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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 05-17923 (ASH)
. .
DELTA AIR LINES, INC., et al, . New York, New York
. Thursday, October 19, 2006
Debtors. . 2:35 p.m.
.

TRANSCRIPT OF HEARING
MOTION TO APPROVE AGREEMENTS WITH RETIREE COMMITTEES
BEFORE THE HONORABLE ADLAI S. HARDIN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: (ON THE RECORD)

For the Debtors: Marshall Scott Huebner, Esq.
Benjamin S. Kaminetzky, Esq.
DAVIS, POLK & WARDWELL
450 Lexington Avenue
New York, New York 10038

For the Official Committee
of Unsecured Creditors: Lisa Beckerman, Esq.
AKIN, GUMP, STRAUSS, HAUER
& FELD, LLP
590 Madison Avenue, 20th Floor
New York, New York 10022

For the Non-Pilot Section
1114 Committee: Dean M. Gloster, Esq.
FARELLA, BRAUN & MARTEL, LLP
235 Montgomery Street
San Francisco, California 94104

(Appearances continued)

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311 Cheyenne Road
Lafayette, New Jersey 07848
(973) 383-6977

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produced by transcription service.

1 APPEARANCES: (Continued)

2 For the Official Section
3 1114 Committee of Retired
4 Pilots:

Alisa C. Lacey, Esq.
STINSON, MORRISON, HECKLER, LLP
1850 N. Central Avenue
Suite 2100
Phoenix, Arizona 85004

6
7
8
9

David L. Tillem, Esq.
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER, LLP
3 Gannett Drive
White Plains, New York 1604

10 For Objectors Captain
11 William Buergey, et al:

William D. Frumkin, Esq.
SAPIR & FRUMKIN, LLP
399 Knollwood Road
White Plains, New York 10603

12
13 Participating Pro Se:

John Paparella (Delta Retiree)

14
15
16
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23
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1 (Proceedings commence at 2:35 p.m.)

2 THE COURT: Okay. Good morning. Good afternoon, sir.

3 MR. KAMINETZKY: Good afternoon, Your Honor. Benjamin
4 Kaminetzky for the debtor Delta Airlines.

5 First of all, thank you for meeting us here in Bowling
6 Green. We very much appreciate it.

7 THE COURT: Okay.

8 MR. KAMINETZKY: I stand before the Court, Your Honor,
9 with tremendous, tremendous pride. We have consensual deals
10 for critical modifications to retiree health and medical
11 benefits with both of the 1114 retiree committees. Quite
12 frankly, Your Honor, when we commenced this 1114 process, I
13 considered consensual deals with one committee highly unlikely
14 and with both committees virtually impossible.

15 My skepticism that consensual deals were possible was
16 fueled in part by Delta's need for significant cost savings in
17 this area, by the extreme and understandable angst and
18 sensitivity when discussing cuts to retiree health and medical
19 benefits; and by the fact that, unlike any other case in this
20 district, we actually had not one but two different authorized
21 representatives in this case, one for pilots and one for non-
22 pilots, making it all too easy, I believed, for each side, each
23 committee to just point at the other and say talk to somebody
24 else about these cuts.

25 So why and how did we get here, Your Honor? The

1 answer is I didn't fully appreciate what it meant to be "a
2 Delta person" and I grossly underestimated the dedication and
3 resolve of a few people.

4 Your Honor, before I go on, I'd like to introduce you
5 to three extraordinary people and I will ask each of them to
6 stand up. The first is Mr. Rob Kight, vice president of
7 compensation and benefits of Delta Airlines; Ms. Cathy Cone,
8 who is the chairperson of the 1114 non-pilot committee; and
9 Captain Donald Romley, who is the chairman of the 1114 pilot
10 committee. These folks, along with their respective committee
11 members, professionals, lawyers, financial advisors, and
12 actuaries, have worked almost around the clock over the last
13 several weeks to get where we are today.

14 And once again: Why are we here? Because rather than
15 the zero sum game that this process could have become, the
16 retirees and Delta were able to agree on two fundamental
17 principles:

18 One, in order to survive in today's hyper-competitive
19 airline industry, Delta needed to reduce its controllable costs
20 in every area of operation to market-based rates, including
21 retiree medical costs. And at the same time, two, consistent
22 with that first principle, Delta would continue to provide
23 meaningful level of benefits to retirees.

24 In other words, the retired Delta people cared deeply
25 about Delta's survival and viability and the Delta people on

1 the debtors' side of the table cared deeply about the welfare
2 of retirees.

3 Now, how did we get here? This was no love fest; far
4 from it. Indeed, just the opposite. In a word, this 1114
5 process was brutal, it was absolutely brutal. We faced the
6 fiercest of adversaries and they put us through the wringer.
7 As Your Honor knows, 1114 sets up a statutory obstacle course
8 that a debtor must navigate and finance in order to modify
9 retiree health benefits. And as I mentioned before, the
10 obstacle course here was even more complicated because we were
11 juggling two different authorized reps.

12 As an initial matter, with the assistance of the
13 United States Trustee, and after a lengthy solicitation
14 process, the Court appointed two committees. Each committee
15 hired multiple law firms, a total of five law firms, and each
16 committee retained its own financial advisor and its own
17 actuary. Delta, not the retirees, pays for each of these
18 advisors and, needless to say, the type of litigation process
19 one is willing to launch when your adversary is footing the
20 bill is, shall I politically say, quite robust.

21 Now, after the appointment of the committees, the 1114
22 process officially commences when the debtor provides the
23 retirees with a modification proposal. Here on October 8th and
24 October 9th respectively, Delta met with each of the committees
25 and their legal representatives and their financial advisors

1 and presented a detailed proposal for modifications to retiree
2 benefits.

3 In addition to a detailed presentation describing the
4 proposal, we also had two separate financial presentations, one
5 by Delta's vice president and controller, the other one by the
6 Blackstone Group, Delta's restructuring advisors, which
7 presented detailed financial information and where we opened
8 the tent flap and provided the committee with highly
9 confidential information.

10 I'm sorry. These proposal meetings happened August
11 8th and 9th. I misspoke. Not October 8th and 9th. Sorry.
12 That would be something if they did, though.

13 (Laughter.)

14 MR. KAMINETZKY: It was August dates, yes.

15 In a normal 1114 process, after making the proposal,
16 the next step would be providing the authorized representative,
17 here the two committees, with discovery. This was not the
18 normal case.

19 Because the Court appointed the non-pilot committee
20 nine months before we actually made a proposal, discovery
21 actually commenced last year and I would guess that this is
22 unprecedented in any other case. Delta produced thousands of
23 pages of documents to the committees before we even made a
24 proposal.

25 Indeed, to give you a flavor as to how aggressive the

1 committees were in pursuing discovery, as Your Honor may
2 recall, one of the committees actually filed a motion to compel
3 discovery in late May, more than two months before we even made
4 a proposal. And once we presented the 1114 proposals on August
5 8th and 9th, there's only one way to describe the discovery
6 that occurred thereafter: surreal.

7 From mid-August to mid-September, Delta received and
8 responded to scores of information requests, document requests,
9 and questions from each of the committees and their respective
10 advisors. Delta and its advisors initiated conference calls
11 with each of the committees to answer their questions, many of
12 which lasted multiple hours. These conference calls sometimes
13 took place several times a week and often multiple times a day.

14 Moreover, to insure that the committees were receiving
15 the most accurate information as quickly as possible, Rob
16 Kight, who you just met, along with his staff and the company's
17 actuary from Towers Perrin, participated personally in the vast
18 majority of these calls and then spent the rest of the night
19 researching and responding to the committees' multiple follow-
20 up questions.

21 Despite its limited resources, Delta spent countless
22 hours identifying, gathering, and producing the documents that
23 each committee and its advisors had requested and almost
24 without exception, after completing the production, Delta spent
25 hours walking the committees through these very complicated

1 documents at times.

2 The next step required that under Section -- the next
3 step required under Section 1114 is for the debtor to:

4 "-- meet at reasonable times with an authorized
5 representative to confer in good faith in attempting
6 to reach mutually satisfactory modifications of such
7 retiree benefits."

8 Accordingly, commencing the week of September 11th up
9 until almost the moment we filed the instant motion on October
10 5th, we were negotiating, often in parallel, with both
11 committees in an attempt to reach deals. This included multi-
12 day, multi-hour in-person meetings; many, many phone calls,
13 scores of conference calls, and hundreds of e-mails and
14 correspondence. And, Your Honor, we did it, what many thought
15 impossible: We reached consensual deals with both committees.

16 As soon as we reached both agreements, and although
17 the negotiations were conducted separately with each committee,
18 we actually reached agreement almost exactly the same time.
19 And as soon as we had both agreements, we filed the instant
20 motion.

21 And, Your Honor, that brings us to the objections.
22 Delta more than complied with both the letter and spirit of
23 Section 1114. As the Court just heard, and hope fully
24 appreciates, the 1114 process was an extraordinary financial
25 and human resource burden to these debtors. We paid for

1 everything and everyone, times two. And for several months,
2 many Delta employees, lawyers, and advisors had to drop their
3 day jobs and devote 200 percent of their time to 1114
4 exclusively.

5 So what does Delta achieve for all this money and
6 effort, for this blood, sweat, and tears? What we got is the
7 following:

8 We got a counter-party. If a debtor completes the
9 1114 obstacle course, if a debtor runs the gauntlet and either
10 reaches a consensual deal with the authorized representative or
11 prevails in an 1114 litigation against the authorized
12 representative, it's done. For all of its time, investment,
13 and effort, debtors got a single or hereto statutory and court-
14 sanctioned counter-parties to negotiate with and, if necessary,
15 litigate against, as well as a single process that, if
16 completed, either through a deal or through litigation, the
17 debtors can finally and lawfully modify retiree health
18 benefits.

19 Now, Captain Buergey and his group have two primary
20 objections:

21 One, not enough notice was provided for the motion.

22 And, two, well, all the work Delta did with the 1114
23 authorized representatives, the proposal process, the extensive
24 discovery, and the negotiations, well, that's all well and
25 good, but, hey, I and presumably any and all of Delta's 31,000

1 plus retirees and survivors, I want my own proposal, I want my
2 own discovery, and I want my own negotiation and if I'm not
3 happy, I want my own ability to litigate 1114 if I so choose.

4 Both of these objections, Your Honor, not enough time
5 and I want my own personal 1114 process, are based on the same
6 completely erroneous premise. They are based on the premise
7 that someone other than the debtor and the 1114 authorized
8 representative can have any role to play in an 1114 process.

9 Now, Your Honor, back in early February, the last time
10 I appeared before the Court on an 1114 issue, the question of
11 one committee or two committees, things were going great for
12 me. I was pretty darn sure I had the better argument. I
13 thought I had overwhelming precedent. I was speaking in
14 beautiful prose.

15 THE COURT: I thought so, too.

16 (Laughter.)

17 MR. KAMINETZKY: You were nodding, as you're doing
18 now. I could taste victory, and the Court did something quite
19 astonishing. You opened up the code, turned to Section 1114,
20 and you read the words. And you ruled that the statute
21 actually requires that you appoint a second committee in that
22 case -- in this case. Well, I lost, but I learned an important
23 lesson.

24 So let's do that again. Let's take out our codes and
25 turn to 1114(e)(1). And what does 1114(e)(1) say? It says:

1 "Notwithstanding any other provision of this title,
2 the debtor in possession or the trustee, if one has
3 been appointed under the provisions of this chapter" -
4 -

5 Skipping the parenthetical.

6 "-- shall timely pay and shall not modify any retiree
7 benefits except that, A, the Court, on motion of the
8 trustee or authorized representative, and after notice
9 and a hearing, may order modifications of such
10 payments pursuant to the provisions of Subsection (g)
11 and (h) of this section" --

12 And here it comes, "or," Your Honor.

13 "-- or the trustee and the authorized representative
14 of the recipients of those benefits may agree to
15 modification of such benefits, after which such
16 benefits, as modified, shall continue to be paid by
17 the trustee."

18 THE COURT: And from that you conclude that no court
19 approval is, in fact, required by the statute?

20 MR. KAMINETZKY: Exactly.

21 THE COURT: I agree.

22 MR. KAMINETZKY: I think it's crystal clear from the
23 statute.

24 THE COURT: Perfectly clear.

25 MR. KAMINETZKY: They're entitled to no notice and

1 they're not entitled to have any process, any discovery, any
2 proposal, any litigation. If you read the rest of the statute,
3 this statute is a statute between the authorized representative
4 and the debtor. You have to give the authorized representative
5 the proposal. You have to reach an agreement. You have to
6 litigate against the authorized representative. Nobody, no --
7 congress made it exceedingly clear who you have to negotiate
8 with, who you have to reach agreement with, or who you have to
9 prevail in litigation against.

10 Couldn't be any clearer. And there is case law, too.

11 THE COURT: I agree. You're absolutely right.

12 MR. KAMINETZKY: Well, you just took the wind out of
13 my sails, then, so --

14 (Laughter.)

15 THE COURT: No, I want you to continue.

16 MR. KAMINETZKY: Well, you know, I don't -- you know,
17 they say about, you know beating a dead horse.

18 So anyway, the -- I think the bottom line is the
19 statute here is dispositive. We could talk about cases, but I
20 don't think we need to. The words are the words.

21 And just another word about notice. I mean, clearly
22 you don't need notice, according to the statute, but I think I
23 need to say something because this is a perfect example of the
24 time-honored proverb no good deed goes unpunished.

