

MILLER & MARTIN PLLC
 Dean Booth (DB-3807)
 Shelley D. Rucker, (SR- 8175)
 1170 Peachtree Street, NE, Suite 800
 Atlanta, Georgia 30309
 Telephone: (404) 962-6100
 Facsimile: (404) 962-6300
*Attorneys for DP3, Inc. d/b/a
 Delta Pilots' Pension Preservation Organization
 J. Bomar, R. Colby, J. Gray, D. Mairose,
 W. Wirth, J. Mills, and R. Ross*

**Objection Deadline: March 16, 2007
 4:00 p.m. (Prevailing Eastern Time)
 Hearing Date: March 21, 2007, 2:30 p.m.
 (Prevailing Eastern Time)**

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

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

**SUMMARY SHEET ACCOMPANYING MILLER & MARTIN PLLC'S APPLICATION
 FOR AWARD OF COMPENSATION FOR PROFESSIONAL
 SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED**

Name of Applicant: Miller & Martin PLLC representing DP3, Inc. d/b/a Delta Pilots' Pension Preservation Organization, James Bomar, Richard Colby, James Gray, Donald Mairose, William Wirth, John Mills, and Roger Ross

Orders Authorizing Payment: Stipulation and Consent Order between the Debtors, the Committee and DP3 entered June 2, 2006 (Docket No. 2656); Further Order Concerning Stipulation and Consent Order Between the Debtors, the Committee and DP3 entered August 29, 2006 (Docket No. 3152) and Order Approving Stipulation between Debtors, the Official Committee of Unsecured Creditors and DP3, Inc. Regarding Allowed Claims in Respect of Post-termination Non-Qualified Pension Benefits of Retired Pilots entered December 15, 2006 (Docket No. 3871). The three orders are referred to as the "Claims Settlement Orders."

Period for Which Compensation and Reimbursement is Sought: October 1, 2004 to January 18, 2007

Nature of Application: Applicant is seeking an award of fees for its services in creating a fund of claims for retired pilots who were participants in the NQ Plans and for its efforts to obtain the appointment of a committee to represent the interests of retired pilots. Any approved fees will be paid from claims previously allowed by the Claims Settlement Orders. These claims are currently held by Covered Pilots. No fees will be paid directly to Applicant by the Debtors. The amount of the Applicant's claims for approved fees will reduce the allowed claims of the Covered Pilots. Any distribution on account of the fee claims will be paid at the same time as the allowed claims of the Covered Pilots and pursuant to a confirmed plan of reorganization.

Fees Requested: Applicant seeks allowance of the following claims totaling \$6,611,937.00 ("Fee Claims") as payment for its fees and expenses:
 (a) Administrative claim of \$900,000.00
 (b) General Unsecured Claim of \$5,711,937.00.
 The request is based on a percentage of the fund of claims created.

Common Fund for Retired Pilot's Resulting from Applicant's efforts:

	<u>Fund of Allowed Claims</u>	<u>Percentage Requested</u>	<u>Estimated Distribution Value of Claims</u>	<u>Estimated Distribution Value of Fee Claims</u>
NQ Admin Claims	\$9,000,000.00	10%	9,000,000.00*	900,000
Balance Claims	\$71,399,209.08	8%	46,409,485.90**	3,712,759
Post Termination Claims	\$728,854,937.00	0%	473,755,709.05**	0
TOTAL	\$809,254,146.08		529,165,194.95	4,612,759

Fee Claims as a Percentage of Total Claims: .817% (6,611,937 ÷ 809,254,146.08)
Fee Claims Distribution Value as Percentage of Total Claims Distribution Value: .871% (4,612,759 ÷ 529,165,194.95)

Lodestar Multiplier: 1.727 (based on Estimated Distribution Value excluding expenses - \$4,612,759 ÷ 2,669,510.50)

* Contingent on plan confirmation and payment to Administrative Creditor Class.

****Contingent on plan confirmation and the distribution of New Delta Common Stock generating a recovery of 65% to the claimholder (.65x \$71,399,209.08). No value is guaranteed.**

All capitalized terms shall have the meaning provided in the Claims Settlement Orders.

EXHIBIT 1 to SUMMARY
SUMMARY OF SERVICES RENDERED IN OBTAINING CLAIM FOR RETIRED PILOTS

INVOICE	PERIOD COVERED	FEES	EXPENSES	AMOUNT ADVANCED
1	10/1/04 - 9/30/05	390,259.00	5,997.96	396,256.96
2	10/1/05 - 10/31/05	291,235.00	17,693.12	308,928.12
3	11/1/05 - 11/30/05	189,507.00	20,727.36	210,234.36
4	12/1/05 - 12/31/05	200,724.00	23,774.72	224,498.72
5	1/1/06 - 1/31/06	136,049.00	22,187.05	158,236.05
6	2/1/06 - 2/28/06	44,723.00	1,755.97	46,478.97
7	3/1/06 - 3/31/06	23,227.00	15,025.67	38,252.67
8	4/1/06 - 5/31/06	0.00	53.88	53.88
9	5/20/06 - 5/31/06	321,194.00	1,895.57	323,089.57
10	6/1/06 - 6/30/06	115,705.25	4,083.86	119,789.11
11	7/1/06 - 8/31/06	257,363.85	4,084.24	261,448.09
12	9/1/06 - 9/30/06	115,351.50	11,628.27	126,979.77
13	10/1/06 - 10/31/06	183,449.50	10,302.79	193,752.29
14	11/1/06 - 12/8/06	224,281.50	5,544.72	229,826.22
15	12/9/06 - 1/18/07	164,718.00	2,038.54	166,756.54
	TOTALS	2,657,787.60	146,793.72	2,804,581.32

