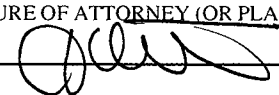


B 104 (Rev. 2/92)	ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS JAMES H. GRAY, JAMES HAIGH, REUBEN BLACK, WILLIAM WIRTH, JAMES BOMAR, RONALD STOWE, EVAN GOST, RICHARD COLBY, AND DONALD MAIROSE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED		DEFENDANTS DELTA AIR LINES, INC.
ATTORNEYS (Firm Name, Address, and Telephone No.) Dean Booth John A. Christy Jason W. Graham Schreeder, Wheeler & Flint, LLP (404) 681-3450 127 Peachtree St., NE., Ste. 1600, Atlanta, GA 30303-1845		ATTORNEYS (If Known) Marshall Huebner and Ben Kaminetzky Davis, Polk & Wardwell 450 Lexington Avenue, New York, NY 10017
PARTY (Check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input type="checkbox"/> 2 U.S. DEFENDANT <input checked="" type="checkbox"/> 3 U.S. NOT A PARTY		
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) This action is brought pursuant to the provisions of 28 U.S.C. Section 2201, 11 U.S.C. Sections 365, 503 and 1113 and principles of common law on behalf of the approximately 5,800 retired pilots of Delta, including their survivors, to compel Delta to comply with its obligations to make contributions to the tax-qualified pilot plan and payments to retirees pursuant to non-tax qualified plans created pursuant to a collective bargaining agreement, or in the alternative to award administrative priority status to such payments and order their immediate payment.		
NATURE OF SUIT (Check the one most appropriate box only.)		
<input type="checkbox"/> 454 To Recover Money or Property <input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11, Chap. 12, or Chap. 13 Plan <input checked="" type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action <input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523 <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property <input type="checkbox"/> 434 To obtain an injunction or other equitable relief <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan <input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727 <input type="checkbox"/> 498 Other (specify)		
ORIGIN OF PROCEEDINGS (Check one box only.)		<input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy Court		
DEMAND \$ To be determined	OTHER RELIEF SOUGHT Declaratory judgment and award of admin. claim	<input type="checkbox"/> JURY DEMAND Check only if demanded in complaint
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Delta Air Lines, Inc.		BANKRUPTCY CASE NO. 05-17923-PCB
DISTRICT IN WHICH CASE IS PENDING Southern	DIVISIONAL OFFICE Manhattan	NAME OF JUDGE Prudence Carter Beatty
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT	DIVISIONAL OFFICE	NAME OF JUDGE
FILING FEE (Check one box only.) <input checked="" type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE IS DEFERRED		
DATE December 14, 2005	PRINT NAME John A. Christy	SIGNATURE OF ATTORNEY (OR PLAINTIFF) 

SCHREEDER, WHEELER & FLINT, LLP
 Dean Booth (DB-3807), Georgia Bar No. 067900
 John A. Christy (JC-6826), Georgia Bar No. 125518
 Jason W. Graham (JG-0336), Georgia Bar No. 304595
 127 Peachtree Street, N.E.
 1600 Candler Building
 Atlanta, Georgia 30303-1845
 Telephone: (404) 681-3450
 Facsimile: (404) 681-1046

Attorneys for James H. Gray, James Haigh,
 Reuben Black, William Wirth,
 James Bomar, Ronald Stowe,
 Evan Gost, Richard Colby, and
 Donald Mairose

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

-----X		
In re:)	Chapter 11
)	
DELTA AIR LINES, INC.,)	Case No. 05-17923-PCB
)	(Jointly Administered)
Debtor.)	
-----X		
)	
James H. Gray, James Haigh, Reuben Black,)	
William Wirth, James Bomar, Ronald Stowe,)	
Evan Gost, Richard Colby, and Donald Mairose,)	
individually and on behalf of all others similarly)	
situated,)	
Named Plaintiffs,)	
v.)	Adv. Pro. No. _____
)	
Delta Air Lines, Inc.,)	
)	
Delta.)	
-----X		

CLASS ACTION COMPLAINT

COME NOW James H. Gray, James Haigh, Reuben Black, William Wirth, James Bomar, Ronald Stowe, Evan Gost, Richard Colby, and Donald Mairose (“**Retired Pilots**”

or “**Named Plaintiffs**”), all retired Delta Air Lines, Inc. Captains who are also members of the Board of Trustees of DP3, Inc. d/b/a Delta Pilots’ Pension Preservation Organization (“**DP3**”), by their undersigned counsel, and on behalf of themselves and all other persons similarly situated, file this class action adversary proceeding and show this Court as follows:

NATURE OF THE CLASS ACTION COMPLAINT

1.

This action is brought pursuant to the provisions of 28 U.S.C. § 2201, 11 U.S.C. §§ 365, 503 and 1113 and principles of common law on behalf of approximately 5,800 retired pilots of Delta, and their survivors, to compel Delta to comply with its obligations to make contributions to its tax-qualified pilot pension plan and payments pursuant to its non-tax qualified pension plans created pursuant to a collective bargaining agreement, or in the alternative to award administrative priority status to such payments and order their immediate payment.

