

Hearing Date: January 5, 2006 @ 2:30 p.m.

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James Haigh, Reuben Black, William Wirth, James Bomar,
Ronald Stowe, Richard Colby, and Donald Mairose

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

TO THE HONORABLE PRUDENCE CARTER BEATTY
UNITED STATES BANKRUPTCY JUDGE

**REPLY MEMORANDUM IN SUPPORT OF AMENDED AND RESTATED
MOTION FOR APPOINTMENT OF RETIRED PILOTS' COMMITTEE**

I. Introduction.

There are only two issues to be determined by the Court at Thursday's hearing with respect to this motion:

- 1) Does the Court believe that it is appropriate to appoint a Section 1114 retired pilots' committee at this time to begin preparing for Delta's coming proposal to modify retiree benefits for the retired pilots?

- 2) Does the Court believe that it is more appropriate to appoint a separate Section 1114 retired pilots' committee to deal with collectively bargained for retiree benefits, or should we just throw a few retired pilots on the existing non-union retirees' committee?

Although Delta does not argue that § 1114 representation for retired pilots should be further delayed, Delta wants the Court just to throw a few retired pilots on the existing non-union retiree committee.

II. A § 1114 committee should be appointed now.

Delta and its professionals have literally spent thousands of hours “getting ready” for retired pilot § 1114 benefits issues. DP3 has in fact been acting as an *ad hoc* § 1114 committee since the filing of this bankruptcy proceeding. Contrary to Delta’s rather personal attacks, DP3 has attempted to gather, analyze, and disseminate information regarding the retiree benefits of retired pilots as best it can without the resources and support of an official court-appointed committee.¹ Virtually all of the facts and figures supplied throughout Delta’s twenty-four page response brief are available only through Delta which has fiercely resisted efforts to obtain access to such data through discovery. The retired pilots are hostage to Delta’s whims regarding what filtered information and data will be shared with the retirees or the Court.²

Appointing a committee for retired pilots now would allow the retired pilots to officially interact with Delta on issues like the Delta Pilots Disability & Survivorship Plan (“D&S Plan”) payment issue and to adequately prepare for the eventual proposal to

¹ Although Delta apparently pays its counsel to review and analyze every posting on DP3’s website, DP3 does not.

² Delta finally relented when faced with a hearing on the motion for a Rule 2004 examination. The email exchange attached hereto as Exhibit “A” also substantiates the efforts of DP3 in obtaining clarity on the issue of withdrawals from the D&S Plan as well as the resumption of D&S Plan payments to retirees. It also undercuts Delta’s accusations of sharp tactics and litigation gamesmanship.

modify their retiree benefits³. Neither Delta nor the Committee of Unsecured Creditors have offered a justifiable reason for delaying court-recognized representation for the retired pilots until the eve of their retiree benefits being on the chopping block.

III. A separate § 1114 committee for retired pilots is appropriate in this case.

Delta concedes that this Court is authorized to appoint a separate § 1114 committee for retired pilots, but argues that the Court would be doing something “unusual” in doing so. Delta’s workforce *is* unusual. The pilots have the only large union and the vast majority of Delta’s workforce is non-union. Unlike many other legacy carriers, Delta’s flight attendants are not unionized, its mechanics are not unionized, its baggage handlers are not unionized, its ticket agents are not unionized, *etcetera*. Unlike many other companies, Delta does not have a single medical plan for all employees, but rather has a separate medical plan for which only its unionized pilots (and retired pilots) are eligible.⁴ Unlike many other unions, ALPA has historically recognized its inherent conflict of interest in representing retired pilots and chooses to cede the issue of retiree benefits to a court-appointed committee pursuant to § 1114(c)(2). Regardless of what other courts have done in other cases, a separate § 1114 committee for retired pilots is appropriate *in this case*.

If ALPA had chosen to represent the retired pilots pursuant to § 1114(c)(1) (and the Court did not determine that different representation of the retired pilots would be more appropriate), Delta would have no choice but to deal with the non-union retiree

³ Delta admits that it did not rectify its failure to pay benefits to retired pilots pursuant to the D&S Plan until it was contacted by retirees and then only on the eve of the original hearing date for the non pilot Section 1114 committee’s motion regarding withdrawals from the non-pilots’ D&S Plan. DP3 believes that it first brought this issue to Delta’s attention by a letter from its Chairman dated November 23, 2005, a copy of which is attached hereto as Exhibit “B”. Thus, DP3 was involved in getting Delta to resume paying retired pilots under the D&S Plan.

