

Hearing Date: November 16, 2005 at 12:30 p.m.
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:
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DELTA AIR LINES, INC., <u>et al.</u> ,	:
	:
Debtors.	:
-----X	

Chapter 11
Case No. 05-17923 (PCB)
(Jointly Administered)

**REPLY TO OBJECTIONS OF DP3, INC. AND JIM DEAN JOHNSON
TO THE MOTION TO REJECT ALPA COLLECTIVE BARGAINING AGREEMENT**

The Official Committee of Unsecured Creditors (the “Committee”) of Delta Air Lines, Inc. and its affiliated debtors and debtors in possession in the above captioned chapter 11 cases (collectively, the “Debtors” or “Delta”), by and through its counsel, hereby files its Reply to Objections of DP3, Inc. and Jim Dean Johnson to the Motion to Reject ALPA Collective Bargaining Agreement and respectfully states as follows:

I. BACKGROUND

1. On September 14, 2005 (the “Petition Date”), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the

“Bankruptcy Code”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. On September 28, 2005, the Office of the United States Trustee for the Southern District of New York appointed the Committee pursuant to Section 1102 of the Bankruptcy Code.¹

3. On September 28, 2005, Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”) was selected by the Committee to serve as its counsel during the Debtors’ bankruptcy proceedings. On November 10, 2005, the Court entered an order approving the Committee’s retention of Akin Gump as counsel.

4. On November 1, 2005, Delta filed its Motion to Reject ALPA Collective Bargaining Agreement and attached a Memorandum in Support of the Motion to Reject ALPA Collective Bargaining Agreement (collectively referred to herein as the “Section 1113 Motion”).

5. On November 9, 2005, the Delta Pilots’ Pension Preservation Organization (“DP3”) and Jim Dean Johnson (“Johnson”) filed objections to the Section 1113 Motion (the “Objections”).

6. On November 10, 2005, the Committee filed its Response in Support of the Motion to Reject ALPA Collective Bargaining Agreement (the “Committee Response”).

¹ The Committee is comprised of the following members: 1) The Boeing Company; 2) Pension Benefit Guaranty Corporation; 3) Pratt & Whitney; 4) Fidelity Advisor Series II: Fidelity Advisors High Income Advantage Fund; 5) Mackay Shields, L.L.C.; 6) The Coca-Cola Company; 7) The Bank of New York, as Indenture Trustee; 8) Air Line Pilots Association, International (“ALPA”); 9) U.S. Bank National Association and U.S. Trust National Association; 10) Kenton County Airport Board (ex-officio); and 11) Hartsfield-Jackson Atlanta International Airport (ex-officio).

II. ARGUMENT

7. In the Objections, DP3 and Johnson first contend that the Section 1113 Motion must be denied because Delta's unilateral cessation of pension plan payments is not included in the Section 1113 proposal and because Delta has not shown that the cessation of these pension plan payments are modifications necessary to permit the successful reorganization of Delta.²

8. There is no legal basis to compel the Debtors to continue to make pension plan payments to or for the benefit of the pilots or to treat the pilots more favorably than all of the Debtors' other pre-petition unsecured creditors. The arguments set forth in the Objections on these points rely upon inapplicable law and ignore binding Second Circuit precedent. Indeed, according to the unambiguous decision of the Court of Appeals for the Second Circuit in In re Ionosphere Clubs, Inc. (Ionosphere II), 22 F.3d 403, 407 (2d Cir. 1994), a debtor's failure to perform pre-petition obligations under a collective bargaining agreement does not constitute a unilateral modification or termination of that agreement under Section 1113(f) of the Bankruptcy Code.³ Simply stated, the Debtors' cessation of pension plan payments has no bearing on the Section 1113 Motion. Accordingly, these arguments should be summarily denied.

9. In addition, since it is undisputed that ALPA does not represent the pilot retirees' interests, DP3 and Johnson also contend that the Section 1113 Motion is procedurally defective because the: a) retired pilots were not included in the Section 1113 negotiations; b) retired pilots

² All of the arguments raised in the Objections have already been considered by this Court in connection with DP3's Motion to Compel the Continued Payment of Collectively Bargained for Pension Benefits to the Retired Pilots Pursuant to Bankruptcy Code § 1113 and DP3's Emergency Motion to Appoint an Official Committee of Retired Pilots.

³ The Committee's responses to these arguments are set forth in greater detail in the Committee's Objection to DP3's Motion to Compel the Continued Payment of Collectively Bargained for Pension Benefits to the Retired Pilots Pursuant to Bankruptcy Code § 1113 ("Compel Objection"). Accordingly, the Committee incorporates all of the arguments set forth in the Compel Objection herein.

did not receive any Section 1113 proposals from the Debtors; and c) Debtors did not confer with DP3 and Johnson in good faith.

10. However, DP3 and Johnson's procedural arguments must also be summarily rejected because there is no legal requirement that the retired pilots receive proposals related to Section 1113 or that they be involved in the Section 1113 negotiations. Without question, the only "authorized representative" for purposes of Section 1113 is ALPA. See In re United Airlines, Inc., Case No. 02-48191 (Bankr. N.D. Ill.) ("[T]he parties to the contract, that is to say [ALPA] on one hand and United on the other, are the ones who are appropriately engaged in negotiations [regarding Section 1113 issues]." See Tr. of Hr'g on Dec. 14, 2004 at 7:2 – 7:5; attached as Exhibit A hereto. Unlike Section 1114, there is nothing in the plain language of Section 1113 that authorizes the appointment of a retiree committee or requires the involvement of retirees in negotiations surrounding modifications to a collective bargaining agreement. DP3 and Johnson's sole basis for the assertion that the retired pilots must be involved in the Section 1113 negotiations is the Second Circuit's decision in In re Century Brass Prod., Inc., 795 F.2d 265, 275 (2d Cir. 1986). In Century Brass, the Second Circuit reversed the bankruptcy court's Section 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. Century Brass, however, involved the modification and termination of insurance, not pension benefits, was decided *before* the enactment of Section 1114 of the Bankruptcy Code in 1988 and has been rendered moot by the enactment of Section 1114. Indeed, since Section 1114 was enacted, not a single reported decision has followed Century Brass and appointed a Section 1113 committee of retirees or compelled the involvement of retirees in the negotiations of a collective bargaining agreement as a procedural requirement to

obtaining relief under Section 1113. Hence, DP3 and Johnson's arguments that the Section 1113 Motion is procedurally defective are meritless.

WHEREFORE, for all of the foregoing reasons and the reasons set forth in the Committee Response, the Committee requests that the Court overrule the Objections and grant the Section 1113 Motion.

Dated: November 14, 2005
New York, New York

Respectfully submitted,

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