JURISDICTION AND VENUE ALLEGATIONS

2.

On September 14, 2005, Delta Air Lines, Inc. and related companies (“**Delta**”) filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in this Court (the “**Petition Date**”).

3.

This Court has jurisdiction over this adversary proceeding because it arises out of the underlying bankruptcy action and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (B). The adversary proceeding relates to the administration of the

underlying bankruptcy action and the allowance or disallowance of claims against the estate.

4.

Venue for the adversary proceeding is proper in this court pursuant to 28 U.S.C. § 1409 because the adversary proceeding is related to the underlying bankruptcy case.

5.

The statutory predicates for the relief requested herein are §§ 365, 503 and 1113 of the United States Bankruptcy Code, and 28 U.S.C. § 2201.

THE PARTIES

6.

James Gray is a retired airline captain who worked over 30 years for Delta and receives benefits pursuant to the pension plans which are the subject matter of this action. He is Chairman of DP3, which presently has over 2,600 members and was formed to protect the pension, medical, dental, insurance, disability, and other retirement benefits of Delta's retired pilots and survivors.

7.

James Haigh is a retired airline captain who worked over 30 years for Delta and receives benefits pursuant to the pension plans which are the subject matter of this action. He is a member of the Board of Trustees of DP3.

8.

Rueben Black is a retired airline captain who worked over 34 years for Delta and receives benefits pursuant to the pension plans which are the subject matter of this action. He is a member of the Board of Trustees of DP3.

9.

William Wirth is a retired airline captain who worked over 30 years for Delta and receives benefits pursuant to the pension plans which are the subject matter of this action. He is a member of the Board of Trustees of DP3.

10.

James Bomar is a retired airline captain who worked over 30 years for Delta and receives benefits pursuant to the pension plans which are the subject matter of this action. He is a member of the Board of Trustees of DP3.

11.

Ronald Stowe is a retired airline captain who worked 31 years for Delta and receives benefits pursuant to the pension plans which are the subject matter of this action. He is a member of the Board of Trustees of DP3.

12.

Evan Gost is a retired airline captain who worked over 32 years for Delta, including Western Airlines, and receives benefits pursuant to the pension plans which are the subject matter of this action. He is a member of the Board of Trustees of DP3.

13.

Richard Colby is a retired airline captain who worked over 27 years for Delta and receives benefits pursuant to the pension plans which are the subject matter of this action. He is a member of the Board of Trustees of DP3.

14.

Donald Mairose is a retired airline captain who worked over 34 years for Delta and receives benefits pursuant to the pension plans which are the subject matter of this action. He is a member of the Board of Trustees of DP3.

15.

Delta is a United States certificated air carrier which employed the Named Plaintiffs and which is obligated to provide the Named Plaintiffs and all members of the proposed class with pension benefits pursuant to a collective bargaining agreement known as the Pilot Working Agreement (“PWA”).

FACTUAL ALLEGATIONS REGARDING PILOTS’ PENSIONS

16.

Named Plaintiffs reallege and restate the allegations contained in paragraphs 1 through 15 of this complaint against Delta with the same force and effect as if they had been fully restated herein.

17.

Delta’s retired pilots have the right to receive monthly pension payments (both tax-qualified and non-tax qualified) pursuant to the express terms of the PWA. Named Plaintiffs are intended third-party beneficiaries of the PWA.

18.

A pilot who retires at age 60 generally is entitled to an annual pension benefit equal to 60% of his or her “**Final Average Earnings**,” which is defined as the average of the highest thirty-six (36) consecutive months of earnings during the last ten years worked by the retiring pilot, with such benefit reduced for early retirement and service of less than twenty-five years. This pension benefit is called the “**Formula Benefit**.” The

earlier a pilot retires, the lower his Formula Benefit. This Formula Benefit is provided in part by the “**Tax-Qualified Pilot Plan**” and, for those pilots with Final Average Earnings above certain limits set forth in the Internal Revenue Code (“**IRC**”), in part from the “**Non-Tax Qualified Plans.**”

19.

The IRC limits the amount of annual income (i.e., Final Average Earnings) that can be considered in determining the pension benefit payable from a tax-qualified pension plan.

20.

A pilot with earnings in excess of this IRC limit must have part of his or her earned pension benefit paid from a source other than the Tax-Qualified Pilot Plan (the “**Non-Tax Qualified Pension Benefits**”). These payments are made from Non-Tax Qualified Plans which provide that the difference between the full Formula Benefit and the maximum benefit payable from the Tax-Qualified Pilot Plan is paid by Delta as a Non-Tax Qualified Pension Benefit. These payments are made directly by Delta to retirees and are taxable to retirees as current income.

21.

Currently, approximately 5,800 retired pilots and survivors receive pension benefits from the Tax-Qualified Pilot Plan. Of these retired pilots, approximately 3,485 of them also receive Non-Tax Qualified Pension Benefits.

22.

Pilots retiring from Delta have had the option for over 15 years to take the present value of one half (1/2) of their monthly retirement pay in cash at retirement. This payment is actuarially determined and is the present value of the foregone income stream.

