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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
. Wednesday, December 20, 2006
Debtors. . 2:38 p.m.
.

TRANSCRIPT OF MOTIONS
BEFORE THE HONORABLE ADLAI S. HARDIN
UNITED STATES BANKRUPTCY JUDGE

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INDEX

	<u>Page</u>
<u>INTRODUCTORY COMMENTS BY MR. HUEBNER</u>	4
<u>DEBTORS' MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT WITH THE PENSION BENEFIT GUARANTY CORPORATION</u>	
Argument by Mr. Huebner	14
Argument by Ms. Beckerman	27
Argument by Mr. Booth	35
Argument by Ms. Lacey	36
Argument by Mr. Mora	37
Argument by Mr. Sapir (Note: Including responses by opposing counsel)	39
<u>Court Decision</u>	87
<u>MOTION TO STAY PENDING APPEAL AND TO REOPEN AND RECONSIDER RE: WILLIAM C. BUERGEY</u>	
Argument by Mr. Sapir	80
<u>Court Decision</u>	85

1 (Proceedings commence at 2:38 p.m.)

2 THE COURT: Have a seat, please.

3 I know what we have today. We'll follow your order.

4 MR. HUEBNER: If you don't mind, Your Honor, that will
5 be great.

6 THE COURT: All right.

7 MR. HUEBNER: Good afternoon, Your Honor. I am
8 Marshall Huebner of Davis, Polk & Wardwell, here on behalf of
9 Delta Air Lines with my colleagues.

10 As has been true throughout these proceedings, the
11 vast majority of motions, many quite important, that were
12 urgently scheduled to be heard today were, one, fully agreed to
13 with our Official Committee of Unsecured Creditors; and, two,
14 not objected to by any party in these proceedings. While
15 granted without a hearing, the relief in many of these motions
16 was no less important to the debtors' continued successful
17 restructuring, and we thank the Court, the Creditors'
18 Committee, and the counterparties for their work on these
19 matters.

20 In fact, Your Honor, this omnibus would, like so many
21 of its predecessors, have been canceled entirely, but for the
22 Buergey group, which is both, one, the sole objector to the
23 PBGC settlement motion; and, two, despite a resounding
24 rejection on appeal by Judge Cote, continues to press its
25 attempts with respect to this Court's September 5th 4041

1 ruling.

2 Before, however, we dive into the maelstrom of the two
3 motions on for today's hearing, I will, as requested by
4 chambers, briefly summarize for the Court and others a few
5 salient facts relating to pilot retiree pension issues and what
6 the coming weeks and months will bring. The presentation in
7 the forthcoming written materials will hopefully address the
8 various retiree letters that both the Court and Delta have been
9 receiving.

10 Let me begin on the non-qualified side. As everyone
11 in this room surely knows by now, pilots have both a qualified
12 and a non-qualified pension benefit. The qualified benefit is
13 paid out of the qualified plan; the non-qualified benefits are
14 those that exceed the levels that are allowed to be paid --

15 THE COURT: Can I interrupt you? What is this noise?

16 (Court and court personnel confer.)

17 MR. HUEBNER: I'll try to also speak up, Your Honor.
18 I apologize.

19 THE COURT: Well, that's not your fault.

20 MR. HUEBNER: The non-qualified benefits are those
21 that exceed the amounts that can be paid lawfully under the
22 Internal Revenue Code from a qualified plan.

23 One of the most important orders entered by the Court
24 last week, as to which there was not a single objector, was the
25 settlement reached between the debtors, the Official Committee

1 of Unsecured Creditors, and DP3, that both binds and benefits
2 all retired pilots who received non-qualified benefits by
3 giving them very substantial claims on account of those
4 benefits.

5 A few very quick central facts about the settlement:

6 One, the total allowed unsecured pre-petition claim
7 granted to retired pilots on account of their non-qualified
8 benefits, including the 80 million of claims granted several
9 months ago pursuant to the first stipulation, will now total
10 approximately \$810 million. We thought, when we first filed
11 the document, that it would be eight-hundred-and-one-odd
12 million, but because we agreed to a methodology, not an amount,
13 and the methodology has dug up some more people in due
14 diligence, the number has increased slightly. More good news,
15 frankly, for pilot-retirees.

16 Assuming a sixty-five percent recovery in unsecured
17 claims, which is their approximate current trading value, this
18 translates to more than \$525 million of value to retired pilots
19 on account of their non-qualified benefits.

20 The original stipulation, as this Court surely
21 remembers, has literally only a single individual, Captain
22 Buergey himself, and no other, who is, in fact, carved out from
23 the stipulation, and then there are about nine other people as
24 to whom both sides reserve their rights as to whether or not
25 they're bound.

1 The second stipulation drew not a single objection,
2 including the objectors to the first one, who apparently were
3 very satisfied with its terms.

4 As to mechanics. As to this \$810 million or so worth
5 of claims, we committed in writing in the second stipulation
6 approved by this Court to send every single retired pilot with
7 non-qualified benefits, by February 13th, 2007, a personalized
8 notice and scheduling listing the exact amount of their
9 administrative claim, their pre-termination general unsecured
10 claim, and their post-termination unsecured claim, allowed
11 under both of the two stipulations.

12 Doing these individual calculations for approximately
13 3,200 claimants is no small task. Luckily, it does not fall to
14 Davis Polk. And I'm happy to report that we will have these
15 thousands of individualized letters and notices and
16 calculations out comfortably before the agreed and court-
17 approved deadline. So that's Information Packet No. 1, that
18 has a time frame that will go out and give people a full
19 explanation of exactly what their individual status will be
20 under the two settlements.

21 Let me now turn to the qualified side, which is
22 slightly more complex.

23 The distress termination order was, of course, entered
24 by this Court, or the factual findings, on September 5, 2006.
25 The plan administrator is required under ERISA to adjust to

1 PBGC-mandated levels all benefits that are to be paid after the
2 termination date, the proposed termination date set forth in
3 the notice of intent to terminate. That date was September 2,
4 2006.

5 So initial estimates of revised pension benefit levels
6 were sent to retirees around October 1, 2006. They were based
7 on Delta's then best estimate of the PBGC plan termination
8 rules. I should note that the calculations and methodology for
9 a company moving from normal rules to PBGC termination rules
10 is, frankly, one of the most complex things I have ever had
11 contact with, as a legal and calculation matter.

12 The results of the initial preliminary calculations
13 for the roughly 6,300 retired pilots who were then receiving
14 monthly qualified pension benefits were as follows:

15 Approximately 1,080 retained 100 percent of their then
16 monthly annuity payment.

17 Approximately 1,600 retained ninety to ninety-nine
18 percent of their remaining monthly qualified plan annuity
19 benefit.

20 And then, going to the other end of the range,
21 approximately 1,060 had their remaining monthly qualified plan
22 annuity reduced to zero. Of these 1,060 whose monthly benefits
23 were reduced to zero -- and I would guess that most of the
24 letter-writers fall in this category -- virtually all were
25 those who took substantial lump-sum payments, equal to fifty

1 percent or more of their total qualified pension benefits. And
2 we've now been through this at many hearings --

3 THE COURT: Right.

4 MR. HUEBNER: -- but I'm happy to quickly do it
5 again. But I have two pieces of very good news to report on
6 this front.

7 Based on further guidance from the PBGC and further
8 refinements to the post-termination calculation methodology,
9 these benefits are going to be revised in early 2007. It is
10 currently our understanding that, once adjusted, the number of
11 zero current benefit retirees will drop from 1,060 to 270 out
12 of 6,300. And unsurprisingly, these 270 are generally very
13 large lump-sum-takers.

14 But in fact, the story is going to get much better for
15 retirees than even that because these estimates, as we have
16 said now at, I think, three hearings to the Court, do not
17 include a critical component that will substantially increase
18 ultimate retiree recoveries for qualified benefits; the very
19 material recoveries we'll be talking about in a few minutes, in
20 favor of the PBGC under this settlement agreement.

21 We understand from the PBGC that the way it works is
22 that, until they actually get in the settlement proceeds and
23 run them through the machine, they can't count them and they
24 don't count them as assets that are used when calculating
25 benefit payments. So we've said all along, using our prior

1 numbers, that they exclude the benefits of any future
2 settlement with the PBGC. And now, we're happy to say, we have
3 a bit of a better sense of where that's going to end up.

4 Because when the very substantial PBGC recoveries
5 under today's settlement agreement are received and processed,
6 we expect that over \$1 billion of additional value will go to
7 fund retirement benefits for our plan participants. And when
8 that one-billion-dollars-plus goes to fund plan benefits for
9 Delta retirees, the benefit calculations get done retroactively
10 to September 2nd, 2006. In other words, you can't give away
11 what you don't have, but once you have it, you have to
12 calculate it.

13 In fact, Your Honor, when this settlement value is
14 taken into account, assuming it is approved, and based on
15 Delta's estimates of PBGC payments and calculations, we think
16 it is highly likely that not a single retiree that had an
17 annuity payment under the qualified plan prior to its
18 termination will remain in the zero benefit category going
19 forward. We don't know for sure; it's not ultimately for Delta
20 to do, it's for the PBGC to do. But based on our understanding
21 of the way this inordinately complex machine works, it is our
22 view that it is highly likely that there will be no zeros left.
23 Not even those who retires well before sixty and took a lump
24 sum well in excess of \$1 million. Even they will likely, in
25 our view -- best case, best estimate, no promises -- get an

1 annuity from the PBGC.

2 Indeed, Your Honor, now that we have a better sense of
3 the further value that will go into the plan from the PBGC
4 settlement on for today's hearing, Delta's current estimate,
5 assuming today's claim-trading values as the ultimate recovery
6 for the PBGC, because you have to make assumptions; and, as
7 I've said before, and I put it in all caps because I've got to
8 make sure everyone hears it loud and clear: On average, and
9 including the value of the lump sums previously taken, which
10 were very substantial:

11 One, retired pilots will, on the whole, on average,
12 with those assumptions, retain approximately ninety-five
13 percent of their total qualified plan benefits.

14 Two, it is our current best estimate that
15 approximately 2,300 of the 6,300 total will receive 100 percent
16 of their total qualified plan benefit.

17 Five thousand, two hundred and sixty of the 6,300 will
18 receive more than ninety percent of their total qualified plan
19 benefit, all in recovery.

20 And virtually all, more than ninety-seven percent of
21 current retirees receiving qualified plan benefits as of the
22 day this all started, will receive at least eighty-six percent
23 of their total qualified plan benefits.

24 I want to say it one last time. The PBGC's ultimate
25 termination calculations and the actual recovery on the claims

1 and the values and all that are enormously complicated, and we
2 made assumptions about today's trading prices and all that.
3 But that is, in fact, our best current estimate, which I would
4 note for the record lines up perfectly with Ms. McDaniel's
5 affidavit at the 4041, her trial at the -- testimony at the
6 4041, what I represented to this Court when it came up sort of
7 as a bit of a surprise at the 1114 hearing. The story has
8 never changed, and it's true.

9 As to process -- because, again, the goal is not only
10 to have the facts, but to get them out in the right way that
11 makes it useful to people. Obviously, we didn't have clarity;
12 and, frankly, until the settlement is approved, we don't really
13 have clarity yet as to both the calculations, which are
14 inordinately complicated, as well as the possible all-in
15 recovery, which includes a ratio that goes to the plan.

16 However, now that hopefully after today we move
17 another important step towards clarity, we intend, in fact, to
18 launch a communications program to pilot-retirees that is
19 expected to include explanations of many of the things we've
20 just discussed and illustrative calculations for people at
21 individual benefit levels that will also be posted on various
22 webpages, to give them our best cut of what things are going to
23 look like.

24 As I think the Court knows, and the PBGC, I assume,
25 would agree, it often takes two to three years for the PBGC to

1 take over a plan of this size and complexity and run everything
2 through very complex ERISA, locked-in-stone provisions about
3 how benefits get calculated and through the regulatory process.
4 But this is our best current view about how it will end up.

5 So it's important to understand, Your Honor, that even
6 our most bitter detractors, many of whom are in an unusual
7 category because they took unusually large lump sums, left
8 right before the bankruptcy, and were generally a fair bit
9 younger than sixty, a lot of them -- maybe most of them, maybe
10 all of them -- are actually going to get eighty-five percent or
11 more of their total qualified plan benefits.

12 So, you know, the rhetoric about devastating, et
13 cetera, at least we think that needs to be seen in context. As
14 we've said many times, we don't for a minute minimize at all
15 that no one is more vulnerable than pensioners, and that any
16 loss to someone who has limited ability to replace income is
17 very serious. That said, though, the facts matter. And
18 frankly, as we'll talk about in a few minutes on the
19 settlement, we and the Creditors' Committee labored very hard
20 and negotiated very hard, but ultimately have gotten fair, but
21 extremely substantial consideration on a consensual basis to
22 retirees, both in the form of the stipulations with DP3 as to
23 non-qualified benefits, as well as the settlement with the
24 PBGC, that we'll talk about in a few minutes, will send over a
25 billion dollars more into, we believe, the hands of retired

1 pilots.

2 So with that context, Your Honor, which I hope will
3 explain to the Court that, now that the story is moving towards
4 gelling, we will, in fact, be communicating it in ways that we
5 think are appropriate, and we are, in fact, well ahead of
6 schedule to give individuated calculations for the non-
7 qualified benefits for every single pilot-retiree that has
8 them, I'd like to turn to Item 1 on the agenda.

9 THE COURT: Before you do, I want to express my
10 appreciation to the professionals and to the company and those
11 who have worked on this for responding, I think very, very
12 fairly, to the concerns that I had expressed, because I've
13 gotten a lot of these letters that you've mentioned, and it has
14 concerned me. So I'm extremely grateful for the, I think very
15 comprehensive and fair response. It certainly is illuminating,
16 I'd say.

17 MR. HUEBNER: Thank you, Your Honor. It was written
18 by Willow Crystal.

19 (Laughter.)

20 THE COURT: Bravo.

21 MR. HUEBNER: I'm just the mouth.

22 (Laughter.)

23 MR. HUEBNER: That brings us, Your Honor, to Item 1,
24 which is the motion for approval of the settlement agreement
25 with the PBGC.

1 Your Honor, this past Friday, on December 15th, 2006,
2 the Pension Benefit Guaranty Corporation informed the debtors
3 that it had, in fact, issued a final determination approving
4 the distress termination of the pilot plan, and finding that
5 all of the Delta entities of debtor and non-debtor met the
6 relevant statutory test for financial distress and for the
7 termination of the plan itself.

