

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

In re DELTA AIR LINES, INC., et al.

DP3, Inc. d/b/a Delta Pilots Pension
Preservation Organization, James H. Gray,
James Haigh, Reuben Black, William Wirth,
James Bomar, Ronald Stowe, Richard Colby
and Donald Mairose,

Appellants,

v.

Delta Air Lines, Inc.,

Debtor-Appellee,

and

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

Appellee,

Air Line Pilots Associational International,

Appellant,

v.

Delta Air Lines, Inc.,

Debtor-Appellee,

and

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

Appellee,

Case No.: 05 CV 10601 (LBS)

Case No.: 05 CV 10303 (LBS)

Fiduciary Counselors, Inc.,

Appellant,

v.

Delta Air Lines, Inc.,

Debtor-Appellee,

and

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

Appellee,

Case No.: 05 CV 10600 (LBS)

Reply Brief of Appellants DP3, Inc. d/b/a Delta Pilots' Pension Preservation Organization ("DP3"), and James H. Gray, James Haigh, Reuben Black, William Wirth, James Bomar, Ronald Stowe, Richard Colby, and Donald Mairose

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Reply Brief of Appellants

Appellants DP3, Inc. d/b/a Delta Pilots' Pension Preservation Organization ("DP3"), and James H. Gray, James Haigh, Reuben Black, William Wirth, James Bomar, Ronald Stowe, Richard Colby, and Donald Mairose, all retired Delta Captains who are also members of the Board of Trustees of DP3, respectfully submit this reply brief in support of their appeal in the above matter.

Introduction

Section 1113 of the Bankruptcy Code does not permit a reorganizing debtor, such as Delta, to unilaterally reject its collectively bargained pension obligations. Appellants do not argue that Delta is prohibited from modifying its pension obligations arising from the current unrejected collective bargaining agreement. If modification of Delta's ongoing pension obligations is necessary to permit the successful reorganization of the debtor, then 11 U.S.C. § 1113 provides a statutorily mandated process for debtors to obtain such modifications with the approval of the bankruptcy court. A prerequisite to obtaining this court approval is that the debtor first bargain in a good faith attempt to obtain consensual modifications to the collective bargaining agreement before seeking court approval. If a debtor needs immediate relief from the financial burdens imposed by a collective bargaining agreement, then section § 1113(e) provides a mechanism for obtaining such relief with court approval. Delta ignored these statutory procedures and instead unilaterally rejected its pension obligations without bargaining to modify the collective bargaining agreement, or seeking the required court approval. Affirmation of Delta's wrongful conduct will result in thousands of retired pilots losing a substantial portion of their pension income.

Ionosphere II does not apply to the facts of this case

Delta's failure to make the Pension Payments¹ constitutes a breach and rejection of the collective bargaining agreement's pension obligations. The retired pilots' motion, joined by the union and the fiduciary of the pension plan, seeks to compel Delta to comply with the procedural and substantive requirements of § 1113 for rejection of collectively bargained obligations and to prevent Delta from unilaterally rejecting such obligations. Delta and the Official Committee of Unsecured Creditors ("Creditors' Committee") continue to try to frame the issue on this appeal in terms of whether § 1113 allows for a new "super-priority" of its PWA-required² pension obligations to retired pilots. The purpose of the motion to compel was not to determine the priority of a claim arising from Delta's breach of the collective bargaining agreement, but rather to prevent the breach itself by forcing Delta to comply with the Bankruptcy Code, namely § 1113. The motion to compel was filed very early in the bankruptcy to force Delta to sit down with an authorized representative of the retired pilots and negotiate a compromise deal that would provide some pension benefits to the retired pilots and give Delta cost savings necessary to a successful reorganization. This appeal is about compelling a debtor enjoying the protections of Chapter 11 of the Bankruptcy Code to comply with all of the Bankruptcy Code's provisions and requirements.

¹ "Pension Payments" were collectively defined in Appellants' initial brief as "the ongoing minimum funding contributions to the Tax-Qualified Pilot Plan and ongoing Non-Tax Qualified Pension Benefits."

² "PWA" was defined in Appellants' initial brief as the current collective bargaining agreement between Delta and its pilots. The parties have stipulated that Delta's pension obligations are derived from the PWA. (Joint Statement of Stipulated Facts, filed October 12, 2005 [docket no. 711] ¶ 5).

