

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

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

**JOINT STATEMENT OF STIPULATED FACTS
WITH RESPECT TO THE MOTION OF DP3, INC. TO COMPEL THE
CONTINUED PAYMENT OF COLLECTIVELY BARGAINED-FOR PENSION
BENEFITS TO THE RETIRED PILOTS**

Solely for the purposes of the hearing on the motion of DP3, Inc. to compel the resumption of collectively bargained-for pension benefits by the Debtors, the parties hereto, by their respective counsel, stipulate and agree as follows:¹

I. Introduction

1. Delta Air Lines, Inc. (“**Delta**”) and its Official Committee of Unsecured Creditors (the “**Committee**”) assert that (i) Non-Qualified Pension Benefits (as defined below) paid to retirees and earned by pre-petition labor and (ii) funding contributions to the Qualified Pilot Plan (as defined below) in respect of benefits earned by pre-petition labor (together, the “**Contested Pension Payments**”) each give rise to pre-petition, unsecured obligations of Delta under § 507 of title 11 (the “**Bankruptcy Code**” or the “**Code**”). Delta and the Committee do not believe that § 1113(f) of the Code creates a superpriority status for these pre-petition claims or that it overrides § 507. Accordingly, in its first-day “Wages Motion,” Delta did not seek authority to make these payments and does not intend to make these payments.

2. DP3, Inc. d/b/a Delta Pilots’ Pension Preservation Organization (“**DP3**”) and the Air Line Pilots Association (“**ALPA**”) assert that, unless and until the Court, pursuant to § 1113 of the Code, rejects or modifies the Pilot Working Agreement

¹ Many of the numerical figures and estimates in this stipulation (including, without limitation, those in paragraphs 28-31) are based on information provided by Delta. The remaining parties have not confirmed these figures and reserve the right to contest these numerical figures and estimates at the appropriate time.

(“PWA”) to permit Delta not to make the Contested Pension Payments, Delta must continue to make all such payments when due because they arise under and in connection with the PWA. These parties believe that Delta’s determination to cease making these payments at this time constitutes an impermissible unilateral modification or termination of the PWA in violation of § 1113(f).

3. While Fiduciary Counselors Inc. (“**Fiduciary Counselors**”) asserts that minimum funding contributions to the Qualified Pilot Plan that come due post-petition constitute administrative expenses because they are attributable to post-petition labor under the PWA unless and until § 1113 relief has been granted, it does not seek current payment of these amounts.

4. The parties hereto all agree that the dispute pending before the Court – whether § 1113(f) of the Bankruptcy Code (and other sections of the Code read in conjunction therewith) obligates Delta to pay all of the Contested Pension Payments unless and until § 1113 relief has been granted – is a pure issue of law.

II. Delta’s Pilot Pension Benefits – Overview

5. The PWA incorporates by reference the Delta Pilots Retirement Plan (the “**Qualified Pilot Plan**” or the “**Plan**”) and related non-qualified plans (the “**Non-Qualified Plans**”).

6. Section 10.02 of the Qualified Pilot Plan states that “[t]he contributions of the Employing Companies shall be paid at reasonable periodic intervals, taking into consideration the recommendation contained in the latest actuarial valuation.” Section 26 of the PWA states that “[t]he Company will pay the entire cost of providing retirement benefits for Pilots”

7. A pilot who retires at age 60 generally is entitled to an annual pension benefit equal to 60% of his or her “**Final Average Earnings**,” which is defined as the average of the last three years of earnings of a retiring pilot, with such benefit reduced for early retirement and service of less than twenty-five years. This pension benefit is called the “**Formula Benefit**.” This Formula Benefit is provided in part by the Qualified Pilot Plan and, for those pilots earning above certain limits set forth in the Internal Revenue Code (as discussed below), in part from the Non-Qualified Plans.

8. At the election of each retiring pilot, 50% of the present value of the Formula Benefit can be paid to him or her from the Qualified Pilot Plan in a one-time lump sum upon retirement, with the remainder payable monthly as an annuity.

III. Plans and Fiduciaries

9. A qualified defined benefit plan such as the Qualified Pilot Plan is a separate legal entity that has its own assets, separate and apart from those of the sponsoring employer. The assets of qualified plans are not subject to the claims of the

employer's creditors. The federal law governing the establishment, administration and management of plans – the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) – expressly requires that a qualified plan's assets to be held in a separate trust. It also mandates that a qualified plan's assets be used exclusively for the benefit of the plan's participants and their beneficiaries. Thus, under ERISA, qualified pension benefits are not payable directly by employers to retirees.