8 This, of course, Your Honor, is a momentous
9 determination, as the PBGC, as is well known nationwide, has no
10 interest in taking on additional troubled pension plans and
11 would not do so unless it felt that it had no choice, in light
12 of it's responsibilities and federally statutory charter.

13 This determination, Your Honor, is just yet another
14 confirmation of the absolute necessity for the termination of
15 the pilot plan. It follows, coincidentally, by only a few days
16 the decision of Judge Cote that resoundingly affirmed Your
17 Honor's September 5th order with a similar outcome: Approving
18 the distress termination, finding that Delta had overwhelmingly
19 proved its case on these matters.

20 Your Honor, the letter is attached as an exhibit to
21 the PBGC's brief, but if it will be convenient for the Court, I
22 won't otherwise be referring to it, but we do have copies, but
23 we have still to hand one up.

24 THE COURT: All right.

25 MR. HUEBNER: Your Honor, as outlined in our papers

1 and supported by the Creditors' Committee and certain of the
2 others, as well, who will speak for themselves, the PBGC
3 settlement represents an extraordinary result for the debtors
4 and for their estates, and resolves all of the momentous,
5 multi-billion-dollar issues between the debtors and the PBGC.
6 It is our view that, perhaps neck and neck with the ALPA
7 contract amendment, that this may be the single most important
8 settlement of this entire case.

9 One, it removes the uncertainty of the PBGC not
10 undertaking at all, or on a timely basis all of the many steps
11 it must take before a qualified pension plan can be terminated.
12 This Court's ruling is one matter, but there are many others as
13 well that are reflected in this determination letter.

14 Two, it removes uncertainty about the appeal of Your
15 Honor's approval of LOA-51, the critically important amendment
16 to Delta's collective bargaining agreement with its pilots. As
17 Your Honor surely remembers, the PBGC was the only objector at
18 the hearing and the only appellant. So with this agreement,
19 within two business days they will withdraw that appeal with
20 prejudice, and the second -- or first or second most important
21 other settlement and contract will go final for all time.
22 Tremendously important to these estates.

23 Three, it removes the risk that the PBGC has \$2.989
24 billion of secured priority or administrative claims against
25 every single Delta affiliate, both debtor and non-debtor; a

1 situation that could easily preclude the reorganization of the
2 debtors, other than at the sufferance of the PBGC itself.

3 Four, it removes the risk that the debtors could be
4 tied up in years of expensive, intense, and highly uncertain
5 litigation regarding the amount, priority, and secured nature
6 of the PBGC's claims resulting from termination of the pilot
7 plan. As they told you with a lot of confidence, they won the
8 last three decisions on their methodology, and they're gunning
9 for bear. Well, that's not a fight we felt we needed to pick
10 with them, in light of our settlement.

11 Five, it removes uncertainty about the irrevocability
12 and the timing of the pilot plan termination in the form of a
13 waiver by the PBGC of its restoration power. Because of the
14 unique risks and attributes of this plan, as we proved, and
15 this Court found, and Judge Cote appealed, we could not propose
16 a feasible plan or get exit financing unless this plan were
17 gone -- and "gone" means really gone, not gone and might come
18 back in three weeks, and be dropped back on these estates and
19 their balance sheets like an anvil.

20 Nor do we think we overpaid, Your Honor. Not at all.
21 Negotiations were unbelievably intense -- I think we can all
22 represent that on the record -- and took place over a period of
23 months. I dreamed of weeks; Lisa said, grow up, months.

24 (Laughter.)

25 MR. HUEBNER: At the end of the day, the PBGC, while

1 receiving claims that are assuredly large, is receiving value
2 that is hundreds and hundreds of millions of dollars less than
3 what they firmly believe they are entitled to.

4 I could go on, but I'm not going to repeat what is
5 laid out at length in our papers.

6 The settlement agreement is totally critically; it is
7 an excellent deal for the debtors. That is why so many of the
8 parties you would think would be on the other side of the table
9 are by our side. So why are we here today? Because of the
10 sole objection filed by Captain William Buergey, a retired
11 Delta pilot, and a growing group of other retired pilots.

12 Because I think context is very important, and we'll
13 be talking a little bit more about that on the second motion,
14 Your Honor, in light of the extraordinary burden that the
15 objectors bear to upset a 9019 settlement, I think it is
16 actually important and appropriate to remind the Court of the
17 other past litigations that this group has undertaken on these
18 matters and their utter lack of merit and massive consumption
19 of estate resources to date.

20 Sapir & Frumkin, the law firm we'll hear from in a few
21 minutes today, first appeared at the DP3-1 stipulation on
22 behalf of their then-single client Captain Buergey. You and we
23 kept telling them, your client is totally carved out, why are
24 you objecting, and it took about forty-five minutes until you
25 finally said, we're done, your client is not affected by this

1 order, please have a seat.

2 Two was the 4041 trial itself, which they did not
3 bother to attend, nor did they appear, nor did they
4 participate, nor did they seek due diligence. But yet, on the
5 tenth day, hours before the appeal deadline was to run, they
6 felt it appropriate to appeal, arguing among other things
7 insufficiency of evidence at a trial they could not be bothered
8 to attend.

9 And how did they fare on appeal, Your Honor? Let's
10 talk about some of the words Judge Cote used in dealing with
11 their issues: "Frivolous, flawed, at the very least
12 overstated, failing to hold water." But there's a lot more.

13 Because, of course, Sapir & Frumkin also showed up as
14 the lone objector to the fully consensual 1114 deal with our
15 pilot committee, seeking to turn the congressionally designed
16 1114 process on its head by permitting individual retirees one-
17 by-one 1114 processes.

18 As Your Honor ruled, they also complained about the
19 constitution of the Official 1114 Pilot Committee, despite the
20 fact that it was put out for public comment and objection six
21 months earlier; nobody said a word, and it went final as being
22 agreed representative. That objection was readily dismissed,
23 as well.

24 Next, Your Honor, as we'll talk about in a few
25 minutes, they raised the same claim simultaneously, both before

1 this Court and on appeal, a procedural course of action that we
2 believe totally improper, with obvious and severe
3 jurisdictional and judicial conservation implications.

4 They also served an order -- they also -- the mike is
5 off.

6 They also served --

7 THE COURT: I don't know what's wrong. I'm sorry.

8 (Court personnel confer.)

9 MR. HUEBNER: Is that better? Yeah.

10 THE COURT: Yes.

11 MR. HUEBNER: They also served an order to show cause
12 on us, in blatant violation of the case management order that
13 has governed these cases for fifteen months, which requires a
14 very specific procedure before emergency proceedings are filed.

15
16 Now, after all this, they are the only objectors to
17 the PBGC deal. And as we will talk about, their objection is
18 filled with absurd mathematical, factual, and legal claims.
19 But of course, we have to take it seriously, and all these
20 parties here; many paid for by the estate, reflect tremendous
21 resources that again and again and again have to be spent to
22 respond to these meritless pleadings.

23 Indeed, they arguably insult this Court, noting it has
24 paid lip service to the contribution of the retired pilots; the
25 District Court that parroted the debtors' views as to the

1 facts; DP3 and DP2, that cease to press for the continuation of
2 the plan in return for payment of their legal fees. These
3 inappropriate accusations against courts and other parties are
4 totally misplaced.

5 What do the objectors actually argue on the merits?
6 Let's take a look.

7 One, they argue that it's a bad settlement because the
8 PBGC is basically being paid in full, so, quote, "What's all
9 the hoopla about?" Quote:

10 "Considering that the debtors are advocating what
11 practically amounts to payment in full of the PBGC's
12 claim, one has to wonder what all the hoopla about
13 termination has been."

14 Their objection at Page 4.

15 And then at Paragraph 13:

16 "Delta has agreed to pay almost 100 cents on the
17 dollar to settle the claim of the PBGC."

18 This is a totally false statement in a signed
19 pleading; it is outrageously false. The PBGC made it very
20 clear in its proofs of claim, in its pleading, and we made it
21 clear in our motion that they believe they are owed \$2.989
22 billion in cash by each and every entity. There is no question
23 that these claims are joint and several; the statute is clear
24 on its face. Even if we just credit a hundred percent face
25 amount for every element of consideration, the deal is still

1 \$550 million less than what the PBGC says they are owed by
2 statute, that the last three cases agree they would be owed.

3 More importantly, as Your Honor and most people in
4 this courtroom, and certainly counsel is very well aware of,
5 this is a pre-petition general unsecured bankruptcy claim.
6 It's not a wire transfer, and it is not worth 100 cents on the
7 dollar; meaning that, the value of what is being offered to the
8 PBGC is over a billion dollars less than their claimed
9 entitlement. For this group to allege that they are being paid
10 in full, it's just simply inappropriate. There's no better
11 word for it.

12 In fact, they go farther. After saying that we agreed
13 to pay almost 100 cents, they say, indeed, quote:

14 "It may be more than 100 cents on the dollar,
15 depending on Delta's calculation of the amount it owes
16 the PBGC."

17 As this Court knows well, Delta and the Creditors'
18 Committee were not going to pay the PBGC one penny more than
19 they had to, to get a deal. As you said famously at the 1113:
20 You wanted to pay as little as possible, and they wanted to get
21 as much as possible. And that's exactly what happened here.

22 The irony, of course, should also not be lost on the
23 Court, since most of the benefits of the settlement go right to
24 retired pilots. The fact that they're arguing that we should
25 have paid less into their own retirement benefits is almost too

1 painful to bear.

2 Second, Your Honor, their legal argument is that the
3 Court can't rule on the motion because the debtors never gave a
4 number and said how much we think the claims should have been.
5 This objection is -- I'm not even quite sure how to respond to
6 it, so I'll just briefly say what we made clear.

7 There is no single answer for "the amount we think
8 this claim should have been." There are three independent,
9 complex litigations that we would have had to win to establish
10 our view of value:

11 One, whether the PBGC's statutory rate or the prudent
12 interest, prudent investor rate, should be used for valuing
13 these benefits. If we lose that -- and they say they've won
14 the last three cases -- game over: \$2.989 billion against
15 every entity.

16 Two, even if we won the litigation, we just buy
17 ourselves the next litigation, which is: What should the
18 appropriate, prudent investor rate be? Lose that one, the
19 claim is well in excess of the settlement.

20 Three, even if we won both of those and our claim is
21 only \$1.9 billion, is it secured, is it priority, is it admin.,
22 is it a tax? We could win all of those, Your Honor, all three
23 of them, and still lose. Because at the end of the day, it's
24 still a joint and several claim. And even if it was just a
25 pre-petition, general, unsecured, non-priority claim in exactly

1 the amount we dreamt of, they could still enforce it against
2 every single debtor and non-debtor entity, which could have
3 been much, much worse for us; having won all three heavily
4 contested litigations, than the settlement that we reached. We
5 did not overpay.

6 Third, Your Honor, the objectors, yet again in another
7 procedural format, try to argue to this Court that termination
8 is not really, quote, "needed anymore," or that it's, quote,
9 "premature." These agreements just have -- these arguments
10 simply have no bearing on this matter, and we will not reargue
11 another collateral attack on a 4041 decision reached three
12 months ago and affirmed last week in the guise of a 9019
13 settlement on the PBGC's claims in this case.

14 I just will not address them further. If they come
15 up, I'm happy to address them on rebuttal or in connection with
16 the second motion.

17 Let me just correct one of the many flatly wrong
18 statements or insinuations in their papers, though, because
19 this is important and the record should be clear.

20 The objectors grossly misread the motion and represent
21 to the Court that they believe that the pilot plan did not come
22 out of liquidity shortfall, as we had told you all along that
23 it would come out on October 1st. Let me be very clear for the
24 record about their misreading.

25 The pilot plan came out of liquidity shortfall on

1 October 1st. But for this Court's ruling and the notice of
2 intent to terminate, the lump sum door would have opened on
3 October 1st with disastrous consequences for all, including
4 retirees. If there was some sentence in our brief that they
5 weren't quite clear about, maybe they should have called. But
6 the record should be clear. Everything we said to this Court
7 all along is absolutely true and correct on this point. It
8 came out of liquidity shortfall. But for the NOI and the
9 ruling, the lump sum door would have opened.

10 Finally, Your Honor, the objectors make a series of
11 arguments that the plan -- that after the plan is terminated,
12 and in the hands of the PBGC, the PBGC, a governmental
13 corporation, should be compelled to administer the plan in
14 numerous ways that either violate ERISA, or violate the PBGC's
15 regulations. These illicit suggestions, which Captain Buergey
16 and others would have this Court impose as the price of
17 approving a settlement between the debtors, the Committee, and
18 the PBGC include the following, among others:

19 One, calculating benefits using age sixty as the
20 retirement age, rather than the statutorily mandated age of
21 sixty-five.

22 Two, requiring the PBGC to violate ERISA by ignoring
23 the three-year look-back and calculation rules of ERISA.

24 Three, violating ERISA by compelling the PBGC somehow
25 to allocate a hundred percent of the value received in the

1 settlement directly into the plan.

2 Four, requiring the PBGC to violate ERISA by ignoring
3 the five-year look-back rule with respect to a prior amendment
4 to the pilot plan.

5 Five, overriding the PBGC's discretionary decision to
6 waive the restoration authority under ERISA.

7 Six, disregarding statutory dictates about how
8 recoveries must be shared.

9 Seven, changing by fiat the termination date of the
10 pilot plan agreed to by the PBGC and Delta, as expressly
11 contemplated by ERISA.

12 Suffice it to say that, as I'm sure others will
13 address at greater length, these are totally improper
14 arguments. The pilot plan is not an asset of the debtors'
15 estates; there is no jurisdiction, even, before this Court of
16 any kind with respect to the pilot plan, let alone how a
17 governmental agency that in the future takes it over should
18 then go and administer the plan and give out benefits to
19 beneficiaries. Unsurprisingly, there's no case in the history
20 that has ever suggested that a bankruptcy court approving a
21 settlement should tell the PBGC as statutory trustee, how to
22 administer the plan, let alone in direct conflict with ERISA
23 and governing regulations.

24 Your Honor, at base, it's very simple. The objectors
25 wish that they were going to be treated upon termination of the

1 plan than federal law and applicable regulations provide. We
2 don't fault them for that; we don't fault them for that at all.
3 What we do fault them for is filing another frivolous pleading
4 in these cases, one that is replete with mathematical, factual,
5 and legal errors.