Rather than attempting to negotiate a mutually beneficial compromise as required by § 1113, Delta dug in its heels and argued that it was merely breaching the collective bargaining agreement by not paying its pension obligations and that any damages flowing from such a breach would be paid, or not paid, pursuant to the priority scheme of § 507. This legal position conflicts with § 1113 and controlling Second Circuit precedent holding that collectively bargained pension benefits are a necessary and proper subject of § 1113. In re Century Brass Products, Inc., 795 F.2d 265, 274 (2nd Cir. 1986) (“Yet, if retirees benefits are subjects of bargaining between the union and the employer, and no modification can occur absent the retirees’ consent, those retirees must be represented in the negotiations. In order to promote ‘the policies of flexibility and equity built into Chapter 11 of the Bankruptcy Code,’ retirees should properly be characterized as ‘employees’ for purposes of applying § 1113.” (quoting NLRB v. Bildisco & Bildisco, 465 U.S. 523, 525, 104 S. Ct. 1188, 1196 (1984))). Section 1113 does not permit a debtor to breach a collective bargaining agreement while continuing to enjoy all of its benefits at the same time. A debtor under no obligation to pay its collectively bargained pension obligations would have no reason to bargain with retirees regarding the modification of their pension benefits as required by Century Brass – and Delta has refused to do just that.

Delta has dissected its pension obligations based upon whether the pension beneficiaries provided post-petition labor. It is paying the small portion of the legally and contractually required pension contribution to the Tax-Qualified Pilot Plan on an administrative basis that it alleges has been actuarially determined to arise exclusively from post-petition labor. (Delta Brief at p. 7 n.5). Delta is not paying the large portion of the legally and contractually required pension contribution to the Tax-Qualified Pilot Plan at all that it alleges has been actuarially determined to arise exclusively from pre-petition labor, nor is Delta paying any of the Non-Tax

Qualified Pension Benefits. Delta wants the damages from its post-petition breaches of the collective bargaining agreement to be treated as pre-petition unsecured debts, just as damages from a rejected executory contract would be treated pursuant to § 365, without meeting the rejection prerequisites of § 1113.

The collective bargaining agreement imposes obligations upon Delta in return for the labor of pilots. These obligations include funding the Tax-Qualified Pilot Plan and paying Non-Tax Qualified Pension Benefits to retired pilots. Part of the consideration for these obligations is the post-petition labor of the active pilots.³ That is why ALPA, the union representing only active pilots and no retired pilots, joined DP3's motion to compel and this appeal. That is also why Delta recently offered ALPA and the active pilots a \$300 million interest-bearing note if Delta decides to terminate the Tax-Qualified Pilot Plan. This offer would not have been made if the active pilots were not providing current consideration for the Pension Payments. The Second Circuit made it clear that the collectively bargained pension rights of retirees are integrally related to the rights of active workers and are properly the subject of § 1113 negotiations:

We agree with the district court that the rights of retired workers "vitaly affect" the rights of active workers within the meaning of *Pittsburgh Plate Glass* when their employer files a Chapter 11 petition. In a Chapter 11 context a refusal to negotiate a reduction in retiree benefits under § 1113 will "vitaly affect" active employees in two possible ways: first, it could mean that, as is the case here, they will have to bear a much larger reduction in wages and benefits in order to permit reorganization because of the significant cost of the retiree benefits; second, and more importantly, if retiree benefits cannot be renegotiated, the debtor's reorganization may well fail, in which case the active employees would most likely lose their jobs and benefits.

Century Brass, 795 F.2d at 274.

³ Indeed, a number of retired pilots already receiving their pensions continued to fly for Delta post-petition under the "Post Retirement Pilot" or "PRP" program. (Declaration of Geraldine P. Carolan, filed 11/1/05, p.17, ¶ 25).

Delta would have this Court dissect the integrated collective bargaining agreement and treat it as a bundle of thousands of individual employment contracts – some contracts with active pilots and some contracts with retired pilots. This view represents a fundamental misunderstanding of labor law. There is only one contract and it covers everyone. While Delta may be free to pick and choose which non-union executory contracts to reject or assume under § 365, it is not free to pick and choose which obligations arising from the single union contract it will perform.