10. Responsibility for administering and managing a plan does not necessarily rest with the employer that established it. Rather, that responsibility rests with “named fiduciaries” appointed under the plan's governing document. The Qualified Pilot Plan's governing document names the Administrative Committee of Delta, consisting of certain Delta management employees, as the named fiduciary.

11. A named fiduciary may appoint an independent fiduciary to perform limited tasks normally performed by it. The Administrative Committee, Delta and Fiduciary Counselors entered into an agreement dated September 1, 2005, under which Fiduciary Counselors is to exercise authority as independent fiduciary of the Qualified Pilot Plan solely as to: (1) pursuing claims, if any, against Delta that the Qualified Pilot Plan may have if Delta fails to make a required contribution to the Qualified Pilot Plan when due, and (2) determining the timing of lump sum payments and the ability of the Qualified Pilot Plan to make such payments under applicable law (as described below).

IV. Internal Revenue Code Limits on Tax-Qualified Plans

12. The Internal Revenue Code limits the amount of annual income that can be considered in determining the pension benefit payable from a tax-qualified plan. Congress set this limit at \$200,000 in 2001. The limit is adjusted from time to time to reflect changes in the cost of living, but the sample calculations herein will assume, for simplicity, a limit of \$200,000 per year.

13. Thus, a pilot with earnings in excess of \$200,000 must have part of his or her pension benefit paid from a source other than the Qualified Pilot Plan (any such benefits, the “**Non-Qualified Pension Benefits**”).

14. For example, a pilot with a final average earnings of \$250,000 can be paid only \$120,000 (i.e., 60% of \$200,000) in pension benefits from the Qualified Pilot Plan, even though his or her total Formula Benefit would be \$150,000 a year for life (i.e., 60% of \$250,000). In this case, then, the difference – \$30,000 per year – must be paid from another source: generally, as a Non-Qualified Pension Benefit.²

² For sake of simplicity, this example assumes the Internal Revenue Code income limit is \$200,000, and does not include the impact of the money purchase pension plan, the Social Security offset, any benefit from the Delta Western Pilots Defined Benefit Plan, or the freeze of service under the Qualified Pilot Plan as of December 31, 2004.

15. Of Delta's approximately 32,500 retirees,³ approximately 3,551 had final earnings high enough that a portion of their pension must be paid as Non-Qualified Pension Benefits. This consists of approximately 66 former executives and approximately 3,485 retired pilots.

16. In total, there are approximately 5,800 retired pilots currently receiving pension benefits from the Qualified Pilot Plan (inclusive of the 3,485 that also have a claim for Non-Qualified Pension Benefits). Thus, over 2,300 retired pilots are not paid Non-Qualified Pension Benefits by Delta (this is so as to some number of these 2,300 because they had pensions from predecessor airlines, compensating disability payments, or retired prior to 1988 when the income caps described above were established under the Internal Revenue Code).

V. Qualified Benefits

17. ERISA and the Internal Revenue Code require that tax-qualified defined benefit plans be funded according to a regular funding schedule, generally on a quarterly basis. The ERISA rules governing the funding of qualified plans are complex. These rules are based on various factors, including asset value fluctuations, interest rates and expected benefits.

18. Delta established the Qualified Pilot Plan in 1972. The Plan is a tax-qualified defined benefit plan.

19. Prior to the Petition Date, Delta met all funding obligations to the Qualified Pilot Plan as required by law. Notwithstanding such fundings, the Qualified Pilot Plan is less than 100% funded on an ERISA current liability basis.

20. To date, in 2005 Delta has contributed approximately \$237 million to the Qualified Pilot Plan. Delta's estimated funding obligations for the Qualified Pilot Plan (assuming PFEA interest rate relief expires at the end of this year and excluding any potential need for or impact of Supplemental Contributions (as defined below)) are approximately \$179 million in 2006, \$430 million in 2007 and \$750 million in 2008.

21. The Qualified Pilot Plan presently holds roughly \$1.89 billion in assets.

22. In the last twelve months, the Qualified Pilot Plan has paid out approximately \$240 million in annuity payments to retired pilots (which are paid out on a monthly basis).