25 As we just discussed, we could have just implemented

1 the benefit changes without notice, without court approval, and
2 that's it. Instead, as soon as we reached agreement, we filed
3 the motion. The hearing date and objection deadline all
4 followed the case management order entered in these cases.

5 At a significant cost to the estates, we then drafted
6 and as quickly as possible sent plain-English letters to each
7 of the retirees, all 31,000, and survivors explaining the
8 modifications reflected in the term sheets, and informing them
9 of the motion, the hearing date, and the objection deadline.

10 What's more, when we got wind that people were upset
11 about the short amount of time in which to object, we asked the
12 various retiree committees and the various retiree groups to
13 post a notice on their website saying, hey, you know, the case
14 management order says you have until October 12th, but we won't
15 make a big deal if you file through October 16th; we extended
16 the deadline. And once again, we didn't have to do any of
17 this.

18 So to conclude, Your Honor, this is simply not an 1114
19 hearing or an 1114 trial. We don't need one because of the
20 hard work of the dedicated people that I introduced to you and
21 all the other people that supported their efforts. The only
22 hearing or trial contemplated in 1114 takes place if and when
23 negotiations fail and here, thank God, they didn't, and only
24 between the debtor and the authorized representative, not with
25 Captain Buergey or any other individual or group of

1 individuals.

2 Accordingly, this Court need not make 1114 findings.
3 You don't have to find necessary, fair and equitable. That's
4 all if you're in -- if negotiations break down and you're in
5 litigation under 1114(g) and (h). And you'll see our order
6 contains -- our proposed order contains no such findings
7 whatsoever.

8 To the extent the hearing is about something, it's
9 about the debtor's business judgment. We moved -- very
10 carefully we moved under Section 363(b). Pursuant to section
11 363(b), the court shall permit a debtor to use property of the
12 estate if the decision is based on the sound business judgment
13 of the debtor. No one, no one has or could challenge Delta's
14 business judgment when it agreed to the deals embodied in this
15 term sheet. It is a deal that saves these estates
16 approximately \$50 million a year. It's a deal that takes one
17 of our above-market costs and reduces them to competitive
18 levels. It's a deal that avoids a bruising litigation with a
19 valued and beloved constituency, our retirees. It's a deal
20 that avoids the general uncertainty, risk, expense,
21 inconvenience, disruption, and possible delay attendant to any
22 litigation. It's a deal that preserves, and, in some
23 instances, actually guarantees for a period of time a
24 significant level of benefits for our retirees. And
25 accordingly, it's a deal in the best interest of Delta, it's in

1 the best interest of our creditors, and therefore, it
2 represents the sound business judgment of the debtors.

3 Thank you, Your Honor.

4 THE COURT: Thank you, sir. Yes?

5 MR. GLOSTER: Your Honor, Dean Gloster, Farella, Braun
6 & Martel, on behalf of the non-pilot 1114 committee.

7 I wanted to just add a couple of things to what Mr.
8 Kaminetzky had said.

9 First, from our perspective, the urgency of moving
10 forward now and not delaying; and second, I actually wanted to
11 address a couple of things that Mr. Kaminetzky had said which,
12 had I been the judge, would have alarmed me slightly, so I want
13 to go ahead and talk about those.

14 As Mr. Kaminetzky points out, these two agreements are
15 actually the tip of a very large iceberg. In the case of the
16 non-pilot committee, this is the second agreement we've reached
17 with the debtor. We reached agreement with them in December of
18 last year around interim changes and this is the second
19 agreement; that if our committee believed it could have gotten
20 more for the retirees by not reaching this agreement with
21 Delta, I can assure you they would not have reached the
22 agreement. And I can also assure you that people can always
23 complain about a complicated deal, that they don't think it's
24 fair for this group to get this and that group to get that, but
25 the enormous amount of effort that our committee members went

1 through to see that this was as fair as possible to each of the
2 constituencies because there are very different early
3 retirement packages and lots of different, you know, above --
4 over-sixty-five benefits and under-sixty-five benefits, and the
5 amount of attention that they gave to those concerns and the
6 number of times they asked me to prepare a chart that showed
7 exactly what each group was giving up and what they were going
8 to have to pay and how that sort of fit within the fairness,
9 the level of commitment and attention to that issue has been
10 extraordinary, Your Honor.

11 In connection with the over-sixty-five benefit, we
12 accomplished something that was remarkable and extraordinary,
13 Your Honor. Mr. Kaminetzky actually didn't take as much credit
14 as he needed to. We were before Your Honor in May on a motion
15 to compel to seek to get the information so we could go out and
16 make a request for proposal and he had explained that it was
17 very difficult, the debtor was doing sixteen different things,
18 and Your Honor said, look, I'm not going to make them live with
19 these short deadlines, given that they appear to be doing the
20 best they can.

21 I can tell you after you told the debtor they didn't
22 have to get this information by the next Friday, they actually
23 got us most of that information by that next Friday and we were
24 able to use that to go out with a request for proposal to all
25 of the providers of nationwide benefits and, in connection with

1 that, we identified a benefit that would be much less
2 expensive, much more attractive for the over-sixty-five
3 retirees than the ones that Delta had prepared.

4 And I need to give Delta even more credit. To go to a
5 Fortune 1000 company and say we, the 1114 committee, have,
6 through brokers and through this process, identified a much
7 better benefit, will you consider using our benefit for the
8 over-sixty-fives. Most companies would find that simply dead
9 on arrival just because that's not the way it's done.

10 They actually sat down with us, reached the conclusion
11 that this was, in fact, a much more attractive benefit for the
12 over-sixty-fives, and there were difficult negotiations about
13 how the retirees could be protected against future mergers of
14 Delta, what would happen in the future if they were in
15 bankruptcy again and suddenly there was no attention from
16 management around these over-sixty-five benefits.

17 The end result of that was that, you know, Delta will
18 not be the policy owner, but even after that Delta made sure
19 that it did due diligence with the vendors and the plant
20 providers that the retirees were not being left in the lurch
21 and that our committee had not sort of been taken advantage of
22 by providers. So they did an extraordinary thing in working
23 with us, but there are some important corollaries for that.

24 Part of what the non-pilots got was a hardship fund
25 that we now need to administer and we need to educate the

1 retirees about how they need to apply for that fund, what the
2 procedures are going to be, and we have set up a large meeting
3 in Atlanta on October 25th and we have twenty-one separate
4 meetings that our committee has set up in hub cities to educate
5 them about this program and about the new over-sixty-five
6 benefit and their benefit changes.

7 We also agreed with the debtor that this over-sixty-
8 five plan, which works much better with Medicare and which is
9 much more attractive, is open for the pilots as well, but we
10 will have to enroll those pilots. And rolling out a benefit
11 plan where you have people literally in fifty states, we don't
12 have any more time, Your Honor, so that there is actually a
13 great deal of urgency about this. So I find myself in the odd
14 position as counsel for the retirees, having negotiated an
15 agreement that reduces retiree medical benefits and saying it's
16 very urgent, Your Honor, that this agreement be approved now
17 and not put off for some period of time.

18 So let me just say sort of finally, had I been Your
19 Honor, I would have been somewhat alarmed when I heard about
20 five different law firms and multiple financial advisors and,
21 you know, something that sounded like, you know, World War II.
22 In truth, I think both committees have a local counsel, as well
23 as another counsel. Our non-pilot committee also had another
24 litigation counsel to deal with very discreet litigation issues
25 and we've managed to avoid all of those issues and I have to

1 say that co-counsel has not billed practically anything for
2 some time because we were very hopeful of avoiding litigation
3 and thanks to the work of our committee and thanks to the
4 debtor, we've done that.

5 And if Your Honor has any other concerns about
6 fairness issues or any other issues, I'm happy to address them,
7 but -- I've told my clients that there are no happy faces in
8 bankruptcy court and the retirees are disappointed that some of
9 these benefits they won't have. On the other hand, the company
10 has done a great deal of work to try to make sure that in
11 saving \$50 million, and on the non-pilot retiree side, the
12 average retiree pension checks are often \$1,500 or less; that
13 they've tried to be compassionate and careful about how that is
14 done and they've tried to provide some protection to their
15 retirees. And it's an extraordinary company and it's an
16 extraordinary result and there are no happy faces in bankruptcy
17 court, but things could be much, much worse. And 32,000 people
18 on the non-pilot side will have benefits next year, and I think
19 they will appreciate that.

20 Thank you, sir.

21 THE COURT: Thank you.

22 MS. LACEY: Good afternoon, Your Honor. Alisa Lacey
23 from the firm the firm of Stinson, Morrison, Heckler, and David
24 Tillem from Wilson Elser. We have the privilege and the honor
25 of representing the retired pilots committee.

1 I would echo much of what has been said by Mr.
2 Kaminetzky and Mr. Gloster. There are a couple of additional
3 points that are perhaps worth noting. One is to thank Your
4 Honor and thank the non-pilot committee for having the
5 foresight to, in this case, have two committees go through the
6 process. The Court has had the opportunity to plow through the
7 very complex term sheets. It will recognize, as we do and live
8 through, that each term sheet is tremendously complex, meaning
9 that the issues that face each of the groups represented by the
10 committees were very complex.

11 I think what that means is the reasons settlements
12 were reached was because there were two committees, not in
13 spite of it. Yes, it did put the company to two times the
14 work, if not three times the work. They did stand up to
15 tremendous challenge in getting all that information out, but I
16 think even the company, once the process started, fully
17 recognized that the two committees represented entirely
18 different and distinct constituencies and, frankly, their best
19 prospects were to reach agreements separately and independently
20 with each committee which, unbelievably, happened.

21 So we'd like to start off with a thank you note to the
22 other committee, who had the foresight to endorse that
23 proposition, which we think was correct, and to Your Honor for
24 reading the code and saying, yes, in this case it appears to be
25 appropriate. And just for future other cases that ever

1 consider this issue, it worked better, I think, than it would
2 have without the two committees.

3 We represent the retired pilots group. Our group was
4 composed of nine appointed members by the U.S. Trustee and,
5 like the other group, tremendously intelligent, hard-working,
6 non-paid, these are all volunteer committee members that spent
7 hundreds and hundreds, if not thousands, of hours reviewing
8 Delta financial information, benefit information, responding to
9 and bring up to us e-mail after e-mail after e-mail from our
10 constituencies, pointing out to us the various different kinds
11 of retirement contracts and plans that we were forced to try
12 and come up with a fair treatment for across the board. But
13 these nine individuals, there can be no shortage of praise for
14 how much they had to look at, digest, understand, learn,
15 appreciate, and balance in trying to reach a very fair result
16 in this case.

17 So while we do regret that -- the best result, of
18 course, is if this process never has to occur at all. If you
19 don't have to do an 1114 process, that's the best result for a
20 retiree. But when the process must be engaged in, the one
21 thing I would like to assure all retired pilots that are within
22 our constituency is that they had tremendous representation.
23 They had very diligent and hard-working committee members and
24 their professionals did their utmost to reach the fairest deal
25 we could.

1 We do think that it can't be understated how grim the
2 prospects were for a litigated and successful 1114 benefit
3 treatment. One of the things you must do is you must survey
4 what's out there in the airline industry and other published
5 decisions and cases and how other groups have fared, and the
6 fact is, most groups have fared very, very poorly.

7 We are pleased in this case because the Delta family
8 spirit, as has been alluded to throughout this case, is very
9 much alive. Our committee felt it strongly. It was a deep
10 allegiance to everybody they represented, and also an
11 allegiance to the company they wanted to see survive in order -
12 - for a number of reasons: One, they had allegiance to the
13 company; two, they wanted to make sure that the benefits the
14 company could provide continued to exist.

15 As a result of sort of the attitudes that I think
16 surprised a number of parties on both sides of the
17 negotiations, I think this case, perhaps for both committees,
18 has resulted in 1114 agreements which provide benefits which
19 are ground-breaking. There are no other published opinions
20 which provide the level of benefits, the complexity of
21 benefits, and, in fact, just the monetary -- it's good news.

22 It's good news in a bad-news situation. It's better
23 news that we could have litigated for, particularly with
24 respect to both groups. The benefits achieved for those that
25 are sixty-five and over are ground-breaking. There are no

1 other cases that we're aware of that have succeeded in
2 providing consensual benefits or even non-consensual benefits
3 after a litigated result at these levels.

4 So we're pleased; we're very pleased with the company
5 for assisting us and cooperating to reach these kinds of
6 agreements and we are going to try and convince and we've been
7 responding to e-mails and try to get the information as best we
8 can, but we can't state strongly enough to all of the retired
9 pilots how deeply the committee really did feel its
10 responsibility to try and soften the blow, if you will, for
11 each group that it could.

12 Our constituency is a very mixed group: 50.7 percent
13 are sixty-five and over, 24.4 percent are sixty-four and under,
14 25 percent are fifty-nine and under, and all of those groups
15 have a variety of retirement plans, under which some were
16 paying zero in health insurance premiums and some were already
17 paying 100 percent and we were trying to reach a balance for
18 every group in between. So it is exceedingly complex.

19 It's a good thing two committees were formed. Despite
20 it doubled or tripled the work for Delta, which we have no --
21 no, there was never any discovery -- there was a brief
22 discovery skirmish in May, but to Delta's credit, there was
23 never any discovery fight. They bent over backward to produce
24 every document, you know, they could in response to everything
25 we requested.