On the contrary, § 1113(f) expressly provides that “[n]o other provision of [Chapter 11] shall be construed to permit a [debtor in possession] to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section.” The Second Circuit construes this subsection literally:

We hold that it was meant to prohibit the application of any other provision of the Bankruptcy Code when such application would permit a debtor to achieve a unilateral termination or modification of a collective bargaining agreement without meeting the requirements of § 1113. . . . The language of the statute indicates that Congress intended § 1113 to be the sole method by which a debtor could terminate or modify a collective bargaining agreement and that application of other provisions of the Bankruptcy Code that allow a debtor to bypass the requirements of § 1113 are prohibited.

In re Ionosphere Clubs, Inc., 922 F.2d 984, 990-91 (2d Cir. 1990) (“Ionosphere I”) (internal citations omitted). Later applying this holding to obligations incurred by a liquidating debtor when the debtor was not receiving any benefits from the collective bargaining agreement, the Ionosphere II court held that the strict circumstance specific application of § 507 in that case would not be inconsistent with the letter or spirit of § 1113. In re Ionosphere Clubs, Inc., 22 F.3d 403 (2d Cir. 1994) (“Ionosphere II”).

Unlike the case at bar, Ionosphere II did not involve a breach of the collective bargaining agreement while the debtor was still reorganizing and receiving the benefits of the collective

bargaining agreement. The breach, Eastern's failure to pay accrued vacation pay, occurred after all of the striking union pilots had been terminated and Eastern had ceased revenue flying. *Id.* at 405. Delta and the Creditors' Committee argue that these facts have no bearing on the applicability of Ionosphere II's headnotes to the case at bar despite Ionosphere I's direction to make a "circumstance specific . . . particularized determination," 922 F.2d at 991, and the Ionosphere II court's acknowledgement of this limitation: "Applying the analytical framework we established in Ionosphere I to the facts of this case, we hold that application of the priority scheme of section 507 will not allow Eastern unilaterally to modify or terminate its obligations under the CBAs." Ionosphere II, 22 F.3d at 407 (emphasis added).⁴

The "facts of this case" included the following: "On January 18, 1991, Eastern ceased operations, and all employees of Eastern were terminated by February 1, 1991. . . . Employees generally are entitled to full payment for earned, unused vacation upon their separation from Eastern." *Id.* at 405. The decision upon which the Ionosphere II court principally relied, In re Roth American, Inc., 975 F.2d 949, 957 (3d Cir. 1992), was also a Chapter 11 liquidation and acknowledged the importance of this fact to its holding: "Moreover, Unimet itself is of questionable application in this situation because it did not involve either a Chapter 11 liquidation or the question of priority." Delta and the Creditors' Committee's assertion that the rationale of the Ionosphere II court is equally applicable in operating reorganizations ignores the operative facts of that case and ignores the holding in Ionosphere I that determinations regarding the scope of § 1113(f)'s preemptive effect on other provisions of Chapter 11 must be based upon

⁴ The Ionosphere II court also acknowledged that Ionosphere I's holding found that the automatic stay provision of § 362(a)(3) could be applied consistently with § 1113 in one situation while the same subsection would be preempted by § 1113 in another. *Id.*

a “circumstance specific . . . particularized determination.” 922 F.2d at 991.⁵ Moreover, the strict application of § 507 to the reorganizing Delta’s PWA-derived pension obligations, while Delta continues to receive the full benefit of the collective bargaining agreement, would do violence to both the letter and spirit of § 1113. This result was not intended by the Second Circuit in Ionosphere II.

Ionosphere II must be read in harmony with the Second Circuit’s Century Brass decision

The only way for this Court to reach the result urged by Delta is to hold that Ionosphere II implicitly overruled Century Brass. Delta and the Creditors’ Committee both essentially ignore Century Brass and make minimal efforts to distinguish this controlling Second Circuit precedent which held emphatically that a reorganizing debtor must bargain with a representative of retirees before modifying their collectively bargained pension benefits. Id. at 267, 274 (“The collective bargaining agreement provided for payment of . . . pension benefits to more than 1,300 retired employees and their families.”). The debtor in Century Brass properly included modification of its pension obligations in its § 1113 proposals and in its § 1113 motion. Id. In