23. The average annual benefit payment to retired pilots by the Qualified Pilot Plan who did not elect to take lump sums (as described below) is approximately \$41,800,

³ Where appropriate in context, the references to retirees herein shall include their survivors or other beneficiaries.

or \$3,483 per month. The average annual benefit payment to retired pilots from the Qualified Pilot Plan who did elect to take lump sums (as described below) is approximately \$33,100, or \$2,760 per month. The average annual benefit payment to all retired pilots by the Qualified Pilot Plan is approximately \$33,600, or \$2,800 per month.

24. Unless and until actually terminated under ERISA, the Qualified Pilot Plan can and must continue to pay monthly benefits to retirees, even if Delta does not make funding contributions to the Plan. Should the Qualified Pilot Plan be terminated under ERISA, the PBGC takes over and pays according to its rules. Under ERISA, many pilots may get substantially less than their full pension benefits from the Qualified Pilot Plan if the PBGC terminates and takes over the Plan.

VI. Lump Sums

25. The PWA provides that retiring pilots may elect to take 50% of the present value of their projected total Formula Benefit payments as a lump sum upon retiring. This is calculated, very generally, by using the pilot's actuarially estimated remaining life to calculate 50% of the total annual payments he or she would receive, and discounting such payments to a present value.

26. The 50% lump sum benefit is paid entirely from the assets of the Qualified Pilot Plan.

27. Federal law currently obligates pilots to retire at age 60. Although "normal" retirement age under the Qualified Pilot Plan for pilots is 60, pilots are allowed to take "early retirement" once they reach age 50. Delta currently employs 7,009 pilots on its seniority list. Approximately 1,090 pilots took early retirement in the last twelve months.

28. In the last twelve months, the Qualified Pilot Plan has paid out approximately \$907 million in lump sums to 1,190 pilots.

29. The average lump sum paid out by the Qualified Pilot Plan in the last twelve months was \$760,000.

30. The average lump sum of all retired pilots currently eligible for Non-Qualified Pension Benefits was \$825,000.

31. The average lump sum of all retired pilots not eligible for Non-Qualified Pension Benefits was \$480,000.

32. Even if ALPA (and even if each individual pilot) consented, the Internal Revenue Code and ERISA's "anti-cutback" rules prohibit the Qualified Pilot Plan from reducing or eliminating lump sum rights accrued to date under the Qualified Pilot Plan.⁴

VII. Liquidity Shortfall Contributions⁵

33. In addition to requiring periodic contributions under the Qualified Pilot Plan's regular funding schedule, ERISA and the Internal Revenue Code require that the Plan be reviewed at the end of each quarter to determine if additional contributions must be made (such additional amounts, "**Supplemental Contributions**").

34. Supplemental Contributions may become necessary under ERISA for a number of reasons, including (a) payments being made from the Plan, including lump sum payments, or (b) a decline in the market value of the Plan's assets.

35. If required Supplemental Contributions are not paid when due, a qualified defined benefit plan is deemed to be in "liquidity shortfall."

36. Under ERISA, if a defined benefit plan is in liquidity shortfall, while it is generally permitted and obligated to continue paying monthly benefits to participants, it is prohibited from paying any lump sums until the shortfall calculation shows that no Supplemental Contributions remain due.

37. For plans like the Qualified Pilot Plan, the number of lump sums paid in the twelve months prior to the end of the quarter is an important factor in the shortfall calculation.

38. Absent the recent payment of a large number of lump sum payments to retiring pilots (and, in Delta's and the Committee's view, absent the chapter 11 filing), the quarterly contribution due to the Qualified Pilot Plan under the Plan's regular funding schedule on or about October 15, 2005 would have been \$31.4 million.

39. Because of the lump sums paid by the Qualified Pilot Plan to pilots who retired pre-petition, however, the Plan's enrolled actuary, based on estimated asset and benefit information provided by Delta, estimates that ERISA's liquidity shortfall rules would result in a Supplemental Contribution of not less than \$129 million, for a total contribution of not less than \$160 million, coming due on or about October 15, 2005.

40. If Delta does not make this contribution, ERISA will prohibit the Qualified Pilot Plan from making further lump sum payments – but will allow and

⁴ DP3 has not verified this statement.