1 We gave them a fairly thorough exam and our
2 accountants were directed at any moment to look at absolutely
3 everything, look at the backup for absolutely everything. If
4 at any point there had been any concern about a material
5 discrepancy in the accountings, they were to raise the red flag
6 and the process would have stopped and we would have been in
7 here. That did not happen.

8 We asked our accountants at Alvarez & Marsal time and
9 time again. They were exceedingly diligent. We said, do you
10 see anything that causes you any concern with the information
11 that's been reported to you thus far. They said, no, we do
12 not. So we asked and asked and our professionals were very
13 responsive and very diligent. I think Delta can attest that
14 they would probably rather not go through that kind of physical
15 again for a long time.

16 In any event, Your Honor, I don't want to be --
17 belabor the process too much, except to try and assure all of
18 our constituents that I had the privilege and the other
19 professionals that my team had the privilege of representing an
20 extremely diligent, hardworking, and attentive group and they
21 did a fantastic job. Captain Romley is to receive a great deal
22 of credit for the time and effort he put in. They were well
23 represented. It was -- despite the fact that it ended up being
24 a settlement, to speak in pilot terms, it was very much a dog
25 fight until the settlement was reached.

1 Thank you.

2 THE COURT: Thank you.

3 MS. BECKERMAN: Good afternoon, Your Honor. Lisa
4 Beckerman from Akin Gump for the Creditors' Committee.

5 I guess we have the distinction of being sort of a
6 little bit outside, but being involved and looking in on the
7 process. I just wanted to raise a few more points and just
8 echo a few points that have been made.

9 This was definitely a contentious, hard-fought
10 process. I can assure you myself, having seen the initial
11 proposals that were reached and what was ultimately decided and
12 agreed upon by the parties, that it started out with a
13 different number, it started out with different terms. Every
14 different group and subgroup was changed in the process of the
15 negotiation. There was a lot of hard-fought negotiations
16 between the parties and I am very surprised, just like Mr.
17 Kaminetzky said, that they were actually able to reach
18 agreement with both groups, but very pleased. I think that's a
19 high compliment to the very, very hard work that was clearly
20 done by both of the 1114 committees and by the debtors.

21 I think that the settlements with each group provide
22 for sacrifices to be made with the various groups, even within
23 the two groups of the retirees. There are changes for pre-
24 sixty-five group, post-sixty-five group. With respect to
25 premiums, people who are paying no premiums are now going to

1 be. There's this, as Mr. Gloster indicated, a massive ground-
2 breaking change and Alisa as well, with the over-sixty-five
3 treatment, and I think that the modifications don't fall on any
4 one group or any one subgroup, they fall on all. And I think
5 that, as Your Honor knows, sometimes that's the best indication
6 of a good settlement because it's really tried to be fair.

7 And being fair here is a very difficult situation. As
8 you can imagine, given the complexity in the subgroups between
9 each group, you could never have a perfect settlement here,
10 Your Honor, that would be ideal and perfect for everyone. But
11 I think that what has been negotiated really does, I think,
12 fairly try to deal with the situation and apportion among the
13 various groups.

14 Again, it's our view that the result here was
15 extraordinary, especially without the need to expend estate
16 resources with costly litigations, given the complexities. I
17 can tell you that just from my end, as the lawyer having to
18 understand all these various groups and the plans that existed,
19 to be able to evaluate the settlement, along with my ERISA
20 counsel, it is very complicated and I honestly think that it
21 could have easily degenerated on either side to litigation.
22 And I think that the result that has been reached is very fair.
23 It achieves what the company needs to have accomplished for
24 purposes of its business plan in a way that I think is a very
25 fair and appropriate result.

1 And again, I can't be -- I think I can't commend the
2 parties enough for the hard work because I personally thought
3 it might be possible to get to a resolution with one group, but
4 I honestly thought we'd be litigating with respect to at least
5 one group here, you know, before Your Honor and I think that
6 the fact that they were able to do so really says a lot about
7 the time and effort and creativity of the parties.

8 And just as some who is not in those groups but has to
9 look at the end result and participate in the process and we
10 did have some input with the process and the claims negotiation
11 with the non-pilot group for their claims, et cetera, so I can
12 honestly say that I've been very impressed by the process. I
13 think that it's a fair and equitable result that's in the best
14 interest of all the creditors and that's why the Creditors'
15 Committee has not only supported, but made clear in our
16 pleading that we really commend the parties for the hard work
17 because we really believe the result could have ended up much
18 worse for various constituencies and certainly could have ended
19 up in a very serious litigation before Your Honor.

20 So we would urge approval of, I guess, approval of the
21 motion.

22 THE COURT: Thank you.

23 MR. GLOSTER: I apologize, Your Honor, taking thirty
24 more seconds of the Court's time, but as long as we're talking
25 about nice things about each other, I did want to say that the

1 chair of our committee, Cathy Cone, is in the courtroom today
2 and she has been working for a year essentially full time on
3 these issues. And I have never met anyone who was as
4 relentless, tireless, creative, and concerned about the people
5 that she has been appointed to represent and it's an
6 extraordinary privilege to work with her. And we should all
7 have such fiduciaries looking out for us. I just wanted to say
8 that. Thank you.

9 THE COURT: Thank you. Yes, sir?

10 MR. FRUMKIN: I wish to be heard on behalf of the
11 objectors.

12 THE COURT: Yes?

13 MR. FRUMKIN: Your Honor, my name is William Frumkin
14 from Sapir & Frumkin. I represent Will Buergey and the other
15 objecting pilots and I appreciate the Court's opportunity to --
16 provide me this opportunity to address the Court.

17 First of all, Your Honor, I don't wish to be the
18 breakup person of the love in here and I respect counsel and
19 all the parties for all the hard work that they did, however, I
20 do have to say a few things that I think will enlighten the
21 Court and hopefully not have the Court have a rush to judgment.

22 Okay, the first is that with respect to the issue of
23 the approval of this, counsel or the debtor, in its reply
24 papers to our opposition, stated on Page 8 that Delta, out of
25 courtesy to all parties and the parties in this -- strike that,

1 Your Honor. Out of courtesy to all parties in the case and an
2 abundance of caution, sought a hearing before this Court on
3 October 19th, 2006. In accordance with the case management
4 order, the motion was filed fourteen days before the hearing
5 and the objection deadline was set for October 12th. Okay?

6 Essentially, Your Honor -- I think I had the wrong
7 page on that. I'm sorry, Your Honor. I'm just going to
8 continue.

9 Upon filing of the motion -- I'm sorry, Your Honor.
10 I'm going to start that again.

11 Starting at Page 7, Paragraph 11 -- I'm sorry --
12 although Section 1114(e) (1) (b) provides that a debtor and the
13 authorized representative of retirees may consensually modify
14 retirement benefits without a hearing and without court
15 approval, on October 5th, 2006, the day after retiree term
16 sheets were finalized, Delta, out of courtesy to all parties in
17 the case and in an abundance of caution, sought a hearing
18 before the court on October 19th of 2006. Then a footnote is
19 dropped and it says Delta brought the motion pursuant to
20 Section 363 of the Bankruptcy Code because, inter alia, one,
21 the retiree term sheet grants pre-petition unsecured claims for
22 the benefit of affected retirees; and, two, the retiree term
23 sheets both contemplate court approval.

24 So in essence, the debtors are explaining that they
25 had to seek the court's approval. Now, whether it was under

1 1114 or not, the court had to approve this and the actual
2 settlement with the retirement committees contemplated the
3 court's approval so, Your Honor, we're not all here for our
4 health and the Court does have an obligation to the objectors.
5 And there may have been other objectors because in the notice
6 issue, which I'll turn to in a moment, to at least hear the
7 parties out and to address the concerns that we have, which are
8 legitimate. So just to reiterate, I don't believe that that
9 was really an accurate statement made that didn't have to be
10 any seeking of the court's approval with respect to this issue.

11 Now, you heard Mr. Kaminetzky state that the
12 negotiations on this issue began in August, which was about
13 almost three months ago. Okay? And the case management plans
14 contemplated some resolution by October 19th and a report to
15 the Court, so there had to be a contemplation by the parties
16 that the Court would approach on this issue by or around that
17 date. That was a date that was set by the debtor. Okay.

18 The fact that it was arrived at in the eleventh hour
19 on October 5th, okay, and that notice was sent in the mail, you
20 know, to -- these 31,000 letters that allegedly didn't need to
21 be sent but were sent out of the abundance of caution, okay,
22 which who knows who received what on that. At any rate, I know
23 that my client did get notice, but my client is computer savvy.
24 Mr. Buergey is -- not everybody in the retiree status is --
25 particularly with respect to the pilots and we don't know who

1 really knows what about what with respect to this. And that's
2 why I don't think the Court should rush to judgment.

3 Ultimately the theme of where I'm coming from is to
4 put this matter over to give us a chance, to give the objectors
5 a chance to come in and address the Court directly to
6 understand what has actually occurred. So I think that there
7 are issues of notice. The fact that it's on the ECF website, I
8 know lawyers, Your Honor, who can't access the ECF website, or
9 at least they're having trouble with it, so the Court can
10 recognize that.

11 And I don't think, also, that they would have sent out
12 -- Delta or the debtors would have sent out 31,000 letters out
13 of an abundance of caution unless they felt that there was some
14 legal obligation to do so and the timing really did cut off the
15 ability of our clients to respond and the ability for me to be
16 here today, Your Honor, without witnesses and to get people
17 from around the country to address the Court with respect to
18 the serious nature of what has happened.

19 Now, I think we're all in agreement, Your Honor, that
20 the substance of any bankruptcy reorganization is fairness;
21 that unfortunately the difficulties or the economic
22 disadvantages have to be felt by all parties equally and I
23 don't necessarily think that that's been the case because I
24 think that the pilot retirees, you know, particularly those
25 under sixty, have taken a major hit. And more than have been

1 really leveled on anyone else, including the active employees,
2 including the executives, which I'll get to in a moment.

3 But, Your Honor, I wish to make a point that in the
4 motion that was filed to approve -- I'm sorry -- to seek the
5 Court's permission to terminate the qualified plan to the
6 pilots, the following statement was made on Page 18 at
7 Paragraph 37. I'll just read that to the Court. In essence,
8 what we stated, Your Honor, was that:

9 "DP3" -- that was the group of the retirees, the Court
10 may remember that -- "which counts 2,700 retiree pilots as
11 members has also informed Delta's counsel that it will not
12 oppose termination of the pilot plan. Delta believes that this
13 is because the termination of the pilot plan, under the present
14 circumstances, is also in the best interest of Delta's retired
15 pilots. The pilot plan will not terminate until after the
16 lump-sum door opened and it's anticipated if hundreds of Delta
17 pilots took early retirement, hundreds of millions of dollars
18 would be drained from the pilot plan and would become
19 unavailable to cover retirees who would lose substantial
20 benefits when the pilot plan was then terminated."

21 It says:

22 "If, however, the pilot plan is terminated prior to
23 the lump-sum door reopening, retirees are expected to receive
24 on average eighty-five to ninety percent of their qualified
25 plan benefits."

1 Now, let me read you from a letter that my client and
2 about 1,000 other of the people in the class, of the 2,700,
3 received dated September 22nd.

4 "Dear Mr. Buergey. As you know, in June 2006 Delta
5 filed a notice of intent to terminate the Delta pilots
6 retirement plan effective September 2, 2006. In connection
7 with the pending termination of the plan, we are required by
8 law to estimate the PBGC benefit for each participant and
9 adjust all payments after the proposed termination date to
10 reflect those estimates. Based on our estimate effective
11 October 1, 2006, your monthly retirement payment will be
12 reduced to zero."

13 Okay? So it's not eight-five to ninety percent. We
14 realize that they did get a lump sum when they took early
15 retirement, but now we've gone from eighty-five to ninety
16 percent to probably less than fifty percent because they're not
17 anticipated to get anything.

18 And so this representation to the Court, I don't know
19 if it was a misrepresentation or negligent misrepresentation,
20 but if the Court based its decision in that context on this
21 fact, then it's just not true because this letter was received.
22 And, Your Honor, that's why we'd like the opportunity for you
23 to hear testimony on this issue.

24 Now, the other thing you have to recall, Your Honor,
25 is --

1 THE COURT: Let me interrupt you.

2 MR. FRUMKIN: Yes.

3 THE COURT: One of the things that I was going to
4 raise today after this motion was the subject that you have
5 just raised because I, too, have received quite a few letters
6 from retired pilots who referred to assurances or statements
7 made in open court in connection with the motion to terminate
8 the pension plan. And statements were made -- I thought that,
9 again, I didn't go back and scrutinize the record, but my
10 recollection of the record was that statements were made by
11 counsel and by professionals on behalf of Delta to the effect
12 that the average retired pilot would ultimately receive I think
13 it was seventy percent of what that person would have received,
14 but for the termination.

15 And I have received many communications similar to the
16 one that you just mentioned where the person is complaining of
17 receiving a great deal less. So I was going to raise that
18 question after we deal with the motion that is before me today.
19 Enough said on that for the moment. We will go back to the
20 motion of today. I want to hear what you have to say about
21 today's motion.

22 MR. FRUMKIN: Okay. Thank you, Your Honor.

23 Well, like I say, in accordance of this and the impact
24 upon this is that for Mr. Buergey, for example, who was
25 receiving a sixty-four-hundred-dollar payment each month and

1 now is receiving zero, his premium for his retiree medical was
2 coming out of that 6,400. So we said in our papers that
3 they're taking the hit on this, on the fact that they're paying
4 100 percent. It's different to have 6,400 minus whatever the
5 premium is than it is to write a check for the premium.

