

its continued use of the fund for other expenses. Such charges are barred within 180 days before a filing, the committee contends.

If Delta is allowed such changes for other expenses, the fund could be depleted "within months," the retiree creditor committee says.

### Delta disputes allegations

In its responses in court documents, Delta disputes the allegations and also argues that, under bankruptcy law, the group can't challenge Delta's actions prior to its filing.

"The fatal flaw in the committee's argument is that Delta has not made, nor does it have any current intention to make, any changes to the monthly survivor benefit provided under the plan," the company said.

Delta says the trust's rules are flexible and the benefit plan is "fully amendable," allowing it to pay all of the disputed expenses without changing the trust's rules. The airline said it met all legal obligations regarding changes in how it maintained or used the fund.

Further, the airline says the trust's financial status is largely irrelevant because it already pays most employee and retiree non-pension benefits out of operating cash.

"In our view, the really important question is what level of retiree benefits can Delta afford to pay over the long term," said Huebner. "The trust fund is but one funding source for those benefits."

But Cathy Cone, the retiree who heads the committee, says Delta's argument is disingenuous. When the trust fund runs out, "where are you going to get the money from?" she asked.

Bankruptcy experts say both sides have holes and correct positions in their arguments, making some sort of negotiated settlement likely.

Jack Williams, a law professor at Georgia State University, said retroactive plan modification is "peculiar," but added that many of the retiree committee's arguments depend on the specifics of the contract language in the benefit plan. He agreed that companies can generally change non-pension benefits at will.

Meanwhile, Eva Gill hopes she won't have to sell her house or tap savings if survivor benefits go away. She says she probably can't get a job because she has heart and other ailments.

"I'd hate to see them drop it because there are people who are worse off than me," she said. "At least I have my house paid for."

Atlanta bankruptcy attorney Darryl Laddin, who isn't involved in the Delta case, said the retiree committee's goal may be to negotiate a deal with Delta to protect the trust fund as other creditors jockey for position and the airline puts together its reorganization plan.

"What they seem to be doing is sending a shot across the bow aimed at protecting the assets of the trust from being used to pay other employee benefits in the future," he said.

The dispute was scheduled for a hearing next week in Delta's New York court, but it will be delayed because Delta's case was assigned to a new judge this week after the first one took a medical leave.

Fund started in 1980s

At the center of the dispute is the 31-year-old Delta Family-Care Disability and Survivorship Plan. The plan has long provided an assortment of mostly free retirement and disability income and life insurance benefits. To pay such current and future benefits, Delta began setting aside money in a trust fund in the 1980s.

The trust fund is separate from the airline's primary pension funds, and Delta contends it is a discretionary fund that the company can use to pay several types of employee benefits whenever it wants.

The survivor/disability plan covers about 64,000 current and former employees and relatives, but only about 700 disabled former employees and 2,200 widows and other survivors get long-term payments, according to court documents.

The dispute arose because Delta modified the disability and survivor plan a number of times after 9/11 so that it could use it for other needs, including employee severance packages.

Gloster estimated Delta may have pulled about \$80 million from the trust since 2001 — most of it without proper legal authorization, the retiree committee claims — to pay such benefits. The committee says those payments, along with losses from investments after 2000, cut the trust fund from being over-funded by about \$99 million in 2001 to a shortfall of \$212 million.

The retiree group alleges that Delta's board and then-executives such as CEO Leo Mullin and finance chief M. Michele Burns orchestrated questionable changes in the plan's rules. They did so, the retiree group notes, at around the same time they were creating bankruptcy-proof pension trusts for almost three dozen top executives, including themselves.

"At the same time they authorized these [executive trusts], they decided to invade the disability and survivorship plan ... which is just outrageous," said Gloster.

Delta continued dipping into the disability trust fund to pay employees' severance checks even after the new rules expired in early 2002, according to the retiree committee. Including later job cuts, Delta has used the fund for \$36 million in severance payments since 2002.

The committee also contends that Delta violated bankruptcy law by retroactively modifying the plan's rules only two days before it filed for Chapter 11 protection last September, to allow

## **Delta Retiree Group Fears Benefit Fund Raided**

**Airline says money moved, but recipients continue to get paid**

By RUSSELL GRANTHAM  
The Atlanta Journal-Constitution  
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Nearly 20 years after the death of her husband, a Delta Air Lines technician, Eva Gill never thought she'd be worried about possibly losing nearly half her retirement income.

"Losing that would cut into my life a lot," the 68-year-old Fayetteville woman says of the \$950 survivor benefit she gets each month from Delta, in addition to about \$1,380 in monthly pension and Social Security income.

Gill and about 2,900 other widows, disabled former employees and other beneficiaries are still getting monthly checks from Delta's so-called disability and survivorship plan, which is separate from the embattled carrier's pension plans.

But they're worried that could change.

A committee representing retiree interests in Delta's bankruptcy case claims that a trust fund used to pay such benefits is underfunded by at least \$100 million and rapidly shrinking — in part because the airline improperly diverted at least \$52 million to pay other employee-related expenses.

Delta, however, contends it was well within its rights to dip into the fund as it fought a grueling financial crisis. Executives say the company has no plans to stop paying disability/survivor benefits — although they add that the level of any non-pension benefits depends on Delta's financial recovery.

But the committee wants Delta's bankruptcy judge to stop further diversions and let it sue Delta executives and directors who allowed the payouts.

"When the fund's gone, there's nothing backing up those obligations," contends Dean Gloster, attorney for the committee, which represents non-pilot retiree interests in Delta's case. The committee is linked to another group that bought a full-page newspaper ad Tuesday to lay out its case.

The outcome of the complex dispute probably won't make or break Delta's bid to remake itself in Chapter 11 proceedings. But it shows how a case like Delta's can inflame passions, especially among workers or retirees who fear they'll be betrayed in the process.

Delta's lead bankruptcy attorney, Marshall Huebner, said Tuesday that the retirees' concerns are misplaced.

"If Delta had in fact sought to raid the trust, as alleged, these limited benefit categories would be an ineffective way to do it," said Huebner. "In fact, in 2004 alone, Delta paid over \$475 million on employee and retiree medical expenses out of its operating cash."