⁴ Under Delta’s logic, a single committee dominated by non-pilots would lead to the absurd result of non-pilots having a controlling vote on changes to the pilot medical plan.

committee with respect to their retiree benefits and with ALPA with respect to the retiree benefits of retired pilots. 11 U.S.C. § 1114 requires this result. Delta has offered no compelling reason for this statutorily-mandated separation of union and non-union retiree representation to be collapsed due to ALPA's decision to cede its right to represent retired pilots for purposes of § 1114 to a court appointed committee.

Delta's attempt to dismiss the inherent and obvious conflicts (noted by the Court on several occasions) between retired union pilots and Delta's other non-union retirees by analogizing a § 1114 committee to a creditors' committee shows no appreciation for the human element involved in the appointment of a retiree committee. Unlike a creditors' committee which is usually comprised of large corporations or organizations familiar with the bankruptcy process and represented by counsel for all purposes on the committee, a § 1114 committee is comprised of individual retired *people* who are deeply and personally concerned about their medical and other benefits. When the creditors' committee meets, it is a meeting of a bunch of lawyers. While the § 1114 committee might retain counsel and other professionals, when the retiree committee meets it is a meeting of *retired people* whose medical and other benefits are in the crosshairs.

Any feigned concern over the additional cost of a separate committee for retired pilots is laughable in light of the millions of dollars Delta has spent "getting ready" for retiree benefits issues.⁵ According to the recently filed Monthly Operating Report for the Month Ended November 30, 2005, Delta's "professional fees incurred in connection with our reorganization proceedings approximated \$15 million." Addressing the § 1114 needs of the retired pilots will cost the estate additional professional fees regardless of whether

⁵ Pre-petition, Delta engaged Alston and Bird, LLP as "Special Pension and Employee Benefits" counsel to study these issues. Delta paid that firm \$1,549,672 in the year leading up to the petition and a \$400,000 retainer for post petition work.

the work is done through the existing committee or through a separate committee. The work required to prepare for Delta's § 1114 proposal, and hopefully to participate in the formulation of the proposal, has to be done in any event and Delta, the bankruptcy estate, and the retired pilots would be better served by starting now rather than being forced to prepare under the gun. Any legitimate concerns about the scope of work being done by the retired pilots' committee can be dealt with through the fee application process. The marginal additional cost of doing this work through a separate committee, in the context of the millions being spent for Delta's professionals in this bankruptcy proceeding, does not justify giving pilot and non-pilot retirees a say over each others' retiree benefits when that would be unthinkable pre-bankruptcy.

IV. Conclusion.

The last one-third of Delta's brief is devoted to a vituperative bashing of DP3 and its counsel. While saying that "Delta maintains a good working relationship with many of the individual Board members of DP3 and would not object to any of these individuals joining the existing retiree committee" (Debtors' Supplemental Memorandum in Support of Objection to Amended and Restated Motion for Appointment of Retired Pilots' Committee, fn. 10), Delta then launches into a diatribe accusing DP3 of overstating its role in the bankruptcy. This Court knows the truth. DP3 has been vigorously representing the interests of retired pilots throughout these bankruptcy proceedings. DP3 has engaged in standard discovery in an attempt to break Delta's carefully guarded monopoly on facts and data concerning retiree benefits. Delta's unexplained resistance to such standard discovery does not make the discovery unwarranted.

Delta's characterization of DP3's filing of the class action adversary proceeding is also an unwarranted attack on retired pilots. It was filed at the Court's suggestion because, despite the Court's admonition that the parties should talk and try to settle the pension issue, no discussions have been held other than a brief exchange during which Delta expressed concern that it could not settle the pension issues if it wanted to because DP3 did not represent all retired pilots. The class action provides Delta with the appropriate vehicle to settle the pension issues, if it serious about doing so. The appeal of the denial of the motion to compel on purely procedural grounds could not be helped since other parties appealed the order before DP3⁶. However, the pendency of the appeal does not prevent the adversary proceeding from going forward.

Regardless, none of these "side issues" about discovery and pension litigation have anything to do with whether it would be appropriate to appoint a separate § 1114 committee of retired pilots. Delta wants to maintain its advantage by any means necessary. This Court should level the playing field and allow the retired pilots to adequately and appropriately prepare and defend themselves and their retiree benefits.