23.

Based on information provided by Delta, the average¹ annual benefit payment to all retired pilots from the Tax-Qualified Pilot Plan is approximately \$33,600, or \$2,800 per month. The average annual benefit payment to retired pilots from the Tax-Qualified Pilot Plan who did elect to take lump sums is approximately \$33,100, or \$2,760 per month. The average annual benefit payment to retired pilots from the Tax-Qualified Pilot Plan who did not elect to take lump sums is approximately \$41,800, or \$3,483 per month.

24.

Based on information provided by Delta, the average Non-Tax Qualified Pension Benefit paid to retired pilots is approximately \$2,000 per month, or \$24,000 per year.

25.

Section 26(B)(1)(a) of the PWA requires that Delta “will pay the entire cost of providing retirement benefits” Section 26(D) of the PWA forbids unilateral modification of the pension plans by Delta:

Irrespective of any contrary provisions of the Retirement Plan, the MPPP, the Bridge Plan, the Supplemental Annuity Plan, the D&S Plan, the Western D Plan and the DC Plan, the Company agrees that such Plans will not be amended, changed, varied, modified, or voluntarily discontinued during the term of the PWA and thereafter until the date the parties have been released to exercise self-help after exhaustion of the dispute

¹ Named Plaintiffs are only able to provide averages at this time because Delta has only provided averages and has refused to share the actual data and information with Named Plaintiffs, or their representatives.

resolution procedure of the Railway Labor Act, except as agreed by the Association and the Company, or except as otherwise required by law.

26.

Section 26(I) of the PWA further incorporates each of the pension plans by reference. Each of the incorporated plans in turn provide for the timely payment of pension benefits to or on behalf of retired pilots. The above provisions will be referred to collectively herein as the “**Pension Payment Provisions.**” Named Plaintiffs are intended third-party beneficiaries of the Pension Payment Provisions.

27.

The Pension Payment Provisions require Delta to timely pay all minimum funding contributions to the Tax-Qualified Pilot Plan and all Non-Tax Qualified Pension Benefits to retired pilots (together the “**Pension Payments**”).

28.

The Employee Retirement Income Security Act (“**ERISA**”) and the IRC require that all tax-qualified defined benefit plans be funded according to a regular funding schedule, generally on a quarterly basis (the “**Minimum Funding Contributions**”), so that – in theory - the plan’s assets, plus an assumed rate of growth, will be sufficient to pay all promised pension benefits as they come due. However, over the past four to five years, rather than appropriately and adequately funding the Tax-Qualified Pilot Plan so that it would be able to meet its obligations to retirees, Delta consistently used the most aggressive actuarial and interest assumptions allowed by law, paid the least amount to the pension fund that the law would allow, and obtained special exemptions from Congress and the IRS to pay even less than the legally mandated minimum contributions.

29.

Both the PWA and ERISA required Delta to pay a quarterly Minimum Funding Contribution of \$31.4 million that was due to the Tax-Qualified Pilot Plan under the plan's regular funding schedule on or about October 15, 2005. An additional "**Supplemental Contribution**" of approximately \$129 million was also due on October 15, 2005 due to the Qualified Pilot Plan's failure to satisfy ERISA' rules.

30.

Upon filing this Chapter 11 case, Delta unilaterally declared, without any prior notice, that it would refuse to pay any further Non-Tax Qualified Pension Benefits to retired pilots and that it would not make any of the required future contributions to the Tax-Qualified Plans.

31.

Since the filing of this case, Delta has sought to blame everyone but itself, its management and its controlled financial advisors for the shortfalls in its pension plans.

32.

In the years leading up to its Chapter 11 filing, Delta had the cash available to adequately fund its pension plans, but instead chose to squander its cash on repurchasing billions of dollars of its own stock and paying millions to fund – and pay the tax liability on – “bankruptcy proof” retirement trusts for its top executives.² The Tax-Qualified Pilot Plan thus became grossly underfunded.

² To date Delta has taken no action to recover those funds, transferred to insiders while Delta was in the shadow of bankruptcy, for the benefit of creditors in this case.

33.

The Tax-Qualified Pilot Plan is presently in liquidity shortfall and is barred by ERISA from making any additional lump sum payments due to its failure to satisfy ERISA's liquidity shortfall rules. No further lump sum payments may be taken from the Tax-Qualified Pilot Plan unless Delta makes all required Minimum Funding Contributions *and* Supplemental Contributions.

34.

Delta's current "Business Plan" forecasts that Delta will earn a profit of \$498 million in 2007 indicating that it has the ability to make its pension payments

35.

Delta's suggestion that the current underfunded status of the Tax-Qualified Pilot Plan was caused by the large number of pilots who retired last year and chose to take the present value of one half of their earned retirement annuity (lump sum) is true only if one ignores the fact that the unusual number of early retirements and lump sum distributions were caused by the job and pension insecurity created by Delta's failure to adequately fund the plan in the first place.

36.