**EXHIBIT 2 to SUMMARY
SUMMARY OF PROFESSIONALS PROVIDING SERVICES TO RETIRED PILOTS IN
CHAPTER 11 PROCEEDING**

PROFESSIONAL	INITIALS	TITLE	State of Admission	Year of Admission	RATES	HOURS	VALUE OF SERVICES RENDERED
G. Dean Booth	GDB	Member	GA	1963	450.00	177.60	79,920.00
G. Dean Booth	GDB	Member	GA	1963	550.00	1,569.00	862,950.00
G. Dean Booth	GDB	Member	GA	1963	580.00	338.10	196,098.00
*Samuel F. Boyte	SFB	Of Counsel	VA	1975	250.00	46.90	11,725.00
*Samuel F. Boyte	SFB	Of Counsel	VA	1975	260.00	7.60	1,976.00
*Samuel F. Boyte	SFB	Of Counsel	VA	1975	440.00	183.40	80,696.00
*Lawrence S. Burnat	LSB	Partner	GA	1975	500.00	32.40	16,200.00
James Tramonte	JT	Member	LA & GA	1976 & 1989	350.00	5.20	1,820.00
William O'Bryan	WO	Member	TN	1977	375.00	0.50	187.50
*James L. Mackay	JLM	Contract Att	GA	1975	300.00	742.60	222,780.00
Kent Antley	KA	Member	GA	1978	335.00	7.10	2,378.50
*John A. Christy	JAC	Partner	GA	1980	330.00	0.80	264.00
*John A. Christy	JAC	Partner	GA	1980	340.00	1.30	442.00
*John A. Christy	JAC	Partner	GA	1980	550.00	170.10	93,555.00
*Edward H. Brown	EHB	Partner	IL & GA	1980 & 1984	310.00	3.50	1,085.00
*Edward H. Brown	EHB	Partner	IL & GA	1980 & 1984	500.00	5.20	2,600.00
Shelley D. Rucker	SDR	Member	GA & TN	1982	320.00	574.40	183,808.00
Shelley D. Rucker	SDR	Member	GA & TN	1982	340.00	37.60	12,784.00
*Mark Johnson	MJ	Contract Att	TX	1983	400.00	41.20	16,480.00
John Bode	JB	Member	TN	1985	330.00	2.50	825.00
*Alexander J. Simmons, Jr.	AJS	Partner	GA	1986	430.00	1.80	774.00
William A. DuPre	WAD	Member	GA	1986	350.00	18.60	6,510.00
Chris Crevasse	CC	Member	CA & TN	1987 & 1996	305.00	134.80	41,114.00
Chris Crevasse	CC	Member	CA & TN	1987 & 1996	325.00	17.30	5,622.50
*Debra A. Wilson	DAW	Partner	GA	1988	430.00	11.50	4,945.00
Ansley Moses	AM	Member	GA & TN	1989 & 1991	330.00	0.70	231.00
Nicholas W. Whittenburg	NWW	Member	GA & TN	1990	275.00	91.90	25,272.50
Scott Ruth	SR	Member	FL & TN	1993 & 1997	300.00	5.90	1,770.00
Scott Ruth	SR	Member	FL & TN	1993 & 1997	325.00	0.70	227.50
Carl Pilger	CP	Member	GA	1994	300.00	812.30	243,690.00
William Eiselstein	WE	Member	TN & GA	1995 & 1998	305.00	0.40	122.00
*Jason W. Graham	JWG	Associate	GA	1996	200.00	23.50	4,700.00
*Jason W. Graham	JWG	Associate	GA	1996	220.00	17.50	3,850.00
*Jason W. Graham	JWG	Associate	GA	1996	350.00	695.50	243,425.00
*Carole Thompson Hord	CTH	Associate	GA	1996	190.00	0.60	114.00
*Carole Thompson Hord	CTH	Associate	GA	1996	210.00	0.80	168.00
*Carole Thompson Hord	CTH	Associate	GA	1996	340.00	61.90	21,046.00
Ryan Kurtz	RK	Member	TN & GA	1997 & 2003	290.00	140.60	40,774.00
*Scott McAlpine	SM	Associate	GA	1999	320.00	33.20	10,624.00
James Woodward	JW	Member	GA	1999	270.00	0.30	81.00
Joseph McCoin	JM	Associate	TN	1999	235.00	2.20	517.00
Catherine Harrison	CH	Associate	TN & GA	1999	270.00	3.00	810.00
Ashley Commins	AC	Associate	GA	2002	195.00	6.00	1,170.00
Ashley Commins	AC	Associate	GA	2002	200.00	15.80	3,160.00
*Cheralynn M. Gregoire	CMG	Associate	GA	2003	140.00	1.00	140.00
*Cheralynn M. Gregoire	CMG	Associate	GA	2003	250.00	41.10	10,275.00
*Frederico C. Lander	FCL	Associate	GA	2004	240.00	9.00	2,160.00
Mike Marshall	MPM				305.00	2.00	610.00
Chris Walsh	CW	Associate	GA	2004	175.00	220.50	38,587.50
Chris Walsh	CW	Associate	GA	2004	195.00	3.00	585.00
*Bryan M. Knight	BMK	Associate	GA	2005	200.00	29.50	5,900.00

**EXHIBIT 2 to SUMMARY
SUMMARY OF PROFESSIONALS PROVIDING SERVICES TO RETIRED PILOTS IN
CHAPTER 11 PROCEEDING**

PROFESSIONAL	INITIALS	TITLE	State of Admission	Year of Admission	RATES	HOURS	VALUE OF SERVICES RENDERED
M. Craig Smith	MCS	Associate	TN	2005	155.00	146.70	22,738.50
M. Craig Smith	MCS	Associate	TN	2005	190.00	6.30	1,197.00
*Paul Vranicar	PV	Associate	GA	2006	150.00	23.20	3,480.00
Gail Sisson	GS	Att/Librarian	TX & TN	1994 & 1997	150.00	1.70	255.00
Jeff Gibson	JG	Clerk			95.00	7.30	693.50
Kate C. MacDonald	KCM	Clerk			100.00	5.50	550.00
Michael Lord	ML	Clerk			95.00	3.40	323.00
Sonya Madison	SM	Clerk			95.00	8.00	760.00
Dara Ballard	DB	Clerk			90.00	0.30	27.00
*Shawn J. Cade	SJC	Paralegal			110.00	2.50	275.00
*Renee D. Williams	RDW	Paralegal			150.00	310.10	46,515.00
Janet Brock	JB	Paralegal			165.00	20.40	3,366.00
Pamela Starr	PS	Paralegal			165.00	192.00	31,680.00
Pamela Starr	PS	Paralegal			180.00	1.50	270.00
Tanya Travis	TT	Paralegal			165.00	277.90	45,853.50
Tanya Travis	TT	Paralegal			180.00	22.10	3,978.00
						7,378.80	2,669,510.50