Dated: January 3, 2006

SCHREEDER, WHEELER & FLINT, LLP

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

⁶ Contrary to Delta's assertions, it is Delta, not the Movants, who are creating the procedural morass because Delta is seeking to litigate the substantive issues on appeal when the Court' order was clearly procedural in nature. See Debtors'\Appellees\ Counter-Statement of Issues and Counter-Designation of Additional Items to be Included in the Record on Appeal. [Docket Entry 1257]. A copy is attached hereto as Exhibit "C".

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Attorneys for DP3, Inc. d\ba Delta
Pilots' Pension Preservation
Organization, James H. Gray, James
Haigh, Reuben Black, William
Wirth, James Bomar, Ronald Stowe,
Richard Colby, and Donald Mairose

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Christy, John

From: Benjamin Kaminetzky [kaminet@dpw.com]
Sent: Friday, December 16, 2005 11:43 AM
To: Christy, John
Cc: Booth, G. Dean; Graham, Jason; Hord, J Carole
Subject: Re: DAL

I agree -- but it has to be stated as DP3's view of the law.

Also, looks like you are on your Blackberry and I am therefore not sure that you received my "blacklined" revisions to your email (i.e., not sure the text that I struck out appeared as such).

Here is the "clean" version:

Ben- we have agreed to continue the hearings on appointment of the 1114 committee to January 5, 2006 on the agreement that:

1. DAL to send a single ltr to retired pilots drafted by DP3 that is accurate and non-disparaging to Delta;
2. DAL will produce the same dox it gave to DALRC/retiree committee, except for materials related to the non-pilot D&S trust -- we will enter into same (or substantially similar) confidentiality order as DALRC/retiree committee- you will provide us with that order as soon as possible so that the document production will begin promptly;
3. DAL will confer with us once we review dox and, if necessary, meet with us to respond to questions which we might have;
4. DAL is recommencing disability payments to pilots and will make up arrears since petition date;
5. DAL is not withdrawing funds from the pilots' d&s plans for other than payments to the beneficiaries of such plans, i.e. withdrawals of the sort alleged by DALRC are not being made;
6. We continue 2004 motion, our motion to compel and your motion for protective order to be reset, if necessary, only in accordance with the case management order;
7. you will confirm items 4 and 5 for me in an email or letter; and
8. We confirm that we are not moving for a committee of retired pilot based on Section 1113 or 1102, only for Section 1114 purposes.

Based on the foregoing I understand that we do not need a call with the Courtt to discuss matters pertaining to our clients

EXHIBIT A

At 11:24 AM 12/16/2005 -0500, Christy, John wrote:

Ben so that we are clear-a contrary legal position expressed by dp3 is not to be considered inaccurate or disparaging

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Benjamin Kaminetzky <kaminet@dpw.com>
To: Christy, John <jchristy@SWFLLP.com>
CC: Booth, G. Dean <dbooth@SWFLLP.com>; Graham, Jason <jgraham@SWFLLP.com>; Hord, J Carole <chord@swfllp.com>
Sent: Fri Dec 16 11:20:37 2005
Subject: Re: DAL

John:

See my few edits below that reflect our discussions more precisely and corrects the numbering error. Subject to this, we are in agreement and I will get you confirmation on items 4 and 5.

Ben

At 10:39 AM 12/16/2005 -0500, Christy, John wrote:

Ben- we have agreed to continue the hearings on the Rule 2004 motion and on the appointment of the 1114 committee to January 5, 2006 on the agreement that:

1. DAL to send a single ltr to retired pilots drafted by DP3 that is accurate and non-disparaging to Delta;
2. DAL will produce the same dox as respects pilots as it gave to DALRC/retiree committee, except for materials related to the non-pilot D&S trust -- we will enter into same (or substantially similar) confidentiality order as DALRC/retiree committee- you will provide us with that order as soon as possible so that the document production will begin promptly;
3. DAL will confer with us once we review dox and request to, if necessary, meet with us to respond to questions which we might have;
4. DAL is recommencing disability payments to pilots and will make up arrears since petition date;
5. DAL is not withdrawing funds from the pilots' d&s plans for other than payments to the beneficiaries of such plans, i.e. withdrawals of the sort alleged by DALRC are not being made;
6. We continue 2004 motion, our motion to compel and your motion for protective order to be reset, if necessary, only in accordance with the case management order;

7. you will confirm items 4 and 5 for me in an email or letter; and
8. We confirm that we are not moving for a committee of retired pilot based on Section 1113 or 1102, only for Section 1114 purposes.