If the Tax-Qualified Pilot Plan is terminated under ERISA, the Pension Benefit Guaranty Corporation ("PBGC") will take over the plan and only pay benefits according to its rules and many retired pilots will get substantially less than their full pension benefits from the Tax-Qualified Pilot Plan.

37.

Delta narrowly avoided bankruptcy in October 2004 due in large part to significant concessions from its pilots, some of whom have since retired.

38.

Part of the consideration for these significant concessions was Delta's promise that if it subsequently filed for Chapter 11 bankruptcy protection, it would not "file or support any motion or proceeding under any provision of 11 U.S.C. § 1113 or 11 U.S.C. § 1114 . . . nor file or issue a notice of intent to terminate the Delta Pilots Retirement Plan" unless and until the occurrence of a certain defined financial "material shortfall." (Bankruptcy Protection Letter ¶ 3, a copy of which is attached hereto as **Exhibit "A"**). In the event of such a "material shortfall," Delta may then seek relief pursuant to § 1113 and § 1114, "but only to the extent such relief, in conjunction with all other actions taken or to be taken, is essential to the Company's ability to meet its obligations as they become due" and only if Delta complies with contractually specified consultation with ALPA in good faith.

39.

In defiance of the PWA, Bankruptcy Protection Letter, and the Bankruptcy Code, Delta has unilaterally ignored its obligation to pay the ongoing Pension Payments since the Petition Date.

40.

As of the date hereof, the PWA has not been rejected and Delta is obligated to honor all of its obligations thereunder pursuant to 11 U.S.C. § 1113(f) including its

obligation to make contributions to the Tax-Qualified Pilot Plan and to pay Non-Tax Qualified Pension Benefits.

CLASS ALLEGATIONS

41.

Named Plaintiffs reallege and restate the allegations contained in paragraphs 1 through 40 of this complaint against Delta with the same force and effect as if they had been fully restated herein.

42.

This action is properly brought as a class action pursuant to Rule 23(b)(1), (2) and (3) of the Federal Rules of Civil Procedure and Fed. R. Bankr. P. 7023.

43.

The “**Class**” consists of approximately 5,800 retired pilots, and their survivors, formerly employed by Delta who are entitled to receive pension benefits from the Tax-Qualified Pension Plan established for pilots pursuant to the express terms of the PWA, a collective bargaining agreement under which Delta continues to presently employ pilots during its reorganization under Chapter 11 of the United States Bankruptcy Code.

44.

The “**Subclass**” consists of approximately 3,485 members of the retired pilots Class who are also entitled to receive pension benefits directly from Delta pursuant to the Non-Tax Qualified Pension Plans established for pilots pursuant to the express terms of the PWA.

45.

The members of the Class and Subclass are so numerous that the joinder of all members would be impracticable.

46.

Named Plaintiffs further allege, on information and belief, that members of the Class reside in most, if not all, of the fifty states, as well as overseas, and that their joinder would be impractical.

47.

The instant litigation raises questions of law and fact common to the Class (and Subclass) which predominate overwhelmingly over issues affecting individual members. The common question of law critical to the resolution of each of the below enumerated counts of this class action adversary proceeding complaint and to the pension security and economic well-being of each member of the Class and Subclass is as follows: Does 11 U.S.C. § 1113 require a debtor in bankruptcy to continue making pension payments required to be paid to or on behalf of retired workers by a collective bargaining agreement until such collective bargaining agreement is modified or rejected or are such collectively bargained for pension obligations coming due post-petition accorded no higher status than a pre-petition unsecured debt?

48.

There is no respect in which this question can be answered differently for different members of the Class or Subclass.

49.

The prosecution of separate actions by individual class members would not only create a risk of inconsistent verdicts, but also would be likely to establish incompatible standards of conduct for Delta.

50.

The adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

51.

Delta has acted or refused to act on grounds generally applicable to the Class and Subclass claiming that it is not obligated to make the subject pension payments because they are pre-petition debts, thereby making the monetary relief and corresponding final declaratory relief appropriate as to the Class and Subclass as a whole.

52.

For all of these reasons, a class action is superior to any other available method for the resolution of this Class-wide controversy.

53.

The Named Plaintiffs are all members of the Class and Subclass, are qualified to represent the Class and Subclass, are representative of the Class and Subclass and each will adequately and fairly represent the Class and Subclass.

54.

Each Named Plaintiff is a retired Delta captain and is a member of the Board of Trustees of DP3, an organization which is known to this Court and which has been active in this case representing the interests of retired pilots.

55.

The Named Plaintiffs provided almost 300 years of combined service as Delta pilots and several assumed numerous and widely varied positions of pilot leadership with

the Air Line Pilots Association and/or in corporate management roles. In addition, while still working as active pilots, some of the Named Plaintiffs were involved in the negotiation of the PWA and the benefits that Delta has been refusing to provide.

56.

The Named Plaintiffs are entitled to receive the Pension Payments constitute a diverse and representative cross-section of retired pilots capable of appropriately representing the interests and concerns of all members of the Class and Subclass.

57.

The claims of the Named Plaintiffs are typical of, and do not conflict with, the claims of other class members. Not only do the Named Plaintiffs possess the same interests as other class members, but they will suffer the same injuries if the requested relief is not granted.

