

In Delta Bankruptcy, Judge's Ruminations Are Legal Sideshow

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U.S. Bankruptcy Court Judge Prudence Carter Beatty recently offered some thoughts on how much money pilots make, on a recent day in Delta Air Lines' Chapter 11 proceedings.

"You know, what's really weird is why anybody [agreed] to pay them as much money to begin with," the judge said, according to a transcript of the hearing. "I mean, they get paid an awful lot of money. The only good thing about them is they can't work after they're 60."

Regular visitors to Judge Beatty's cramped courtroom, tucked in a corner of the seventh floor of New York's historic U.S. Customs House, are no longer surprised by such ruminations. In the two months since Delta filed for protection from creditors under the federal bankruptcy code, the judge has held forth on subjects ranging from whether Delta stores its disassembled aircraft parts in brown paper bags to whether the airline would be better off with an alcohol policy like that of a Central American carrier she once flew to Guatemala.

"They have a real cost-savings plan on that airline," Judge Beatty said in court on Sept. 15, the day after Delta made its filing. "They start at the beginning of every flight with the stewardesses uncorking three or four bottles of liquor and they just go down the aisle...until it runs out. You see how you could save money that way....It's so much faster than dealing with all those little bottles."

Yesterday, when Delta's labor attorney asked the company's chief financial officer, on the witness stand, what Delta did when it found itself falling behind in meeting financial targets, the judge interjected, "They did what everyone else did: engage in creative accounting." Amid laughter, the judge continued, "It's what Enron did, what WorldCom did." The executive replied, "That's absolutely not the case."

Judge Beatty stands out from the usually somber jurists presiding over painful wage cuts, pension losses and job layoffs that are standard in Chapter 11 reorganizations. One executive, whose company has an interest in the Delta case, remarked that a visit to Judge Beatty's courtroom is like a visit to the Grand Canyon: "You have to see it once, and it is worth the price of admission."

With her 1982 appointment to the bankruptcy bench in New York's Southern District, Judge Beatty became the nation's fourth female bankruptcy judge, according to a biography her office provided. She co-wrote a doctrine on the treatment of creditors in bankruptcy cases that has been cited by the U.S.

Supreme Court. She reads filings two or three times before a hearing -- a habit she mentions often in court. Unlike judges who make long written rulings, Judge Beatty resists making rulings at all, often pushing the parties in a case to reach an agreement outside court, according to lawyers who have practiced before her.

What has become an issue in the Delta case is Judge Beatty's unusual courtroom manner, including regularly interrupting lawyers with colorful banter or scoldings that often make her feelings about a particular party in the case clear.

On Wednesday, the Air Line Pilots Association, which represents 6,100 Delta pilots, asked Judge Beatty to recuse herself, saying she showed bias against the group even as she was set to hear arguments as to whether its members should be forced to accept pay cuts. Bruce Simon, the association's longtime lawyer, made the unexpected request in court, citing the comment about pilot pay last week. On Sept. 15, he said, Judge Beatty called the pilots' pay "hideously high."

Judge Beatty declined to comment on the union's request or on her reputation in general. In court, she refused the pilots' request and denied she was biased, sipping from a bottle of water before telling Mr. Simon, "I believe you misstate the totality of my remarks."

"You have to look at the entire record," says Jim Gray, chairman of DP3, a retired-pilots group that has borne some of the judge's criticism. "The things that she has said are not reflective of the nuanced way in which she has ruled. She has been very careful."

The sideshow could have significant consequences: Delta officials note that the airline's financial condition is worsening, as it burns through cash at a rate of \$5 million a day. Many lawyers who practice in New York's Southern District say that when they have cases pending, they pray that the court's case-assignment system, which randomly pairs cases to judges, doesn't land them in Judge Beatty's hands, because of her reputation for verbally battering the parties in court, which can drag out proceedings.

Delta has tried to move quickly, trying to dump aircraft leases and push for employee pay cuts, including \$325 million in concessions from the pilots. By comparison, Northwest Airlines, which filed for bankruptcy protection in the same New York court just minutes after Delta, has pulled ahead of the Atlanta airline in some of its reorganization efforts, having earlier this week won at least interim concessions from all its labor groups, including its ALPA-represented pilots.

Many lawyers involved in the Delta case declined to be interviewed, fearful that negative comments could harm their clients' interests and that positive comments might seem like currying favor. Jonathan C. Lipson, an associate law professor at Temple University, Philadelphia, who has represented parties before Judge Beatty, says she is known to be "independent-minded" and he hasn't run into problems. But he explains why she has become legend: "You don't know if she's

going to listen to you or if she's going to interject and ask you a question that is serious or a question that is very silly."

Under the judicial ethics code, judges are allowed to form opinions as they hear a case, says Stephen Gillers, a professor of legal ethics at New York University School of Law. "A judge has to say rather explosive things based on things outside the case" to get recused, he says.

Judge Beatty did soften her tone somewhat after the pilots' complaint, explaining that she was concerned that Delta was trying to foist blame for its financial troubles onto the union. But then she strayed from the topic at hand, chiding Delta executives for announcing plans to get rid of their Song discount subsidiary. "When you say you want to get rid of Song, I want to say 'What's the matter with you people?,' the judge said. "You got something that works, don't give it up!"