⁵ Commentators have also recognized that Eastern’s liquidation, and the fact that the vacation pay claims arose after the decision to liquidate, meant that § 1113 policies were not implicated by the Second Circuit’s strict application of § 507. Keith A. Simon, Liquidating Chapter 11 Debtors and Rejection of Collective Bargaining Agreements under Section 1113 of the Bankruptcy Code, 14 J. Bankr. L. & Prac. 5 Art. 2 (Oct. 2005) (“[T]he nine steps of section 1113 of the Bankruptcy Code have very little impact when dealing with a liquidating debtor.”); Steven Kropp, A Case of Misplaced Priorities: A Proposed Solution to Resolve the Apparent Conflict Between Sections 507 and 1113 of the Bankruptcy Code, 18 Cardozo L. Rev. 1459, 1482 (Jan. 1997) (“The Second and Third Circuits [in Ionosphere II and Roth], however, faced [a] situation[] where the company was proceeding to liquidate. These circuits viewed liquidation as a distinguishing factor.”).

the case at bar, neither Delta's § 1113 proposal to ALPA nor its § 1113 motion included modifying the PWA with respect to its collectively bargained pension obligations.

Delta, for its part, argues that Century Brass “has no bearing on these appeals” because it involved the “complete elimination”⁶ of pension benefits and a debtor who refused to pay pension benefits in any order of priority rather than the payment of pension benefits in accordance with § 507. (Delta Brief at pp. 36-37). However, the debtor is not the one who decides how and whether to pay claims – the bankruptcy court does. 11 U.S.C. § 502; Katchen v. Landy, 382 U.S. 323, 86 S. Ct. 467 (1966) (holding that the bankruptcy court's expressly granted power to allow, disallow, and reconsider claims is of basic importance in administration of bankruptcy estate). If the retirees in Century Brass would have been content with receiving their pensions through the § 507 claim administration process, all they had to do was file a proof of claim. Moreover, if the debtor in Century Brass was required to pay its retirees' pension benefits solely pursuant to § 507, and could pay no more and no less, there would have been no reason to remand the case for further bargaining since neither the debtor nor the retirees would have any room to bargain. 11 U.S.C. § 502; Century Brass, 795 F.2d 265, 267 (remanding and requiring the bankruptcy court to appoint an “authorized representative” other than the union to negotiate on behalf of the retirees since the union had a conflict of interest as a matter of law).

The Creditors' Committee, for its part, simply notes that Century Brass does not deal with the interplay between § 507 and § 1113. (Creditors' Committee Brief at p. 21). Although

⁶ The entire quote from Century Brass that is partially reproduced in Delta's brief at p. 36 makes clear that the debtor sought to eliminate benefits only for some retirees and merely reduce them for others: “[T]he proposal still called for the complete elimination of retiree insurance benefits for approximately 700 pre-acquisition hourly retirees and for a significant reduction in the insurance benefits of 500 post-acquisition retirees” Id. at 268. The “acquisition” discussed in the above quote refers to the 1976 (nine years before the bankruptcy petition was filed) acquisition of Scovill Manufacturing Company by Century Brass Products, Inc. Id.

true, this observation misses the point; Century Brass was not about claim administration, it was about bargaining. No claim had yet arisen to be administered pursuant to § 507 because the debtor had complied with § 1113 and continued paying its collectively bargained pension obligations pending the bankruptcy court's ruling on its motion to modify them. Id. at 268-69. The point of Century Brass is that a debtor is required to bargain in good faith with an authorized representative of retired union workers *before* modifying pension obligations which are provided pursuant to a collective bargaining agreement. The Second Circuit's subsequent opinion in Ionosphere II did not overrule or abrogate Century Brass.

Adventure Resources is on point and explains why Delta's obligation to pay the Pension Payments on an administrative basis until modified in compliance with § 1113 is consistent with § 507 and Ionosphere II