Based on the foregoing I understand that we do not need a call with the Courtt to discuss matters pertaining to our clients

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The Delta Pilots Pension Preservation Organization, Inc.
P.O. Box 76362
Atlanta, GA 30358

www.dp3.org

November 23, 2005

Ms. Beth Johnston
Vice President-Human Resources
Delta Air Lines
P.O. Box 20706
Atlanta, GA 30320-6001

Re: Improper offsets under the Delta Pilots Disability and Survivorship Plan

Dear Beth; *Beth*

This letter is being submitted by DP3, Inc. on behalf of retired Delta pilots and beneficiaries who qualify for monthly long-term disability payments under the Delta Pilots Disability and Survivorship Plan (the "D&S Plan"). The purpose of this letter is to insist that these payments comply with the D&S Plan by reducing the amount due monthly only by the amounts of permitted offsets. Under the D&S Plan and the Pilot Working Agreement as amended by Letter of Agreement #46, no offsets are permitted against monthly long-term disability payments for defined benefit retirement plans except for amounts "actually paid" under those retirement plans.

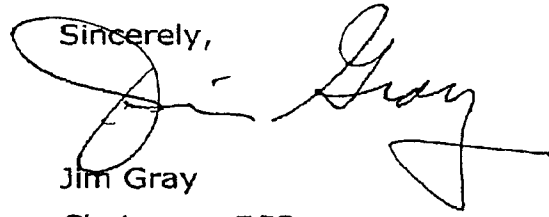
No payments were made under any nonqualified Delta plans October 1 or November 1, and Delta has announced that no such payments will be made. Thus, no deduction should have been made in monthly long-term disability payments for payments under any nonqualified Delta plans. However, retirees have reported to us that October payments and November payments continued deductions for amounts from nonqualified plans. Because those retirement amounts were not "actually paid", they may not be offset against long-term disability payments.

Please promptly confirm by reply mail that the October and November payment shortfall will be remedied immediately and that succeeding monthly payments will be reduced only to the extent that payments are concurrently made for nonqualified defined benefit plans. Delta's failure to make retirement plan payments severely affects disabled pilots and their survivors

EXHIBIT B

already without your compounding the harm by shorting monthly long-term disability payments for nonexistent retirement payments.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Gray". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke extending to the right.

Jim Gray
Chairman, DP3

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Attorneys for Debtors and
Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
In re: :
: :
: Chapter 11 Case No.
DELTA AIR LINES, INC., et al., :
: 05-17923 (PCB)
: :
Debtors. : (Jointly Administered)
: :
----- X

**DEBTORS'/APPELLEES' COUNTER-STATEMENT OF ISSUES AND
COUNTER-DESIGNATION OF ADDITIONAL ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Delta Air Lines, Inc. ("Delta") and those of its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the "Debtors"),¹ by and through their undersigned attorneys, hereby submit, pursuant to Federal Rule of Bankruptcy Procedure 8006, the following counter-statement of issues presented on

¹ The Debtors are the following entities: ASA Holdings, Inc.; Comair Holdings, LLC; Comair, Inc.; Comair Services, Inc.; Crown Rooms, Inc.; DAL Aircraft Trading, Inc.; DAL Global Services, LLC; DAL Moscow, Inc.; Delta AirElite Business Jets, Inc.; Delta Air Lines, Inc.; Delta Benefits Management, Inc.; Delta Connection Academy, Inc.; Delta Corporate Identity, Inc.; Delta Loyalty Management Services, LLC; Delta Technology, LLC; Delta Ventures III, LLC; Epsilon Trading, Inc.; Kappa Capital Management, Inc.; and Song, LLC.

appeal and counter-designation of additional items to be included in the record on appeal with respect to (1) the October 27, 2005 Notice of Appeal (Docket No. 961) and October 31, 2005 Amended Notice of Appeal (Docket No. 980) of Fiduciary Counselors Inc. (“Fiduciary Counselors”), (2) the November 3, 2005 Notice of Appeal (Docket No. 1054) and November 4, 2005 Amended Notice of Appeal (Docket No. 1071) of the Air Line Pilots Association (“ALPA”), and (3) the November 4, 2005 Notice of Appeal (Docket No. 1078) of DP3, Inc. d/b/a/ Delta Pilots’ Pension Preservation Organization (“DP3”), James H. Gray, James Haigh, Reuben Black, William Wirth, James Bomar, Ronald Stowe, Evan Gost, Richard Colby, and Donald Mairose.