6 And those that are in this position of getting zero,
7 as is reflected in this letter, now have gone into sort of a
8 negative situation with respect to their retirement medical.
9 And I don't know really any other class of employee that's
10 affected by this reorganization with respect to their medical
11 that are effected in the same way.

12 And of course, this is the group, Your Honor, that the
13 non-qualified plan was terminated, so they don't have that
14 anymore. They have the situation now with respect to they're
15 no longer getting their pension, which is not in the amount
16 that was at least anticipated by counsel and represented to the
17 Court.

18 And the other important factor is that, you know, once
19 they hit sixty, they will be -- there's eligibility for what
20 they call a health care tax credit, okay, which comes from the
21 IRS and we realize not from Delta. However, you have to be
22 getting subsidized pension benefits from the PBGC in order to
23 benefit from that and if my clients get a zero benefit, they're
24 not going to be able to get the subsidy either.

25 To be honest to the Court, there is somewhat of a

1 Delta subsidy provided, but it's less than half of that. So we
2 repeatedly have here, Your Honor, the underlying concept of
3 reorganization being thrown at the wall and splattered on the
4 backs of my clients; that they are the ones that lost their
5 deferred comp, they lost their pension, they're losing their
6 health insurance. You're having the same situation happening
7 with respect to parts of all of them, and I'm going to talk
8 about the retirement committee in a moment, and so this really
9 isn't really amounting the way that I think it's being
10 presented by counsel, and that's another reason I'm bringing
11 this to the Court's attention.

12 Now, I think you also need to understand how are the
13 non-contracts -- our clients -- my clients are the only ones
14 that were bound by a collective bargaining agreement and had
15 that negotiation. The rest of the employees, including the
16 executives, did not, so it's not clear to us -- I don't believe
17 that they're pension is being affected. I don't believe that
18 the executives' deferred comp plan is being affected. My
19 client has also had the most expensive health insurance and --
20 as compared to other levels and being forced to continue that
21 most expensive plan and not have the option of receiving a less
22 expensive plan, as being offered to the other non-collectively
23 bargained employees or non-pilots, Your Honor, so I think that
24 that's an additional burden.

25 Now, just as a matter of law, which Mr. Kaminetzky --

1 I'm pronouncing your name. I apologize mispronouncing it.

2 MR. KAMINETZKY: Call me Ben.

3 MR. FRUMKIN: Ben? Thank you.

4 The point I want to make to Your Honor is that the
5 pilots who were paying the hundred percent and are now having
6 to take the entire hit, you know, on themselves and the case
7 law seems to discuss that the non-committee members couldn't
8 appeal a determination of this Court. Okay? I have not seen
9 and there is no mention of law in the debtors' brief about the
10 ability of those retirees not to actually be able to object if,
11 in fact, they don't think that their interests are being
12 represented by the retiree committee.

13 For example, it was represented by counsel for the
14 pilots committee that twenty-five percent of the constituency
15 is under sixty. Now, you need to hear testimony from my
16 clients that no one under sixty is on the committee. Now, I'm
17 not saying that they were intentionally sold down the road, but
18 I think if the constituency is twenty-five percent and there
19 are nine members, you'd think one or two -- if you were good in
20 math and it was ten, it would be two and a half. I don't know
21 how we do that, but what I'm trying to say, that did not flow
22 through. Okay? So that I also think is another problem.

23 And I think at the time that my clients, you know,
24 were involved in this and the committee was formed, they
25 thought that the committee was going to fight the termination

1 of the retirement plan and that, of course, changed. Okay?
2 And so there had been a change in circumstances that would also
3 warrant my clients' ability to agree with what was going on and
4 I think that that is a valid point. You know, it's sure going
5 to take a lot of work and standing on its head, but I do think
6 that the Court should consider reconstituting the committee
7 with adequate representation of the below-sixty retirees
8 because of this health tax care credit that we discussed, and
9 because of the fact that the majority of those are the ones who
10 are going to get zero. The over-sixty-five people are going to
11 continue to get something from PBGC. My clients are going to
12 get zero, so I think that that's another issue that the Court
13 would need to address.

14 THE COURT: Do give me your name again?

15 MR. FRUMKIN: Yes, my name is William Frumkin, F-r-u-
16 m-k-I-n.

17 THE COURT: Okay.

18 MR. FRUMKIN: I just wanted to make sure, Your Honor,
19 that I essentially made the points.

20 The other point, Your Honor, is the sharing of
21 information. You know, we made the point that the information
22 is, you know, truckloads of paperwork that were provided in all
23 the discovery efforts that were made, that were provided, were
24 all valid, and I'm sure all that happened. However, because of
25 a lack of an appropriate constituency on the retirement

1 committee and the fact that no documents were shared with my
2 clients, okay, and there are cases on that. I can draw the
3 Court's attention to one case -- excuse me, Your Honor.

4 That's the case, Your Honor, of In re Refco, Inc.
5 It's 336 BR 187 and that is a January 20, 2006 decision, Your
6 Honor. In that case, the committee raised this issue of we
7 can't share confidential information and essentially the court
8 said that, you know, so many confidentialities could be entered
9 into. And the court also said that it may be a duty to
10 voluntarily share that information or even involuntarily share
11 that information with respect to non-committee members.

12 Because, for example, when this whole bankruptcy was
13 conceived, okay, and filed and the distress termination was
14 brought to the Court's attention, that was in September of
15 2005. Okay? At that time, Your Honor --

16 (Counsel confer.)

17 MR. FRUMKIN: At that time, Your Honor, you know, the
18 jet fuel kerosene type was selling for \$223.23 per gallon.
19 Okay? This is as of September of '05. And the -- I guess --
20 I'm not a gas expert, but the low sulphur number two diesel
21 fuel was also selling -- and this is also out of U.S. Gulf
22 Coast, that's where we're alleging Delta gets their gas from --
23 from 181.05. Okay? So it was a much more extensive hit on
24 Delta at that time based on fuel. Now my understanding of that
25 is it's at \$1.69. It's been down to as low as \$1.35. It's

1 also my understanding that that is one of the major drains on
2 not only Delta, but many, many other of the airlines involved.

3 And it's not the case now. So, you know, I mean, to
4 just say that my client should lose their health insurance,
5 lose their subsidy, now start paying out of their pocket
6 because they don't have a source of pension income to now use
7 to pay the premium from, and to just accept it all without a
8 face value, without giving us the opportunity to at least see
9 the relevant information, have it reviewed, have testimony
10 provided to the Court about what's happened, is this is a
11 serious business, Your Honor. This is not a rush for judgment.

12 My client also tells me that usually in mid-November
13 of the prior year is when options are given to my clients and
14 others about do they want to change their health insurance. So
15 we're only -- it's the middle of October. I would hope that
16 the Court could at least give a few weeks of time before this
17 drastic remedy is pursued and agreed to by the Court, even
18 though the Court doesn't have to approve it, but we think the
19 court does, before the Court just rushes to judgment and makes
20 this determination, the Court also needs to look at this issue
21 of the constitution of the retirement community.

22 Which is not to say that anybody is selling anybody
23 down the river, but I just think that the interests are
24 different. I think that the statute was developed to have
25 everyone's interest met, and in this case it really hasn't

1 been, Your Honor. So I believe I've taken up enough of the
2 Court's time and made certain points that I hope will be food
3 for thought and hope that the Court would continue this matter
4 to enable us to provide more information. Thank you, Your
5 Honor.

6 THE COURT: Thank you, Mr. Frumkin.

7 MR. KAMINETZKY: Your Honor, counsel made a number of
8 points, all of which are pretty outrageous. I don't know where
9 to begin.

10 First, I think the most important thing that counsel
11 said, and I wrote this down very carefully, what's his
12 objective, and I'm quoting:

13 "Give objectors a chance to examine what actually
14 occurred."

15 That's what he wants. He wants his own 1114 process
16 and that is precisely exactly what congress said no to. They
17 don't get individual retirees, groups of individual retirees
18 don't get their own 1114 process. Read 1114, Your Honor. The
19 only people, the only entity with standing to do anything under
20 1114 is the authorized representative.

21 Now, he talked about the composition of the pilot
22 committee. As Your Honor will likely recall, after the
23 February 6th hearing where you ruled there should be two
24 committees, you then asked the United States Trustee to assist
25 you in appointing those committees. We then --

1 THE COURT: Actually, the Court has no role in the
2 appointment of committees. Only the U.S. Trustee's office does
3 that, taking counsel from whatever constituencies the U.S.
4 Trustee deems appropriate.

5 MR. KAMINETZKY: I know that's the regime --

6 THE COURT: He wants to make a contribution.

7 MR. KAMINETZKY: I know that's the way it works now
8 under the new code. This might be a grandfather case because
9 we filed it before the effective date of the new provisions of
10 1114.

11 THE COURT: Well, I'm just telling you, since I've
12 been on the bench, any appointments, trustees, examiners,
13 committees, aside from ordering that such a thing be done, that
14 there be a committee or an examiner or a trustee, the Court has
15 no further role.

16 I guess there are some exceptions. For example, a
17 Chapter 7 trustee interim is appointed and there's a contest.
18 Well, that's determined, again, by statute. The Court has no
19 role in the appointment.

20 MR. KAMINETZKY: In this case, Your Honor, what
21 happened was is that the U.S. Trustee asked Delta, and we sent
22 out -- the U.S. Trustee sent out solicitations to each and
23 every retired pilot and invited them to apply to be on the
24 committee. And according to the U.S. Trustee report that was
25 filed with the Court, more than 115 pilots volunteered. There

1 was an extensive interview process. U.S. Trustee then filed
2 his recommendation with the Court, gave people an opportunity
3 to object, and the committee was appointed. So I could not
4 imagine a more robust appointment practice where everyone got
5 an opportunity to apply to the committee, U.S. Trustee
6 interviewed 115 folks before deciding who to be on the
7 committee, so I think to --

8 THE COURT: Let me ask another question. Was the --
9 was it made public who was on the committee?

10 MR. KAMINETZKY: Oh, yes. The U.S. Trustee filed a
11 report --

12 MS. LACEY: I can help. There was a fairly -- sorry,
13 Your Honor. Alisa Lacey representing the retired pilots
14 committee.

15 Particularly with respect to the retired pilots
16 committee, which I can speak to, in early March or late
17 February when the process was completed by the U.S. Trustee,
18 the U.S. Trustee provided a list with basically curriculum
19 vitae information, including age, date of retirement, et
20 cetera, that was all included in the filing with the Court.
21 And then once that information was filed and noticed out, there
22 was an opportunity for parties to see who had been appointed to
23 the committee. We, of course, had not yet at that time been
24 retained, but it was certainly a matter of public record who
25 the U.S. Trustee's office had selected from 115 that had

1 applied.

2 THE COURT: Okay. And their CVs, date of retirement,
3 age, et cetera?

4 MS. LACEY: Correct, Your Honor. And then, as a
5 result of that, I think there was -- it was probably more
6 procedural than substantive. I think there was then an order
7 by Your Honor saying, you know, everybody's now gotten notice
8 of who the U.S. Trustee selected, the committee is therefore
9 constituted.

10 So there was an opportunity, for the record -- didn't
11 want to interrupt, but there was a clear record made.

12 THE COURT: Let me just -- don't go away. Don't
13 leave.

14 Mr. Frumkin?

15 MR. FRUMKIN: Yes?

16 THE COURT: Isn't what has just been revealed on the
17 record an answer to your point that there was nobody under
18 sixty appointed to the committee? That may be so. I assume,
19 since you have represented it to be so, that it is so, but what
20 are we to do about it now? It's a little late for somebody to
21 come along and say, well, there was nobody in this category or
22 this category, and yet it has been the subject of public notice
23 since March or whatever. Wouldn't the time to have complained
24 about that been at some earlier stage?

25 MR. FRUMKIN: Well, Your Honor, I understand what the

1 Court is saying and the facts are the facts. However, I just
2 want to raise that what we're doing --

3 THE COURT: I'm not aware, by the way, of anybody
4 stepping up and applying to the Court or otherwise manifesting
5 disagreement with the fact that nobody of some particular
6 category, under sixty or whatever, was not represented on the
7 committee. I'm just not aware of that. Now, maybe somebody
8 did, but it certainly wasn't brought before me.

9 MR. FRUMKIN: Your Honor, ultimately, the point is
10 this: Procedurally, that may have been the case, but when I
11 read to the Court, Your Honor, the letter that Mr. Buergey
12 received on the 22nd of September indicating that he's getting
13 a zero pension, after the motion had represented that it's
14 going to be, you know, eighty to ninety-five percent of what
15 they would have gotten, so to speak, okay, the people on the
16 committee, if they were under sixty -- just if I may finish my
17 point, Your Honor -- they may not have even been aware of that
18 because, as they represented, negotiations started on August
19 8th and 9th, they continued, there were conferences and
20 telephone conferences --

21 THE COURT: The point of the matter is we are --

22 MR. FRUMKIN: -- so I don't know even know if that
23 factor was considered.

24 THE COURT: We are where we are and it seems to me
25 that it's a little late for some category of retired pilot to

1 come along and now say, well, the process has to be upset, the
2 statutory process, because my kind of person wasn't
3 represented. Anyway, I've heard you on that.