Average Rate=\$307.73 per hour

Average Partner Rate = \$370.48 per hour

Average Associate Rate = \$226.67

*Attorney w/Shreeder, Wheeler & Flint

MILLER & MARTIN PLLC
 Dean Booth (DB-3807)
 Shelley D. Rucker, (SR- 8175)
 1170 Peachtree Street, NE, Suite 800
 Atlanta, Georgia 30309
 Telephone: (404) 962-6100
 Facsimile: (404) 962-6300
*Attorneys for DP3, Inc. d/b/a
 Delta Pilots' Pension Preservation Organization
 J. Bomar, R. Colby, J. Gray, D. Mairose,
 W. Wirth, J. Mills, and R. Ross*

**Objection Deadline: March 16, 2007
 4:00 p.m. (Prevailing Eastern Time)
 Hearing Date: March 21, 2007, 2:30 p.m.
 (Prevailing Eastern Time)**

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

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

**APPLICATION BY MILLER & MARTIN PLLC FOR AWARD OF COMPENSATION
 FOR PROFESSIONAL SERVICES RENDERED AND REIMBURSEMENT OF
 EXPENSES INCURRED**

COMES NOW Miller & Martin PLLC (“Miller & Martin” or “Applicant”), Attorneys for DP3, Inc. d/b/a Delta Pilots’ Pension Preservation Organization, James Bomar, Richard Colby, James Gray, Donald Mairose, William Wirth, John Mills and Roger Ross (collectively “DP3”), and files its Application for Award of Compensation for Professional Services Rendered and Reimbursement of Expenses Incurred (“Application”) in pursuit of the rights of retired pilots on behalf of DP3 in this Chapter 11 proceeding. This Application is made pursuant to (1) the Stipulation and Consent Order between the Debtors, the Committee and DP3 entered on June 2, 2006 (the “Stipulation”) [Docket No. 2656]; (2) the Further Order between the Debtors, the Committee and DP3 entered on August 29, 2006 (“Further Order”) [Docket No. 3152]; and (3)

the Order Approving Stipulation Between the Debtor, the Official Committee of Unsecured Creditors and DP3 Regarding Allowed Claims In Respect of Post-termination Non-Qualified Pension Benefits of Retired Pilots entered on December 15, 2006 (the “Post-Termination Stipulation”) [Docket No. 3871] (collectively the “Claims Settlement Orders”)¹. Applicant seeks allowance of compensation for the professional services it and DP3’s prior counsel performed during the period from October 2004 through December 31, 2006 (the “Fee Application Period”) in connection with their representation of DP3 and the interests of retired pilots in the bankruptcy proceeding of Delta Air Lines, Inc., et al. (the “Debtors”).² Pursuant to the Claims Settlement Orders, fees requested are in the form of allowed claims to be paid out of the common fund of claims allowed to Covered Pilots under the Claims Settlement Orders. Applicant seeks an award of an administrative claim of \$900,000 (the “Admin Fee Claim”) from the NQ Admin Claims which aggregate \$9,000,000, an award of an unsecured claim of \$5,711,937 (the “Unsecured Fee Claim”) from the Balance Claims which aggregate \$71,399,209.08 and nothing from the Post Termination Claims which aggregate \$728,854,937. This request represents 10% of the NQ Admin Claims and 8% of the Balance Claims. In support of its Fee Application, Applicant would show the Court the following:

BACKGROUND

1. DP3, Inc. is a Delaware not-for-profit corporation which was formed in October of 2003 with the stated intent of seeking to preserve pensions, health insurance and other benefits of the retired Delta pilots and their dependents and survivors. It was created following the

¹ Capitalized terms not defined herein shall have the meaning assigned in the Claim Settlement Orders.

² The Debtors are the following entities: ASA Holdings, Inc.; Comair Holdings, LLC; Comair, Inc.; Comair Services, Inc.; Crown Rooms, Inc.; DAL Aircraft Trading, Inc.; DAL Global Services, LLC; DAL Moscow, Inc.; Delta AirElite Business Jets, Inc.; Delta Air Lines, Inc.; Delta Benefits Management, Inc.; Delta Connection Academy, Inc.; Delta Corporate Identity, Inc.; Delta Trading, Inc.; Kappa Capital Management, Inc.; and Song, LLC.

bankruptcy filing of US Airways and the perceived treatment of the retired pilots in that case. As rumors in the market led the retired pilots to believe that other airlines, including Delta Air Lines, Inc. (“Delta”), could be looking to file Chapter 11 proceedings to restructure their obligations, especially pension and other employee benefits obligations, the founders of DP3 determined to be prepared should Delta file.

2. From its inception, DP3 engaged the services of G. Dean Booth, an attorney with over 30 years of experience in litigation involving airlines and employment issues. At this time, Mr. Booth was a partner with the firm of Schreeder, Wheeler & Flint, LLP in Atlanta, Georgia. Mr. Booth and his team incorporated DP3 and began work preparing the pleadings that would be necessary should Delta file. In March of 2006, Mr. Booth moved his practice to the firm of Miller & Martin and has been working with Applicant since that time.

3. Prior to the Debtors’ bankruptcy filings, retired pilots were receiving benefits pursuant to the Delta Pilots Retirement Plan and the Western Air Lines Defined Benefit Plans (together the “Qualified Plans”) and the Delta Pilots Bridge Plan and the Supplemental Annuity Plan (together the “Non-Qualified Plans” or “NQ Plans”). These plans were incorporated by reference into the Pilots Working Agreement (“PWA”), the collective bargaining agreement between Delta and the Air Line Pilots Association, International (“ALPA”). The retired pilots also participated in various medical benefit plans as part of their retirement benefits under the PWA.