58.

The claims of the Named Plaintiffs are not only typical of the claims of the Class and Subclass, they are virtually identical. They involve the same facts, the same set of events and incidents, and the same actions by Delta. They involve the same federal statutes and common law and equitable principles.

59.

Named Plaintiffs are represented by counsel experienced in bankruptcy and complex litigation, including class actions.

60.

Named Plaintiffs are entitled to an Order of this Court certifying this action as a class action.

**COUNT I: DECLARATORY JUDGMENT - SECTION 1113 OF THE
BANKRUPTCY CODE REQUIRES DELTA TO MAKE COLLECTIVELY
BARGAINED FOR POST PETITION PENSION PAYMENTS PURSUANT TO
THE TAX-QUALIFIED AND NON-TAX QUALIFIED PENSION PLANS**

61.

Named Plaintiffs reallege and restate the allegations contained in paragraphs 1 through 60 of this complaint against Delta with the same force and effect as if they had been fully restated herein.

62.

This count is for declaratory judgment pursuant to 28 U.S.C. § 2201.

63.

11 U.S.C. § 1113 forbids any unilateral modification of benefits paid pursuant to a collective bargaining agreement – including pension benefits paid to retired union workers - unless certain substantive and procedural requirements are satisfied.

64.

11 U.S.C. § 1113 affords collective bargaining agreements the status of an assumed executory contract under 11 U.S.C. § 365 unless and until the substantive and procedural requirements of 11 U.S.C. § 1113 for rejection have been met.

65.

Until these requirements have been met and so long as the debtor accepts the benefits of an executory contract, such as the PWA, then it must fulfill all its obligations thereunder.

66.

11 U.S.C. § 1113(a) provides that “[t]he debtor in possession . . . may assume or reject a collective bargaining agreement only in accordance with the provisions of this

section” and § 1113(f) commands that “[n]o provision of [Title 11] shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section.”

67.

Through the Bankruptcy Protection Letter, Delta contractually bound itself in its collective bargaining agreement to a heightened standard more stringent than § 1113 in regards to pensions in the event of a bankruptcy filing and acknowledged that pension benefit payments were subject to the requirements of § 1113. Named Plaintiffs, and all Class members, are intended third-party beneficiaries of the PWA and the Bankruptcy Protection Letter.

68.

Section 1113 prohibits employers reorganizing under Chapter 11 from terminating, rejecting, modifying, or changing provisions of collective bargaining agreements that affect the rights or diminish the benefits of retirees *unless* the employer first satisfies the requirements of § 1113, including (i) the submission of a formal modification proposal, (ii) providing information relevant to evaluating the proposal, and (iii) consulting and negotiating in good faith with the authorized representative of the individuals receiving pension benefits pursuant to a collective bargaining agreement.

69.

If negotiations fail, Delta then has the burden of proving to the Court that its proposed modification or rejection of the pension benefits provided pursuant to the collective bargaining agreement is “necessary to permit the reorganization of the debtor” and was rejected by the retired pilots “without good cause.” Additionally, in this case,

Delta must also prove that its proposed modification to any retiree or pension benefits “in conjunction with all other actions taken or to be taken, is essential to the Company’s ability to meet its obligations as they become due.” (See Bankruptcy Protection Letter ¶ 4).

70.

By continuing to operate in bankruptcy and employ line pilots pursuant to the PWA without moving to modify or reject the PWA’s Pension Payment Provisions pursuant to 11 U.S.C. § 1113, Delta necessarily assumed the collective bargaining agreement by operation of 11 U.S.C. § 1113(a) and (f) and all of the ongoing obligations – arising pre-petition or post-petition – that went along with it pursuant to 11 U.S.C. § 365.

71.

So long as Delta is reorganizing in Chapter 11 and its pilots continue flying pursuant to the unrejected PWA, 11 U.S.C. § 1113 requires Delta to continue making all ongoing Pension Payments to and on behalf of its retired pilots, including both mandatory minimum funding contributions to the Tax-Qualified Pilot Plan and pension payments directly to the retired pilots pursuant to the non-tax qualified portion of the defined benefit plan, unless and until Delta meets its burden under § 1113.

72.

To date, Delta has not moved to modify or reject the Pension Payment Provisions.

73.

Delta's cessation of the Pension Payments required by the PWA constitutes an unlawful unilateral modification or rejection of the Pension Payment Provisions in derogation of 11 U.S.C. § 1113.

74.

If Delta is allowed to unilaterally cease making the Pension Payments to or on behalf of retirees, it will upset the dynamic established by § 1113 which requires debtors to comply with collective bargaining agreements until they are modified or terminated by the court or by agreement, *not by the debtor*. The statute deliberately places a financial burden on the debtor by requiring it to continue making all payments pursuant to the collective bargaining agreement in the absence of complying with the statutory scheme.

75.

Delta's circumvention of the procedures of 11 U.S.C. § 1113 has undermined the statutory scheme of the Bankruptcy Code to "confer in good faith in attempting to reach mutually satisfactory modifications."