Adventure Resources was about claim administration and provides a separate and independent rationale for reversing the bankruptcy court's denial of Appellants' motion to compel. The Adventure Resources court quoted extensively from and agreed with the Second Circuit's opinion in Ionosphere II. Adventure Resources, Inc. v. Holland, 137 F.3d 786, 797 (4th Cir. 1998) ("We conclude that a bankruptcy claim arising from the breach of a collective bargaining agreement may be accorded priority status only insofar as it fits into one of the categories singled out for preferential treatment in § 507. Fortunately for the Funds, the claims of the Pension Trusts are the proverbial round peg."). The requirement that debtors pay all financial obligations arising from an unrejected collective bargaining agreement that a debtor continues to assume the benefit of is found in the Bankruptcy Code. "[Section] 365 continues to apply to collective bargaining agreements, except where such an application would create an irreconcilable conflict with § 1113." Id. at 798. "Should the debtor in possession elect to

assume the executory contract, however, it assumes the contract *cum onere*, and the expenses and liabilities incurred may be treated as administrative expenses, which are afforded the highest priority on the debtor's estate, 11 U.S.C. § 503(b)(1)(A).” Bildisco, 465 U.S. at 531-532, 104 S. Ct. at 1199. “The collective bargaining agreement between the [union] and [debtor] was assumed in bankruptcy as the result of the latter's failure to reject it in accordance with § 1113.” Adventure Resources, 137 F.3d at 795-99. “In effect, [debtor]'s postpetition assumption of its executory labor contract with the [union] transformed the prepetition claims of the Pension Trusts, once not cured, into new claims arising postpetition.”⁷ Id.

Delta first argues that Adventure Resources is inconsistent with Ionosphere II because both cases involve a liquidating debtor. (Delta Brief at p. 30-31). Although the debtor in Adventure Resources converted to a Chapter 7 liquidation after the bankruptcy court had ruled on the pension issue and that ruling had been appealed⁸, the appellate court was limited to reviewing the ruling of the bankruptcy court in the context of a Chapter 11 reorganization: “The primary question before us in this appeal is whether a debtor in bankruptcy operating under the aegis of Chapter 11 may, with regard to an executory contract in effect at the time of the filing of the petition for reorganization, continue to reap the benefits of its bargain without concern that the non-debtor party will be made whole for the debtor's unfulfilled prepetition obligations.” Id. at 790. Section 1113 does not apply at all in Chapter 7 proceedings and the Fourth Circuit's

⁷ Delta and the Creditors' Committee's reliance upon the absence of payment language in § 1113 akin to the payment language contained in the subsequently enacted § 1114(e)(2) is misplaced because § 1114 deals with the retiree medical benefits of both union and non-union retirees. Accordingly, Congress could not have relied upon the administrative priority afforded assumed executory contracts when enacting § 1114 and a separate provision was necessary to ensure prompt payment until modified in accordance with the statute.

⁸ Id. at 792 n.3 (“[A]fter the notice of appeal was filed in the instant matter, the bankruptcy court, upon Adventure's motion, converted the case to a liquidation proceeding under Chapter 7.”).

review of the district court's order was limited to the facts upon which the order was based – a reorganizing debtor in Chapter 11 that accepted the benefits of the collective bargaining agreement but unilaterally rejected the collectively bargained pension obligations. See Goldman v. D'Amanda, 412 F.2d 827 (2nd Cir. 1969) (holding that merits of subsequent reorganization plans, which were the subject of a subsequent appeal, were not before Court of Appeals on an appeal from an earlier order finding insolvency and rejecting certain reorganization plan, and Court of Appeals would do no more than to decide that district court's order should be affirmed on basis of the facts and law then before district court). Accordingly, the fact that the debtor in Adventure Resources later converted to Chapter 7 has no bearing on the applicability of its holding to the reorganizing Delta.

Moreover, the reasoning behind the holding in Adventure Resources was that “where the Chapter 11 debtor has assumed the benefits and obligations of an existing collective bargaining agreement, but does not comply with its statutory duty to cure all defaults then extant, any claims arising from the debtor's failure to cure are entitled to first priority as administrative expenses of the bankruptcy estate.” Id. at 793. Here, Delta has also “assumed the benefits and obligations of an existing collective bargaining agreement” but has failed to meet its end of the bargain. Delta's pension obligations are coming due and being breached post-petition while Delta continues to enjoy the full benefit of the collective bargaining agreement. Contrary to the assertions of Delta and the Creditors' Committee, the Fourth Circuit's rationale was not based upon the rejected doctrine of implied assumption, but rather upon § 1113's dictate that there is only one way for a debtor to avoid the obligations imposed by a collective bargaining agreement while it continues to accept the benefits of that collective bargaining agreement – the § 1113 process. The purpose of § 1113's enactment in the wake of Bildisco was to eliminate the period

of limbo between the petition date and formal rejection or assumption. Again, this appeal is about compelling a debtor enjoying bankruptcy protection to comply with the Bankruptcy Code.