4. In the fall of 2004, Delta was on the verge of filing for Chapter 11 relief until it reached a last minute wage concession agreement with ALPA, thereby avoiding the need for a bankruptcy filing.

5. Delta's problems continued and on September 14, 2005 (the "Petition Date") the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Upon filing, the Debtors ceased making any payments to retired pilots under the NQ Plans. The loss of these benefits left many retirees with no income. This loss was followed by negotiations between the Debtor and ALPA to modify the PWA to terminate the existing pension plans. In addition to pension benefits being subject to termination, medical benefits were also considered for modification. ALPA refused to represent the interests of the retired pilots in any of these negotiations.

6. On September 15, 2005, DP3 sought the emergency appointment of a committee for retired pilots. See Emergency Motion to Appoint Committee of Retired Pilots on behalf of DP3, Inc. [Docket No. 69]. On September 23, 2005, counsel for DP3 began asserting the rights of the retired pilots by filing a Motion to Compel the Continued Payment of Collectively Bargained for Pension Benefits [Docket No. 396] ("Motion to Compel"). Applicant has continued its representation of the retired pilots throughout the case on numerous issues affecting their livelihood.

JURISDICTION

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B) and (O).

PROVISIONS FOR FEES

8. Paragraph 5 of the Stipulation provided that neither DP3 nor the professionals working on its behalf would seek reimbursement of fees or expenses from the Debtors or from the estate or the fiduciaries of the various plans. The Stipulation provided that "such fees and expenses shall include a reasonable percentage of the actual distribution value on account of, and

shall be paid entirely out of, the . . . [claims allowed in the settlement].” Stipulation, paragraph 5, p. 6 [Docket No. 2656]. The percentage is to be determined by this Court after notice to all Covered Pilots. The Debtors and the Committee agreed not to oppose any request for such fees and expenses so long as such request did not exceed 10% of the actual distribution value on account of certain claims.

9. Under the terms of the Claim Settlement Orders, the Court may allow compensation of DP3’s fees only after notice and hearing. Miller & Martin’s Application is the only such application to be made by DP3 under the Claim Settlement Orders.

CREATING THE COMMON FUND

10. Applicant’s efforts have created a substantial fund to compensate the Covered Pilots for the loss of their NQ Plan benefits and retiree benefits. The major activities undertaken by Applicant in this case during the Fee Application Period are summarized as follows:

a. Motion to Compel Post Petition Pension Payments. Miller & Martin and its predecessor Schreeder Wheeler & Flint prepared the pleadings and pursued litigation to compel Delta to pay the pension benefits that accrued post petition and to make contributions to the Qualified Plans. DP3 argued that the Debtor was obligated to continue making payments under the Qualified Plans and the NQ Plans under Section 1113 of the Bankruptcy Code until the Debtors had rejected the collective bargaining agreement with the ALPA. DP3’s Motion to Compel the payments was initially dismissed. DP3 appealed. The United States District Court for the Southern District of New York reversed the Bankruptcy Court and remanded the issue for trial. DP3 filed an adversary proceeding on the same issue seeking class certification on the payment of these benefits prior to completion of the 1113 process on behalf of all of the Covered Pilots (“DP3 Adversary Proceeding”).

b. Review of ALPA Negotiations and Objection to 363 Motion to Approve Settlement with ALPA. The retired pilots' pension benefits under the Qualified and NQ Plans were granted under the PWA, and those plans could not be terminated without ALPA's consent. Since ALPA took the position that it did not represent the interests of the retired pilots, DP3 monitored the proceedings between ALPA and the Debtor and sought to have a representative appointed to participate in the negotiations. The rights of retirees to participate in the 1113 negotiation presented an issue addressed in a case decided prior to the 1984 amendments to the Bankruptcy Code. In re Century Brass Products, Inc., 795 F.2d 265, 271-273 (2d Cir. 1986). There were no other cases which have allowed the appointment of such a representative, although the same issue was working its way through the Seventh Circuit in the United Air Lines bankruptcy. In re UAL Corporation, 443 F.3d 565 (7th Cir. 2006). When the Debtor and ALPA reached an agreement and filed a Motion to modify the PWA pursuant to Letter of Agreement #51, (the "363 Motion"), DP3 objected on the basis that the retired pilots' pension benefits were being bargained away without representation and prepared to pursue the objection.

c. Negotiation and Settlement of NQ Claims. (i) *NQ Admin Claims and Balance Claims* - On June 2, 2006 the Debtors, the Official Committee of Unsecured Creditors (the "Committee") and DP3 entered into a stipulation (the "Stipulation") resolving the Motion to Compel, the DP3 Adversary Proceeding and DP3's objection to the 363 Motion. The parties sought Court approval of a consent order resolving issues related to pre-termination claims of approximately 3,200 retired pilots for benefits owed to them under the NQ Plans. The Stipulation assumed that the NQ Plans would be terminated and stipulated a formula and priority for claims of the Covered Pilots arising prior to the termination of the NQ Plans. The issue of Post-Termination Claims was reserved to a later date. The pre-termination claims were allowed

as a \$9,000,000 administrative claim (referred to in the Stipulation as the “NQ Admin Claim”) and an unsecured claim for the balance of benefits that accrued prior to termination (referred to in the Stipulation as the “Balance Claim”). Those claims have now been calculated to be \$71,399,209.08³.

(ii) *Post Termination Claims* - As part of the Stipulation, DP3 and the Debtors reserved the issue of whether the retired pilots had claims for any payments as a result of the termination of the NQ Plans. The Supplemental Annuity Plan itself provided for termination at any time. The PWA contained language that the Debtors construed as authorizing ALPA to modify or terminate retirement benefits.

The issues raised by this dispute involved (a) the interpretation of the NQ Plans and the interplay between the language of Qualified Plans, the NQ Plans and the PWA, (b) ERISA provisions and their applicability to “top hat” plans, (c) federal common law of unilateral contract, (d) the implications of the modification of the PWA on the claims, (e) apparent and implied agency concepts, (f) labor law related to representation of former employees by a union for current employees, (g) choice of appropriate actuary tables, (h) estimation of claims and (i) the appropriate interest rate for determining the present value of claims for future benefits. In addition to the complexity of the legal issues, there were practical issues of calculating claims for 3,200 participants, each with different circumstances. The Debtors, the Committee and DP3 required the services of actuaries and financial advisors for the calculation of the claims and the appropriate interest rates.