76.

An actual case or controversy exists because Delta takes the position that its post petition obligations pursuant to the unrejected PWA constitute pre-petition debts which it is not obligated to pay despite accepting and retaining the benefits of the executory contract which gives rise to such obligations.

77.

Named Plaintiffs are entitled to declaratory judgment that the bankruptcy code require Delta to continue making the Pension Payments until such time as the PWA has been rejected or modified in accordance with the procedures of 11 U.S.C. § 1113.

WHEREFORE, Named Plaintiffs demand that this action be certified as a class action and that this Court declare that the Bankruptcy Code requires Delta to continue making the Pension Payments until such time as the PWA has been rejected or modified in accordance with the procedures of 11 U.S.C. § 1113 and that this Court award them their attorney's fees and costs of bringing this action.

COUNT II: SPECIFIC PERFORMANCE - THE PWA'S PENSION PAYMENT PROVISIONS REQUIRE DELTA TO MAKE MANDATORY MINIMUM FUNDING CONTRIBUTIONS TO THE TAX-QUALIFIED PILOT PLAN

78.

Named Plaintiffs reallege and restate the allegations contained in paragraphs 1 through 77 of this complaint against Delta with the same force and effect as if they had been fully restated herein.

79.

Delta's unlawful continued failure to make the required Minimum Funding Contributions has significantly increased the risk of an involuntary termination of the Tax-Qualified Pilot Plan by the PBGC and puts the retired pilots' annuities at grave risk.

80.

Current proposed pension legislation would allow Delta to extend its Minimum Funding Contributions over the next twenty years and may restrict the payment of lump sums based upon the funding status of the plan.

81.

If Delta pays the required Minimum Funding Contributions without paying the Supplemental Contributions, the Tax-Qualified Pilot Plan would remain in liquidity shortfall and would be barred from paying any additional lump sums. However, Delta's payment of the Minimum Funding Contributions would make an involuntary termination of the Tax-Qualified Pilot Plan by the PBGC less likely and would at least allow for the possibility that the legislative pension relief Delta and its retirees have lobbied so hard for might make a difference.

82.

So long as Delta is reorganizing in Chapter 11 and its pilots continue flying pursuant to the unrejected PWA, 11 U.S.C. § 1113 requires Delta to continue making all ongoing Minimum Funding Contributions to the Tax-Qualified Pilot Plan, unless and until Delta meets its burden under § 1113 with respect to these obligations.

83.

As direct third party beneficiaries of the PWA and the recipients of qualified pension benefits, Named Plaintiffs and the Class are entitled to an order of this Court specifically enforcing Delta's obligations under the Tax-Qualified Pilot Plan, incorporated into the PWA, to make the Minimum Funding Contributions as they come due.

WHEREFORE, Named Plaintiffs demand that this action be certified as a class action and that the PWA's Pension Payment Provisions be specifically enforced to require Delta to make the Minimum Funding Contributions to the Tax-Qualified Pilot Plan required by ERISA and the current PWA unless and until Delta meets its burden

under 11 U.S.C. § 1113 with respect to the PWA and that this Court award them their attorney's fees and costs of bringing this action.

COUNT III: SPECIFIC PERFORMANCE - THE PWA'S PENSION PAYMENT PROVISIONS REQUIRE DELTA TO PAY NON-TAX QUALIFIED PENSION BENEFITS

84.

Named Plaintiffs reallege and restate the allegations contained in paragraphs 1 through 83 of this complaint against Delta with the same force and effect as if they had been fully restated herein.

85.

Delta's retired pilots have the right to receive monthly Non-Tax Qualified Pension Benefits pursuant to the express terms of the current PWA of which they are direct and intended third party beneficiaries.

86.

So long as Delta is reorganizing in Chapter 11 and its pilots continue flying pursuant to the unrejected PWA, 11 U.S.C. § 1113 requires Delta to continue paying all ongoing monthly Non-Tax Qualified Pension Benefits to its retired pilots, unless and until Delta meets its burden under 11 U.S.C. § 1113 to reject or modify the PWA.

WHEREFORE, Named Plaintiffs demand that this action be certified as a class action and that the PWA's Pension Payment Provisions be specifically enforced to require Delta to pay monthly Non-Tax Qualified Pension Benefits to the Subclass of retired pilots as required by ERISA and the current PWA unless and until Delta meets its burden under 11 U.S.C. § 1113 with respect to its pension obligations to the Subclass of retired pilots and that this Court award them their attorney's fees and costs of bringing this action.

**COUNT IV: CLAIMS ARISING FROM DELTA'S UNAUTHORIZED
UNILATERAL REJECTION OF ITS OBLIGATIONS TO RETIRED PILOTS
UNDER THE CURRENT PWA ARE ENTITLED TO ADMINISTRATIVE
PRIORITY AND IMMEDIATE PAYMENT**

87.

Named Plaintiffs reallege and restate the allegations contained in paragraphs 1 through 86 of this complaint against Delta with the same force and effect as if they had been fully restated herein.

88.