The plain language of § 1113(a) provides that § 1113 is the exclusive provision regarding the assumption or rejection of collective bargaining agreements, and § 1113(f) commands that no other provision of Title 11 (including § 365 or § 507) shall be construed to permit a debtor to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with § 1113.⁹ Treating a collective bargaining agreement as assumed until properly rejected or modified while the debtor continues to receive the full benefit of the agreement is the only way to effectuate the intent of § 1113.

Conclusion

This Court is bound to make a ruling that follows the Second Circuit's precedent in Century Brass, Ionosphere I, and Ionosphere II. These three cases are all good law and are only inconsistent if read the way Delta urges. Century Brass holds that § 1113 requires a debtor to negotiate in good faith with an authorized representative of retired union workers before seeking

⁹ Delta criticizes Appellants' citation of In re 1655 Broadway Restaurant Corp., 1997 WL 104961 (S.D.N.Y. 1997), because that case purportedly involved pension obligations arising from post-petition labor. Although it is unclear whether "post-petition accrued" is the same as arising from post-petition labor, the 1655 Broadway case is instructive because it required immediate payment of ongoing pension benefits and implicitly treated the collective bargaining agreement as assumed unless and until rejected pursuant to § 1113. Delta also criticizes Appellants' citation of In re Manor Oak Skilled Nursing Facilities, Inc., 201 B.R. 348 (Bankr. W.D.N.Y. 1996). Manor Oak is not inconsistent with Ionosphere II because it involved a reorganizing debtor that continued receiving the benefits of a collective bargaining agreement while failing to honor all of its obligations arising from the collective bargaining agreement. The above decisions support the common sense understanding that § 1113(f) treats collective bargaining agreements as assumed unless and until rejected. Additionally, after criticizing Appellants for relying upon the "unreported one-and-a-half page opinion" from the District Court for the Southern District of New York in 1655 Broadway (Delta Brief at p. 34), Delta proceeds to assure this Court that it should rely upon the *oral* opinion of the Chicago bankruptcy judge in the UAL case (Delta Brief at p. 47-49).

court approval to modify collectively bargained pension obligations – even though most of the Century Brass retirees retired pre-petition. Ionosphere I holds that § 1113 preemption of other provisions of the Bankruptcy Code is circumstance specific and not section specific and must be determined on a case by case basis. Ionosphere II followed these two decisions and held that the prioritization of vacation pay claims arising from a post-liquidation and post-termination breach of a collective bargaining agreement pursuant to § 507 would not, in such circumstances, conflict with § 1113. The only way to read Ionosphere II consistently with Ionosphere I and Century Brass is to recognize that its holding did not implicate the policies behind § 1113 because the Ionosphere II debtor had already ceased assuming the benefits of the collective bargaining agreement at the time the claim arose. The Adventure Resources decision follows Ionosphere II and shows how the debtor’s assumption of all of the benefits of a collective bargaining agreement requires administrative payment of all of the obligations of the collective bargaining agreement pursuant to the Bankruptcy Code.

Delta should have, rather than acting unilaterally, filed a motion pursuant to § 1113(e) early in its bankruptcy to modify its collectively bargained pension obligations on an interim basis. With court approval of such interim modifications in place, Delta should have then initiated negotiations pursuant to § 1113(b) with an authorized representative of the retired pilots to explore the possibility of a consensual reduction of collectively bargained pension obligations. If Delta were unsuccessful in obtaining consensual modifications sufficient, in its view, to allow for a successful reorganization, Delta could have then petitioned the bankruptcy court pursuant to § 1113(c) to reject its collectively bargained pension obligations. Again, this appeal is about requiring Delta, who is enjoying all of the protections of the Bankruptcy Code, to also comply with the Bankruptcy Code. The retired pilots stand ready to bargain with Delta concerning the

level of reduction of Delta's collectively bargained pension obligations required for a successful reorganization.

Dated: March 7, 2006

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2006, a copy of the foregoing Reply Brief of Delta Pilots' Pension Preservation Organization, James H. Gray, James Haigh, Reuben Black, William Wirth, James Bomar, Ronald Stowe, Richard Colby, and Donald Mairose was served via first-class mail and by ECF upon:

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