³ This number was provided by Towers Perrin, the Debtor’s actuary. Additional adjustments may be needed as claims are filed prior to March 12, 2007 and any objection to those claims may be resolved.

(iii) *Termination of the Plans* - The Qualified Plans and the NQ Plans were terminated, effective September 2, 2006. The Debtor, the Committee and DP3 resumed negotiations on the Post-Termination Claims. On December 15, 2007, the Court approved the methodology for the allowance of Post-Termination Claims. On January 24 and 25, 2007, the Debtors filed amended schedules using that methodology thereby allowing an additional \$728,854,937⁴ in additional general unsecured claims to the Covered Pilots.

d. Request for Appointment of Retiree Committee, Appointment of 1114 Committee. Based on the initial responses of the Debtors, the Unsecured Creditors Committee and ALPA to DP3's Motion to Compel, the need for committee representation for the retirees became apparent. The Debtor and the Committee were opposed to the payment of the NQ Plan benefits. Many retired pilots were left with only their distributions, if any, from the Qualified Plans as income. ALPA took a stance early in the case that it did not represent the interests of the retired pilots. The Debtors also made it clear that they viewed the pension plans and medical benefits of retirees as two areas in which costs needed to be dramatically reduced for the Debtors to reorganize. In response, DP3 took steps to seek the appointment of an additional committee to represent the interests of retired pilots on the issues that would arise in the renegotiation of the current pilots' collective bargaining agreement under 11 U.S.C. § 1113 and the negotiations involving the retiree benefits under 11 U.S.C. § 1114. DP3 was aware of the magnitude of the task before the retirees in evaluating any proposal that would alter the retirement benefits portion of the PWA and the short times provided for response under the Bankruptcy Code in the event that negotiations with the Debtor came to an impasse. DP3 ultimately withdrew its request for a

⁴ The number of \$728,854,937 is the sum of the Post-Termination Claims provided to Applicant by Towers Perrin, the Debtors' actuary. The Debtors and the Covered Pilots continue to make adjustments to the claims. A final number will not be determined until the Claims Bar Date of March 12, 2007 has passed and any claims objections are resolved; however, Applicant does not expect the number to be substantially reduced.

separate committee for 1113 issues, but pressed for a separate pilots 1114 committee. DP3 was ultimately successful over the objections of the Debtors and the Committee. The appointment of two committees under 1114 representing the different interests of pilots and nonpilots was unprecedented in the Southern District of New York. As a result of the early appointment, the Retired Pilots 1114 Committee was provided with sufficient time to obtain excellent counsel and financial professionals and to prepare a thorough response to the Debtors' proposals. By placing the retirees on equal footing with the Debtor to address these issues, the parties were able to reach a settlement with the Debtors on terms that preserved medical coverage for the retired pilots and resulted in additional unsecured claims to retired pilots of approximately \$485 million.⁵

e. Counsel to DP3 Serving as Liaison to Retired Pilots. In addition to these specific matters which have been brought before the Court, Mr. Booth and the two firms with which he has been affiliated have served DP3 on a daily basis monitoring the activities in this case and other airline cases for current developments in the law that would assist in the representation of the retired pilots. The Applicant has reviewed information for DP3 for use on their website. It has reviewed letters that the Debtors proposed to send to retired pilots to improve communication and understanding between the retired pilot community and the Debtors. Applicant has reviewed significant settlements, procedures motions, motions and orders related to filing claims, and the pleadings filed by other retired pilots through the case. Most

⁵ See Transcript of Court Proceedings on Debtors' Motion to Approve Agreements with Retiree Committees, October 19, 2006 (in which the Court stated "[The Court] had no idea what a good thing [it] was doing in granting the motion for an 1114 committee. (p. 73) It is always preferable for parties to reach an agreement which they, in their own respective adversarial and competing interests, have concluded is best for their respective clients. Each [committee] worked diligently to reach an accommodation of the very conflicting and different and differing and important interests on each side. Based upon what [the Court has] seen and heard, they have done so in as fair and equitable manner as would be possible.").

recently it has reviewed the plan and disclosure statement on the issues related to the settlements and the allowance and payment of its claims.

f. Representation Related to PBGC issues. In addition to the work on the obligations of the pension plan, Applicant has reviewed the pleadings related to the takeover of the Qualified Plans by PBGC and its participation in those proceedings which would affect the retired pilots' interests. Following the amendment of the collective bargaining agreement, Applicant monitored the developments related to the termination of the Qualified Plan. In particular, Applicant reviewed the materials related to the Debtors' Motion for a Determination of Financial Distress and participated in the hearing. Applicant also reviewed the PBGC Settlement and participated in that hearing. It will be continuing to assist DP3 as it works on matters with the PBGC to reach final determinations with respect to the payments on account of the Qualified Plans.

APPLICABLE LAW

11. In the case of Goldberger v. Integrated Resources, 209 F.3d 43, 47 (2d Cir. 2000), the Second Circuit noted a "salient exception" to the general rule that each litigant is expected to pay its own expenses. The exception "applies where an attorney succeeds in creating a common fund from which members of a class are compensated for a common injury inflicted on the class. . . . In that situation, the attorneys whose efforts created the fund are entitled to a reasonable fee – set by the court – to be taken from the fund. The rationale for the doctrine is an equitable one: it prevents unjust enrichment of those benefiting from a lawsuit without contributing to its cost. Id. (Citations omitted.) The Second Circuit discussed the lodestar method and the percentage of the recovery as methods for setting fees. It described the lodestar method as a process "under which the [court] scrutinizes the fee petition to ascertain the number of hours reasonably billed to

the class and then multiplies that figure by an appropriate hourly rate. . . . Once that initial computation has been made, the [Court] may in its discretion increase the lodestar by applying a multiplier based on ‘other less objective factors’ such as the risk of the litigation and the performance of the attorneys.” Id. (Citations omitted.) The second method approved by the Court is “the percentage of the recovery as a fee.” Id. In this method the courts have looked to the same “less objective” factors that are used to determine the multiplier from the lodestar to determine the appropriate percentage of fee to be awarded. Id. Applicant is seeking a percentage of the recovery.