As of the date of the filing of this Complaint, Delta had defaulted on the payment of the required quarterly Minimum Funding Contribution of \$31.4 million that was due to the Tax-Qualified Pilot Plan under the Plan's regular funding schedule on or about October 15, 2005 and had announced that it would not make any further payments.

89.

As of the date of the filing of this Complaint, Delta had defaulted on the required payment of Non-Tax Qualified Pension Benefits for the months of October, November, and December, 2005, and had announced that it would default on all future monthly payments as well.

90.

These Pension Payments were required pursuant to the express terms of the PWA.

91.

11 U.S.C. § 1113 requires a debtor to bargain in good faith and prove that its proposed modifications are necessary to the reorganization before terminating *any* collectively bargained for benefits.

92.

Because Delta assumed the PWA by operation of 11 U.S.C. § 1113, it assumed the PWA *cum onere*, and the expenses and liabilities incurred must be treated as administrative expenses pursuant to 11 U.S.C. § 503(b)(1)(A) and paid immediately.

93.

The Pension Payments are current post-petition obligations required by the unrejected and unmodified PWA now in effect. Delta does not have two separate collective bargaining agreements – one for active pilots and one for retired pilots – Delta has one contract pursuant to which it has obligations to both active and retired pilots.

94.

Delta wants to accept the benefits of the integrated PWA, but disavow its obligations to retirees under the same PWA. Delta cannot accept all of the benefits of an integrated collective bargaining agreement while picking and choosing which parts of the collective bargaining agreement it elects to perform.

95.

Unless and until Delta complies with the substantive and procedural requirements of § 1113 with respect to the Pension Payment Provisions of the current PWA, all of the unilaterally “skipped” Pension Payments must be accorded administrative priority as expenses incurred in connection with an assumed executory contract pursuant to Sections 1113, 365, and 503 of the Bankruptcy Code.

WHEREFORE, Named Plaintiffs demand that this action be certified as a class action and that the claims of the Class and Subclass for any and all Pension Payments accruing since the Petition Date be accorded administrative priority as expenses incurred

in connection with an assumed executory contract pursuant to Sections 1113, 365, and 503 of the Bankruptcy Code and that Delta be ordered to be pay all past due Pension Payments immediately and to pay future Pension Payments as they subsequently come due and that this Court award them their attorney's fees and costs of bringing this action.

Dated: December 14, 2005.

By: /s/ Dean Booth
Dean Booth (DB-3807)
Georgia Bar No. 067900
John A. Christy (JC-6826)
Georgia Bar No. 125518
Jason W. Graham (JG-0336)
Georgia Bar No. 304595

SCHREEDER, WHEELER & FLINT, LLP
127 Peachtree Street, N.E.
1600 Candler Building
Atlanta, Georgia 30303-1845
Telephone: (404) 681-3450
Facsimile: (404) 681-1046

Attorneys for James H. Gray, James Haigh,
Reuben Black, William Wirth, James Bomar,
Ronald Stowe, Evan Gost, Richard Colby, and
Donald Mairose

Bankruptcy Protection Letter

Delta Air Lines, Inc. ("the Company") and the Air Line Pilots Association, International (the "Association") agree as follows:

1. The modifications (the "Modifications") to the Delta Pilot Working Agreement ("PWA") contained in Letter of Agreement #46 have been negotiated in good faith by the Company and the Association on the basis of the best information currently known to the Company and the Association and with the intent and goal of enabling the Company to avoid reorganization under Chapter 11 of the Bankruptcy Code through, among other things, 1) labor cost savings provided by pilots in Letter of Agreement #46, 2) previous non-pilot cost savings and additional non-pilot cost savings to be achieved by changes to non-pilot pay, benefits, productivity improvements, and other non-pilot operational changes previously announced by the Company and 3) other cost savings previously announced and to be achieved with respect to other stakeholders, including creditors, lessors and vendors. The Modifications are intended to permit the Company to avoid irreparable harm and provide for appropriate changes to the PWA that are necessary to contribute to the successful restructuring and reorganization of the Company within the context of the other non-pilot cost savings achieved and to be achieved by the Company. This Bankruptcy Protection Letter is provided in consideration for the Modifications.
2. This Bankruptcy Protection Letter will become effective and binding when Letter of Agreement #46 becomes final and binding on the Company and the Association.
3. If the Company enters reorganization under Chapter 11 of the Bankruptcy Code subsequent to the date this Bankruptcy Protection letter becomes effective and binding, then, subject to paragraph 4 hereof, neither the Company nor any of its affiliates will file or support any motion or proceeding under any provision of 11 U.S.C. §1113 or 11 U.S.C. §1114 with respect to the PWA as modified by Letter of Agreement #46 nor file or issue a notice of intent to terminate the Delta Pilots Retirement Plan.