6 We ask that the settlement agreement, which falls at
7 the very top of the law's so-called "range of reasonableness"
8 for 9019 deals be approved. Among many, many other things,
9 Your Honor, we would very much like retired pilots to be able
10 to get the substantial benefit increases they will see when an
11 extra billion dollars is sent their way by the settlement.
12 Thank you.

13 THE COURT: Thank you.

14 MS. BECKERMAN: Good afternoon, Your Honor.

15 THE COURT: Good afternoon.

16 MS. BECKERMAN: Lisa Beckerman from Akin Gump on
17 behalf of the Creditors' Committee.

18 Your Honor, I can certainly attest to the first thing
19 that Mr. Huebner opened his remarks about, which was the
20 heated, contested, longstanding negotiations that went on, from
21 our perspective, since last June, and took almost six months to
22 reach to the point where we are here today, Your Honor. But
23 obviously, we're very happy to be here today.

24 I just wanted to explain to the Court from the
25 perspective of the Unsecured Creditors' Committee and the

1 unsecured creditor body, what we were thinking about in
2 connection with this process and why we think that the
3 settlement is very, very appropriate, absolutely critical to
4 these estates, and should be approved.

5 We looked at what were our alternatives, Your Honor.
6 And you know, sometimes, I would say I'm probably more
7 optimistic than Mr. Huebner is in some of these things, but you
8 have to think about, not only, Your Honor, your chances of
9 winning on every single litigation, but also how long it might
10 take, and what does that mean from the perspective of the
11 bankrupt estates and the company being able to move ahead in
12 connection with its reorganization process, as well.

13 So from the perspective of trying to maximize
14 recoveries to unsecured creditors, we're trying to balance
15 getting a fair settlement on the claim and also being able to
16 move forward in a way that allows the estates to successfully
17 reorganize.

18 Well, here, I guess I'm happy to say that this
19 settlement does both; and, without it, it would be very
20 difficult to move forward on any kind of time frame in the near
21 future to accomplish getting these estates successfully
22 reorganized and getting unsecured creditors paid a substantial
23 amount on account of their claims, but unfortunately, clearly
24 not a hundred percent, as the objector has been alleging.

25 We looked at on our end, Your Honor, the fact that we

1 have, as Mr. Huebner said in his remarks, numerous complex
2 litigations. In particular, several of these litigations,
3 there is no precedent within the Second Circuit on. So we know
4 because, as Mr. Mora knows, having dealt with me in lots of
5 other cases, that the PBGC is a party that, if they lost at the
6 bankruptcy court level, they would likely appeal, from our
7 experience. If we lost and it was critical to us to getting
8 the result, we might want to appeal.

9 And what we were looking at as we went through all
10 these litigations was, not only having to litigate our way
11 through, as Mr. Huebner said, several very complicated issues,
12 but also looking at the fact that we were likely going up to
13 the Second Circuit, which would take, you know, a long time,
14 Your Honor, you know, well over a year, maybe two years to get
15 ourselves through that litigation process on all of these
16 points.

17 And if we lost on any one of those litigations at the
18 end of the day, we would clearly be worse off than the
19 settlement. And as Mr. Huebner said, it's possible that even
20 if we won all the way up the chain to the Second Circuit on
21 each one, that we were looking at a worst-case scenario, and
22 during that time, what this settlement provides for unsecured
23 creditors. And during that time, we would be spending the costs
24 of keeping this estate in bankruptcy, creditors would not
25 receive recoveries. And so it's a matter of considering all of

1 those in balancing what's in the paramount interest of
2 creditors.

3 Well, we were fortunate here, I think, where clearly
4 we started at one end in the discussions, the PBGC started at
5 their end of the discussions, and we certainly had a lot of
6 issues to navigate and negotiate through the process. And I
7 think that what all parties were cognizant of is trying to
8 reach a settlement that was fair and reasonable, not only from
9 each side's perspective, but also from the perspective of the
10 estates; keeping in mind that part of our jobs is to make sure
11 -- certainly part of my job and part of Mr. Huebner's job -- is
12 to make sure that, ultimately, we don't win the battle, but
13 lose the war, Your Honor.

14 So we started looking at the litigations. We
15 obviously had the issue of the priority of the claims, the
16 amount of the claims, the prudent investor rate, where we had a
17 decision recently, for example, from Judge Wedoff this year,
18 where that was litigated, and it was found to be 6.25 percent.
19 So that would be a pretty high claim amount, worse than the
20 settlement, for example, Your Honor. And we worked our way
21 through all those issues.

22 And I think what we felt was that, at the end of the
23 day, the consideration that's being put on the table here that
24 was ultimately negotiated is a claim amount that's in between
25 what the lowest number could have been, if we won everything,

1 maybe, and what the highest number, the PBGC's perspective,
2 could have been, you know, pretty much straight in the middle,
3 Your Honor; a very fair number.

4 We also looked at the fact that we needed to deal with
5 the PBGC's appeal of LOA-51, which because -- if that kept
6 going all the way up to the Second Circuit, and there was any
7 risk, for example, of the pilot deal unraveling, that was
8 another critical building block in these estates to moving
9 forward from the perspective of the unsecured creditors.

10 And so what we had looked at in our analysis, when we
11 were negotiating with the PBGC, is obviously, you know, what is
12 the most that they could recover on account of their joint and
13 several claims; what would be the least they could recover if
14 we won everything; and then what would be all those risks and
15 the time frame. And all those things factored into our
16 decision-making and the negotiations that took place.

17 (Court and court personnel confer.)

18 MS. BECKERMAN: The objectors raise certain issues,
19 and I'm not going to, obviously, address all of them, Your
20 Honor. I think I've already commented on the -- clearly, we're
21 not going to have payment in full here, unfortunately, for
22 unsecured creditors.

23 But what I would say is that, when you have a very
24 diverse creditor body -- and on our end, you know, we would
25 have loved to see this claim be as small as we could possibly

1 manage, within the constructs of understanding of what the
2 risks were of litigating this, and how long it would take, and
3 the cost to the estate, and everything else like that.

4 And to have -- be in a situation where our committee
5 is supportive of this, the PBGC has, you know, reached a
6 settlement with the company, and other constituents are, I
7 think what that says to Your Honor is that this clearly above
8 the lowest level of reasonableness. If you looked at any one
9 of these litigated issues and figured out what it could have
10 come out as, the settlement here is preferable to that. And as
11 Mr. Huebner said, it's possible that the settlement is even
12 preferable to, you know, a very good outcome on those issues.
13 And that's how we did our thinking.

14 I'm not going to address the comments that we're going
15 to be addressing in the next motion, Your Honor, about re-
16 litigating your prior termination decision. I think a lot of
17 the objector's pleading, in fact, does try to do that, and I
18 think we'll be addressing that further, so I'm not going to
19 discuss that at this point.

20 I think it's pretty clear that, since the appeal, you
21 know, the decision that the judge rendered, Judge Cote rendered
22 in the appeal, you know, affirmed your decision that there's
23 ample basis for it, and I don't think this is the appropriate
24 time to be re-litigating it.

25 I think that what the objectors do -- and as Mr.

1 Huebner said, it's very understandable why -- is that they're
2 trying to figure out some way to improve what their ultimate
3 recovery is going to be. Although, as you've heard from Mr.
4 Huebner, the ultimate recovery is going to be, you know,
5 reasonably substantial here. And unfortunately, what they
6 suggest are things that either this Court simply doesn't have
7 jurisdiction to do because it's totally within the purview of
8 the PBGC, or things that just contradict the PBGC's
9 regulations.

10 And I think that what the parties need to remember,
11 which is what our pleading suggested to them, is that -- and I
12 think what the PBGC's pleading said clearly, which is, we're
13 not even at the stage, until this Court approves the
14 settlement, hopefully; the PBGC takes over, and then they
15 administer, before these issues are even ripe for any process.
16 And when they are ripe for a process there, if there are any
17 complaints or issues they have, they have the Administrative
18 Procedure Act that governs, and they have their rights under
19 that.

20 It is not appropriate before this Court to try to ask
21 this Court to do things that are in variance with the PBGC's
22 regulations and the Administrative Procedure Act, and it is not
23 really appropriate for us having to be spending time, where the
24 focus should be on the standard, under 9019, which is whether
25 or not this settlement makes sense in the context of the

1 estates; whether it's beneficial for creditors, which it
2 clearly is; whether it falls above the lowest level of
3 reasonableness; whether, when you take into account all the
4 time, expense, and delay that would have been incurred in the
5 litigation, it makes sense. When it satisfies all of those
6 standards, for the objectors to spend their time raising issues
7 that this Court, unfortunately, really can't address, even if
8 it wanted to address, and they clearly can't demonstrate any
9 basis by which the settlement is inappropriate under the
10 standard that the Court has to apply, the 9019 standards, it
11 seems to me that Mr. Huebner's, and I guess Judge Cote's,
12 characterization of the argument as "frivolous" is appropriate.

13 We would urge this Court, from the perspective of the
14 unsecured creditors and the Unsecured Creditors' Committee, to
15 please approve this settlement. We cannot move forward in the
16 reorganization without this settlement. This settlement avoids
17 years of litigation. It allows the plan to be terminated,
18 which will allow us to receive our exit financing that we'll
19 need to get out of Chapter 11. However our plan ultimately is
20 construed in this case, whether it's a stand-alone or a merger,
21 it's necessary, either way.

22 And we need Your Honor to be able to move forward and
23 have some certainty here. This settlement provides certainty;
24 it avoids us spending several more years going back up and
25 forth to the appeals courts over lots of issues, and it will

1 let these estates move forward and successfully reorganize, and
2 it's a fair settlement on its face.

3 And for all of those reasons, Your Honor, we would ask
4 you to approve it. And from our committee's perspective, we
5 wholeheartedly support it and think it's critical to moving
6 forward with these reorganizations.

7 THE COURT: Thank you.

8 MR. BOOTH: Good afternoon, Judge.

9 THE COURT: Good afternoon, sir.

10 MR. BOOTH: I know we have this background noise, and
11 I tend to talk softly, too, so I'd appreciate it if you'd kind
12 of give me some sign if you can't hear me.

13 THE COURT: The only thing I haven't heard is your
14 name. The machine needs to know your name.

15 MR. BOOTH: Okay. My name is Dean Booth, and I
16 represent DP3, which is a group of retired pilots.

17 THE COURT: Yes, sir.

18 MR. BOOTH: Your Honor, we support the settlement.
19 We've addressed the issues in our pleading with the Court. The
20 only thing I would add is, for retirees, the element of risk is
21 a lot more important to us. We don't have -- my clients don't
22 have a chance to make up whatever it is that they lose. We
23 appreciate the arguments that Delta made, that it was -- is,
24 depending on how Your Honor rules, theoretically possible they
25 could win on every issue. We agree that that is theoretically

1 possible. But from our standpoint, if they did, we would lose.

2 And so we're keenly aware of the fact that we'd like
3 to have this settlement approved because we don't feel like our
4 clients are in a station in their life to really take the risk
5 to get a little bit more, when we have an excellent settlement
6 on the table. And it's a lot of money for the retirees, as Mr.
7 Huebner explained. This, together with the other settlement
8 which Your Honor has approved, has resulted in really quite a
9 remarkable result. And so we ask the Court to approve this
10 settlement. Thank you.

11 THE COURT: Thank you so much, sir. I'm grateful for
12 your remarks and your submission, your written submission.

13 MS. LACEY: Good afternoon, Your Honor. Alisa Lacey,
14 Stinson, Morrison, Hecker, appearing as official counsel for
15 the 1114 Retired Pilots Committee.

16 The Retired Pilots Committee does not take a position
17 on the amount in the settlement that's not our area. As the
18 Court is well aware, the 1114 process imposes a very narrow
19 area upon the committees that serve that function.

20 But the settlement does serve an important purpose for
21 us, which is, to the extent issues are successfully resolved
22 between the estate and the PBGC by this settlement, which
23 permits the PBGC to take over as trustee or administrator of
24 the pension plan more quickly, it does have a direct impact
25 upon the qualification for health coverage tax credit benefits,

1 which are an important element to the 1114 settlement.

2 So from a timing perspective, Your Honor, we believe
3 that the approval of the settlement will expedite the process
4 by which the PBGC will take over the administration of the
5 pension plan. One of the eligibility requirements for health
6 coverage tax credit is that the retirees be receiving a payment
7 from the PBGC, so that step has to be taken before that
8 important benefit is available to our group. We do believe
9 that, in the event the settlement were not approved and there
10 was protracted litigation between the estate and the PBGC, it
11 would be difficult to imagine how that would not significantly
12 delay takeover of the pension plan by the PBGC.

13 So for that reason, Your Honor, the 1114 Committee is in
14 favor of moving along the process by which the PBGC takes over
15 administration of the plan. Thank you.

16 THE COURT: Thank you so much.

17 MR. MORA: Good afternoon, Your Honor. Michael Mora
18 for the Pension Benefit Guaranty Corporation. I was pleased to
19 go last, because I think my colleagues have done a superb job
20 of covering all of the issues, so my comments will be brief.

21 It's no coincidence that the debtor was able to file a
22 plan of reorganization yesterday. I think that, clearly, the
23 settlement that the debtor reached with PBGC on all of its
24 remaining pension issues is in the best interest of the
25 estates. Probably, there was no confirmable, feasible plan of

1 reorganization that could have been proposed, unless we had
2 reached that settlement, and I think everybody from all sides
3 who took part in this settlement process can take credit for
4 that. So, clearly, this settlement is reasonable, and it's in
5 the best interests of all of the estates.

6 The objectors don't really give any argument to that.
7 Instead, what they're really focused on is the impact that
8 termination of the pilots' plan will have on their
9 constituents. And as Your Honor has heard and read in the
10 papers, really the objections that they raise go to statutory
11 limits that will apply, once PBGC takes over the plan. And we
12 are simply -- the PBGC is not in a position to waive those
13 requirements. We would be violating our own statute if we did.

14 That's not to say that those individuals will not have
15 their day to challenge whatever determination that we make.
16 Once we take over the plan, there's an administrative process
17 by which benefits will be determined. Those individuals, or as
18 a group, will have the opportunity to present their issues
19 before PBGC, and they will have their day in court, if they so
20 choose, in the appropriate district court, wherever the
21 challenge is made.

