investigating the current status of the pension plan contributions to determine the amount and the timing of the required contributions, as part of its responsibility as the independent fiduciary for certain purposes under the Retirement Plan. Pending that investigation, Fiduciary Counselors seeks a determination regarding the priority payment status of the minimum funding contributions. *See* Fiduciary Counselors Response, p. 2, n.3.

obligation to liquidate a pre-petition debt but an ongoing contractual requirement to pay this money each month during the term of the PWA. Therefore these payments do not fall within the limitations of *In re Ionosphere Clubs, Inc.*, 22 F.3d 403 (2nd Cir. 1994). For that reason and for the reasons set forth in the Fiduciary Counselors Response, which apply equally to the non-qualified benefit payments and to the payment of minimum funding contributions, ALPA respectfully submits that the non-qualified benefit payments should be continued.

Conclusion

For the foregoing reasons, the DP3 Motion should be granted.

Dated: October 3, 2005
New York, New York

COHEN, WEISS and SIMON LLP

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1
2 SECTION 26

3
4 RETIREMENT, BASIC LIFE INSURANCE, DISABILITY AND SURVIVOR BENEFITS

5
6 Note: Unless otherwise provided herein, the modifications in *Section 26* will be effective on
7 September 1, 2001.

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9 A. Plan Benefits, Costs and Guarantees

- 10
11 1. a. The Company will pay the entire cost of providing retirement benefits for Pilots
12 derived from the formulas (as described in *Section 26 A. 1. b.*) under the Delta
13 Pilots Retirement Plan Amended and Restated Effective As of July 1, 1996, as
14 amended by the First Amendment thereto dated December 31, 2000, and as further
15 amended by the Second Amendment thereto to incorporate the provisions of
16 *Section 26* (the "Retirement Plan"); provided however, that for purposes of
17 determining benefits payable under this PWA and derived from such formulas,
18 Earnings (as defined in the Retirement Plan) will not be limited by the dollar limit
19 specified in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended
20 (the "Code"). The retirement benefit derived from use of such uncapped earnings
21 will hereinafter be referred to as the "Formula Benefit". These retirement benefits
22 will be provided first from the Retirement Plan and the Delta Pilots Money
23 Purchase Pension Plan As Amended and Restated Effective As of July 1, 1996, as
24 amended by the First Amendment thereto dated April 14, 1998, as further
25 amended by the Second Amendment thereto dated December 31, 2000, and as
26 further amended by the Third Amendment thereto to incorporate the provisions of
27 *Section 26* (the "MPPP"), applying all offsets described in those Plans. If, due to
28 limitations imposed by the Code, all of the Formula Benefit cannot be provided
29 through the Retirement Plan and the MPPP, that part of the Formula Benefit that
30 cannot be provided through such Plans will be provided from the Delta Pilots
31 Bridge Plan As Amended and Restated Effective July 1, 1996, as amended by the
32 First Amendment thereto to incorporate the provisions of *Section 26* (which is a
33 nonqualified excess benefit plan) (the "Bridge Plan") and the Delta Pilots
34 Supplemental Annuity Plan Effective July 1, 1996, as amended by the First
35 Amendment thereto to incorporate the provisions of *Section 26* (which is a
36 nonqualified plan whose purpose is to provide deferred compensation to a select
37 group of management or highly compensated personnel) (the "Supplemental
38 Annuity Plan") or through any other nonqualified benefit plan or plans determined
39 by the Company to be appropriate under the circumstances.
- 40 b. The Retirement Plan formulas applied to determine the Formula Benefit are the
41 formulas set forth in (1) Section 5 of the Retirement Plan, (2) Section 8.02(B) of
42 the Retirement Plan, with respect to a pilot described in Section 8.02, and (3) upon
43 a pilot's retirement at or after his Normal Retirement Date, Section 8.03(G) of the
44 Plan, with respect to a pilot described in Section 8.03.
- 45 2. The Company's contributions to the Retirement Plan will be determined using an
46 actuarial valuation interest assumption not to exceed 8 ½% per annum.

1 3. The Company will pay the full cost of the Delta Pilots Disability and Survivorship
2 Plan (As Amended and Restated Effective July 1, 1996), as amended by the First
3 Amendment thereto to incorporate the provisions of *Section 26* (the "D&S Plan")
4 which will provide the pre-retirement basic life insurance benefits, post-retirement
5 basic life insurance benefits, temporary disability benefits, long term disability
6 benefits, pre-retirement monthly survivor benefits and post-retirement monthly
7 survivor benefits described in that plan. The Company has established a separate trust
8 for the D&S Plan under Section 501(c)(9) of the Internal Revenue Code, as amended.
9

10 B. Savings Plan

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12 Pilots will be eligible to participate in the Delta Family-Care Savings Plan (As Amended
13 and Restated Effective December 1, 1994), as amended through April 1, 2001 and as
14 further amended by the Amendment thereto to incorporate the provisions of *Section 26*
15 (the "Savings Plan"), including a cash or deferred arrangement, which is intended to
16 qualify under Section 401(k) of the Internal Revenue Code of 1986, as amended. The cash
17 or deferred arrangement will not have the effect of reducing other pay-related benefits
18 provided by the Company. Pilot participants in the Savings Plan will be governed by the
19 same administrative procedures and guidelines that apply to all other participants in the
20 Savings Plan, such as service charges, loan fees, etc.
21

22 C. General

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24 Irrespective of any contrary provisions of the Retirement Plan, the MPPP, the Bridge
25 Plan, the Supplemental Annuity Plan and the D&S Plan, the Company agrees that such
26 Plans will not be amended, changed, varied, modified, or voluntarily discontinued during
27 the term of this PWA and thereafter until the date the parties have been released to
28 exercise self-help after exhaustion of the dispute resolution procedure of the Railway
29 Labor Act, except as agreed by the pilots in the service of Delta Air Lines, Inc., as
30 represented by the Air Line Pilots Association, International, and the Company, or except
31 as otherwise required by law.
32

33 D. Plan Amendment Procedure

34 1. The Company will provide to the Association a draft amendment to any of the
35 following benefit plans within 120 days following the parties' agreement to modify
36 such plan (e.g., through an amended PWA or a side letter of agreement):

- 37 a. the Retirement Plan
- 38 b. the MPPP
- 39 c. the D-Plan
- 40 d. the Bridge Plan
- 41 e. the Supplemental Annuity Plan
- 42 f. the D&S Plan
- 43 g. the Savings Plan, as it relates to pilots' participation therein
- 44 (singularly a "Plan" or collectively "the Plans")

45 The draft amendment will include all modifications to the Plan (or Plans) that the
46 Company determines are required by the parties' agreement. The Association will