12. DP3 respectfully represents to the Court that the fees and expenses requested to be paid are allowable and reasonable pursuant to the factors established in Goldberger. Under Goldberger both the lodestar and the percentage of the recovery methods may properly be used to establish attorneys’ fees. Goldberger, 209 F.3d at 45. Under either method, the courts continue to be guided by the traditional criteria in establishing a reasonable fee, which are: “(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . .; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.” Id. at 50. (quoting In re Union Carbide Corp. Consumer Prod. Bus. Sec. Litig., 724 F.Supp. 160, 163 (S.D.N.Y.1989)).

a. Time and Labor Expended by Counsel: From Mr. Booth’s initial employment through January 18, 2007, DP3’s counsel has expended 7,378.80 hours. These fees were incurred at an average hourly rate of approximately \$307.73 or a blended rate of \$370.48 for partners or members and \$226.67 for associates.

b. Magnitude and Complexities of Litigation: The representation of retired pilots has involved difficult and unresolved issues which were previously outlined in the section

regarding the nature of the services rendered. This case presented a mixture of sophisticated bankruptcy and employee benefits issues further complicated by tax, contract and security issues. The issues related to pension payments and plan termination affect the livelihood of thousands of retirees and involve potential recoveries hundreds of millions of dollars.

c. Risk of the Litigation: (i) *Legal Risk* – In pursuing the suit, DP3 faced problematic language in the NQ Plans, which provided that Delta could terminate such plans at any time, and in the PWA, which provided that the pilots in the service of Delta represented by ALPA could agree to amend, change, vary, modify or voluntarily discontinue the NQ Plans. Although the Second Circuit had not ruled on the issue raised by DP3, it had ruled against a retiree seeking a claim for termination of a top hat plan in a case with distinguishable facts. See Gallione v. Flaherty, 70 F.3d 724 (2d Cir. 1995). DP3 also watched the extensive litigation between the retirees and the Debtor in the United Air Lines case, in which the retirees had not been faring well. Once ALPA agreed to the termination of the Plans, DP3 faced another significant hurdle through Delta’s contention that ALPA had bargained away DP3’s claim for damages by agreeing to the termination of the Plans and that DP3 was thus entitled to nothing.

(ii) *Collection Risk* – Unlike the recovery of a money judgment from a solvent defendant, the retired pilots were seeking their recovery from Delta Air Lines, Inc., a corporation which had teetered on the brink of bankruptcy for a year before filing. At the beginning of the case, there were serious questions about this particular debtor’s prospects. The Debtor itself noted the potential for devastating strikes, escalating fuel prices, fierce market competition and even the risk of terrorist attacks. Any one problem was capable of destroying the Debtors’ hope for a successful reorganization and any creditors’ recovery. DP3 assessed its members for support to pay Schreeder Wheeler & Flint for the first year of representation, but those funds

have been depleted and Miller & Martin is looking to the award of fees in this case to pay for its services to the conclusion of this case. Even the current Application, if granted, is contingent on the Debtors' obtaining confirmation of a plan, paying administrative claimants in full and successfully issuing stock that maintains the lower end of the Debtor's projected value. The Disclosure Statement contains significant disclaimers regarding the ultimate value of the stock. There is no guarantee that the stock will be worth even the lower end of the projected values. In addition to the risk of loss of the Debtors' equity value as a result of operations or some external factor, the value of the fee is also contingent on the market's view of airline stock generally and the impact of a significant influx of the availability of reorganized Delta stock all at one time.

d. The Quality of Representation: (i) *The Results Obtained* - Under Goldberger, 209 F.3d at 55, "the quality of representation is best measured by results, and that such results may be calculated by comparing 'the extent of possible recovery with the amount of actual verdict or settlement.'" Id. (quoting Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary, Corp., 540 F.2d 102, 118 (3d Cir.1976)). Here, the actual losses of the Covered Pilots had a present value of \$809 million, and counsel for DP3 negotiated claims of \$809 million, \$9 million of which will be paid in cash as an administrative claim. This amount represents 100% of the claim for damages recoverable based on the termination of the NQ Plans. The settlement award of \$809 million sets a new standard of fairness for retirees, and has been hailed in the news as reportedly the highest award ever approved by the U.S. bankruptcy courts for the airline industry. See Caulfield, *Retired Delta Pilots Win Back Benefits*, Employment Law 360, January 2, 2007. The size of the award is particularly impressive considering the intense 15 months of fierce three-way negotiations between Delta, DP3 and the Committee. The settlement has been praised by DP3's Chairman, Jim Gray, as a momentous success.

(ii) *The Quality of the Opposition* - The quality of opposing counsel is also significant in considering the quality of the representation. See In re NASDAQ Market-Makers Antitrust Litigation, 187 F.R.D. 465, 488 (S.D.N.Y. 1998). Here, Davis Polk & Wardwell is one of the country's most highly regarded law firms. Debtors' attorney Marshall Huebner, in particular, is a highly skilled bankruptcy attorney and has been recognized as such in numerous publications including *Chambers USA* (2005), *Chambers Global: Leaders in Their Field* (2004), *Turnarounds and Workouts* and Euromoney's *Expert Guide to the World's Leading Insolvency and Restructuring Lawyers* (2005). He is supported by an equally strong and dedicated team of attorneys. The ability of DP3's counsel to obtain such a sizeable settlement in the face of such skilled opposing counsel and against a stubborn and well executed defense further demonstrates the quality of the work done by counsel for DP3.

Applicant has demonstrated the skill to perform the legal services rendered in a professional fashion. Its counsel has successfully represented DP3 in this case by obtaining an administrative claim of \$9,000,000, and an unsecured claim of approximately \$800 million, and by obtaining the early appointment of a separate 1114 committee for retired pilots which achieved continued medical coverage and an additional claim of \$485 million. Applicant has demonstrated its experience in the areas involved in its representation of DP3 and has worked constructively with the Debtors and the Committee while zealously representing its clients. In particular, Mr. Booth's extensive experience in litigation involving airlines and employment issues provided credibility in negotiations with the Debtor.