22 So, Your Honor, as some of your brothers and sisters
23 say in the south, this motion is due to be granted, and the
24 objections are due to be overruled. Thank you.

25 THE COURT: Thank you, sir.

1 MR. SAPIR: Good afternoon, Your Honor. My name is
2 Donald Sapir, I'm with the firm of Sapir & Frumkin, and I am
3 here on behalf of 820 retired pilots, who have joined together
4 to object to this Court's approval of the proposed settlement
5 agreement between the debtors and the PBGC.

6 I'd just like to touch a little bit on the history of
7 my firm's involvement in this case, so that this Court can
8 understand why the recounting that was given by Mr. Huebner is
9 not entirely accurate.

10 Originally, we were requested by Mr. Buergey alone, a
11 retired Delta pilot, to oppose the termination of the non-
12 qualified plan. We did that on behalf of our client. This
13 Court did decide that, notwithstanding our objection, that that
14 plan could be terminated, but only after termination of the
15 qualified plan.

16 Mr. Buergey believed that his claims for benefits
17 during the time that the debtors were in Chapter 11 were
18 appropriately paid as administrative claims. Your Honor has
19 reserved his right to press forward with that claim, and we
20 thank you for that.

21 Thereafter, as Your Honor may recall, there was a
22 hearing held on September 1 and September 5, with respect to
23 the request of the debtors for this Court to authorize
24 termination of the qualified plan. At the time Mr. Buergey and
25 many of the other persons who have now joined to oppose this

1 proposed agreement were supporters of a group called,
2 abbreviated "DP2." As Your Honor will recall, DP2 had filed
3 objections and had opposed the motion of the debtors for your
4 authorization to terminate the qualified plan.

5 After a long holiday weekend on the 5th of September,
6 Mr. Huebner announced that an agreement had been reached with
7 DP2. DP2 was withdrawing its objections, was not going forward
8 in opposition. And at that point in time, Mr. Huebner made
9 what was an offer of proof, there were no additional witnesses
10 asked to testify. So, Mr. Huebner, in essence, was giving his
11 hearsay summary of what he contended those experts would
12 testify to, if called to testify.

13 After that was concluded, Your Honor asked if there
14 was anybody else present who wished to be heard and to object
15 to the motion seeking authorization to terminate the qualified
16 plan. Those retired pilots who were supporters of DP2 were not
17 in the courtroom, they had no independent counsel present in
18 the courtroom. It was their belief, based on what had been
19 represented to them, based on their contributions to that
20 effort to oppose --

21 THE COURT: Represented to them by whom?

22 MR. SAPIR: By those who I am told were the trustees
23 of DP2.

24 THE COURT: All right.

25 MR. SAPIR: Consequently, the record that was created

1 in that hearing was solely and exclusively the record that was
2 created by the debtors.

3 Thereafter, as a result of their belief that the
4 retired pilots had not had the opportunity to be heard, some of
5 them complained that they were not aware of the proceeding
6 because they had not received notice; some complained that they
7 wished to object, but because of this Court's ECF rules, they
8 were unable to do so; and some, in fact, did send objections,
9 although not in electronic format. And Your Honor stated, I
10 believe, at the conclusion of that hearing that,
11 notwithstanding the fact that the those retired pilots had not
12 complied with Your Honor's order regarding how objections were
13 to be filed, nevertheless, Your Honor considered those
14 objections. However, I think Your Honor can understand that
15 there may have been others who did not bother to make the
16 effort to object, even though they would have liked to, because
17 they were unable to comply with this Court's order regarding
18 electronic filing of objections.

19 We were requested at that point in time, after the
20 hearing was closed, if we believed that there was any basis to
21 appeal. We reviewed the record, we reviewed the evidence that
22 had been submitted to this Court; we reviewed the offer of
23 proof of counsel, which we did not believe constituted
24 evidence, since it was simply counsel's representation. And on
25 that basis --

1 THE COURT: Excuse me. I thought what was offered,
2 there was a full day of hearing, was there not?

3 MR. SAPIR: Not September 5th, Your Honor. September
4 2.

5 THE COURT: No, September 2.

6 MR. HUEBNER: Yes, Your Honor.

7 THE COURT: What was the date?

8 MR. SAPIR: Yes. Yes, the --

9 MR. HUEBNER: September 1.

10 THE COURT: Yes.

11 MR. SAPIR: The Friday prior to the long Labor Day
12 weekend.

13 THE COURT: And how many witnesses were here that day,
14 Mr. Huebner?

15 MR. SAPIR: I believe there were two, Your Honor.

16 THE COURT: Huh?

17 MR. SAPIR: I believe you heard two.

18 MR. HUEBNER: Your Honor, Tim Coleman, the debtors'
19 financial advisor and investment banker, testified at length,
20 was cross-examined at length, and was redirected. Then Ms. Peg
21 McDaniel, the pilot plan's actuary, testified at length, as
22 well.

23 THE COURT: All right.

24 MR. SAPIR: So two out of the four did testify; that's
25 absolutely correct, Your Honor.

1 In any event, after reviewing the record --

2 THE COURT: The Court also had the declarations under
3 oath, constituting the direct testimony of all of the Comair
4 witnesses and the exhibits that went with those declarations.

5 MR. SAPIR: That's correct.

6 THE COURT: And those were part of the record.

7 MR. SAPIR: That's correct, Your Honor.

8 THE COURT: It's true that nobody was there to cross-
9 examine, but those facts were in the record, right?

10 MR. SAPIR: That's correct, Your Honor.

11 THE COURT: All right. Go ahead.

12 MR. SAPIR: Nevertheless, using our legal ability, we
13 believed that there were meritorious grounds, with all due
14 respect, to appeal that ruling. One of the grounds that we
15 found as a basis to appeal was the PBGC and its instructive
16 brief had stated to this Court that it was a requirement in a
17 voluntary distress termination to show that each of the
18 debtors, not only Delta, but each of the debtors, all of the
19 controlled group, met the standards of the test. Looking
20 through the record and seeing no analysis regarding the assets
21 and liabilities and ability of all but Delta to pay the
22 liability owed to the PBGC, we believed that that was a
23 meritorious ground.

24 Ms. Beckerman referred to a statement by Judge Cote in
25 her decision that the appeal was "frivolous." The Judge found

1 that that, she believed, was a frivolous basis because she did
2 not believe that the other members of the controlled group had
3 the wherewithal, in order to pay those debts to the PBGC. That
4 wherewithal that she found was, in our opinion, not a part of
5 the record that was developed before this Court because it had
6 not been submitted in any declaration, nor in any testimony
7 that was given. It was certainly a technical legal argument,
8 but one that we believed could be found to have merit. I
9 mention that only for one reason.

10 THE COURT: Before you move on. Is there an answer to
11 that?

12 MR. HUEBNER: There sure is, Your Honor.

13 THE COURT: Because I don't recall it.

14 MR. HUEBNER: Let me read to you from Judge Cote's
15 opinion and tell you what actually happened.

16 "Second, appellants' claim that the eighteen Delta
17 subsidiaries failed to show that they each met the
18 criteria of Section 4041(c). This argument is
19 frivolous. In his testimony, Coleman referred
20 repeatedly to the ability of the debtors, not just
21 Delta, to raise capital. Moreover, appellants have
22 not indicated what basis they have to believe that, if
23 Delta could not support the pilot plan, its captive
24 subsidiaries would somehow be able to do so on their
25 own."

1 Just to be clear, Your Honor, almost everything he's
2 saying Judge Cote addressed directly; and, therefore, it's just
3 like this one on every point.

4 THE COURT: All right. Thank you.

5 MR. SAPIR: Your Honor, just to respond, we believe
6 that it was the debtors' burden of proof, not our burden of
7 proof, to show that they couldn't -- or that they could pay the
8 debts, but that was part of the burden of proof that the
9 debtors had. And we believe that they had failed miserably in
10 that regard because they had not given any of the financial
11 information that they had given for Delta itself.

12 Now, again, it was a technical legal argument. We did
13 not know whether, in fact, the other members of the controlled
14 group could or could not pay that liability. All we knew was
15 that there was no information in the record, other than a
16 couple of wayward statements by experts, who referred to
17 debtors. And we believe that it was just in the way of their
18 testimony that they said "debtors" because they were making
19 conclusory statements that were not based upon solid, hard data
20 in the record.

21 THE COURT: Okay. What's your next point?

22 MR. SAPIR: My point is this. There was a brief that
23 Judge Cote found in her opinion was completely duplicative of
24 what the debtors had filed, and in her opinion, an argument
25 that had been made regarding the lack -- the alleged lack of

1 standing of the retired pilot to bring the appeal was a
2 frivolous claim. And she was referring not to our brief, but
3 to the brief of the Creditors' Committee.

4 So I just want this Court to know that the judge
5 absolutely found fault with one of our arguments, but she also
6 found fault with others. And the reason I took the time to
7 mention that, Judge, is because the way Mr. Huebner made his
8 presentation I think he was implying that we're a bunch of
9 cranks, that our clients are here simply to put a monkeywrench
10 in what Delta and the Creditors' Committee and PBGC would like
11 to see as a very smooth transition of the Delta pilots'
12 retirement plan from a plan that is a viable and existing plan
13 to one that has been taken into trustee -- terminated and taken
14 into trusteeship by the PBGC. And I assure Your Honor that
15 that is not the case.

16 I have clients who are frightened, very, very
17 frightened about their livelihood in the future. Many of the
18 people who are part of our group -- and I just want to say that
19 I know that there have been many times that we have been
20 compared to DP3. My understanding is that DP3 at one time had
21 2,800 -- approximately 2,850 retirees, that their website now
22 shows that they have approximately 1,542 people who are still
23 contributing.

24 THE COURT: Can I interrupt you? I'm not aware that
25 anybody has compared the group you represent to DP3. Move on.

1 MR. SAPIR: Well, I'd just like to say that 428 of our
2 supporters were supporters of DP3. And we are up to almost 840
3 people now in less than three months. DP3 has been around for
4 three years. So there -- I just say that, Your Honor, because
5 there are a lot of people who are retired, who are dependent
6 for their livelihoods to feed and to house their families with
7 their retirement benefits. And that's the reason why we have
8 pressed and why we have pressed so hard until we hope that this
9 Court will hear us and will find, as we will now argue, that it
10 should not approve the proposed settlement with the PBGC. And,
11 after that, we would like this Court to give us an opportunity
12 to argue our motion to reconsider based on evidence that was in
13 existence as of September 5th, but was not available to the
14 objectors at that time. And I'm referring to US Airways'
15 interest in a merger with Delta. But I will address that at
16 the appropriate time.

17 THE COURT: Give me bullet points on why -- just
18 bullet points on why the settlement with the PBGC should not be
19 approved when it has been endorsed by every constituency that
20 has an economic interest in it and is by every constituency
21 that is on it on their face adverse to the PBGC.

22 MR. SAPIR: I don't know that that's the case, Your
23 Honor. I think that, you know, one of the --

24 THE COURT: Bullet points.

25 MR. SAPIR: Okay. Well, let's talk about the

1 reasonableness of the proposed agreement. The amount that is
2 due to the PBGC essentially can be calculated by determining
3 what the unfunded liability is and deducting from that the
4 assets of the plan. That will then indicate what the shortfall
5 is that's needed to fully fund this plan. If this plan were
6 fully funded, there --

7 THE COURT: I'm glad to know it's as simple as that.
8 What does the math tell you?

9 MR. SAPIR: Pardon?

10 THE COURT: I'm glad to know it is as simple as you
11 say after I've been told repeatedly that it's extraordinarily
12 complex. What does your math come out with?

13 MR. SAPIR: Well, that's a very good question, Your
14 Honor, because neither of those amounts has been provided by
15 either the PBGC, nor has it been provided by the debtors. And
16 I would think that that's information --

17 THE COURT: So you don't know?

18 MR. SAPIR: I do not know.

19 THE COURT: Okay.

20 MR. SAPIR: I do not know because it is information
21 which I believe has intentionally been kept from this Court
22 because I would think that that is information that is so basic
23 to this Court's determination of what is reasonable that Your
24 Honor would order that that information be provided.

25 THE COURT: All right. Let's go to the videotape.

1 Mr. Huebner, what's the answer to that?

2 MR. HUEBNER: Your Honor, as we argued at some length
3 in our papers, there is no number that, quote, "we" think is
4 right. The PBGC says that the statute requires \$2.989 billion.
5 The last three Courts that have reached this issue have sided
6 with them and said it doesn't matter what anybody else thinks,
7 the law of the land says that their methodology is what must be
8 applied and they are owed 2.989 billion.

9 If we won that, we would -- we then risk arbitraging
10 the next litigation which is, okay, we win, it's not their
11 methodology, it's prudent investor. Ms. Beckerman already
12 addressed this as did I. We then buy another litigation over
13 what's the right interest rate that a prudent investor would
14 use. If we ended up with a lower interest rate, much like the
15 one United did, it would be more than we settled for.

16 Then the third thing which makes this whole thing
17 totally analytically irrelevant, it almost doesn't matter what
18 the amount of the claims are because the PBGC believes that
19 they are priority claims, tax claims as to non-debtor secured
20 claims, and that all of that doesn't matter either because
21 they're joint and several.

22 So he keeps suggesting, and this is the third time and
23 we're going to be talking about this in the next motion, that
24 we intentionally withheld something from the Court. We'll be
25 talking about that a lot in a few moments. We were very clear.

1 There is no single number. It's not a contract damages case
2 where your damages, your expert says 50 million and our expert
3 says 80 million. There are three independent litigations and
4 then the joint and several issue, all of which spit out the
5 ultimate economic harm to the estates absent a deal.

6 THE COURT: Very briefly, Mr. Sapir, what's your
7 response?

8 MR. SAPIR: My response, Your Honor, is that the
9 debtors and the PBGC and I presume the Creditors' Committee all
10 know how much the assets of the plan are worth. It's not that
11 difficult because it's something that they are required to
12 ERISA to have auditors determine on an annual, if not more
13 frequent, basis. They must know that. What if that amount is
14 \$3 billion?

15 MR. HUEBNER: Well, again, had he bothered to come to
16 the trial he would have known that it was all over our papers
17 and all over our testimony. The plan has I believe \$1.7
18 billion of assets determined on an actuarial basis. So I'm not
19 sure what we're hiding.