⁵ DP3 has not had an opportunity to verify the statements of law or hypothetical examples in this section, and does not stipulate thereto.

mandate the continued payment of all monthly benefits – until the Plan is no longer in liquidity shortfall.

41. Even if Delta makes no further contributions to the Qualified Pilot Plan, because of the way in which the liquidity shortfall is calculated, Delta and the Committee believe that (under current law) the Plan will no longer be in liquidity shortfall in April 2006, and will again be able to pay lump sums.

42. If no further contributions to the Qualified Pilot Plan are made by Delta subsequent to the Petition Date and 50% of pilots eligible to retire in May 2006 in fact retire and opt to take lump sums, the contribution due by Delta in July 2006 to the Qualified Pilot Plan, absent the bankruptcy filing, would be approximately \$650 million, including a Supplemental Contribution.

43. If no further contributions to the Qualified Pilot Plan are made by Delta subsequent to the Petition Date and 25% of pilots eligible to retire in May 2006 in fact retire and opt to take lump sums, the contribution due by Delta in July 2006 to the Qualified Pilot Plan, absent the bankruptcy filing, would be approximately \$120 million, including a Supplemental Contribution.

44. If Delta is required to make the estimated \$160 million contribution due to the Qualified Plan on or about October 15, 2005, and 50% of pilots eligible to retire in fact retire and opt to take lump sums during the remainder of 2005, the contribution due in January 2006 will be approximately \$1 billion, including a Supplemental Contribution.

45. If Delta is required to make the estimated \$160 million contribution due to the Qualified Plan on or about October 15, 2005, and 25% of pilots eligible to retire in fact retire and opt to take lump sums during the remainder of 2005, the contribution due in January 2006 will be approximately \$500 million, including a Supplemental Contribution.

46. Supplemental Contributions actually paid may decrease or offset certain contributions that would ordinarily be due thereafter to the Qualified Pilot Plan.

VIII. Non-Qualified Pension Benefits

47. As noted above, where payment of the full Formula Benefit for a pilot retiree under the Qualified Pilot Plan would violate ERISA, the PWA and the Non-Qualified Plans provide that the difference between the full Formula Benefit and the maximum that can be legally paid by the Qualified Pilot Plan is paid by Delta as a Non-Qualified Pension Benefit. These payments have been made directly by Delta to retirees from Delta's general assets.

48. Approximately 3,485 retired pilots receive monthly Non-Qualified Pension Benefits from Delta.

49. Until the Petition Date, Delta timely paid all Non-Qualified Pension Benefits to retirees.

50. Delta's Non-Qualified Pension Benefits for retired pilots aggregate approximately \$7 million per month, or \$84 million per year.

51. The average total Formula Benefit for retired Delta pilots who receive both qualified and Non-Qualified Pension Benefits is approximately \$120,000 per year. (The average total Formula Benefit for all retired Delta pilots is approximately \$96,000 per year.)

52. On average, for pilots who receive both qualified and Non-Qualified Pension Benefits, approximately 20% of the Formula Benefit is a non-qualified benefit.

53. The average non-qualified monthly benefit paid to retired pilots is approximately \$2,000, or \$24,000 per year.

IX. Example

54. The diagram attached hereto as Exhibit A shows a hypothetical example of a pilot with final average earnings of \$250,000, age 60 and 25 years of credited service who retired on September 1, 2005. Based on his final average earnings, this pilot has a Formula Benefit – a total annual pension right – of \$150,000 annually, for life.

55. The pilot may opt to have one half of the present value of the Formula Benefit – i.e., the present value of a \$75,000 annuity for the remainder of that pilot's life – paid from the Qualified Pilot Plan as a \$1.065 million lump sum. Of the remaining 50% of the Formula Benefit – i.e., \$75,000 per year for life – section 401(a)(17) of the Internal Revenue Code prohibits more than \$45,000 from being paid from the Qualified Pilot Plan. The difference, of \$30,000 per annum, is therefore payable by Delta as Non-Qualified Pension Benefits.


New York, New York
Dated: October 12, 2005

By: _____


John Fouhey (JF 9006)
Marshall S. Huebner (MH 7800)
Benjamin S. Kaminetzky (BK 7741)
DAVIS POLK & WARDWELL
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Fax: (212) 450-3800

Attorneys for Debtors and
Debtors in Possession

By: _____


Daniel H. Golden (DG 5624)
Lisa G. Beckerman (LB 9655)
David H. Botter (DB 2300)
AKIN GUMP STRAUSS HAUER
& FELD LLP
590 Madison Avenue
New York, New York 10022
Telephone: (212) 872-1000
Fax: (212) 872-1002

Attorneys for the Official Committee of Unsecured
Creditors of Delta Air Lines, Inc., et al.