(iii) *Expedited Response Times* - Applicant was also prepared to meet the compressed time frames provided in the Case Management Order entered by the Court [Docket No.660.] (the "Procedures Order"). The Procedures Order provided for the Debtor to make significant motions

on only twenty days notice, with responses due days before the hearing date. Applicant reviewed extensive pleadings and exhibits, communicated their contents to clients and then responded to the Court. The time limitations imposed or created by the circumstances of this case often required intense work by its professionals under short time-frames to accomplish this work. In addition, the Debtors' desire to emerge from bankruptcy by mid-2007 required all the professionals in these cases to act quickly on various matters.

e. Requested Fee in Relation to the Settlement: Applicant respectfully represents that the fees requested herein are within the range of customary fees for the type of services rendered. Given the risk of the litigation and the results achieved, they represent only .87% of the total estimated recovery. The retired pilots will receive cash of \$9,000,000 less the approved fees plus an estimated distribution value of 65% of \$800,000,000 which is \$529 million. This percentage fee is further supported by the hours spent multiplied by the billing rates for work of this nature, the expenses incurred for experts and local counsel, and the additional work that will need to be done prior to the confirmation of a plan and the payment of the fee.

The percentage fee requested by counsel for DP3 of .87% is reasonable because it falls within the bottom range and even below the bottom range of percentage fees awarded within the Second Circuit. See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 121-124 (2d Cir. 2005) (awarding a fee of 6.5% (\$220 million) of the compensatory relief from a settlement fund valued in excess of \$3.3 billion); In re Worldcom, Inc. Securities Litigation, 388 F.Supp.2d 319, 353-60 (S.D.N.Y. 2005) (counsel awarded fees of 5.5% amounting to \$194,600,000); In re AOL Time Warner, Inc. Securities and "ERISA" Litigation, 2006 WL 3057232, *7-*29 (S.D.N.Y. 2006) (unreported) (counsel awarded a fee of \$147.5 million representing 5.9% of the common

fund); In re Adelphia Communications Corp. Securities and Derivative Litigation, 2006 WL 3378705, *1-*3 (S.D.N.Y. 2006) (Slip Copy) (counsel awarded 21.4% of \$455 million settlement where counsel recovered 27.5% of realistically provable damages). Even Goldberger itself, which is one of the seminal cases urging moderation in attorneys' fees, awarded a fee to counsel of 4%, which on a percentage basis is more than four times greater than the .87% requested by counsel for DP3. See Goldberger, 209 F.3d at 48-57.

The percentage fee award proposed for DP3's counsel represents a multiplier of approximately 1.728 times counsel's lodestar of \$2,669,510.50. This is a multiplier at the lower end of the scale, and is particularly modest considering the complexities and difficulties of the case, as well as the quality of the result obtained. Other cases in this district have commonly awarded multipliers of between 3 and 4.5 and some cases have awarded multipliers as high as 5.5 and 6. Further, the proposed multiplier of 1.728 is well supported by precedent within this Circuit. See re NASDAQ Market-Makers Antitrust Litigation, 187 F.R.D. at 489; Roberts v. Texaco, Inc., 979 F.Supp. 185 (S.D.N.Y.1997) (5.5 multiplier); In re RJR Nabisco, Inc. Securities Litigation, 1992 WL 210138 (S.D.N.Y.1992) (not reported in F.Supp.) (percentage fee equal to 6 times lodestar).

In addition, the rates charged by Applicant are the rates customarily charged to clients in other non-bankruptcy matters. Applicant's partner blended rate is \$370.48. This is significantly lower than the rates charged by the Debtors' and Committee's counsel on these matters. Other blended rates in the case are \$702 for Davis Polk's partners, \$611 for Akin Gump's, and \$540 for Alston & Bird's.

f. Public Policy: DP3 respectfully represents that this Fee Application and the costs and fees sought herein, are in keeping with similar applications by other professionals

for the payment of professional fees in this and other cases. Allowance of these fees in this manner will encourage quality representation of parties who would otherwise be unable to respond to the demands of litigation of this size. As seen from the positive settlements in the case, good counsel, well prepared, has assisted the Debtors on its course to emerge from bankruptcy as a viable entity. As was explained by the Honorable Abraham D. Sofaer, fee awards which encourage better recoveries are ultimately in the best interests of current and future class members:

It unquestionably is true that without able lawyers handling these matters not only do some of them go unprosecuted, but the big difference in my experience is in the amount obtained and you don't get the highest recovery and when you are paying at the low end of the scale of fee recovery in contingent actions, it seems to me that as I the protector of the class, can fairly say, and honestly say, that I believe it is in the class' best interests—of this class and of future classes yet unknown—to pay this kind of money for these kinds of benefits.

In re Pepsico Securities Litigation, Civil Action No. 82-Civ-8403 (S.D.N.Y. April 26, 1985) Transcript of April 26, 1985 at 17-18, as quoted with approval in In re M.D.C. Holdings Securities Litigation, 1990 WL 454747 (S.D.Cal.1990) (unreported in F.Supp.).

13. Based on the foregoing, Miller & Martin submits that the services rendered to DP3, for which compensation is sought herein, were necessary and beneficial to DP3's interest in this matter. Miller & Martin further submits that the compensation requested herein is reasonable in light of the nature, extent and value of such services to DP3 and all other parties in interest in this matter.

INAPPLICABILITY OF ESTATE PROFESSIONAL REQUIREMENTS

14. Since Applicant's fees are not payable from the estate, they are not subject to the Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code and Bankruptcy Rule 2016(a) to Establish Procedures for Payment of Fees and a Monthly Compensation and Reimbursement of Expenses of Professionals entered by this Court on October 6, 2005 (the "Compensation and Reimbursement Order") [Docket No. 665].

