

MILLER & MARTIN PLLC
Dean Booth (DB-3807)
Shelley D. Rucker, (SR- 8175)
Ryan Kurtz, (RK-0427)
1170 Peachtree Street, NE, Suite 800
Atlanta, Georgia 30309
Telephone: (404) 962-6100
Facsimile: (404) 962-6300
and

SEWARD & KISSEL, LLP
Ronald L. Cohen (RC- 3897)
One Battery Park Plaza
New York, New York 10004
Telephone: (212) 574-1515
Facsimile: (212) 480-8421
*Attorneys for DP3, Inc. d/b/a
Delta Pilots' Pension Preservation Organization
R. Black, R. Colby, J. Gray, D. Mairose,
R. Stowe, W. Wirth, J. Mills, and R. Ross*

Hearing Date and Time: September 1, 2006, 9:30 a.m.
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**RESPONSE OF DP3, INC. TO DEBTORS' MOTION
SEEKING A DETERMINATION THAT THEY SATISFY THE FINANCIAL
REQUIREMENTS FOR A DISTRESS TERMINATION OF THE DELTA PILOTS
RETIREMENT PLAN AND APPROVAL OF SUCH TERMINATION**

DP3, Inc. d/b/a Delta Pilots' Pension Preservation Organization ("DP3") and retired pilots James H. Gray, Reuben Black, Richard Colby, Don Mairose, Ron Stowe, William Wirth, John Mills, and Roger Ross (collectively referred to as "Trustees"), by their undersigned attorneys, hereby respond to the Debtors' Motion, seeking a determination that it satisfies the financial requirements for a distress termination of the Delta Pilots Retirement Plan (the

“Retirement Plan”) and approval of such termination. See Docket No. 3013 (the “Motion”), filed August 4, 2006. In support of their objection, DP3 and the Trustees respectfully state:

SUMMARY OF OBJECTION

1. The Trustees and DP3 respond to the Motion and request a delay on the basis that a determination of the Debtors’ financial distress may be premature, given that the law which created the very problem of which the Debtors complain is in flux. The Trustees and DP3 request the hearing on the Motion be delayed to allow for a full examination of the recently passed Pension Protection Act of 2006 (the “PPA”) and the exploration of a legislative solution to the problems caused by an accelerated benefits option (the “Lump Sum Option”), or, in the alternative, that the Debtors be required to supplement its Motion to prove that the Retirement Plan must still be terminated even if the Lump Sum Option can be removed.

AUTHORITY AND ARGUMENT

2. The Debtors’ Motion seeks to terminate the Retirement Plan in order to avoid a “near term operational and financial crisis,” to insure the availability of exit financing (Docket No. 3013 at p. 28, ¶ 56), to avert a “financial and operational crisis caused by subsequent waves of early retirements by senior Delta pilots” (Id. at p. 31, ¶ 60), and to meet the feasibility standard required for confirmation of Debtors’ bankruptcy plan. (Id. at p. 32, ¶ 62). This entire case for termination is premised on the Debtors’ belief that the Lump Sum Option currently contained in the Retirement Plan is an overwhelming burden to the Debtors’ future. It appears from the Motion that if this provision could be removed, there would be no need to terminate the Retirement Plan.

3. DP3 did not intend to object to the termination of the Retirement Plan based on the facts that Debtors recite in their Motion, now supported by the declarations of Mr. Bastian,

Ms. McDaniel, Mr. Watson, and Mr. Coleman. In particular, the representation by Debtors that future retirees exercising their Lump Sum Options would worsen Delta's financial problems and reduce the benefits ultimately payable by the Pension Benefit Guaranty Fund to current retirees weighed heavily in the Trustees' and DP3's consideration of their position on termination.

4. Subsequently, however, Congress passed the PPA, and the President signed the pension reform into law on August 17, 2006. One of the changes contained in its 900 pages of new provisions and amendments will alter governing pension law dramatically by forbidding an underfunded single-employer defined benefit pension plan from making lump sum payments if the plan is sponsored by an employer who is a debtor in Chapter 11 bankruptcy proceedings. See Pension Protection Act of 2006, H.R. 4, Section 103(a), p.82. This provision is effective for collectively bargained pension plans like Debtors'; beginning January 1, 2010. Id. at p.97. The impact of this newly enacted, extensive pension reform is still being analyzed. DP3 and the Trustees contend that no finder of fact can determine whether the Debtors can show sufficient financial hardship without fully vetting the effect of the PPA on the Retirement Plan.

5. While the Debtors include some analysis of the PPA's impact in their discussion of the extension of the period to cure underfunding, it would be a Herculean task for the parties who are faced with responding to the Motion to have fully digested the legislation and to determine that there are not other provisions that may provide some additional relief to the Debtors. Even some of the legislators voting on H.R.4 were concerned with how quickly the bill was put together and the impact it would have. See 151 CONG. REC. H6154 (daily ed. July 28, 2006) (Statement of Rep. Andrews) (" . . . I must rise in opposition to this bill because of its procedural irregularity. There is a conference which was seated several months ago that is dealing with these issues. What is before us tonight is a brand-new bill, not a conference report.