4 MR. FRUMKIN: Okay. Your Honor, yeah. The final
5 thing I'll just say is that I meant with all due respect to the
6 Court, you know, we are here to approve this. I think if it's
7 shown that the committee -- and I don't know if the committee
8 knew about this issue or didn't, but they may not have because
9 it was pretty far along at that point and I think the Court is
10 here to make sure justice is served, the people's interests are
11 protected, and that's why we're bringing this to the Court's
12 attention. Thank you.

13 THE COURT: I appreciate it. Thank you. Go ahead.

14 MR. KAMINETZKY: One other piece of data. I have in
15 my hand a court document entitled "Report of the United States
16 Trustee regarding solicitation process for forming pilot
17 retiree committee," which was filed by the U.S. Trustee back in
18 early March. And on this document on Page 6 and 7 it lists the
19 age of each pilot that the U.S. Trustee recommended for the
20 pilot committee, retired pilot, their age, and their I guess
21 professional -- whether or not they were DP3 members or non-DP3
22 members, so it was all here back in March.

23 THE COURT: All right.

24 MR. KAMINETZKY: So if anyone had a problem with it,
25 as Your Honor mentioned, it's a little late, now that we have

1 agreements sitting here in October, for people to complain
2 about the composition of the committee.

3 THE COURT: All right.

4 MR. KAMINETZKY: A couple of other points that counsel
5 made.

6 Counsel suggested that there's no rush here, that we
7 have plenty of time and that we don't really need an order
8 today to implement these benefits because his client told him
9 that he usually receives his open enrollment materials in
10 November or mid-November, and, therefore, there's plenty of
11 time.

12 Well, Your Honor, we actually asked the question.
13 Back when this process started, we asked Delta, like every --
14 let me just add at the beginning, like every company, we have a
15 once-a-year open enrollment period. That's as of January 1st,
16 and if we want to make changes to retiree medical benefits, we
17 have to have them in place by January 1st.

18 We asked Delta back in the summer, how much time do
19 you need in advance of that January 1 date for a resolution to
20 the 1114 process, for you to -- when do you need to know what
21 those new benefits will be, to be able to implement it by
22 January 1, and their answer was three months. They needed to
23 know by the end of September.

24 We pushed back and said, listen, you know, we need
25 more time. We really want to try to reach a deal here. We

1 don't want to have to litigate this too quickly. We want to
2 spend as much time negotiating. Can we push it? Can we
3 really, really push it? Can you have less than three months?
4 And there's people in the courtroom here that were very angry
5 at me about this because they said no, we can't. But finally,
6 we twisted their arms and they said, okay, if you could let us
7 know by this week, we could possibly make the January 1st for
8 open enrollment period. He might not receive the materials
9 until mid-November, but we have to print the materials. We
10 have to finalize the materials and we have to know who is
11 getting what and by whom.

12 So to suggest, I think, based on absolutely no
13 information that, you know, there's plenty of time and we're
14 not in a rush and, Your Honor, that's why, as Your Honor knows,
15 we set this date for an 1114 trial, you know, not even dreaming
16 that we might be here with a consensual deal for this week,
17 because this was the absolute last week that we could do it
18 without having to, number one, cut short our period of
19 negotiation, and more important, too, being able to reap the
20 benefit of an 1114 deal next year, or else it will be just too
21 late to hit the open enrollment period.

22 Now, the questions, why did we file the motion. I
23 think the 1114 is absolutely clear, that when it comes to
24 modifying retiree benefits, once we reach agreement with the
25 two committees, done, we're finished, no notice, no motion,

1 everything else. But this is a big deal and it took tremendous
2 effort. It affects people's lives and Delta is getting
3 significant cost savings and people take court orders quite
4 seriously, and everyone sleeps better at night when deals of
5 this magnitude have Your Honor's signature on it.

6 And relatedly, there are certain elements to the term
7 sheet, all of which are concessions by Delta, that inure to the
8 benefit of Mr. Buergey and other retirees, that no one is
9 objecting to them. The things that we actually may need court
10 approval for are things that the retirees love. For example,
11 we've resolved certain claim issues with the non-pilots.
12 That's stuff that Delta has to give them. We've tried to come
13 up with a formula for calculating claims for the lost pension
14 benefits.

15 In addition, we're actually giving new contractual
16 promises to certain retirees, saying yes, we're taking away, we
17 need cost savings, but in exchange, at least you could sleep
18 better at night knowing that we promise this other, albeit
19 lower level of benefit, for a certain amount of time, for a
20 fixed period of time, for a number of years. That might be
21 outside of the ordinary course, and that might actually need
22 363(b) court approval, but obviously, no one is complaining
23 about that. The only one that could complain about that would
24 be my friend, Lisa Beckerman, because she's a creditors'
25 committee. But what they're complaining about is the lost

1 pension benefits, and 1114 couldn't be clearer that once we
2 reach an agreement with the retiree committee, we're over and
3 done with. And, quite frankly, that's why, you saw it in other
4 cases, that people moved when there was a consensual deal.
5 There is a 363(b) motion in certain cases, in some cases,
6 because people like to see the Court's signature, number one,
7 and number two, if the debtor is getting anything, not only
8 getting the savings, it needs to go to court, or it arguably
9 needs to go to court.

10 I'm the health care guy, Your Honor. Mr. Huebner is
11 the pension person, so I think a lot of what Mr. Buergey is
12 trying to drag in about the pension stuff is really not
13 appropriate for me to address. I'll leave it for Mr. Huebner
14 if Your Honor wants to address them, but, I mean, once again, I
15 think it would -- you know, to suggest that the pilot
16 committee, and maybe I'll let Ms. Lacey speak to this, wasn't
17 aware of certain people's circumstances, didn't take into
18 account the folks that aren't getting a check by the PBGC, I
19 know that that's just not true because we discussed that
20 category of person at great length during these various
21 negotiation sessions.

22 Unless you have any other further -- oh, one last
23 thing. The Refco case that he referred to, that was shameful.
24 Why is that? That had to do with a creditors' committee and it
25 was a case that construed 1102(b)(3)(a). It's a creditors'

1 committee obligation to share things with other creditors.
2 Okay? We're talking about 1114 retiree committees, and as
3 we've said again and again, individual retirees have no rights
4 under Section 1114. This case has absolutely nothing to do
5 with the case at bar.

6 MR. GLOSTER: Your Honor, let me just take one
7 minute --

8 THE COURT: Yes.

9 MR. GLOSTER: Because it's my clients who are rolling
10 out this over-sixty-five benefit, and Mr. Kaminetzky is not
11 exaggerating when he says this is the last day. The anxiety
12 over the successful roll out of the over-sixty-five benefit, we
13 can't wait, and it does not serve pilots who are over sixty-
14 five to not know what their benefits are going to be.

15 And then, if I could just -- the people in Mr.
16 Buergey's situation actually are addressed quite well under the
17 deal with the pilots. Footnote 5 of the term sheet says if the
18 sole reason that someone isn't eligible for the health care tax
19 credit is because they're getting a zero check from the PBGC,
20 then Delta actually pays a special subsidy to that group and,
21 in fact, the health care tax credit is available for people who
22 are fifty-five and older, so even the people under sixty do
23 that, and up until now, Delta has separately rated retirees
24 from active employees for purposes of setting what the total
25 premium costs are, and if Mr. Buergey and the others now elect

1 COBRA continuation coverage, the cost of their health care
2 drops quite a bit, because now they pay 102 percent of the
3 active rate, which is lower than what they're paying now.

4 So this deal is actually very good for the people in
5 Mr. Buergey's position. They should not be objecting and if
6 the concern was they didn't think the committee did better for
7 them than Delta's first offer, I can tell you that is not a
8 realistic concern.

9 THE COURT: Thank you.

10 MS. LACEY: Alisa Lacey, appearing on behalf of the
11 1114 pilots' committee.

12 I love being a bankruptcy lawyer because there's a
13 code, and one of the things in this particular case that's very
14 helpful is understanding which Code we're under. This is, as I
15 understand it, an old Code case. As 1114 counsel, I am
16 required to be pretty myopic, but I think even I can notice
17 that. This one was filed before the Code changed.

18 The provision under which Refco was decided, I have
19 one of these great books that has highlighted in red the new
20 parts of the Code, provision under which In Re Refco was
21 decided was the new Code under 1102, the provision which is
22 (a) (3), that says the committee shall provide access to
23 information, et cetera, et cetera. That's the Refco -- Refco
24 is a fairly famous case in our world, and that was decided in
25 direct response to that new Code provision for unsecured

1 creditors' committees, et cetera.

2 Now, why isn't that a problem in this case? Well,
3 one, we're not in that Code. It is true that 1114 gives 1102
4 powers to an 1114 committee, but this is an old Code case and
5 that doesn't apply. However, there's an additional protection
6 in this case that this Court employed, which is there was a
7 fully noticed protocol agreement. This Court had its
8 reservations because the debtor didn't like that there was
9 going to be a second 1114 committee, was concerned about
10 protecting its sensitive information, and employed and
11 negotiated a detailed protocol agreement which was put on the
12 record before the committee was even formed, and then once the
13 committee was formed, we had some discussions with Davis Polk.
14 We hammered around a little bit and said, well, we need to
15 shine that up a little because we need to have a little more
16 ability to communicate than the original protocol contemplated,
17 and the amended protocol was docketed, Docket No. 2483, was put
18 on record, signed and entered on May 1st, May 2nd of this year.

19 So there is a record, not only who is on the committee
20 by virtue of the U.S. Trustee's detailed report, which was
21 filed on March 7th, 2006, with the age of each member of the
22 committee in it, but there was also the information control
23 aspect of the 1114 committee, because Delta had some concerns.
24 This Court had concerns, and said, don't agree to serve on that
25 committee unless you're willing to live with this protocol.

1 That's all been a matter of record.

2 So those who didn't serve on the committee and who
3 knew their interests were being represented by a committee knew
4 two things. You knew that you were going to be represented by
5 these folks, and you knew that they were going to be under very
6 strict information controls, and you knew it months and months
7 and months ago. So there's never been any secret about how the
8 1114 committee would be working with Delta.

9 Okay. Now the next piece. There's some ado being
10 made about the fact that the term sheet requires a motion.
11 Okay. Well, let's talk about my term sheet, because that's the
12 one I know. What it says is, that they agree to file a motion
13 under 363. Well, that doesn't mean my -- I'm perfectly happy
14 to defend my committee's business judgment, and I'll do that in
15 a minute, but that doesn't mean that the issue being decided by
16 this Court today is not my committee's business judgment; it's
17 the debtors' business judgment.

18 My committee was duly constituted by the U.S. Trustee.
19 The world had notice of who was on it. The Court gave
20 everybody notice of what information we were going to be able
21 to get and must keep confidential, and what those information
22 handling rules of the road were, and then our term sheet does
23 say that the debtor is going to file a 363 motion, which is
24 debtors' business judgment, but it's not the committee's
25 business judgment. The committee did exercise excellent

1 business judgment across the board. It does not matter one
2 iota that there was not a person on that committee that was not
3 under the age of sixty. It's true, but it doesn't matter.

4 There were detailed negotiations. There's a sliding
5 scale on age groups. The group that Mr. Buergey is a part of
6 is a group that, by contract, now pays a hundred percent
7 premiums. If no benefits or benefits as proposed had stayed
8 the same for that group, they would have stayed at a hundred
9 percent forever. There would never have been subsidies or
10 copays. When they turn sixty, they slide into the next group
11 that does have copays and subsidies. When they, by contract,
12 leave the group, they are going to get some benefits.

13 As a practical matter, Judge, what this looks like is
14 let's assume that your health coverage premium is roughly \$775
15 a month. It's about that. When you're under fifty-nine and
16 you decide to voluntarily retire, you know that you're going to
17 pay a hundred percent of that by contract. They knew that
18 before this bankruptcy was filed and they knew that before they
19 retired.

20 So they agreed, when they retired early, because the
21 mandatory age is sixty, to pay that seven seventy-five a month,
22 and they knew they were going to. They probably got a pretty
23 good lump-sum-size distribution at the same time, but again,
24 I'm not allowed to look on the 1113 side of the fence. But
25 from an 1114 side, this party that agreed to pay seven seventy-

1 five under my deal still just pays the seven seventy-five. He
2 might have been stuck there. There might have never been an
3 agreement to allow him to move from that position, but under
4 our agreement, he does move.

5 When he turns sixty, he moves into the category that
6 is subsidized, and the most that they will pay is fifty-one
7 percent of a DPMP premium, if they elect DPMP. So the premium
8 is going to go from seven seventy-five to fifty-one percent of
9 seven seventy-five when they turn sixty. If they don't qualify
10 for anything else, and they might qualify for other things.
11 That's federal law. That's not something I control or don't
12 control. The IRS decides HCTC. COBRA rules are what they are.
13 They either apply or they don't. In some circumstances, they
14 will reduce that premium. In some circumstances, they won't.

15 But then what happens? Now our sixty-one-year old,
16 two-year old, three-year old, who is now paying fifty-one
17 percent, used to pay a hundred, now he's paying fifty-one, now
18 he's going to turn sixty-five. Now what happens? While the
19 Medicare premium -- it's true, he does not qualify for
20 subsidies upon turning sixty-five because we had to close that
21 group off to negotiate better treatment for over half our
22 group, but then what happens? Instead of paying half of seven
23 seventy-five, he goes from paying seven seventy-five to paying
24 half of seven seventy-five. Now he's going to pay for a
25 Medicare supplement. The going rate on that is about \$232 a

1 month or less, depending upon what the GFA group has been able
2 to negotiate. So now his premium monthly is going to drop from
3 seven seventy-five to roughly half of that, to probably half or
4 less than that.