20 Again, they chose not to come. Maybe they should have
21 read the papers.

22 THE COURT: Now what's your response?

23 MR. SAPIR: Yes, Your Honor. Assets are not
24 determined on an actuarial basis. Benefits are determined on
25 an actuarial basis.

1 THE COURT: Okay.

2 MR. SAPIR: But aside --

3 MR. HUEBNER: Fair market value.

4 MR. SAPIR: -- aside from that, if it was \$1.7 billion
5 in September I know with the run-up of the market that it has
6 to be substantially more than that now.

7 So whom are we kidding here? Your Honor is entitled -
8 - sir?

9 MR. MORA: Your Honor, if I could just very briefly be
10 heard. The proof of claim that PBGC has filed is prima facie
11 proof of the amount of our claim. And in our proof of claim we
12 gave the figure of \$3 billion.

13 And, secondly, with regard to the simple math, the
14 total liabilities of this plan for all of the benefits
15 calculated in accordance with our regulations total \$4.7
16 billion. And the approximate amount of assets is 1.7 billion.
17 So the 3 billion is the difference between those two.

18 THE COURT: There you go. There's the simple math.
19 What's your next point?

20 MR. SAPIR: That's the first time I've heard that,
21 Your Honor.

22 THE COURT: Next bullet point. Was that not in the
23 evidence at the trial?

24 MR. SAPIR: I did not see it, Your Honor.

25 MR. HUEBNER: Your Honor, the 1.7 was absolutely in

1 the evidence at trial. The underfunded amount of the plan was
2 absolutely in the evidence at trial. And the PBGC's claims I
3 believe were on file well in advance of the trial. They are
4 public documents. I'm not sure what the issue is.

5 THE COURT: Okay. Help me with your next bullet
6 point.

7 MR. SAPIR: We've heard it stated by all of the
8 proponents of the proposed agreement that if there is not a
9 settlement there will be "complicated, lengthy and
10 unpredictable litigation." That's a quote from the debtors'
11 reply, Paragraph 8. They say, "No single number is correct;"
12 "Any best-case scenario dollar amount is meaningless." These
13 are all quotes from the debtors' reply.

14 The only one who has been somewhat forthcoming in this
15 matter has been the Creditors' Committee. In their reply at
16 Paragraph 23 they say that the amount owed may be as little as
17 \$1.5 billion. They give a range of 1.5 to 1.9, but they say it
18 may be as little as \$1.5 billion.

19 THE COURT: Are we on reasonableness still or the next
20 bullet?

21 MR. SAPIR: This is still reasonable, yes, Your Honor.

22 THE COURT: I thought we had moved on.

23 MR. SAPIR: So when Mr. Huebner says that the amount
24 that's being paid the PBGC is not approaching 100 percent or
25 not possibly in excess of 100 percent of what the claim

1 actually is, as Ms. Beckerman has estimated \$1.5 billion, when
2 you take the 2.2 billion in stock which I think the plan of
3 reorganization now says may be trading at eighty cents on the
4 dollar, that's the prediction at the time that they emerge,
5 plus the 250 million in notes or cash which is part of this
6 proposed agreement that will be paid to the PBGC, you see that
7 we are not a bunch of cranks, that it looks as if they very
8 well may be overpaid based upon --

9 THE COURT: So they shouldn't be paying so much and
10 the settlement should be upset because the company is
11 overpaying?

12 MR. SAPIR: That's correct.

13 THE COURT: What about the irony that has been
14 perceived in your argument?

15 MR. SAPIR: The irony that the less money that goes
16 into the plan the less money that goes to the participants?

17 THE COURT: Isn't that the irony, Mr. --

18 MR. HUEBNER: A word rarely used correctly but, yes,
19 Your Honor, it is a true irony.

20 THE COURT: Okay.

21 MR. SAPIR: Well, the interesting part about that,
22 Your Honor, is that the PBGC kind of writes off a profit out of
23 the money that is paid to it. This is not a termination that I
24 believe will wind up costing the PBGC money. And in that
25 regard, Your Honor, when Mr. Huebner has given his statistics

1 about how many retirees will receive 100 percent and how many
2 have received ninety percent and how many receive eighty-five
3 percent, what I don't know is that his representation is that -
4 - is percentage of what the qualified plan benefit is or
5 whether he's representing that that is the percentage of the
6 recalculated benefit that one would get under the PBGC's
7 recalculation.

8 MR. HUEBNER: It's the former, Your Honor. The
9 estimates are the percentage of the total original qualified
10 plan benefit. The second one would be a mathematical equation.
11 They wouldn't work because you'd be saying X is ninety-five
12 percent of X which is mathematically impossible.

13 So let me say it again very clearly. Delta's estimate
14 is that on an all expenses when prior payments and lump sums
15 and all recoveries from the PBGC are taken into account,
16 including how we believe the settlement proceeds will be
17 allocated and the seemingly-current market values, that on
18 average ninety-five percent of the original expected qualified
19 benefits will be paid.

20 THE COURT: Okay. May we move on from reasonableness
21 to your bullet point?

22 MR. SAPIR: Yes. Delta's proposed plan of
23 reorganization now estimates the value of the company by as
24 much as \$12 billion which is a far cry from what previous
25 estimates have been. The proposed USAir merger estimates

1 approximate savings of \$1.65 billion per year.

2 The point of the matter is, Your Honor --

3 THE COURT: Does this relate to approval of the PBGC
4 settlement?

5 MR. SAPIR: Yes, Your Honor, because things have
6 changed. Things have changed drastically.

7 Now, again, we will in the motion to reconsider who
8 how --

9 THE COURT: Give me the syllogism. Is the syllogism
10 if the USAir proposed takeover is successful then it's going to
11 change the company's ability to deal with the pension plan and
12 will make it unnecessary to terminate? Is that what --

13 MR. SAPIR: Yes, that is part of our argument, Your
14 Honor. Yes, that is, absolutely.

15 THE COURT: Did you read anywhere in the materials
16 that -- correct me, counsel, if I'm wrong that the USAir
17 proposal which, by the way, has been as I understand it
18 rejected by Delta's management, is conditioned upon the
19 termination of the pension plan.

20 MR. SAPIR: It is not, Your Honor.

21 THE COURT: It's not?

22 MR. SAPIR: It is not. No, Your Honor. There is --

23 THE COURT: I thought I read that. Whose paper did I
24 read it in?

25 MR. HUEBNER: Your Honor, you read it in USAir's

1 papers as well as ours. And let's just put this to bed right
2 now.

3 We are in the middle of a hostile takeover attempt by
4 USAir. We're not exactly kind of in bed together.
5 Nonetheless, their counsel gave us a signed, sworn affidavit in
6 which he stated, among other things, they were aware of the
7 proceedings, they've followed the Court's ruling, and that
8 their offer assumed termination of the plan.

9 Mr. Sapir took that to this Court and the District
10 Court at the same time and went to both of you and said, look,
11 look, the USAir offer means that the 4041 should be reversed.

12 Unfortunately or fortunately, Judge Cote got there
13 first and she actually expressed a view on this topic because
14 we had forty-eight hours to do a surreply to respond to his
15 inappropriate on reply allegation in the appeal that the USAir
16 issue changed the equation. And here is what Judge Cote said.
17 Let's go to the videotape:

18 "In their reply appellants raised the additional
19 argument that debtors withheld material information
20 from the Bankruptcy Court by failing to disclose the
21 fact that US Airways Group had expressed interest in
22 merging with Delta. Given that the US Airways did not
23 make an offer to buy Delta until after the September 5
24 order was entered, it would appear that appellant's
25 argument is at the very least overstated. Moreover,

1 the offer currently on the table is premised on the
2 termination of the pilot plan. In any event, it is
3 not necessary to reach the issue here since it was not
4 raised in the first instance with the Bankruptcy
5 Court."

6 In more selected quotations, Your Honor, I will talk
7 about that later also. Judge Coat addressed the issue that
8 they jammed into their reply brief. We went on twelve hours
9 notice and got an affidavit under penalty of perjury from
10 USAir.

11 We then called him and we couldn't believe he wasn't
12 withdrawing this stuff, and we said, we spoke to USAir, we e-
13 mailed with USAir, they said it's conditional, what are you
14 doing. So what does he do in his new pleading? He says, it's
15 a weasel word, they say "assumes." Maybe that doesn't mean
16 conditioned. The representations of two major counsel that
17 they've been in touch with them and that USAir -- it's our
18 clear understanding reconfirmed over this weekend that it's
19 conditioned.

20 I don't think that their clients are cranks at all. I
21 think their clients are being -- you know what? I'll leave it
22 at that for right now.

23 MS. BECKERMAN: Your Honor, I just point out the fact
24 that as we're going to address later on, and their whole
25 argument is based on this idea that there's a weasel word

1 "assumed" being used. Your Honor, the dictionary is clear, as
2 my argument will discuss later on, that "assume" means take as
3 granted or true.

4 I can tell you from my own discussions with USAir's
5 counsel they have been following our proceedings, they put in
6 an affidavit as Mr. Huebner said even though they're adverse at
7 the moment with the debtors. We obviously don't have a
8 position on the merger at this point, Your Honor. But they put
9 in that affidavit because they, like everyone else knows and
10 like we discussed at length at the 4041 hearing, nobody would
11 take the risks that are inherent in not terminating this plan.
12 They used the word "assume" to mean that is what their offer
13 was conditioned upon. And any other argument is just a
14 Quintonian ridiculousness.

15 THE COURT: What's your next point?

16 MR. SAPIR: Your Honor, I would very much like to
17 respond because I think that both counsel --

18 THE COURT: Do it very briefly.

19 MR. SAPIR: Yes. US Airways has made an offer which
20 is subject to Section 8K of the Securities and Exchange Act.
21 In that written offer they have said that their merger offer is
22 conditioned upon the following: satisfactory completion of a
23 due diligence and investigation; the Bankruptcy Court's
24 approval of a mutually-agreeable plan of reorganization that
25 would be predicated on the merger; regulatory approvals and

1 approval of the shareholders of US Airways period.

2 Then they say, forward-looking statement, which was
3 also filed with the merger offer. They provide an exhaustive
4 list of other events that could impact its ability to satisfy
5 the proposed terms of the merger offer, including the wars in
6 Iraq and Afghanistan, widespread infectious diseases,
7 contractual disruptions, changes in fuel prices, and they go on
8 and on and on, and they do not mention anything, anything,
9 about the termination of the Delta pilots' retirement plan.

10 I believe that the general --

11 THE COURT: What about the affidavit?

12 MR. SAPIR: I believe that the -- well, first of all,
13 it's a declaration. But notwithstanding that fact, the words
14 were chosen very carefully. In that declaration the general
15 counsel of US Airways whom I assume knows how to use the words
16 "conditioned upon", "contingent upon," "premised upon," as was
17 the interpretation that was given by Mr. Huebner to Judge
18 Coats. And keep in mind that that was a surreply that we had
19 no opportunity to respond to.

20 Instead, he said that they assumed that it was
21 terminating. Now I believe that they also assumed that there
22 would be no more terrorist attacks crippling the airline
23 industry. I think they assumed many things.

24 THE COURT: What's your next point?

25 MR. SAPIR: But they did not make it a condition. And

1 I think there's a reason why they did not make it a condition.
2 They in their presentation of their offer made it clear that
3 they anticipated a reduction in force initially upon the merger
4 of fifteen percent of the employees. That's in excess of 800
5 pilots of Delta.

6 So the crisis, the crisis that the debtors told you
7 would occur if 800 pilots left is a "crisis," in quotes, that
8 is part of the business plan of US Airways in their proposed
9 merger with Delta.

10 THE COURT: Good. What's your next point? I've got
11 two so far: reasonableness and the USAir offer.

12 MR. SAPIR: In this proposed agreement one of the
13 provisions is that, A, the Western Airlines pilot plan will be
14 terminated post-bankruptcy and will be fully funded.

15 THE COURT: The Western Air --

16 MR. SAPIR: Western Airlines pilot plan. Now that's
17 as a result of a previous merger, I believe, between Delta and
18 Western Airlines. That is one of the -- that is one of the
19 pension plans that they presently sponsor, the Western Airlines
20 pilot plan.

21 THE COURT: That Delta sponsors?

22 MR. SAPIR: That's my understanding.

23 MR. HUEBNER: Yeah. Your Honor, let me help with
24 this. I don't think was anywhere in his papers so this is
25 another surprise. But let's just hit it right now.

1 The total liability under that plan is approximately
2 10 million with an "M" dollars. We agreed as part of the deal
3 with the PBGC to give them comfort that there would not be a
4 distress termination of that plan. The dollars are very, very
5 small.

6 THE COURT: Is this in your papers?

7 MR. SAPIR: I don't recall if it's -- it was raised in
8 --

9 THE COURT: What's your next point? What's your next
10 point?

11 MR. SAPIR: The point is that also that Delta pension
12 plan as part of the agreement, not the retiree -- not the
13 pilots' plan, will not be terminated, but there will be a
14 payment of \$50 million. Your Honor is familiar with In Re
15 Kaiser Aluminum Corporation, the Third Circuit's decision this
16 year.

17 THE COURT: Don't count on it. I might not be.

18 MR. SAPIR: It's a decision in which the Third Circuit
19 found that when terminating a plan or more than one plan that
20 all of the plans should be treated as a group. The PBGC
21 opposed that. They believe that there should be termination on
22 a case-by-case basis I believe.

23 THE COURT: Forgive me. I could have overlooked it.
24 Is this in your papers?

25 MR. SAPIR: As I said, Your Honor, I don't know if

1 it's in the papers. It's something --

2 THE COURT: Is it in the papers?

3 MS. BECKERMAN: No.

4 MR. HUEBNER: Well, it's certainly not in the Kaiser
5 papers.

6 MS. BECKERMAN: No. And I was Committee counsel in
7 that case so I know a little bit about that case.

8 THE COURT: No, I'm talking about his papers.

9 MS. BECKERMAN: No, it wasn't in his papers, Your
10 Honor.

11 THE COURT: All right. Well, move on.

12 MR. SAPIR: In that case --

13 THE COURT: Well, no, move on. What's your next
14 point?

15 MR. SAPIR: All of the counsel that propose this
16 settlement agreement --

17 THE COURT: Which is all of them.

18 MR. SAPIR: All of them.

19 THE COURT: Yes.

20 MR. SAPIR: All of the counsel that preceded me, all
21 of them who have something to gain, each in his or her or its
22 own way at the expense of the retirees, each of whom has
23 something to gain at the expense of my clients the retirees.
24 All of them have said that we are asking this Court --

25 THE COURT: Including the 1114 Committee?

1 MR. SAPIR: Yes. The 1114 Committee as well, which --

2 THE COURT: Of retired pilots?

3 MR. SAPIR: Yes. The 1114 Committee of retired pilots

4 who was so concerned about the healthcare tax credit. Except

5 there are many people that I represent --

6 THE COURT: They're all retired pilots.

7 MR. SAPIR: Many of the people that I represent who

8 are under sixty who are not going to be eligible for COBRA,

9 they have been told, and who will not be receiving a retirement

10 benefit from the PBGC will not be able to avail themselves of

11 the healthcare tax credit. That's what the 1114 Committee did

12 in representing all of the retired pilots.