This does not recognize months of negotiation between the two Houses and between the two parties. It is a brand-new bill that starts without anyone I think truly vetting or understanding.”)

6. If such relief is available in the new legislation or through any bill proposed in the near future to address technical corrections, there might be new hope for the Debtors to keep the Retirement Plan and to continue with a successful reorganization. The inability to avoid the Lump Sum Option is the keystone of the Debtors’ arguments in support of the Retirement Plan termination. Should that keystone be removed, the Motion does not address whether termination would still be necessary.

7. The Debtors focus on the expense of continuing the Retirement Plan in the Motion; however, the termination of the Retirement Plan is not without costs. Delta will be obligated to pay \$650 million in notes to the Airline Pilots Association, International (“ALPA”) for the benefit of the current pilots in the event that the Retirement Plan is terminated. The termination will also result in a significant claim against the Debtors by the Pension Benefit Guaranty Fund. Further, the size of this claim will dilute the recovery of other creditors in this case.

8. Given the costs of termination to the Debtors and the relative benefits to the retirees, the current pilots and the Pension Benefit Guaranty Fund if the Debtors can continue the Retirement Plan without the attendant operational and financial risks, a delay to give the other affected parties an opportunity to explore the new legislation and to seek additional legislative relief seems a small price to pay. The termination of the Retirement Plan is relief of the last resort and will result in immediate and irreparable harm to the retired pilots. Every means of avoiding it should be explored if there is a possibility of a “win – win” situation for the Debtors and the retirees. If, on the other hand, there is no hope for the Retirement Plan even if the Lump

Sum Option may be avoided, then the creditors deserve to know that there are other risks to be considered in the future as the Debtors approach confirmation, and the Debtors should provide that information.

BACKGROUND

9. DP3 is a Delaware, not-for-profit corporation formed in October of 2003, to preserve the earned pensions, health insurance and other benefits promised by Delta to its retired pilots, their children and survivors. DP3 currently has 2,850 members. The individuals who join DP3 in responding to the Motion are retired pilots who serve as Trustees for DP3.

10. Delta currently provides pension and retiree benefits to approximately 5,800 retired pilots, their children and survivors. These benefits are paid pursuant to benefit plans required under and incorporated into the terms of the Pilot Working Agreement, as amended and modified by letters of agreement between Delta and ALPA.

11. The pension benefits discussed in this response are vested interests in the Retirement Plan.

12. In May of 2006, Delta and ALPA agreed to an amended collective bargaining agreement which contained provisions related to the termination of various pension plans including the Retirement Plan. If the Retirement Plan is terminated, retired pilots will see a significant reduction in their benefits. The Motion indicates that there will be a reduction of only 20 to 25% of the overall contractual benefit provided because Delta includes the lump sum amount already paid. See Docket no. 3013 at p.18, ¶37, fn.16. If the percentage of loss in benefits is calculated by what payment a retiree was receiving as his or her monthly income before the bankruptcy and what that retiree will receive after termination, the projected losses in the retiree's benefits are more in the range of 50% to 100% if the Debtors are successful in

terminating the qualified and non-qualified pension plans. The only future retirement compensation that the pilots who lose 100% of their income have to look forward to after this termination will be what they received on account of their bankruptcy claim. In light of the significant impact that the termination will have on the retirees, a short postponement to insure that there is no other alternative is appropriate.

WAIVER OF MEMORANDUM

13. In as much as the relevant legal authorities are set forth herein, no novel issues of law are raised and, in reliance on Order Approving Notice, Case Management and Administrative Procedures entered on October 6, 2005 (“Procedures Order”) (Docket No. 660), DP3 has not filed a separate memorandum in support of its response.

WHEREFORE, the Trustees and DP3 respectfully request that the Court adjourn the hearing on the determination of the Debtors’ financial distress, require the Debtors to demonstrate that the financial distress is so great that the Retirement Plan must be terminated even if the Lump Sum Option is removed, and grant such further relief as may be equitable under the circumstances of this case.

Respectfully submitted,

/s/ Shelley D. Rucker

MILLER & MARTIN PLLC
Dean Booth (DB-3807)
Shelley D. Rucker, (SR- 8175)
Ryan Kurtz, (RK-0427)
1170 Peachtree Street, NE, Suite 800
Atlanta, Georgia 30309
Telephone: (404) 962-6100
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And

SEWARD & KISSEL, LLP
Ronald L. Cohen (RC-3897)
One Battery Park Plaza
New York, New York 10004
Telephone: (212) 574-1515
Facsimile: (212)480-8421
Attorneys for DP3, Inc. d/b/a
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J. Gray, R. Black, R. Colby, J. Gray, D. Mairose, R.
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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2006, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Simultaneously, a true and exact copy of the foregoing was served by deposit thereof in First Class U.S. Mail on Core Parties and the non-ECF service list downloaded from the case information website on August 17, 2006, and dated as of June 30, 2006 and updated through August 17, 2006.

This 17th day of August, 2006.

/s/ Shelley D. Rucker

Miller & Martin PLLC
1170 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309
(404) 962-6100
(404) 962-6300