4. a. If at any time (i) the Company reasonably expects that its Total Liquidity (as defined below) measured as of the last day of any two consecutive months (the "Measurement Period") will be materially less than the forecast Total Liquidity (as defined below) for such Measurement Period and (ii) such shortfall is reasonably not expected to be a temporary one, the Company may give written notice of such expected material shortfall to the Association, setting forth in reasonable detail the underlying circumstances and reasons for the change to such forecasts. For purposes of this paragraph 4., "material shortfall" or "materially less" with respect to Total Liquidity means that the Total Liquidity (x) is 20% less than the forecast Total Liquidity or (y) presents a reasonable risk that the Company will be unable to maintain the minimum cash balance required by the debtor in possession financing lenders; and such a material shortfall is "temporary" if it is not expected to continue for one or more additional Measurement Periods or results from variances in the timing of disbursements, payables, or receipts; "forecast Total Liquidity" for any Measurement Period means the forecast Total Liquidity for such Measurement Period contemplated by the Five-Year Business Plan dated September 9, 2004, updated as of and provided to the Association on September 23, 2004, provided that for any determination involving any Measurement Period ending on or before June 30, 2005, forecast Total Liquidity shall be adjusted on a pro forma basis to reflect fuel costs at the equivalent of an additional \$2 per barrel of oil. During the 30-day period following the giving of such notice, the Company will consult in good faith with the Association concerning possible further actions that could be taken by the Company, including modifications to the PWA, to remedy such expected material shortfall and its projected consequences. If (x) at the end of such 30-day period the Company and the Association have not agreed on proposed actions that could reasonably be expected to effect a long-term remedy for such expected shortfall and (y) during the applicable Measurement Period the Company's Total Liquidity actually is materially less than the forecast Total Liquidity for such period, then the provisions of paragraph 3 shall not be applicable to restrict the Company's ability after the end of the later of such periods to seek relief from the PWA under 11 U.S.C. § 1113 or § 1114, but only to the extent such relief, in

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conjunction with all other actions taken or to be taken, is necessary to remedy such material shortfall.

b. In addition, if at any time the Company reasonably forecasts a material shortfall in its Total Liquidity for a Measurement Period, as compared to the forecast Total Liquidity for that Measurement Period, that (i) presents a reasonable risk that the Company will be unable to maintain its minimum cash balance required by the debtor in possession financing lenders or (ii) is reasonably expected to make the Company unable to currently meet its obligations as they come due, and in either case is reasonably expected not to be a temporary one if relief is not obtained prior to the end of such Measurement Period, then the provisions of paragraph 3 shall not be applicable to restrict the Company's immediate ability to seek emergency relief from the PWA under 11 U.S.C. § 1113 or § 1114, but only to the extent such relief, in conjunction with all other actions taken or to be taken, is essential to the Company's ability to meet its obligations as they become due and only if the Company has first consulted with the Association for no less than 10 days on the amount of and reasons for such material shortfall, and on actions that could be taken by the Company, including modifications to the PWA, to remedy such expected material shortfall.

c. "Total Liquidity" at any time means the total of unrestricted cash and cash equivalents of the Company and its subsidiaries and amounts actually available to be drawn by them under credit facilities and similar liquidity facilities.

d. Nothing in this paragraph 4. is intended to reduce, and nothing in this paragraph shall be construed to reduce, the Company's obligations or the standards for relief set forth in 11 U.S.C. § 1113 or § 1114 in the event such relief is sought by the Company pursuant to the terms of this paragraph.

5. The Company will support the appointment of the Association to an official committee of unsecured creditors in the event a bankruptcy petition is filed.
6. The Company has informed its major creditors, including its lenders, of the amount of labor cost savings it has sought from the Association and will inform them when it is

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ratified by the membership and executed by the parties. Such creditors shall also be informed of the execution of this Bankruptcy Protection Letter.

7. If this Bankruptcy Protection Letter does not become effective and binding in accordance with paragraph 2, then this Bankruptcy Protection Letter will be null and void and neither this Letter nor any discussions concerning this Letter will be cited or referred to in any judicial, bankruptcy, administrative or arbitration proceeding. If Letter of Agreement #46 does become effective, then this Bankruptcy Protection Letter will continue in full force and effect subject to the duration clause (*Section 28 A. 1.*) of the PWA as modified by Letter of Agreement #46.
8. In the event of a dispute regarding this Bankruptcy Protection Letter arising during the pendency of a bankruptcy proceeding concerning the Company, such dispute will not be subject to the grievance and/or System Board of Adjustment procedures of *Section 18* and *Section 19* of the PWA and will be subject to the jurisdiction of the Bankruptcy Court in which the Chapter 11 proceeding is pending. In the event of a dispute regarding this Bankruptcy Protection Letter arising before the filing of a bankruptcy proceeding concerning the Company, any such pending grievance and/or System Board of Adjustment procedures of *Section 18 and 19* of the PWA will be transferred to the jurisdiction of the Bankruptcy Court once the Chapter 11 proceeding is pending.

Dated this ____ day of October, 2004.

Gerald Grinstein
CEO

Captain Duane Woerth
President ALPA

Scott A. Kruse
Chief Negotiator

Captain John Malone
Chairman, Delta ALPA MEC

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Geraldine P. Carolan
Managing Director, Labor Relations

Captain Don Wykoff
Chairman, Delta ALPA
Negotiating Committee