13 THE COURT: What's your point?

14 MR. SAPIR: The point is that that's an important

15 point that should be met in this agreement. The healthcare tax

16 credit should be made available to each of the retirees if this

17 plan is terminated. That's the point.

18 THE COURT: What am I supposed to do about that?

19 MS. BECKERMAN: You can change the rules of Congress.

20 I mean, the statute is clear and the regs are clear on their

21 face.

22 THE COURT: Yes.

23 MS. BECKERMAN: But, unfortunately, you have to be

24 receiving something from the PBGC as Ms. Lacey said before.

25 So, I mean --

1 MR. SAPIR: Your Honor, I did not interrupt any of the
2 proponent counsel in the middle of their arguments and I would
3 appreciate it if proposing counsel did not feel free to stand
4 up and interrupt my argument. I would appreciate that.

5 THE COURT: I will appreciate it if you will permit me
6 while we're on a particular point, because you see I have this
7 short little attention span and it's helpful to me with my
8 short little attention span to be able to get the other side of
9 a particular point before it passes. What's your point?

10 MR. SAPIR: Of course, Your Honor.

11 MS. LACEY: Yes, Your Honor. Alisa Lacey appearing on
12 behalf of the 1114 Committee. I don't know if I'm within mike
13 range.

14 THE COURT: You are.

15 MS. LACEY: But assuming I am, Your Honor, the point
16 which Mr. Sapir makes regarding health coverage tax credit,
17 just for the record, that's a matter of federal law, what the
18 eligibility requirements are for the health coverage tax
19 credit. That's not been changed or altered by the Committee or
20 any act by the Committee. It is simply a right which if you're
21 in qualified health coverage which is available not only
22 through COBRA arrangements that we've made with Delta for
23 eligible -- and, again, that's COBRA law, that's not anything
24 we did. But there's more than one way to be eligible.

25 There's also many states, I think forty-seven out of

1 fifty, maintain state-operated health coverage tax credit
2 health plans which, if you're not eligible for COBRA through
3 Delta, a retiree age fifty-five to sixty-four, or under sixty-
4 five, could also avail themselves of a state-operated HCTC
5 qualified plan that is not a Delta COBRA plan.

6 But again, Your Honor, just for the record, the health
7 coverage tax credit is a matter of Internal Revenue Service
8 Code provisions. COBRA eligibility is a matter of COBRA
9 federal law provisions.

10 THE COURT: May I ask you this? Does this settlement
11 with the PBGC impair anybody's rights with regard to this
12 health coverage issue?

13 MS. LACEY: No, sir. It does not.

14 THE COURT: All right.

15 MR. SAPIR: To the extent that there are retirees who
16 will receive no benefit from PBGC, and I heard no
17 representation from Mr. Huebner that there would be no retirees
18 who would be left out in the cold who would receive at least
19 some benefit --

20 THE COURT: What am I supposed to do about it? This
21 settlement doesn't affect, as I understand it and you're not
22 telling me that I'm wrong in this, this settlement doesn't
23 affect the availability or not of retirement health benefits or
24 COBRA or whatever it is that you're arguing about.

25 So what does this settlement have to do with this

1 issue that you are now raising?

2 MR. SAPIR: Well, I believe the settlement does, Your
3 Honor.

4 MR. HUEBNER: Can I help for a minute?

5 THE COURT: Yes.

6 MR. HUEBNER: He needs to -- he just doesn't
7 understand. And if it's helpful, it's the exact opposite. The
8 more money you get to the PBGC, the more money the PBGC
9 actually has to pay benefits to retirees to put them into the
10 category that gets the tax credit.

11 So to argue that we pay too much and we should pay
12 less will have the effect of pulling people out of the category
13 that gets benefits from the PBGC, thus turning off their tax
14 credit. So it has a benefit, one that his argument directly
15 tries to take away from his own clients.

16 THE COURT: Okay. Well --

17 MR. SAPIR: Not exactly, Your Honor, because, as I
18 say, many of them are under age sixty. And under the
19 healthcare tax credit provisions they would not be eligible.

20 THE COURT: With or without this settlement.

21 MR. SAPIR: No. No, to the contrary. That's why I am
22 here today. I am here today not to ask that Your Honor order
23 the PBGC to do something or not to do something. I am here to
24 ask Your Honor to have the parties to this agreement go back
25 and negotiate and to alter provisions of this agreement so that

1 it can be assured that everybody, everybody, will receive some
2 benefit out of this proposed agreement.

3 THE COURT: You mean the healthcare benefit?

4 MR. SAPIR: And when I say "everybody," I mean all of
5 the retired pilots who have put in twenty or more years at
6 Delta who have retired from Delta and who are now being told
7 that on February -- in February 2007 you will get something in
8 the mail that will tell you that you may receive a benefit or
9 that you may not receive a benefit. And then what? And then
10 what?

11 I'm here today because now is the time that Your Honor
12 can do something. Your Honor --

13 THE COURT: But, see, that -- my perception is that I
14 can't do something.

15 MR. SAPIR: My perception is that Your Honor can do
16 something.

17 THE COURT: Well, what can I do?

18 MR. SAPIR: You can not approve the settlement
19 agreement as proposed.

20 THE COURT: I see.

21 MR. SAPIR: You can require that the parties go back
22 and negotiate and change terms that --

23 THE COURT: To do what? To provide what?

24 MR. SAPIR: Well, let me give you one example.

25 THE COURT: No. To provide what? Answer my question.

1 MR. SAPIR: Yes. One thing that they can do --

2 THE COURT: To provide what?

3 MR. SAPIR: Provide for a different termination date.

4 They have the right under ERISA --

5 THE COURT: Termination of what? Of the plan?

6 MR. SAPIR: Yes.

7 THE COURT: I thought that was statutory. It has to
8 be on the --

9 MR. SAPIR: That is not statutory. That's based upon
10 a notice that's given by the debtors and approved by the PBGC.
11 And there is nothing to prevent the debtors from giving another
12 notice of a changed date. Nothing at all to prevent that.

13 THE COURT: Would that have anything to do with this
14 medical entitlement?

15 MR. SAPIR: Yes. That would help -- that would make -
16 - here's what that would do, among other things.

17 That would -- Your Honor has heard of the three-year
18 look-back rule where PBGC is ignoring the payments --

19 THE COURT: Wait a second. Wait a second. Does the
20 three-year look-back rule have anything to do with the medical
21 benefits? That's what we're on now.

22 MR. SAPIR: Yes. Yes, Your Honor. The three-year
23 look-back rule has this to do with the medical benefits. If
24 that three-year look-back rule is pushed forward to a date when
25 the PBGC actually takes over the assets of the plan and

1 actually begins to be the trustee of the plan, that three-year
2 look-back rule will go back instead of from September 2, 2006
3 maybe as of January 15th, 2006, will go back three years from
4 there. That will allow many, many more people, many, many more
5 people who are retirees to have their last year, their -- that
6 will add another year towards calculation of their benefit
7 because we will have gone into another year. That's why it
8 makes a difference. And that's something that these two
9 parties can do by going back and changing the settlement
10 agreement.

11 THE COURT: What's the answer to that, PBGC counsel
12 and Mr. Huebner? Can you change the date?

13 MR. MORA: Well, Your Honor, I'm trying to -- on the
14 termination date issue the law says the termination date in a
15 distress termination is the date established by the debtor.
16 That's what Delta did here. They did it in accordance with
17 law, September 2nd. And then the second part of that is,
18 agreed to by PBGC. That's what we agreed to do in our
19 settlement agreement, to follow the law exactly as it says.

20 It's appropriate; it's authorized; there's no basis
21 for forcing us in an agreement to do otherwise.

22 MR. HUEBNER: Your Honor, let me help with a couple of
23 other angles. Number one, the law also requires that if a
24 notice of intent to terminate is sent out it must set a
25 termination date, a date certain that is between sixty and

1 ninety days from the date of the notice. That is the law also
2 and that is what we did.

3 Number two, there is a risk that if this termination
4 date is not followed the original notice of intent to terminate
5 would be deemed void which would open the lump-sum window which
6 could have a catastrophic effect on the estate.

7 Three, and this is a kind of seismic issue, we're
8 debating and debating and debating what is in the best
9 interests of a tiny subset of retired pilots once a plan that
10 is not under the jurisdiction of this Court is in the hands of
11 a governmental corporation. The actual test is what are the
12 best interests of the estate and the law is very clear. It is
13 not the function of judges to renegotiate individual terms of a
14 settlement agreement that falls within the range of
15 reasonableness.

16 We thank you all the time. But to say that we should
17 get up here and have -- first of all, everything he's saying
18 has a direct statutory answer and is simply wrong or was ruled
19 on by Judge Cote, et cetera.

20 But the fundamental premise of this whole exercise
21 that we're here like negotiating before the Court for changes
22 to federal ERISA law, PBGC regulations, healthcare tax credit
23 law, the final 1114 deal, the final DP3 stipulations that I
24 note all rest on the September 2nd termination date, and all
25 those benefits and his admin claim and the pre-termination

1 claim all rest on that, should all be overthrown because they
2 don't like the way a plan that is not an asset of this estate
3 and not even before this Court will be run by a governmental
4 corporation bound by law. This is the point, Your Honor.

5 THE COURT: Okay.

6 MR. HUEBNER: It's not that his clients are cranks.
7 It's that we've now been dealing for months with totally
8 frivolous almost incomprehensible arguments often made to
9 multiple Courts at the same time. And we hope that you will at
10 some point tell people that this just has to stop.

11 MR. SAPIR: Your Honor, I hope that simply because Mr.
12 Huebner says that something is not the law, unless he comes
13 forward and shows us that it's not the law, I assume and I hope
14 that Your Honor will not accept his representation as the law.
15 I hope that that's the case because it's very clear that there
16 is nothing in ERISA to prevent the debtors from filing another
17 notice of intention to terminate and the date that that is
18 served and filed in one day that closes the lump-sum window.
19 So it never opens. It never opens.

20 All it does -- all I'm asking is that these two
21 parties go back and take some pity on the retired pilots that
22 I'm representing. It is not something that will cost either of
23 them anything because it's not coming out of PBGC's pocket,
24 it's not coming out of Delta's pockets. If they adhere to the
25 proposed agreement, it's coming out of my clients' pockets,

1 those who will never receive any benefit as a result of this
2 proposed plan.

3 MS. BECKERMAN: Your Honor, with respect to the point
4 that Mr. Sapir just made -- I'm sorry to rise.

5 Your Honor, we've obviously looked at this issue from
6 the perspective of ERISA and the ability to give another notice
7 of termination. And to be very frank, because of the
8 regulations that Mr. Huebner has said that you have to give
9 sixty to ninety days notice, and if you were to make a change
10 the regulations are totally unclear about whether you have to
11 give a new notice and another time period and whether the
12 window opens.

13 And our concern, obviously from the perspective of the
14 estate, is that if you do have to give a new notice since
15 there's no real clear-cut law on this, and the time starts
16 running again, you have to give sixty to ninety days for
17 termination, that the window will open in the middle, people
18 will sue arguing that they should have been able to retire, you
19 will have enormous litigation, et cetera, and the estate will
20 be at risk of all the reasons why we did the termination in the
21 first place.

22 And furthermore, I would just note for the record, the
23 September 2nd date is not a mystery. It was in the notice that
24 was sent out back in the summer. If this was an issue with Mr.
25 Sapir he certainly could have raised this argument at trial on

1 the 4041 which he didn't do, Your Honor, in front of you saying
2 the notice of termination was inappropriate and should have
3 been some other date. It was clear that we were asking Your
4 Honor to terminate the plan and we knew that that was the date.
5 It was clear to everybody. It was sent out to the
6 beneficiaries. It was filed with the public record. And he
7 didn't raise that argument.

8 And then we had an appeal and he didn't raise that
9 argument, either. So, Your Honor, we're back here today. And
10 I guess what I would say to you is that we probably wouldn't
11 have signed onto this settlement if the date were changed
12 because we think that there are tremendous risks to the estate
13 and it's obviously not what Your Honor's order already in the
14 termination proceeding which is that you knew that the
15 company's motion was to distress terminate and that that
16 termination date would be as of September 2nd.

17 MR. SAPIR: Now here I can tell you that Ms. Beckerman
18 is wrong and I hope that Mr. Mora will back me up because I
19 know that he knows that she's wrong.

20 The filing of a notice of intention to terminate, the
21 act of filing the notice of intention to terminate, closes the
22 ability of employees of Delta to avail themselves of the lump-
23 sum retirement benefit. You give a day sixty to ninety days.
24 But once you file, that lump-sum window is closed.

25 So there is absolutely no hardship at all, no

1 possibility of the alleged parade of horrors happening as a
2 result of another notice being sent or filed, actually it's the
3 filing I believe, not the sending, that would allow a new date
4 which would be very, very helpful to the retired pilots who are
5 the ones that are paying dearly as a result of this proposed
6 settlement agreement, not PBGC which is not only getting
7 seventy percent of what's received to pay benefits, but they're
8 taking thirty percent and using it in other ways.

9 And it's not Delta which is being harmed as a result
10 of this. It's my clients. And I ask --

11 THE COURT: Mr. Huebner?

12 MR. HUEBNER: Your Honor, according to my ERISA
13 counsel who is a very senior lawyer at Delta, moving the
14 termination date to December or January or February would not
15 in fact affect the five-year look-back rule. It would have to
16 be filed in July 2007 which for a lot of reasons doesn't work.
17 It's also outside the ninety-day window that is the upper limit
18 of a new notice of intent to terminate.