By: 

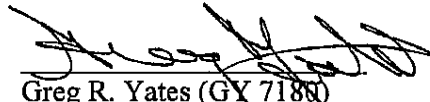
Dean Booth (DB 3807)
Georgia Bar No. 067900
John A. Christy (JC 6826)
Georgia Bar No. 125518
Jason W. Graham (JG 0336)
Georgia Bar No. 304595
SCHREEDER, WHEELER & FLINT, LLP
127 Peachtree Street, N.E.
1600 Candler Building
Atlanta, Georgia 30303-1845
Telephone: (404) 681-3450
Fax: (404) 681-1046

Attorneys for DP3, Inc. d/b/a/ Delta Pilots' Pension
Preservation Organization

By: _____
Greg R. Yates (GY 7180)
Filiberto Agusti (FA 1662)
STEPTOE & JOHNSON LLP
750 Seventh Avenue, Suite 1900
New York, New York 10019
Telephone: (212) 506-3900
Fax: (212) 506-3950

Attorneys for Fiduciary Counselors Inc.

By:




Greg R. Yates (GY 7180)
Filiberto Agusti (FA 1662)
STEPTOE & JOHNSON LLP
750 Seventh Avenue, Suite 1900
New York, New York 10019
Telephone: (212) 506-3900
Fax: (212) 506-3950

Attorneys for Fiduciary Counselors Inc.

By:

Babette A. Ceccotti (BC 2690)
Robin H. Gise (RG 5592)
COHEN, WEISS and SIMON LLP
330 West 42nd Street, 25th Floor
New York, New York 10036-6976
Telephone: (212) 563-4100
Fax: (212) 695-5436

Attorneys for Air Line Pilots Association

By: 
Bruce H. Simon (BS 2597)
 Babette A. Ceccotti (BC 2690)
 Robin H. Gise (RG 5592)
 COHEN, WEISS and SIMON LLP
 330 West 42nd Street, 25th Floor
 New York, New York 10036-6976
 Telephone: (212) 563-4100
 Fax: (212) 695-5436

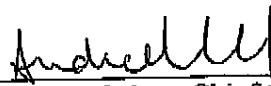
Attorneys for Air Line Pilots Association

By: _____
 Jeffrey B. Cohen, Chief Counsel
 Charles L. Finke, Associate Chief Counsel
 Michael P. Mora, Assistant Chief Counsel
 Andrea M. Wong, Attorney
 Frank A. Anderson, Attorney
 PENSION BENEFIT GUARANTY
 CORPORATION
 Office of the Chief Counsel
 1200 K Street, NW, Suite 340
 Washington, D.C. 2005-4026
 Telephone: (202) 326-4020 ext. 3848
 Fax: (202) 326-4112

Mark I. Bane (MB 4883)
 Mark R. Somerstein (MS 9721)
 KELLEY DRYE & WARREN LLP
 101 Park Avenue
 New York, New York 10178
 Telephone: (212) 808-7800
 Fax: (202) 808-7897

Attorneys for Pension Benefit Guaranty Corporation

By:


 Jeffrey B. Cohen, Chief Counsel
 Charles L. Finke, Associate Chief Counsel
 Michael P. Mora, Assistant Chief Counsel
 Andrea M. Wong, Attorney (AW § 221)
 Frank A. Anderson, Attorney
 PENSION BENEFIT GUARANTY
 CORPORATION
 Office of the Chief Counsel
 1200 K Street, NW, Suite 340
 Washington, D.C. 2005-4026
 Telephone: (202) 326-4020 ext. 3848
 Fax: (202) 326-4112

Mark I. Bane (MB 4883)
 Mark R. Somerstein (MS 9721)
 KELLEY DRYE & WARREN LLP
 101 Park Avenue
 New York, New York 10178
 Telephone: (212) 808-7800
 Fax: (202) 808-7897