15. Applicant is not required to comply with the Amended Guidelines for Fees and Disbursements for Professionals in the Southern District of New York Bankruptcy Cases adopted by the Court on April 19, 1995 (the "Amended Guidelines"). However, in support of its Application it has attached the Affidavit of Shelley D. Rucker addressing the relevant portions of information generally included in the certification. The Certification is attached hereto as Exhibit "A".

16. During the Fee Application Period, Schreeder Wheeler & Flint received compensation from DP3 for the services it rendered in connection with the pursuit of pension or benefit matters in this bankruptcy case. Miller & Martin has also received some payment from DP3 for the Fee Application Period. Miller & Martin has employed Seward & Kessell as local counsel and employed various professionals to assist it with the Delta litigation and settlement analysis. Applicant or DP3 have paid these parties for their services. Other than the repayment of these advances, there is no agreement or understanding between Miller & Martin and any other person, other than members of the firm, for the sharing of compensation to be received for services rendered in these cases.

17. As set forth in this Application, the fees charged by Schreeder, Wheeler & Flint and Miller & Martin in these cases are billed in accordance with their existing billing rates and

procedures in effect during this period. The rates Miller & Martin charges for the services rendered by its professional and paraprofessionals in this case are the same rates Miller & Martin charges for professional and paraprofessional services rendered in comparable non-bankruptcy related matters. Such fees are reasonable based on the customary compensation charged by comparably skilled practitioners in comparable non-bankruptcy cases in the southeast regional market. However, when compared to the comparable rates of the other professionals in the case they appear to be below market for a national case.

18. The time entries reflecting the work performed are attached hereto as collective Exhibit "B".

ACTUAL AND NECESSARY EXPENSES

19. A summary of the expenses incurred by Schreeder, Wheeler & Flint, Miller & Martin and DP3 sorted by type is attached hereto as Exhibit "C". As set forth in Exhibit "C", DP3 has incurred \$146,524.24 of expenses in pursuing its claims during the Fee Application Period. These expenses are included in Applicant's request. Applicant does not seek an additional claim for such expenses.

20. Miller & Martin charges all of its clients \$.20 per page for photocopying. Miller & Martin utilizes an electronic device that electronically records the number of copies made. Whenever feasible, Miller & Martin sends large photocopying projects to an outside service that charges a reduced rate for photocopying. Miller & Martin charges \$.20 per page for outgoing facsimile transmissions plus the cost of the long distance telephone call (if applicable). Miller & Martin does not charge for incoming facsimile transmissions.

21. Miller & Martin's charges for photocopying and facsimile transmissions do not exceed the maximum rate set forth by the Amended Guidelines. These charges are intended to

cover Miller & Martin's direct operating costs, including the use of machines, supplies and labor expenses, which costs are not incorporated in the Miller & Martin hourly billing rates. Only clients who actually use services of the types set forth in Exhibit "C" are separately charged for such services.

22. Miller & Martin has contracts with LEXIS and WESTLAW for computerized legal research. The charges incurred each month are allocated to impacted clients. The resulting rates are less than the standard rates charged by LEXIS and WESTLAW.

NOTICE

23. Pursuant to the Claims Settlement Orders, notice of this Application has been provided to: (i) Delta Air Lines, Inc.; Law Department (#981), 1030 Delta Boulevard, Atlanta, Georgia 30354, Attn: John J. Varley, Esq.; (ii) counsel for the Debtors, Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner; (iii) counsel to the Official Committee of Unsecured Creditors, Akin, Gump, Strauss, Hauer & Feld Attn: Lisa Beckerman; (iv) counsel to the Official Section of 1114 Committee, Foley & Lardner; (v) the Office of the United States Trustee for the Southern District of New York; (vi) counsel for the Official Section 1114 Committee of Retired Pilots, Stinson Morrison Hecker LLP Attn: Alisa Lacey and (vi) the Covered Pilots. Complete copies of the Fee Application have been provided to Debtors' counsel, Committee counsel, and the U.S. Trustee.

24. With respect to notice, Miller & Martin has complied with the Compensation and Reimbursement Order to the extent of notifying relevant parties of its request and attempted to comply with the Claims Settlement Orders by working with the Debtors to send notice to all Covered Pilots. A copy of the Notice is attached hereto as Exhibit "D". Miller & Martin relied on the list of the Covered Pilots furnished to Bankruptcy Services, Inc. by the Debtors. The

Debtors have refused to grant DP3 or its counsel access to names and addresses of the Covered Pilots on the basis that such information is confidential pursuant to the terms of the Employment Retirement Income and Security Act. The Application is also available at www.deltadocket.com. Complete copies of the Application are available from Applicant upon request to Ms. Pamela J. Starr, by mail at Miller & Martin PLLC, 1170 Peachtree Street, N.E., Suite 800, Atlanta, GA 30309; by phone at 404-962-6100; by email at pstarr@millermartin.com; or by fax at 404-962-6300.


CONCLUSION

WHEREFORE, Miller & Martin respectfully requests the entry of an order in the form attached hereto as Exhibit "E":

1. Allowing an administrative claim of \$900,000 to Miller & Martin for professional services performed during the Fee Application Period.
2. Allowing Miller & Martin a general unsecured claim in the amount of \$5,711,937 for professional services performed during the Fee Application Period.
3. Providing for the Admin Fee Claim shall be paid by a corresponding pro rata reduction of the NQ Admin Claims of the Covered Pilots and the Unsecured Fee Claim shall be paid by a corresponding pro rata reduction in the general unsecured claims of the Covered Pilots attributable to the Balance Claim.
4. Granting DP3 such other and further relief as this Court deems just and proper.

Respectfully submitted this 1st day of March, 2007.

MILLER & MARTIN PLLC

By: 

MILLER & MARTIN PLLC

Dean Booth (DB-3807)

Shelley D. Rucker, (SR- 8175)

1170 Peachtree Street, NE, Suite 800

Atlanta, Georgia 30309

Telephone: (404) 962-6100

Facsimile: (404) 962-6300

Attorneys for DP3, Inc. d/b/a

Delta Pilots' Pension Preservation Organization

J. Bomar, R. Colby, J. Gray, D. Mairose,

W. Wirth, J. Mills, and R. Ross