Counter-Statement of Issues Presented on Appeal

Should the Bankruptcy Court’s decision be affirmed based on the controlling law of this Circuit, as stated in Air Line Pilots Association, International v. Shugrue (In re Ionosphere Clubs, Inc.), 22 F.3d 403 (2d Cir. 1994), that the prioritization of collectively bargained obligations pursuant to §§ 503(b) and 507 of the Bankruptcy Code does not constitute a unilateral rejection or alteration of the collective bargaining agreement within the meaning of § 1113(f) of the Bankruptcy Code?

Counter-Designation of Additional Items to Be Included in the Record on Appeal

Pursuant to Federal Rule of Bankruptcy Procedure 8006, the Debtors counter-designate the following additional items to be included in the record on appeal:

Date	Docket No.	Pleading
09/14/2005	10	Declaration of Edward H. Bastian Pursuant to Rule 1007-2 of the Local Bankruptcy Rules of the Southern District of New York and in Support of Debtors’ Informational Brief in Support of First Day Motions

Date	Docket No.	Pleading
09/14/2005	13	Debtors' Informational Brief in Support of First Day Motions
09/14/2005	21	Debtors' Motion Pursuant to Sections 105(a), 362(d) and 363(b) of the Bankruptcy Code for Authorization to (i) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation, (ii) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (iii) Allow Employees to Proceed with Outstanding Workers' Compensation Claims and (iv) Authorize Applicable Banks and Other Financial Institutions to Receive, Process, Honor and Pay All Checks Presented for Payment and to Honor All Fund Transfer Requests
09/14/2005	67	Bridge Order Pursuant to Sections 105(a), 362(d) and 363(b) of the Bankruptcy Code Authorizing the Debtors to (i) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation, (ii) Maintain their Employee Benefits Programs and Pay Related Administrative Obligations, (iii) Allow Employees to Proceed without Outstanding Workers' Compensation Claims and (iv) Authorize Applicable Banks and Other Financial Institutions to Receive, Process, Honor, and Pay All Checks Presented for Payment and to Honor All Fund Transfer Requests
09/16/2005	150	Order Granting Motion for Authorization to (i) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation, (ii) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (iii) Allow Employees to Proceed with Outstanding Workers' Compensation Claims and (iv) Authorize Applicable Banks and Other Financial Institutions to Receive, Process, Honor and Pay All Checks Presented for Payment and to Honor All Fund Transfer Requests
10/06/2005		Transcript of hearing held on October 6, 2005 at 1:30 p.m. before the Honorable Prudence Carter Beatty ²

² A copy of the transcript is filed herewith.

New York, New York
Dated: November 17, 2005

By: /s/ Benjamin S. Kaminetzky
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Marshall S. Huebner (MH 7800)
Benjamin S. Kaminetzky (BK 7741)
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Attorneys for Debtors and
Debtors in Possession

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **REPLY MEMORANDUM IN SUPPORT OF AMENDED AND RESTATED MOTION FOR APPOINTMENT OF RETIRED PILOTS' COMMITTEE** was served via first class U. S. mail in properly addressed envelopes with sufficient postage affixed thereon to insure delivery upon the following:

Honorable Prudence Carter Beatty U.S. Bankruptcy Court Southern District of New York Alexander Hamilton Custom House One Bowling Green New York, NY 10004-1408	Davis Polk & Wardell Attn: Marshall S. Huebner, Esq. 450 Lexington Avenue New York, NY 10017	Stroock & Stroock & Lavan, LLP Attn: Lawrence M. Handelsman, Esq. 180 Maiden Lane New York, NY 10038
Debevoise & Plimpton, LLP Attn: Richard F. Hahn, Esq. 919 Third Avenue New York, NY 10022	Office of The United States Trustee Southern District of New York Attn: Greg Zipes, Esq. 33 Whitehall Street Suite 2100 New York, NY 10004	Akin Gump Strauss et al Attn: Daniel H. Golden, Esq. 490 Madison Avenue New York, NY 10022
David S. Miller Giuliani Capital Advisors, LLC Five Concourse Parkway, Suite 2750 Atlanta, GA 30328	Bankruptcy Services LLC Attn: Robert Saraceni 757 Third Avenue New York, NY 10017	Securities and Exchange Commission Attn: Michael A. Berman 100 F Street, NE Washington, DC 20549
Securities and Exchange Commission Attn: Nathan Fuchs 3 World Financial Center New York, NY 10281	Internal Revenue Service Attn: Sid Brown 290 Broadway New York, NY 10008	

I hereby further certify that the foregoing is a complete list of the Non-ECF Participants on www.deltadocket.com as of 9:00 a.m. on January 3, 2006.

This 3rd day of January, 2006.

/s/ John A. Christy

John Christy

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