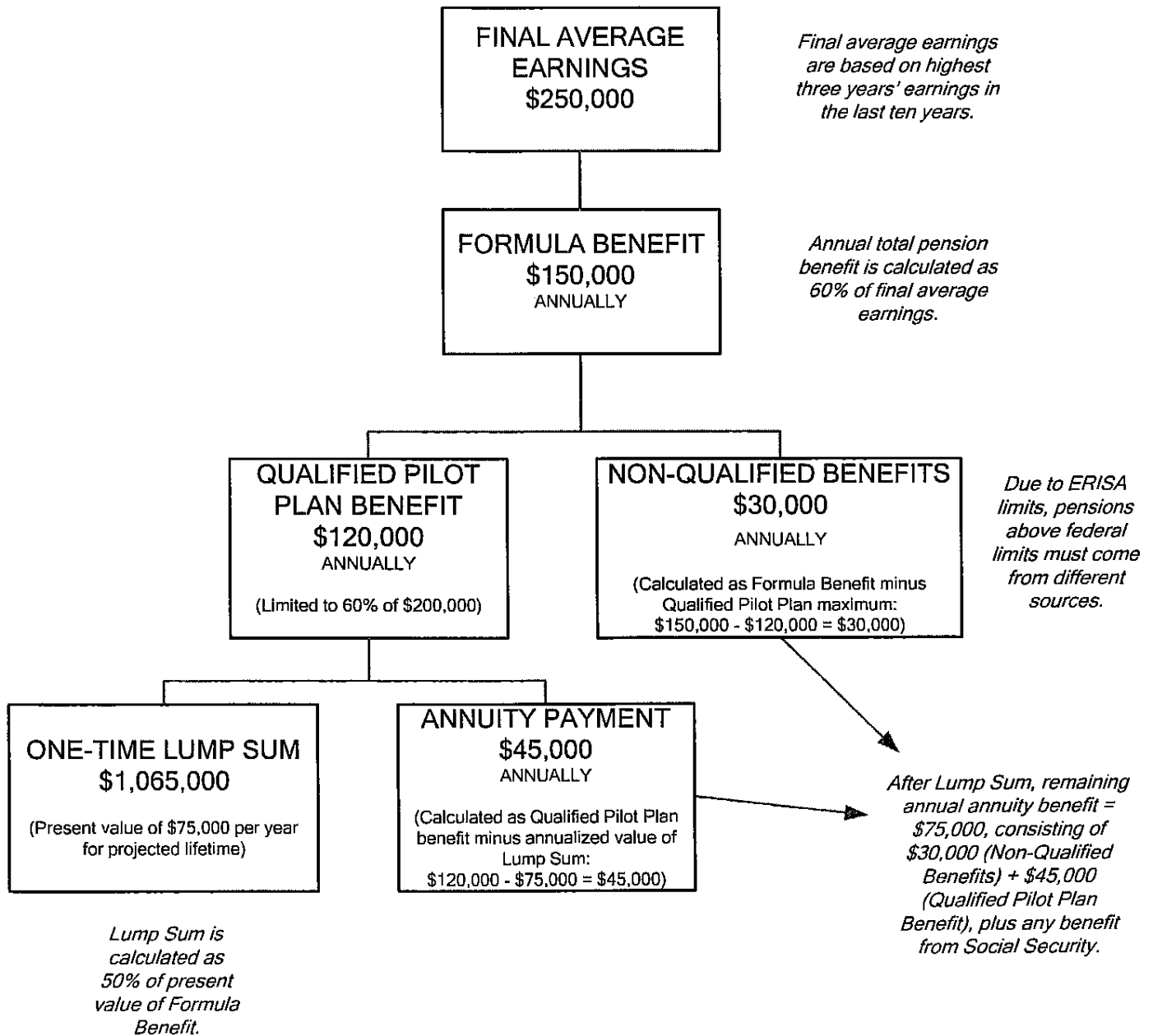
Attorneys for Pension Benefit Guaranty
 Corporation

EXHIBIT A

HYPOTHETICAL PILOT PENSION CALCULATION

RETIREMENT ON SEPTEMBER 1, 2005 AT AGE 60

PLUS 25 YEARS OF SERVICE*



*For sake of simplicity, this example assumes the Internal Revenue Code income limit is \$200,000, and does not include the impact of the money purchase pension plan, the social security offset, any benefit from the Delta Western Pilots Defined Benefit Plan, or the freeze of service under the Qualified Pilot Plan as of December 31, 2004.