5 So if you're an individual under the age of sixty,
6 this committee was very mindful of exactly what your next ten
7 or fifteen years with premium payments were going to look like,
8 and the good news is, they go down and then they go down. They
9 don't stay the same. They don't go up. They get to go down,
10 and then they go down again in a stepped process, so the
11 committee was very mindful of it, understood it completely and
12 negotiated for what we thought was a fair result by a group
13 which, although I'm not allowed to know this, probably
14 negotiated for and got substantial A, early retirement and B,
15 did get some lump-sum distributions. I don't know what the
16 remaining percentages are and how all that plays out, but from
17 strictly an 1114 perspective, our committee's business judgment
18 was excellent on this front and the debtors' business judgment
19 is what's at issue today. Thank you.

20 THE COURT: Thank you very much. Are you going to
21 address the medical? Well, we're not to you then. Does
22 anybody else want to be heard on the motion that is pending
23 before me? Sir?

24 MR. PAPARELLA: Your Honor, if it pleases the Court, I
25 would like to address the Court.

1 THE COURT: Why don't you come up?

2 MR. PAPARELLA: Thank you. Thank you, Your Honor.

3 Your Honor, my name is John Paparella, and I'm a Delta
4 Airlines retiree. I retired this past September 1st, 2006, at
5 the age of fifty, with over thirty years of service to Delta
6 Airlines. I did retire under the provisions of Delta's special
7 early retirement policy. I spent my entire career at Delta
8 Airlines in the airport customer service division, also known
9 within the company as ACS. I first started with Delta -- well,
10 when I first started with Delta, the division was called
11 Stations Department, so if there's any confusion.

12 I began as a twenty-year-old employee, cleaning
13 aircraft on a midnight shift, with Tuesdays and Wednesdays off.
14 I finished my career in charge of Delta's ramp tower at
15 LaGuardia, reporting to one of our hub managers. In between
16 those two assignments, I performed every job duty in the ACS
17 Division, and those included aircraft weight and balance,
18 deicing, aircraft towing, all aspects of aircraft fueling,
19 catering, gate check-in, ticketing, along with supervisory
20 functions. For six years I was a Stations administrative
21 supervisor, performing what was really management-level work.
22 These responsibilities included being the local budget person
23 at the station, interviewing new employees, and many other
24 various duties on an ad-hoc basis.

25 I did all these jobs, like tens of thousands of my

1 fellow Delta employees, not based upon some written contract,
2 but rather a social contract between the individual employee
3 and Delta Airlines. It was sealed with a firm handshake when
4 we were hired.

5 These two fundamentals, the social contract and the
6 handshake, were core values and components of the success that
7 Delta enjoyed almost uninterrupted, from 1929 to 1993. I may
8 be mistaken, but if I recall my Delta history correctly, during
9 that sixty-four-year period, Delta Airlines only lost money
10 once, in 1954. Even during the recession of 1974 and '75,
11 Delta did not lay off any employees due to financial
12 difficulties. They found work for everyone who wanted to stay
13 on the payroll. This resulted in pilots working on the ramp,
14 alongside guys like me, and it built a bond that was just
15 unbelievable.

16 That bond propelled Delta to even greater
17 accomplishments, starting in 1976. It was our nation's
18 bicentennial and Delta really started to gain altitude,
19 continuing on a flight plan that it started out in 1974, and
20 culminated in 1991. For seventeen straight years, Delta led
21 the industry in the fewest customer complaints, as tracked by
22 the United States Department of Transportation Statistics.

23 In fact, in 1989, Mr. Ron Allen, then CEO of Delta,
24 produced a videotape which was sent to the home of every Delta
25 employee. On it, he correctly stated that our balance sheet

1 was in great shape. Our fleet was young. Our employee group
2 was lean, and our customer service was second to none. He went
3 on to say Delta would continue to grow in a calculated and
4 measured fashion, to ensure that what made Delta special in the
5 past would continue to make Delta special in the future.

6 Well, that all began to change in the early nineties.
7 By 1993, Delta was losing money and, it depends on who you talk
8 to and what their viewpoint is, there are many reasons that can
9 be attributed to that. But, in any event, Delta needed to turn
10 it around and make some changes. Retiree health care benefits
11 were a blip on a radar screen, and the announcement was made.
12 On June 28th, 1993, Ron Allen and Maurice Worth put out
13 announcements that essentially said Delta Airlines would no
14 longer offer free retiree health care. Anyone who had retired
15 retroactive back to February 1st, 1993 would have to pay full
16 price for retiree health care.

17 Well, you know, it was a sign of the times and any
18 rational and reasonable employee would understand that. The
19 good health of Delta Airlines is critical. We receive nothing
20 unless there's a Delta Airlines. I kind of compare it to when
21 you're on an airplane and they tell you to don the oxygen mask
22 first, and then put it on your child. We're the children.
23 Delta's the adult. If they don't survive, it means nothing.

24 So I, as a seventeen-year employee with Delta Airlines
25 at that point, who had worked up to that point knowing or

1 thinking that he was going to get all these benefits, said
2 listen, I have no problem, as we go forward, that there will be
3 no retiree health care, but certainly, my seventeen years, and
4 this person and this person over here, should be valued, should
5 be worth something, and this conversation was brought forth to
6 anyone who would listen.

7 Unfortunately, that time already served counted for
8 nothing. It was not prorated. There was no consideration
9 given. We had built Delta. We had sustained Delta for that
10 period of time and, unfortunately, it looked like it was
11 basically just negated.

12 I felt, at the time, and I voiced concerns, that we
13 should have immediately developed a methodology to prorate that
14 seniority, looking forward saying, okay, as of June 28, 1993,
15 you have this much seniority, when you retire in the future,
16 that will come into play, and everybody will pay on a prorated
17 basis. That kind of thinking, I guess, did not mean much. I
18 guess I was mistaken or alone in that.

19 I'm not here asking for free retiree health care. Far
20 be it. Delta Airlines put food on my table, helped me raise my
21 children, put clothes on my back, helped me pay off my house.
22 I did not spend thirty years with Delta Airlines, missing
23 holidays, missing Christmas, getting up at 3:30 in the morning,
24 to want to see Delta Airlines disappear. My dad worked for
25 PanAm. My father-in-law worked for TWA. Combined, we had over

1 -- almost ninety years of service in the airline industry, and
2 I know very well what happens when these things occur.

3 However, I felt that during this whole process, that a
4 fair and balanced approach would be taken. I received a letter
5 on October 10th, that was dated October 5th, and basically, it
6 shows me that as a thirty-year veteran retired from Delta
7 Airlines, that my monthly premium for health care, with my
8 spouse, if I chose to accept it, would be \$840. Now, because I
9 took special early retirement, and I understood the clauses
10 therein because I'm very well acquainted with the policies,
11 over thirty years I made myself aware of what was going on, I
12 get a sixteen-hundred-and-five-dollar-a-month pension at age
13 fifty-two. Well, that's gross, and I've got to pay out of
14 whatever net dollars that yields, \$840, if I choose to keep
15 that coverage. That's out of balance, especially when you
16 consider that when the change occurred in '93, I had seventeen
17 years.

18 So, what do I suggest? I suggest that we go back and
19 we prorate what everybody had in '93, at the time. If you had
20 twenty years, eventually you would be responsible for one-third
21 the premium, if you completed thirty at the time of your
22 retirement. If you didn't complete thirty, we would have to
23 prorate on a second level what your time was. In the example
24 that I set forth, a twenty-year veteran would pay one-third of
25 their premium at the time of retirement if they did thirty

1 years. I thought it was reasonable. I thought it protected
2 Delta Airlines, the source of all this income, the source of
3 all these jobs, and the source of why we're here today, and I
4 guess what I considered to be reasonable was simply not.

5 I was there, and I gave push-bank clamps to Captain
6 Ted Conners the night before 191. He departed LaGuardia. I
7 was in the ramp tower. I was there to handle remains of
8 Frannie Alfred (phonetic) when she came off the flight from
9 Dallas after 191. I was standing next to her parents. I had
10 to handle her remains. I've been there in the good times and
11 bad for this company. I've been there at two o'clock in the
12 morning in blowing snow, trying to get flights out because
13 people counted on Delta and we did it.

14 I don't want to bore the Court and I don't want to
15 take up all this valuable time at these hourly rates to discuss
16 my experience. I'm here to put a face on hundreds, if not
17 thousands of people who are not getting any discount. The
18 Pension Plus folks left in 2001. They got a five-year
19 enhancement on their pension and they got free medical for five
20 years. They were older than I. I had enough time with the
21 company. I simply wasn't old enough to retire. If I was, I
22 would have. Fine.

23 Now that we're in reorganization, a time to address
24 all of these inconsistencies and get Delta Airlines back on
25 heading to sustain her for the next seventy-five years, it

1 seems to me we're missing the point. Why should someone from
2 Pension Plus, who has had free medical for five years, a three-
3 hundred-dollar enhancement on a seventeen or an eighteen-
4 hundred-dollar pension, pay \$115 a month, when mine is \$840,
5 and I have more seniority. I had more seniority then, when
6 they were -- some people, some, not all, I had more seniority
7 than some of those people when they walked off the property.
8 And yet, they're receiving what I consider to be a very deep
9 discount.

10 I think, in my situation, it depends on how you
11 calculate it, eight forty? Maybe I should be paying three
12 fifty, three eighty-five, something. Give me some
13 consideration. I'm not looking for free. I'm looking for
14 reasonable.

15 I just want to conclude that I've been talking about
16 these kind of things for years. I have with me a January 1985
17 Delta Digest. I was the correspondent at LaGuardia at the
18 time, and I've been talking about dedication and legacy for
19 many, many years. Let me just read you a brief excerpt, at the
20 very end of the article.

21 It is now time that I must report the sad news of the
22 passing of two long-term Delta employees, Senior Customer
23 Service Agent Al Bardman (phonetic) and Aircraft Mechanic Paul
24 Resigno (phonetic). The many years of dedicated service by
25 these gentlemen had a positive influence on all of us who knew

1 and worked with them. I hope we can pass along this legacy of
2 dedication to those who replace them.

3 Your Honor, that was over twenty-one years ago. I've
4 been talking about dedication, loyalty and service to Delta
5 Airlines for many years. I'm not the only one. There are
6 people out there that, if you got to know on a personal basis,
7 they're not here today, they're not going to get the discounted
8 medical, they're out there looking at paperwork like I
9 received, \$840 a month. They are not, unfortunately, able to
10 be here to say what I'm saying.

11 I brought this along. This is an award I won in 1981
12 for helping a customer who was lost at the airport, spoke no
13 English, was wandering around at two o'clock in the morning.
14 His sister came looking for him. She went home, she got into
15 a bad accident. I found him. I kept him with me for the
16 entire shift, I drove him home in the morning. This was given
17 to me by Dave Garrett. It's the Delta Airlines Customer
18 Service Award, and it says here this award is given in
19 recognition of outstanding customer service, far above and
20 beyond normal duty requirements.

21 I just have two other things I'd like to show you.
22 These are my service pins. There's seven pins here. Maybe
23 they're not much monetary value, but every time I got one, as
24 tens of thousands of other Delta employees, we were proud. We
25 were proud to put it on our lapel. We're proud to call

1 ourselves Delta employees.

2 The one in the lower right-hand corner is the one I
3 got for participating in Project 767. We bought an airplane
4 for Delta Airlines, voluntarily. There was no union. There
5 was no negotiating, there was no contract. It was a bunch of
6 people that just said, let's do the right thing.

7 Your Honor, thank you. Thank you very much for
8 listening to this presentation. I do respect all the people
9 who are involved in this process. I'm not looking to slow the
10 wheels of justice down. I know the matter is of an urgent
11 cause, and I want to see decisions made, not hastily, but with
12 all due haste, to ensure Delta's future. I want that sixteen-
13 hundred-and-five-dollar check to arrive at my house on time
14 next year, but I just wish that greater consideration would be
15 given to every one of those 31,000 employees. I've heard a lot
16 of conversation here this morning or this afternoon about
17 consideration and everybody got something out of the deal.
18 Your Honor, I'm here to say I, for one, didn't, and the special
19 early retirement that I took, some people may take exception
20 with that and have you believe that because I took that, I'm
21 not entitled to something. The provisions of special early
22 retirement were enhanced in the year 2005 to allow people who
23 are under fifty to take it for the first time, and there were
24 some enhancements with retirement benefit -- not retirement
25 benefit, travel benefit. But I, sir, am going to wrap this up

1 in about thirty seconds -- I see you getting a little --

2 I, sir, lost all the survivorship benefits for my wife
3 by retiring when I did. I had to. I was scheduled to make
4 \$46,000 this year, after thirty years of Delta Airlines. A
5 quick look at my W-2 shows me I made the same money in 1992 and
6 1994, and that's not because I worked a lot of overtime.

7 Your Honor, thank you. I thank the Court. I thank
8 everyone here for everything they've done for Delta. I just
9 hope that we can maybe be a little bit fair to everyone. Thank
10 you.