19 I also have to say, Your Honor, and we should try to I
20 guess keep emotions a little bit more to a minimum, to suggest
21 that Delta and the constituents in this case have lacked pity
22 for retirees, and I don't think "pity" is the right word at
23 all, to be clear we have all voluntarily reached deals both on
24 the non-qualified and the qualified side that give billions and
25 billions -- more than a billion, probably more than 2 billion

1 value to retirees without even commencing litigation. We're
2 reached consensual deals with our Official Committee of 1114
3 for both sides.

4 For this man to stand up at this stage of our
5 proceedings and allege, especially after we represented the
6 actual numbers and the fact that we think that it's likely that
7 virtually all retired pilots with qualified benefits will in
8 fact get some annuity from the PBGC and the fact that he's
9 simply ignoring what's been told to him, he's just not
10 listening, that there are state regimes that give healthcare
11 tax credits even for the very few people that don't qualify.

12 But, again, to be very clear, the test before this
13 Court is whether this agreement as agreed to is in the best
14 interests of the estate. That's it. And, in fact, it's even
15 better. Is it within the lowest part of the range of
16 reasonableness? I have not heard one word as Delta's and its
17 innocent creditors spend thousands and thousands and thousands
18 of dollars to sit here that is even arguably relevant to the
19 test of is this in the best interest of Delta Air Lines, Inc.
20 and its subsidiaries.

21 THE COURT: Okay. Anything else?

22 MR. SAPIR: Yes, Your Honor. I just would like to say
23 that Ms. Beckerman stated --

24 THE COURT: Last point?

25 MR. SAPIR: -- as Mr. Huebner had that I was not at

1 the trial. I thought I explained that I was not retained to be
2 at that trial.

3 THE COURT: You did. You needn't touch on it again.

4 MR. SAPIR: And it's unfair -- it's unfair for anybody
5 --

6 THE COURT: Please, sir. Please, sir, move on.

7 MR. SAPIR: Yes, sir. I'd like to speak briefly with
8 respect to what I understand to be the five-year look-back
9 rule.

10 The five-year look-back rule provides that when
11 calculating or when PBGC --

12 THE COURT: I'm going to interrupt you.

13 MR. SAPIR: Yes.

14 THE COURT: It's twenty after four.

15 MR. SAPIR: Yes, Your Honor.

16 THE COURT: Is there anything you're going to tell me
17 that wasn't in the papers?

18 MR. SAPIR: Yes.

19 THE COURT: And, if so --

20 MR. SAPIR: Well, I could tell you about Kaiser. But
21 I could also tell you about the five-year look-back rule.

22 THE COURT: I only want to hear what your bullet point
23 objections to this settlement are. Is there anything further?

24 MR. SAPIR: Yes, Your Honor.

25 The basis for computing benefits by PBGC takes into

1 account a reduction, a reduction of benefits --

2 THE COURT: Is this the five-year rule?

3 MR. SAPIR: Five-year rule.

4 THE COURT: Sir, the papers indicate to me that this
5 is a question of either federal regulation or federal law. And
6 in any event, it has to do with what PBGC does in administering
7 the assets which are committed to it.

8 I don't have any jurisdiction, so I am told, with
9 regard to what PBGC does and I don't know how I would have any
10 jurisdiction. So I don't know what I can do for you on that.

11 MR. SAPIR: Well, I can tell you what you could do
12 that would be very helpful.

13 THE COURT: Is turn the settlement down?

14 MR. SAPIR: Turn the settlement down until PBGC goes
15 back and talks to debtors and makes sure that there are
16 provisions in this settlement agreement as to how there will be
17 administration, for instance, with the five-year look-back
18 rule. This is in a question of interpretation.

19 The five-year look-back rule refers to plan amendments
20 that increase benefits within the last five years. But what
21 I'm talking about --

22 THE COURT: Do forgive me. It's important that you
23 understand. I'm not going to issue any kind of a ruling that
24 requires the PBGC to bind itself now with regard to how it's
25 going to administer this trust. That's not my role.

1 What's your next point? I'm not going to do it.

2 MR. SAPIR: Well, you are going to do it, Your Honor,
3 with all due respect if you sign an order authorizing this
4 agreement. Why? Because the PBGC has agreed that it would not
5 reverse the termination. That's part of the administration
6 after it's taken over.

7 Delta for its benefit, obviously, asked the PBGC to
8 agree to it with respect to its administrative role, not to
9 attempt to reinstate the plan after it's terminated.

10 THE COURT: Okay. What is your next point?

11 MR. SAPIR: The point is that that is an agreement
12 between the parties concerning the administration of the plan
13 after it terminates.

14 THE COURT: May I assume that you have concluded on
15 the 9019 issue that's before me?

16 MR. SAPIR: No, Your Honor. May I just have a second?
17 I just -- in our papers we cite you a regulation which we
18 believe does give the PBGC the ability to make exceptions to be
19 fair and equitable as to how benefits are calculated.

20 We also would cite to 29 USC Section 1322(d) which
21 authorizes the PBGC to make guarantees to classes of -- for
22 other classes of benefits than those that are set forth in the
23 statute. And we believe that the PBGC has the ability to
24 utilize that statute to make sure that the retired pilots of
25 Delta are treated fairly and equitably in the recalculation of

1 their benefits.

2 And just getting back -- I know Your Honor doesn't
3 want to hear anymore about the five-year rule, but I would like
4 to make a point because it's different than the others. And
5 the reason it's different is because what we are asking is that
6 in calculating benefits that PBGC agree that it will give to
7 the retirees the maximum allowable compensation -- credit for
8 the maximum allowable compensation that IRS allows at the time
9 of the calculation. In 2007 I believe that that's going up to
10 the sum of \$225,000 a year.

11 That would create a benefit to the retirees that is
12 not as a result of an amendment of the plan, which is what the
13 statute refers to in the five-year look-back rule. That would
14 be a benefit as a result of the act -- an act of Congress or an
15 act of an agency, specifically the IRS.

16 And to the extent that Your Honor believes that it's
17 only fair that they use that in calculation, we would ask that
18 you not approve this settlement, you not approve this
19 settlement, without PBGC agreeing as it has agreed not to
20 reinstate the plan, that that is the law that they will follow,
21 the law as set forth by ERISA and by IRS with respect to the
22 maximum compensation that can be utilized for purposes of
23 determining a retiree's benefit.

24 THE COURT: Good. All right. Now I'd like to hear
25 from you briefly on your other motion. And the other motion is

1 to basically reconsider. Articulate for me exactly how you
2 would describe your other motion.

3 MR. SAPIR: Yes. The other motion is to ask that Your
4 Honor reconsider its determination authorizing termination of
5 the qualified plan in light of facts that were in existence at
6 the time.

7 THE COURT: What were the facts that were in existence
8 at the time?

9 MR. SAPIR: The facts that were in existence at the
10 time are the following. Now I don't have all of the facts, but
11 I can tell you the facts that have become public.

12 That sometime it appears in June of 2006 there was a
13 discussion between the CEO of US Airways and the CEO of Delta
14 at the instance of the CEO of Airways. During that discussion
15 the CEO of US Airways discussed the topic of merger of the two
16 airlines. I cannot tell you specifically what was said. I
17 have not taken any depositions, nor has there been any verbatim
18 transcript. But, clearly, it was understood by the two CEOs
19 that the topic of the conversation was some kind of a merger.
20 At that time, Delta was already in bankruptcy.

21 Although I don't know the facts, it is my belief, and
22 I think it is reasonable for this Court to infer, that the CEO
23 of US Airways would not call the CEO of Delta to discuss a
24 proposed merger unless it had done a substantial amount of
25 analysis and had gone fairly far down the road as to what the

1 advantages of a merger would be, how a merger would be
2 conducted and what the cost of the merger would be to US
3 Airways.

4 As of September 5th, which was the date that the
5 hearing concluded, I think we can reasonably infer by virtue of
6 the fact that on September 29th the CEO of US Airways followed
7 up that discussion with a letter to the CEO of Delta with
8 specifics regarding the proposed merger.

9 If I had been retained and if I had on September 5th
10 when Your Honor said, is there anybody else who would like to
11 be heard, stood up and said, Your Honor, I would like to be
12 heard, I have some startling news for you to consider, there is
13 at the present time a proposal that US Airways is working on,
14 it may be complete, it may not be complete, but clearly they
15 have gone far down the road to propose a merger with Delta, and
16 based on the information that existed at that time I would say
17 to Your Honor that if there were a merger between Delta and
18 USAir, we believe that we can prove that a plan of
19 reorganization could be adopted which would permit the merged
20 airline to successfully emerge from Chapter 11 with the Delta
21 pilots' retirement plan intact, I believe Your Honor would have
22 been very interested to hear more.

23 And if on that date I had asked Your Honor for the
24 ability to subpoena the CEO of USAir, to subpoena others who
25 had been working on that proposal, to subpoena the CEO of Delta

1 or, if I had know the information, perhaps I would have
2 subpoenaed them to be in court on September 5th. I feel
3 relatively confident that Your Honor being fairminded would
4 have said, this is information that I would like to hear.

5 And upon hearing that information, which as we now
6 know shows that Delta is offering in excess of \$8 billion, \$4
7 billion in cash US Airways is offering Delta, and that they
8 have arranged a huge line of credit that would allow them to
9 obtain exit financing, which would allow them to obtain debtor-
10 in-possession financing, which would allow them to fund the
11 Delta pilots' retirement plan, then I believe that Your Honor
12 would have listened to that evidence and I believe that we can
13 show that if Your Honor had heard that evidence that Your Honor
14 would be unable to say that there is no possibility for this
15 company emerging from Chapter 11 successfully with the pension
16 plan intact.

17 US Airways states that in excess of \$1 billion, and I
18 think the amount is \$1.65 billion, in synergy and savings alone
19 will be produced on an annual basis. As I stated before, USAir
20 says that as part of its business plan based on its past
21 experience it anticipates that fifteen percent of the workforce
22 of the combined companies will be laid off. That accounts for
23 in excess of 900 pilots at Delta. And of course those that
24 would be laid off would be the most junior. Since everything
25 works in seniority under the collective bargaining agreement,

1 those being exited would be the most junior pilots, those not
2 available for retirement.

3 If, if, if, if the alleged parade of horrors that was
4 predicted or speculated by Delta occurred, and there was a mass
5 exodus of pilots --

6 THE COURT: That would serve the US Airways plan.

7 MR. SAPIR: That would serve the US Airways plan. You
8 would have the junior pilots available to -- who are on
9 furlough. Also, USAir has in excess of 1,700 pilots on
10 furlough. So there's no reason to believe that at least
11 insofar as the alleged operational difficulties which really
12 were the crux of the argument, that those would not be
13 alleviated. In fact, it appears that they would be very much
14 alleviated as a result of the proposed merger of the two
15 airlines.

16 THE COURT: Okay. So that's the new evidence?

17 MR. SAPIR: Yes, because as I think --

18 THE COURT: The USAir plan. Is there anything else?

19 MR. SAPIR: -- Mr. Huebner will agree, your inquiry,
20 your investigation at that hearing was to determine whether
21 there was any possible way to save this retirement plan and for
22 the company not to liquidate.

23 THE COURT: So is there any other ground for the
24 motion for me to reconsider the ruling that I made on, what was
25 it, September 5?

1 MR. SAPIR: Yes, Your Honor.

2 THE COURT: Okay. Any other ground?

3 MR. SAPIR: I just would like --

4 THE COURT: I think that's it. Am I not right?
5 That's the only ground?

6 MR. SAPIR: That is the new evidence.

7 THE COURT: Okay.

8 MR. SAPIR: That was not available at the time.

9 THE COURT: Okay. I'll take a brief recess and then
10 we'll conclude.

11 MR. SAPIR: Thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. SAPIR: Your Honor, I would just ask one thing.

14 THE COURT: Yes?

15 MR. SAPIR: And that is we hope that Your Honor will
16 grant the motion to reconsider. But if Your Honor were to deny
17 the motion to reconsider, we would request that that motion be
18 decided before any decision is made on the motion brought by
19 the debtors for approval because if there is approval --

20 THE COURT: For approval of what?

21 MR. SAPIR: Approval of the settlement agreement. I
22 don't know if Your Honor plans to rule on that today or not.
23 But we would ask that the motion to reconsider if Your Honor is
24 going to rule today, that that ruling precede the ruling
25 regarding the motion that was made by the debtors to approve

1 the settlement with the PBGC.

2 THE COURT: I see. All right.

3 MR. SAPIR: Thank you, Your Honor.

4 THE COURT: Thank you. Shall we say ten minutes?

5 (Recess taken at 4:34 p.m.)

6 (Proceedings resume at 4:48 p.m.)

7 THE COURT: Have a seat, please. These are my rulings
8 on the two motions that are before me. In a word, both motions
9 are denied.

10 Which one did you want me to take up first, counsel?

11 MR. SAPIR: The motion to reconsider, Your Honor.

12 THE COURT: Okay. With regard to the motion to
13 reconsider, I confess it reminds me ever so much of the old
14 aphorism, if we had some ham we could have some ham and eggs if
15 we had some eggs, because that's what this is like.

16 The motion that I'm asked to reconsider was decided as
17 it had to be decided upon the facts and the record that were
18 before the Court at the time. What counsel for Captain Buergey
19 has asked is that I now reconsider the motion on the basis of
20 what he believes to have been a conversation in June between
21 two CEOs of US Airways and Delta concerning an interest in US
22 Airways taking over or merging with or somehow combining with
23 Delta, and the speculation that that proposal, which surfaced
24 in the public on, what was it, September 29?

25 MR. HUEBNER: No, Your Honor. It was actually

1 November 15, more than ten weeks after the trial. And, Your
2 Honor, the Pohl affidavit makes clear that prior to November
3 15th, and I quote:

4 "November 15th, 2006 is the first time US Airways made
5 a specific proposal with financial terms. Before then
6 there was nothing but a phone call and one letter
7 asking for a conversation."

8 THE COURT: I see. I perhaps misunderstood what Mr.
9 Sapir said about September 29. Do forgive me, Mr. Sapir, if it
10 appears that I was misled by what you said.

11 The motion was decided on the basis of the factual
12 record. That is the only basis that it could have been
13 decided. The fact that after the fact, long after the trial
14 and the Court's ruling on September 5 and whatever the date of
15 the order was -- what was the date of the order?