11 THE COURT: Mr. Paparella, thank you very much.

12 MR. PAPARELLA: Thank you, Your Honor.

13 THE COURT: Anyone else? Did you want to respond to
14 that?

15 MR. GLOSTER: If I could just respond very briefly,
16 Your Honor.

17 THE COURT: Sure.

18 MR. GLOSTER: I think it's important that the Court
19 and, frankly, that everybody understand what the human face is
20 for the Delta retirees and what an extraordinary group have
21 built this airline.

22 When we were dealing with this process, it was hard
23 enough just to preserve the benefits that existed now and Delta
24 is cutting \$50 million so that there will still be an airline
25 next year. To go back to decisions that were made long before

1 the bankruptcy was really not within our ability to change, but
2 I would hope that the -- you know, Bankruptcy Court is a place
3 that companies go because they can't keep all their promises.
4 It's very hard to expect that they're going to make new
5 promises as part of that process and I simply would hope that
6 as Delta gets to a place where it is in better financial
7 health, that the management of Delta will consider that social
8 contract because even in this agreement that we're getting
9 approved today, Delta is a free actor in many respects, after
10 2010 and 2012 and 2015, and we would hope that at that time,
11 that the people who are operating the airline have an
12 appreciation for the people like this gentleman, who built that
13 airline. Thank you.

14 THE COURT: Anyone else?

15 MR. FRUMKIN: Your Honor, may I just respond to one
16 thing?

17 THE COURT: Yes, sir.

18 MR. FRUMKIN: And that's the issue of the -- you know,
19 the rush. I did not say or represent to the Court that the
20 Court could take forever, this really doesn't matter, but I do
21 think, though, that losing a retirement benefit, and the only
22 hook into the pension, I'm not arguing that, is that that was
23 the money that was going to be used to pay for the premiums for
24 my clients, but that to -- there is an issue of justice being
25 done and fairness and, as this gentleman said, he feels that

1 his group is being treated unfairly. I'm representing that my
2 -- the group that I represent has been treated unfairly. That
3 is not the tenant of bankruptcy, that everyone is supposed to
4 share the hit, so to speak, and I don't think it's happening
5 here, and to lose your retiree medical -- and I also want to
6 say that the subsidy that Counsel spoke to doesn't filter down
7 to the spouse if the spouse is under sixty, and many of my
8 clients, not to be sexist, but are males, they married younger
9 women, so they're not going to share in that subsidy at all if
10 they're in this boat that I mentioned to you about not getting
11 a pension from the PBGC and that subsidy.

12 So bottom line, Your Honor, is I think there's more
13 here that needs to be addressed. It doesn't have to be
14 addressed over a matter of months. We could probably come back
15 here in a week and be ready to go, and the Court would have
16 more information to be able to make a more informed decision.
17 Thank you.

18 THE COURT: All right. First of all, I want to thank
19 all of the professionals who have spoken and that includes Mr.
20 Frumkin and it also includes Mr. Paparella, who has spoken on
21 his own behalf.

22 Let me go back, for a moment, to what's been adverted
23 to a number of times, which is that in, when was it, February,
24 when the issue was raised, I made a ruling based upon my
25 reading of the Bankruptcy Code, the way it's written, that

1 required a separate committee, am I right, for the retired
2 pilots?

3 MR. KAMINETZKY: That's correct.

4 MS. LACEY: February 6th.

5 THE COURT: Okay. I did that because I'm one of those
6 old-fashioned judges who believes that the way the Code is
7 written, the way I read it, is the way I have to interpret it,
8 and that was the predicate for that ruling. But I will say,
9 also, that I was disposed to make that ruling and I think the
10 Code is wise in the way it's written, because I think it
11 required me to do a wise thing.

12 One thing that I've learned in my nearly twelve years
13 on the bench, after thirty-two years as a trial lawyer, is I
14 always enjoyed the adversary process as a lawyer, but I really
15 value it as a judge. It is terribly, terribly important to me
16 and to every other judge in trying to do the right thing. The
17 adversary process requires a competent professional or
18 professionals, plural, to represent each side, and to make the
19 best possible presentation to the Court on behalf of the
20 professional's clients.

21 You really miss the adversary process when you're
22 dealing with pro se litigants because by and large, they do not
23 have the competence any more than a non-bankruptcy lawyer has
24 the competence, really, to represent adequately a client in
25 bankruptcy or a non-pension lawyer has the ability to represent

1 a client adequately in pension matters. These are questions
2 where expertise is important. Nowhere can that be more true
3 than when you're dealing with terribly important issues, social
4 issues that affect people's lives so urgently and so strikingly
5 as what happens to employee pensions and other rights and
6 emoluments in the context of bankruptcy, where there isn't
7 enough money to go around. That's just the reality of
8 bankruptcy.

9 I have seen so clearly in this Delta case how
10 important and how wise Congress was in the provisions written
11 into Sections 1113 and 1114. Prior to those sections, and I'm
12 saying this for all those non-bankruptcy lawyers and non-
13 lawyers who may be here, a company had the right to simply make
14 an exercise of business judgment to assume or reject a contract
15 and when that power, under the broad discretion given to
16 management under the business judgment rule, was exercised
17 initially to reject collective bargaining agreements, there was
18 a tremendous uproar and the result was that Congress passed
19 Sections 1113 and 1114 in order to institute tremendous
20 controls limiting the power and the ability of companies in
21 bankruptcy to reject or change employee rights.

22 One of the protections built in, which I'm sure that
23 every judge that's ever had to administer this kind of issue is
24 deeply grateful for, is the provision requiring the appointment
25 of committees that have to be paid for by the debtor, out of

1 the debtor's estate, to represent constituencies of debtor
2 employees who have differing interests, and everything that
3 we've heard today underscores the importance of the 1114
4 committee. I had no idea what a good thing I was doing in
5 granting the motion for an 1114 committee. I thought it was
6 right at the time, but I didn't have the slightest idea how
7 important that decision was.

8 I also want to say that I'm really grateful that Mr.
9 Frumkin spoke today on behalf of Captain Buergey. Is that the
10 way you pronounce it?

11 MR. FRUMKIN: Buergey.

12 THE COURT: Buergey.

13 And that Mr. Paparella spoke on behalf of himself
14 because those presentations, which I thought were very moving
15 and very articulate, on behalf, in the case of Mr. Frumkin, of
16 a group of uncertain number, and on behalf of Mr. Paparella,
17 who spoke for himself, but he is one of thousands of employees,
18 all of whom are a little different -- all of whom are a little
19 different, but they are all basically within a category.

20 Now Congress said bankruptcy judges, you can appoint
21 committees to be paid for by the debtor's estate within
22 segments. You can't appoint a committee for every six hundred
23 employees or every five employees that are going to have their
24 own professionals, but Congress articulated, and I don't even
25 remember what the statute says now, but Congress articulated

1 parameters for the appointment of committees, and this very
2 experience that we've been through here today, and in this
3 whole process, illustrates the wisdom of that committee
4 process, because I do think, and everybody that's spoken has
5 acknowledged it, that the interests of the retired pilots are
6 different from the interests of the other retirees, in many
7 respects. The interests of the retired employees, en masse,
8 are different from -- and en masse, and as creditors, are
9 different from the interests of the creditors, the financial
10 creditors represented by the creditors' committee. I rejected
11 arguments to the contrary on that point, and I think rightly.

12 I think Congress was right, but there are limits --
13 there are limits to -- there are practical limits on that
14 process. I think Congress has set some pretty good ones in a
15 statute which really has enormous wisdom in it. I didn't
16 realize how much.

17 So we have here a situation where two committees, for
18 different segments of retired employees, have been appointed.
19 They have been appointed through an appointment process which
20 I, frankly, didn't appreciate how it worked. I'm glad, whoever
21 it was, that read or articulated how the U.S. Trustee's office,
22 which, by the way, is a part of the Department of Justice, how
23 the U.S. Trustee's office picked those committees. It was a
24 process that gave as wide possible circulation to the fact that
25 there was going to be a committee and if you wanted to appear

1 on it or you wanted to have some input into it, hey, let us
2 know.

3 By all accounts that I've ever heard, the two
4 committees that we're talking about here, first of all, they
5 were represented by multiple sets of professionals, at great
6 cost to the debtors' estate. I'm glad they were, because those
7 committees had the benefit of experts who, because they were
8 getting paid and because they were experts, had the ability to
9 devote time and effort advocating their client's position. I'm
10 not just talking about the lawyers, but the other -- the
11 accounting -- the other expertise. They had the time and the
12 expertise and they were getting paid for looking out for the
13 benefit -- for the interests of all of their constituents.
14 That was their charge. That was their fiduciary task, to look
15 out for the interests of all their constituents.

16 And there were conflicting interests amongst the
17 various constituents. No doubt about it. Congress didn't
18 authorize me to appoint a separate committee for each of the
19 differing age groups within, for example, the retired pilots,
20 or the different categories of employee, of which Mr. Paparella
21 was one. What Congress did do was the authorization to appoint
22 a committee with the fiduciary responsibility of the
23 individuals on that committee and the professionals, to look
24 out for all of the different constituencies within their
25 particular groups.

1 Counsel for the committees has spoken glowingly of the
2 performance and the dedication of these committees, both of
3 them, and their chairpersons. I don't know how many people
4 here, other than the professionals, have really spent a little
5 time looking at the term sheets. I have. They are complex.
6 They're detailed. They reflect the degree of effort and the
7 attention to the interest of varying different groups. Maybe
8 they're not perfect, but they represent an enormous diligent,
9 good-faith effort.

10 Now, that brings me back to the statute. The statute,
11 which was read into the record earlier, states that when the
12 trustee and the authorized representatives or the recipients of
13 those benefits have agreed to a modification of such payments,
14 after which -- after that agreement, that the benefits may be
15 modified and they will continue as modified.

16 It is perfectly clear from the statute that Court
17 approval of these two agreements is not required. What that
18 means, in effect, is that I really don't have the power to
19 disapprove it, but I wouldn't disapprove it if Court approval
20 were required under the statute. I wouldn't approve it because
21 although I have not heard all the evidence that might be
22 brought to bear, pro and con, in a long, complex and difficult
23 trial, that could only be conducted by professionals and
24 indeed, well-compensated professionals, because this is complex
25 stuff and amateurs don't deal with it. They can't deal with it

1 because they've got to persuade a Judge who is an amateur on
2 this stuff what the right outcome should be. These people have
3 done their jobs and they have reached agreements.

4 It is completely clear if you study the term sheets,
5 not just the summaries, but the term sheets, that enormous
6 efforts have been made to adjust and reconcile the competing
7 needs of the airline and not just the entirety of the
8 employees, but the differing needs of differing categories of
9 employees within the representation of each committee.

10 So no, I cannot make findings of fact, and I need not
11 make findings of fact and conclusions of law as to every,
12 single aspect of these agreements that have been reached, but I
13 can state that it is absolutely evident that both committees
14 and their professionals, on the one side, and Delta on the
15 other, each have worked diligently to reach an accommodation of
16 the very conflicting and different and differing and important
17 interests on each side.

18 I am confident, based upon what I have seen and heard,
19 that they have done so in as fair and equitable manner as would
20 be possible, and it is always preferable for parties to reach
21 an agreement which they, in their own respective adversarial
22 and competing interests, have concluded is best for their
23 respective clients. It's better to have it done that way than
24 to litigate and have a Court have to master all of the issues
25 and basically force a result.

1 So I will add one more point. I cannot imagine any
2 possible way, as a practical matter, that Mr. Paparella or
3 hundreds, probably thousands of people with individual faces
4 and individual concerns and individual differences in their
5 economic situations, their employment history with the company,
6 et cetera, or even the group, whatever it is, that is
7 represented by Mr. Frumkin, could possibly, within any
8 reasonable time frame, marshal the facts and the evidence to
9 present to this Court, to now, in effect, litigate, knit by
10 knit and issue by issue, what has been painstakingly
11 accomplished by two very accomplished, diligent committees and
12 I don't want to say hordes, but their numerous professionals.

13 Think about it, and think also upon this, that
14 supposing I were to reach some different conclusion for people
15 like Mr. Paparella. I don't know how many of you there are, or
16 Mr. Buergey, Captain Buergey, or other people that may be in
17 Captain Buergey's situation or maybe a little different,
18 probably a little different, with different needs. You know,
19 ultimately, what one would say, well, gosh, Captain Buergey and
20 his group didn't get enough. Well, it's going to come out of
21 somewhere. It's going to come out of somebody else, and that
22 person, well, I want to hear from that person, too, but they're
23 not here.

24 If I am to conclude that Mr. Paparella should have
25 some different treatment, based upon something that was decided

1 years ago with regard to seniority, then, you know, there are
2 going to be a lot of other people who, if what I conclude
3 should be allocated to Mr. Paparella, that's going to probably
4 come out of somebody else's pocket, and that person, or those
5 people, aren't represented here.

6 What I'm saying is, I hope self-evident by now, the
7 only way to resolve these complex social issues involving many,
8 many people, with disparate interests, is, as Congress has
9 done, to require to appointment of committees to represent a
10 reasonably allied or similarly situated personnel, and have the
11 committee be charged with the professional responsibility of
12 representing the interest, as best they can see them, of all of
13 those people. That was done here. The process has worked.

14 I am compelled to overrule the objections and to grant
15 the relief sought.

16 Do you have an order?

17 MR. KAMINETZKY: Yes, Your Honor, and --

18 THE COURT: Or orders?

19 MR. KAMINETZKY: And just to be clear, this was a
20 363(b) motion.

21 THE COURT: Yes.

22 MR. KAMINETZKY: As you mentioned, it's not an 1114
23 motion, for reasons --

24 THE COURT: Right, right.

25 MR. KAMINETZKY: So I guess the Court would need to

1 find that this is -- this deal was done and the use of property
2 is in the best interest of the estate.

3 THE COURT: Quite so.

4 MR. KAMINETZKY: And that's what's reflected in the
5 order.

6 THE COURT: All right.

7 MR. KAMINETZKY: If I could hand that up, please, Your
8 Honor?

9 THE COURT: Yes, indeed.

10 Now, does this order cover one or both?

11 MR. KAMINETZKY: I think both parties.

12 THE COURT: Okay.

13 MR. KAMINETZKY: And both committee counsel has
14 reviewed the order.

15 THE COURT: All right.

16 MR. KAMINETZKY: Thank you, Your Honor.

17 THE COURT: Okay. I want to thank everybody, again,
18 for really excellent presentations and to the committees and
19 their professionals, my enormous admiration and commendation
20 for the work that you've done.

21 This hearing really has been helpful to me, at least,
22 and I hope to other people, because the submissions by Mr.
23 Frumkin and by Mr. Paparella, again, to whom I am extremely
24 grateful, and everyone should be, really, when you think about
25 it, underscores the wisdom of this statute, the necessity for

1 having committees appointed to provide a real adversary process
2 for the benefit of all of the constituents. I thank you all.
3 Great job.

4 MR. KAMINETZKY: Thank you, Your Honor.

5 MS. LACEY: Thank you, Your Honor.

6 THE COURT: Now, before everybody runs out, I don't --
7 you know, it is 4:30.

8 MR. HUEBNER: This will take less than two minutes,
9 Your Honor.

10 THE COURT: All right.

11 MR. HUEBNER: I just think it's important.

12 THE COURT: All right.

13 MR. HUEBNER: Well, you know, I woke up with a dream
14 this morning, which is that for the first time in my life, I
15 would attend a Delta hearing and not say anything, because if
16 it was a dream for me, it was certainly a fantasy for Mr.
17 Kaminetzky, so I can say I'm only partially grateful to Mr.
18 Frumkin for obligating me to say a word or two about pension
19 issues, Your Honor. When you afforded us --

20 THE COURT: By he way, I actually was going to raise
21 that issue, not as an issue that would require a response
22 today, but simply to put it out on the table as a concern that
23 has been expressed to me in numerous letters, and because of
24 the stark contrast between my recollection of the
25 representations in the papers and to the Court with regard to

1 the seventy percent of the benefits or whatever it was, and I
2 didn't go back to look, but the stark contrast between my
3 recollection and these letters that I'm getting, people saying
4 I was reduced from this amount to zero, or I have been told by
5 the PBGC that my pension benefit will be cut by seventy-eight
6 percent, you know, I've just gotten a lot of those letters and
7 it concerned me, and since I know that there are a lot of
8 people out there who have experienced this, I wanted to bring
9 it to the attention of Delta because it's something that I
10 would think Delta would want to address.

11 MR. HUEBNER: Yeah. And, Your Honor, let me do that,
12 because I think the good news is that, in fact, there is a very
13 coherent, complete explanation for that, which, in fact,
14 accords perfectly with what Ted said to you on the record at
15 the 4041 hearing. I believe that Captain Buergey's group,
16 although they appealed that order as the sole appellant,
17 actually did not attend the trial, nor did they participate,
18 nor did they cross-examine witnesses.

19 THE COURT: That's right.

20 MR. HUEBNER: Maybe, had they actually read the
21 transcript, they would know what we said --

22 THE COURT: Right.

23 MR. HUEBNER: And, in fact, he quoted part of our
24 pleading, which he was kind of enough to lend me, but, of
25 course, didn't cite all of it, including the part that explains

1 it, at least a little bit, so let me take a minute, because I
2 think it's very important for the Court and for the public
3 record to understand why those two things can actually be
4 consistent and, in fact, they are.

5 THE COURT: All right.

6 MR. HUEBNER: As we explained to the Court at the 4041
7 hearing, this is all about the lump sums. When lump sums were
8 calculated when pilots retired, they got fifty percent of their
9 total pension benefit, not just a qualified piece, but the non-
10 qualified, as well. And so that, for many pilots, and many of
11 them took lump sums, as Your Honor knows, at or above \$1
12 million, that lump sum, all by itself, represented, for many,
13 fifty-six, fifty-eight, sixty-one percent of their total
14 qualified pension, all in one moment.

15 And what we were very clear about, and it's right here
16 in our pleadings and we were very clear about it in court, was
17 including the benefit associated with the lump sums previously
18 taken. And so, that's sort of point number one, which is --
19 and let me be as clear and as sympathetic now as I was then,
20 when I was actually prepared and address this more slowly.

21 We don't minimize anybody's payment and we don't make
22 light of the fact that whether you took a lump sum or not, you
23 designed your life and your retirement and your grandchildren
24 and your children around an expectation that is now not able to
25 be met. That's a horrible fact, and there's no two ways about

1 that, so in line with Your Honor's remarks that unfortunately,
2 insolvency means that not all promises can be kept, I just want
3 to be very clear, with the same sympathy and empathy that was
4 in evidence last time. That said, Your Honor has asked a
5 factual question, and let me continue.

6 So, first of all is the fact that many of these people
7 got very large lump sums that, right then and there, paid them
8 more than half of the entire lifetime stream of their qualified
9 pension benefit.

10 Second, many of those pilots then received additional
11 payments for several years, further filling up the percentage
12 of their total expected lifetime benefit, even if you assume no
13 further payments from the given date forward, even of zero.

14 Three, it is an average figure and it, in fact, is
15 correct. Many pilots are losing nothing in light of the
16 qualified pension plan termination. Some had no non-qualified
17 benefits to begin with, and so that didn't affect them, and
18 they are in a category or at an amount where they are losing
19 nothing.

20 It happens, and I think you're getting a sense of this
21 on the medical side, as well, that Captain Buergey and his more
22 particularistic demographic brethren are being hit a little bit
23 harder, if not a lot harder, by the Chapter 11 because they
24 left young, which put them in a certain position. It was a
25 choice they made, and as I said last time, and I want to be

1 clear, I don't begrudge it. If I had worked for decades and
2 feared that if I stayed, I would lose a pension that was my
3 pension, I would probably weigh the duty to my family and my
4 ability to protect my own personal fisc. more heavily than a
5 generalized notion of loyalty to an employer, however beloved.

6 The next issue, though, which I think nobody really
7 understands that clearly, is that for the moment, some people
8 are getting no current checks because the PBGC regulations
9 require us to assume that the PBGC is getting no recovery from
10 the Delta bankruptcy, and to compute the current payments as if
11 their recovery is zero.

12 I can assure you, Your Honor, that the PBGC's recovery
13 in this case will not be zero, nor will it be close to zero.
14 As you said, and was heard many times over negotiations, our
15 job is to pay as little as possible, and their job is to get as
16 little as possible, and Ms. Beckerman's job is to scream at me.

17 So, what's going to happen, I believe, and you alluded
18 before and I guess I'm in the cross hairs of, you know, people
19 who are not pension lawyers should not get up and talk about
20 pension matters, but unfortunately, in the course of this case,
21 I found myself doing that for a rather large number of hours.

22 THE COURT: There's an exception for you, Mr. Huebner.
23 You can talk about anything.

24 (Laughter.)

25 MR. HUEBNER: Thank you, Your Honor. Could you call

1 my wife? Because at home, I'm actually not allowed to talk
2 about anything.

3 So just, I'm looking at Mr. Kight, who I think is --
4 is at least my expert. Is my statement about the fact that
5 when the PBGC then gets recoveries in the Delta case, there
6 will be some recalculations of benefits that will then take
7 into account that recovery, that might increase the monthly
8 payments that certain retired pilots are getting?

9 MR. KIGHT: That is correct.

10 MR. HUEBNER: Okay. So I think that is correct, Your
11 Honor.

12 Now, I know that we're sort of done with that hearing,
13 Mr. Frumkin made a couple of statements that are flatly
14 incorrect and, in fact, again, had they taken the time and
15 given us the courtesy of coming to the 4041 trial, which
16 they're now appealing, they would have learned a few things
17 that maybe would have made them not make flatly wrong
18 statements that, you know, subtly and not so subtly impugn
19 Delta and the way it's made choices. So let me correct a
20 couple of things for the record, so that it's clear at yet
21 another hearing what the facts are.

22 One, many of the pilots in this group received lump
23 sums at or even above \$1 million, and they chose to leave
24 early. That was their choice.

25 Two, unless my memory fails me, the average non-pilot

1 pension is \$16,600 a year, and so, again, since there was
2 clearly an appeal to the fair and equitable side of things, we
3 do need to keep in mind, as Mr. Gloster and his committee has
4 reminded us on any number of occasions, that when you're
5 weighing overall pain, you need to actually calculate what
6 people have in the bank and are otherwise getting, and what
7 they can literally afford to pay or go hungry if it's not
8 coming in. Those were all parts of very complex calculuses
9 that went on as part of this process.

10 We actually still stand by our representation to the
11 Court, but on an all-in basis, retired pilot pension
12 recoveries, taking all those things into account and all their
13 sources of recovery, are still multiples -- multiples of non-
14 pilot pensions.

15 Finally, let me correct some, again, I think,
16 atmospheric misstatements that were very important. Again,
17 this has been said to the Court many times before, but maybe
18 not in Mr. Frumkin's hearing. Retired non-pilots and retired
19 pilots, and to use the moniker, retired executives, were
20 treated exactly the same for pension purposes. Delta has not
21 paid one penny of non-qualified pension benefits to any person,
22 male or female, who has retired as of the petition date. What
23 was good for the goose was good for the gander. These are
24 these subtle continued allegations that, you know, this is one
25 of those cases where they're getting it from us, but protecting

1 their friends and family. That is simply totally untrue.

2 And as we made clear at the pension hearing, and I
3 will say hopefully for the last time, neither the CEO, nor the
4 CFO, nor the COO, nor the vast, vast majority of anyone you
5 could call a senior executive at Delta, has any non-qualified
6 pension benefits, and neither the CEO, nor the CFO, nor the
7 COO, would lose one penny if the non-pilot pension plan were
8 terminated because their accrued pension benefits are so low
9 that even in a termination scenario, they would be paid in
10 full. So for the sake of integrity and good order, since
11 again, I don't blame them, but part of the atmosphere that I
12 think Mr. Frumkin truly believes and was maybe trying to create
13 was, we need to look into all this stuff. There's more, you
14 know, the checks are -- they lied to you about that, they
15 misrepresented, they took care of themselves under the table.

16 Again, we are officers of the court, and I firmly
17 believe that nothing that was said with respect to those facts
18 was correct.

19 THE COURT: Okay. Well, I want to thank you all.
20 Thank you, Mr. Huebner, for that. That's very helpful.

21 I guess we're done, eh?

22 MR. KAMINETZKY: That was the only agenda item, and we
23 thank the Court for hearing us outside of the ordinary omnibus
24 hearing process.

25 THE COURT: All right.

1 MR. KAMINETZKY: Thank you.

2 THE COURT: Well, thank you. Yes, sir?

3 MR. PAPARELLA: Your Honor, if I may, I'd just like to
4 make one more statement, less than one minute, if it pleases
5 you. If not --

6 THE COURT: Well, if you will confine it to less than
7 a minute.

8 MR. PAPARELLA: Yes, sir. Your Honor, I just want to
9 make it clear that I did not come here today to seek any
10 benefit for myself individually. I came here because I had the
11 opportunity to come here, which many other hundreds, if not
12 thousands of people could not, to say that there was a segment
13 of people who are not substantially different than anybody else
14 in the ground and flight attendant retiree committee
15 population, but that there was a difference in the benefits
16 that we would receive.

17 Thank you, Your Honor.

18 THE COURT: Well, again, I will thank you again, Mr.
19 Paparella, for your appearance. Yes?

20 MS. CONE: Your Honor, can I just point one thing out?

21 THE COURT: Sure. You know, it's a risk being in my
22 courtroom, because I almost never cut anybody off, or deny
23 anybody the right to speak.

24 MS. CONE: I just wanted to point out --

25 THE COURT: Yes.

1 MS. CONE: -- to Mr. Paparella, the fact is that our
2 committee was made up -- the majority of the people on our
3 committee are paying 100 percent of their insurance, as well.
4 So it was not that they did not understand that there were
5 people paying 100 percent of the cost, and I would also like to
6 point out to Mr. Buergey's --

7 THE COURT: Lawyer.

8 MS. CONE: -- lawyer that our non-pilot executives
9 that are on my committee are paying 100 percent of their
10 insurance and they don't have the benefit of any reductions of
11 fifty-one percent or a health care tax credit or anything else.
12 So just to let you know how they were treated in the
13 bankruptcy.

14 THE COURT: Thank you very much. Good day, everybody.
15 Thank you, and thank you both.

16 (Proceedings concluded at 4:43 p.m.)

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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

Lisa Luciano

October 23, 2006

Lisa Luciano, AAERT Cert. No. 327
Certified Court Transcriptionist
For Rand Transcript Service, Inc.

Jennifer Linnartz

October 23, 2006

Jennifer Linnartz, AAERT Cert. No. 339
Certified Court Transcriptionist
For Rand Transcript Service, Inc.