16 MR. HUEBNER: I believe it might have actually been
17 entered on September 5 itself.

18 THE COURT: All right. And the fact that in
19 somebody's mind in the headquarters of USAir there was a
20 thought brewing, if it was brewing, that USAir might like to
21 try to take over Delta Air Lines at some point in the future is
22 and was completely irrelevant to the decision that I made.

23 Based on the record before me today with regard to
24 what is known about the USAir bid, putting aside the affidavit
25 of Mr. who?

1 MR. HUEBNER: Your Honor, Mr. Timothy Pohl who is the
2 Skadden Arps bankruptcy lawyer heading up at least in part the
3 US Airways effort in this matter.

4 THE COURT: And that's the affidavit that said that
5 the proposal to acquire was made upon the assumption of the
6 rejection of the plan?

7 MR. HUEBNER: Yes, Your Honor.

8 THE COURT: Okay. Putting aside Mr. Pohl's
9 affirmation or declaration or whatever it was, the USAir
10 proposal of November whatever the date was would not today be a
11 ground for this Court to have reached a different decision on
12 the motion to reject the pilot pension plan.

13 In my view, the motion for reconsideration is
14 genuinely frivolous. You will do an appropriate order denying
15 the motion, Mr. Huebner, and submit it to me.

16 MR. HUEBNER: Yes, Your Honor.

17 THE COURT: Now with regard to the settlement that I
18 have been asked to approve on a motion under Section -- or is
19 it Rule 9019 --

20 MR. SAPIR: Yes, Your Honor.

21 THE COURT: -- of the Bankruptcy Rules, the tests for
22 approval of a settlement are as set forth in the movants papers
23 and is articulated today orally by Mr. Huebner.

24 This Court, or any Court which is asked to rule upon a
25 settlement, is asked basically to decide whether the settlement

1 which has been reached by management with the advice and
2 counsel of its professionals is within the -- what is the
3 rubric, the lowest range of reasonableness?

4 MR. HUEBNER: Your Honor, I believe it's the lowest
5 point in the range of reasonableness.

6 THE COURT: There we go. Mr. Sapir has argued that
7 the settlement was not reasonable because it proposed to pay
8 almost the entire amount of the PBGC claim. Nearly 100 percent
9 I believe appears in the papers that he submitted. As a matter
10 of very obvious fact, that is simply false.

11 The settlement constitutes a very real compromise in
12 the claim asserted by the PBGC. Mr. Sapir is right in at least
13 one respect, and that is that Delta and those that support the
14 motion have not precisely quantified exactly what Delta would
15 claim was the proper measure of the PBGC claim. But that has
16 been fully explained both in the papers and in open court
17 today. It has been explained in terms of the fact that there
18 are complex issues that would involve significant and difficult
19 litigation on three -- at least three separate issues, other
20 issues as well, for example, whether or not the claim is a
21 secured claim, whether it can be asserted against all of the
22 Delta subsidiaries, et cetera.

23 I cannot and will not attempt to summarize Delta's
24 response in its papers, but it is a very comprehensive response
25 and I accept it and adopt it.

1 The non-monetary importance of this settlement and
2 getting the settlement done now has been made perfectly clear
3 in the papers. And, again, I will not attempt to repeat from
4 my memory, which is terribly infirm, all of the articulated
5 reasons as to why it is important to get on with the
6 settlement. Suffice it to say that all of the constituencies
7 which have an interest in the outcome of this motion, save only
8 Captain Buergey and his 820 colleagues, if that's the number, I
9 may perhaps say all of the constituencies that have an ax to
10 grind and have devoted professional study to the consequences
11 of this settlement and the denial or granting of the motion to
12 approve the settlement, all have acknowledged the critical
13 importance of getting this settlement done as a vital stepping
14 stone in the road to the confirmation of a plan so that this
15 debtor or these debtors can emerge successfully, hopefully,
16 from Bankruptcy.

17 I said previously in regard to the other motion that
18 the USAir proposal in, I am now corrected, November would not
19 change the outcome of my ruling with respect to the pilot
20 pension plan. By the same token, the USAir proposal which, by
21 the way, has been rejected for a number of articulated reasons
22 by the Delta management and its professionals, plays no role in
23 my consideration of this settlement with the PBGC. It's just
24 simply not relevant, putting aside Mr. Pohl's affidavit. But
25 it is particularly so -- well, Pohl's affidavit related solely

1 to the pension plan, but it's not unrelated.

2 Another basis for Captain Buergey's objection to this
3 settlement is the proposition that the Court should reject the
4 settlement on the grounds or with the instruction that the PBGC
5 and the company should go back and negotiate further elements
6 to the settlement, specifically relating to such matters as the
7 two-hundred-thousand-dollar-a-year regulation with regard to
8 the calculation of benefits, the three or five-year look-back
9 requirement, matters which are I am told without contradiction
10 matters of federal law and federal regulation, matters which in
11 any event have to do with the PBGC's administration of the
12 plan, matters with respect to which this Court does not have
13 jurisdiction and matters with respect to which, if the retired
14 pilots have a position on the PBGC's administration of the
15 plan, they have whatever rights are accorded to them by
16 petitioning the PBGC and availing themselves of the Federal
17 Procedures Act, or whatever it's called, whereby they can
18 litigate any adverse determination by the PBGC.

19 Most important, however, the role of the Court on a
20 9019 motion is not to make a determination of points, specific
21 points, which the Court feels ought to have been covered or
22 agreed to by the parties and to deny confirmation or approval
23 of the settlement subject to the parties going back and
24 renegotiating the agreement. The Court's role is to determine
25 whether or not the proposed settlement agreement, as it is

1 written and agreed, meets the lowest reasonable test, Mr.
2 Huebner, you've got it memorized, or not. That's the Court's
3 role.

4 My conclusion is that this settlement is eminently
5 reasonable, that it is indeed, as has been asserted by all of
6 the parties who have examined it and whose ox may be gored by
7 it such as the Creditors' Committee, all of the parties who
8 have looked at it and who care, save only Captain Buergey and
9 his group, have acknowledged that it is not only a good
10 settlement, but it is an absolutely essential settlement to
11 permit the company to go forward, and for the benefit of the
12 pilots, the retired pilots and the non-retired pilots.

13 Sometimes I am minded to ask a litigant, be careful
14 what you ask for because you might get it. I would ask Mr.
15 Sapir that question because for the great majority of the
16 retired pilots the consequences of not approving this
17 settlement may well be far worse, far worse, than the approval.
18 I didn't ask the question because there's just no question at
19 all that this settlement is reasonable and must be approved by
20 the Court.

21 Please submit an appropriate order. Thank you all.

22 MR. HUEBNER: May I trouble you for one housekeeping
23 detail? I'll be very brief.

24 THE COURT: Yes, you may.

25 MR. HUEBNER: Yesterday in the guise of information we

1 sent to the Court and of course all the other parties the 8K
2 materials that were publicly filed yesterday by Delta. We
3 don't obviously have those before us. They're not part of the
4 record.

5 We would only ask that the two press releases be
6 admitted into evidence in the record and that the other
7 background materials, I think everyone agrees, are not in the
8 record, not part of the record, not part of the Court's
9 consideration. And with that I think we're done.

10 THE COURT: All right. You're talking about the press
11 releases that came out, very large thick documents?

12 MR. HUEBNER: Yeah. But the press releases are very
13 brief documents and that's all that we would ask be put in.

14 THE COURT: Well, that's fine. You can put those into
15 ECF.

16 As far as the spreadsheets are concerned, there was a
17 reference to CASM and RASM. What are they?

18 MR. HUEBNER: CASM, Your Honor, is a very large thing
19 in Arizona.

20 (Laughter.)

21 MR. HUEBNER: CASM is costs per available seat miles
22 and RASM is revenue per available seat miles.

23 Your Honor, I think Mr. Sapir may wish to be heard on
24 something. And if I'm guessing what it is, we will definitely
25 need to be heard in response.

1 MS. BECKERMAN: Yes.

2 THE COURT: Mr. Sapir, fire away. I assume I can be
3 heard. Okay.

4 MR. HUEBNER: Permission granted, Your Honor.

5 THE COURT: You will not mind if I don't sit down
6 because when I do sit down I get all stiff and can't walk.

7 MR. SAPIR: Your Honor, we would request that a stay
8 be issued regarding each of the orders that Your Honor has
9 issued today to give my clients the opportunity to have an
10 appeal to the District Court.

11 THE COURT: Denied.

12 MR. SAPIR: Thank you.

13 MR. HUEBNER: Your Honor, if I can address one thing
14 very quickly --

15 THE COURT: If you can submit an order on that oral
16 motion as well?

17 MR. HUEBNER: Your Honor, I think it's important, and
18 I am loathe to do this, but given that multiple Courts now have
19 used the words "frivolous" and the like, we are very concerned,
20 frankly, because they have told -- Mr. Sapir has told Ms.
21 Beckerman and myself that if and when they do not prevail today
22 their next move is to seek a stay from this Court, and if they
23 don't win on that, a stay from the District Court and to
24 further appeal. And we have never, ever in this case even
25 talked about financial sanctions as to any party, but the fact

1 that the estates have had to spend possibly hundreds of
2 thousands of dollars, and I had a long speech prepared.

3 In addition to his long history of frivolous pleadings
4 that have gotten denied, there are many misstatements in those
5 pleadings. As Your Honor pointed out, his mathematical
6 statements are misleading and frivolous.

7 We wonder if it is not too much to ask, frankly, for
8 the benefit of all, including his clients, with all due
9 respect, whether Mr. Sapir not be put on notice in some way
10 that this Court takes the frivolity of his pattern of
11 litigation seriously and that past and future events may well
12 be under consideration of Rule 11.

13 THE COURT: Did you want to be heard, too, Ms.
14 Beckerman?

15 MS. BECKERMAN: No. I'm sorry, Your Honor. I was
16 just standing up --

17 THE COURT: Or were you just standing up?

18 MS. BECKERMAN: I was standing up.

19 THE COURT: Well, that's all right.

20 MS. BECKERMAN: But, obviously, I concur with Mr.
21 Huebner on these points. We obviously are distressed that the
22 estate is going to have to spend even more money now to go
23 litigate frivolous stay motions and then further appeals. And,
24 quite frankly, you know, it's obvious that we're trying to make
25 progress in this restructuring and this is just costing the

1 estate lots of time and money. So we would concur with Mr.
2 Huebner's oral motion for sanctions.

3 THE COURT: All right. Well, I'm not going to make a
4 ruling. But I hope I have made it clear and if it hasn't, I
5 will make it clear now.

6 I believe that the positions that you have asserted
7 are frivolous for the reasons that I have said and the reasons
8 that are amply embodied in the record and that have been found
9 to be frivolous.

10 Every constituency of pilots, every single
11 constituency of pilots that has been represented by responsible
12 professionals, including finally DP2, after hearing the
13 evidence and reading the entire record, including the experts,
14 and conferring over the weekend, the Labor Day weekend, with
15 the Delta professionals, has reached the conclusion that the
16 objection to the elimination of the pilot pension plan simply
17 could not be sustained and that the pilot pension plan had to
18 be terminated. Let me count them all. I can't count them all.
19 DP2, DP3 --

20 MR. HUEBNER: ALPA, Your Honor, the active pilots
21 union.

22 THE COURT: ALPA.

23 MR. SAPIR: ALPA, which said it does not represent the
24 interests of the retired pilots.

25 THE COURT: No, but they do represent the interests of

1 pilots who were affected by the elimination of the plan.

2 MR. SAPIR: They eliminated the plan.

3 THE COURT: The 1114 Committee, that's another
4 committee. They never weighed in against the plan. Am I
5 correct or have I not appointed --

6 MR. HUEBNER: And they are, of course, here today
7 against the motions of Captain Buergey's group.

8 THE COURT: Yes. Yes, they are.

9 MR. SAPIR: I don't believe they opposed the motion,
10 only -- maybe counsel can --

11 THE COURT: My point simply is, sir, that at no time
12 that I'm aware of, correct me if I'm wrong, somebody, has the
13 1114 Committee for Retired Pilots ever weighed in against the
14 elimination of the pension profit -- the pension plan. Only
15 Captain Buergey with your assistance has done so.

16 The matter has been litigated, it has been appealed.
17 The appeal has been decided. The motion for reconsideration
18 based on a USAir seed in the mind of the chairman of USAir is
19 rejected today as completely frivolous.

20 The objection to this settlement which, again, is so
21 clearly beneficial, probably even to almost every one of the
22 clients that you represent. Perhaps not every single one, they
23 may not all benefit, I don't know. But you heard the numbers
24 from Mr. Huebner as to the moving target of retired pilots
25 whose eventual benefits may come into play, even the ones that

1 now apparently will get zero because they got a very large lump
2 sum retirement.

3 The point of the matter is that this is extremely
4 costly. If you don't think it's costly, try to top out all of
5 the professionals who are in court all afternoon today, and
6 goodness knows how many hours out of court preparing responses
7 to your many litigation forays.

8 So that's my view. And sooner or later, whether it's
9 a Karen Myers (phonetic) situation or some other situation, I
10 would assume that the constituents who are paying a huge amount
11 of money through all this litigation that multiple Courts have
12 now found to be frivolous, will tire of the game,
13 understandably. Delta has never sought sanctions against any
14 of its pilots, but who knows? There may be a limit to their
15 patience. I don't know what else to say.

16 MR. HUEBNER: Your Honor, to be clear --

17 THE COURT: I'm not making any ruling now because
18 nothing is before me.

19 MR. HUEBNER: -- we did not ask for them. We asked
20 for exactly what we got which is a sense of the Court about
21 what might be appropriate if these types of activities continue
22 and we are perfectly satisfied and we appreciate it.

23 MR. SAPIR: Your Honor, if I just might say I respect
24 what you have said and it's something that will be discussed
25 with my clients. But I would respectfully say that the other

1 counsel here have their clients to represent and they have a
2 viewpoint and I have my clients to represent who have a
3 different viewpoint.

4 THE COURT: Yes, I know that. I realize that. I do
5 realize that. All right. Anything else?

6 MR. HUEBNER: No, Your Honor. Thank you very much.

7 THE COURT: Thank you all. Good day.

8 (Proceedings concluded at 5:15 p.m.)

9 *****

10 CERTIFICATION

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

14 

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December 21, 2006

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December 21, 2006

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