

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re: : 05-17923 (PCB)
: :
DELTA AIRLINES INC., et al, : One Bowling Green
: New York, New York
: :
Debtors. : October 17, 2005
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TRANSCRIPT OF HEARING ON MOTIONS
BEFORE THE HONORABLE PRUDENCE C. BEATTY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: RICHARD HAHN, ESQ.
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022

For Delta: MARSHALL SCOTT HUEBNER, ESQ.
Davis, Polk & Wardwell
450 Lexington Avenue
New York, New York 10017

For the Ad Hoc Comm.: PETER D. SCHELLIE, ESQ.
Bingham, McCutchen, LLP
1120 20th Street, N.W.
Washington, D.C. 20036

For DP3: JOHN CHRISTY, ESQ.
Schreeder, Wheeler & Flint, LLP
1600 Candler Building
127 Peachtree Street, N.E.
Atlanta, Georgia 30303

For the APA: BRUCE SIMON, ESQ.
Cohen, Weiss & Simon, LLP
330 West 42nd Street
New York, New York 10036

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

APPEARANCES CONTINUED:

For Bank of New York: LEO T. CROWLEY, ESQ.
Pillsbury, Winthrop, Shaw & Pittman
540 Broadway
New York, New York 10036

For Aircraft Financiers: MICHAEL J. EDELMAN, ESQ.
Vedder, Price, Kaufman & Kammholz
805 Third Avenue
New York, New York 10022

Court Transcriber: SHARI RIEMER
TypeWrite Word Processing Service
356 Eltingville Boulevard
Staten Island, New York 10312

1 THE COURT: You may be seated but you make a poor
2 showing compared to the number of people that we had here on
3 Friday filing Chapter 7 petitions but we only let forty in the
4 courtroom at a time. We were afraid they wouldn't deal well
5 with standing.

6 MR. HAHN: Good afternoon, Your Honor.

7 THE COURT: I want to take the equipment first. I
8 think it will be short.

9 MR. HAHN: Agreed, Your Honor.

10 If I could ask one thing.

11 The U.S. Bank motion which is uncontested which we
12 had put first on the agenda so that those people can leave and
13 make their travel plans.

14 THE COURT: Well, I have no problem with it so they
15 can leave.

16 MR. HAHN: So, Your Honor is it fair to say then that
17 the first motion which is the motion --

18 THE COURT: There's no objection to it so I'll grant
19 it.

20 MR. HAHN: Thank you, Your Honor.

21 THE COURT: Okay.

22 Now, with respect to the equipment motions I think
23 that there are three pieces of equipment that are in the
24 possession of what airline?

25 MR. BALDWIN: World Airways, Your Honor.

1 THE COURT: World Airways.

2 I can't tell from the schedules whether all three of
3 those planes are in flyable condition.

4 MR. HAHN: Richard Hahn of Debevoise & Plimpton,
5 special aircraft counsel to the debtors, Your Honor.

6 Would it make sense before we get into that question
7 to, perhaps, clear away some of the underbrush?

8 We have, I think, some settlements that we can deal
9 with.

10 THE COURT: Oh, sure, but I mean I can clear away a
11 lot of underbrush by saying no to every question that they ask
12 except, "When are you going to get it," and that is tomorrow.
13 But I mean I think the question that -- I see two categories.
14 I see the World planes and I see the rest of them because with
15 respect to the World planes the question is does World want
16 them and if it does can they make terms with the person who has
17 the rights? I think that that's -- I would assume, possibly
18 erroneously, that Delta tried to get as good a price as it
19 could because it was making up the difference between what
20 World was paying and what the documents required.

21 MR. HAHN: I think that's a fair assumption, Your
22 Honor.

23 Our understanding from World is that they would like
24 to continue to use the planes. I believe the owners of the
25 planes and the lenders with liens on those planes have had

1 conversations with World about that.

2 THE COURT: Well, okay.

3 Let me ask you a question.

4 Do they really think that they can lease them for
5 more in Zimbabwe or Nigeria or the Congo, or Kenya?

6 MR. HAHN: That, of course, I can't tell you, Your
7 Honor.

8 THE COURT: No, but what I'm saying is I would gather
9 that these planes are on their way out as the creme de la creme
10 of American aircraft.

11 MR. HAHN: My understanding, Your Honor, is that most
12 planes of that model and vintage are headed towards use as
13 cargo carriers and they're being converted from passenger
14 service.

15 THE COURT: Okay.

16 So that there is actually some use for them?

17 MR. HAHN: UPS and FedEx over time, yes.

18 THE COURT: Okay.

19 Well, I mean UPS thinks it's going to overtake FedEx?

20 MR. HAHN: Well, they may be the better buyer then.

21 Your Honor, the debtor's goal with respect to those
22 planes has basically been to get ourselves out of the middle.

23 THE COURT: And I'm saying in my judgment the people
24 who own the rights have got two choices; get rid of World and
25 do something that they like better or not. I mean there is no

1 other choice that they have and it seems to me that the price
2 that Delta was getting is probably just about a fair price
3 because Delta didn't have any reason to want to have to pick up
4 the difference.

5 MR. HAHN: To that end, Your Honor, we have
6 structured the proposed order at the suggestion of World's
7 counsel to allow the controlling parties with respect to those
8 aircraft to instruct us and World to leave the aircraft with
9 World in order to allow those discussions to continue provided,
10 however, of course, that in so doing we'd be satisfying any
11 obligations we have with respect to the return of the equipment
12 and we wouldn't be in the middle any longer.

13 THE COURT: Well, I think that that ought to be a
14 sufficient satisfaction. In the event that World somehow
15 doesn't do that then we'll deal with that at that moment.

16 I mean I don't think with respect to the World planes
17 -- I mean I think there's one of them in Montreal? Yes? No?

18 MR. HAHN: The World planes are all in operation,
19 Your Honor.

20 THE COURT: Okay.

21 MR. HAHN: But the other three planes are the ones in
22 Montreal.

23 THE COURT: So you, sir --

24 MR. SCHELLIE: May be I heard, Your Honor?

25 THE COURT: Yes.

1 MR. HAHN: Just, again, before we get further into
2 this would it make sense to deal with the settled orders?

3 THE COURT: No, it would not make sense. I'd like to
4 deal with the three World planes first.

5 MR. HAHN: Certainly, Your Honor.

6 THE COURT: You know, and get them off to the people
7 that have to make a decision as to whether they want world or
8 whether they want somebody else.

9 MR. SCHELLIE: Good afternoon, Your Honor.

10 Peter Schellie of Bingham, McCutchen for the ad hoc
11 committee of senior secured aircraft creditors.

12 THE COURT: So why are you in a position to talk on
13 the subject of whether any individual one of these people wants
14 to do one thing or another?

15 MR. SCHELLIE: We represent the holders who have the
16 debt at risk with respect to all three MD11s that are on
17 sublease to World Airways and they have been in active
18 discussions with World Airways about extending those
19 arrangements.

20 THE COURT: I would have thought that somebody else
21 like the owner might have thought that that was something he
22 was supposed to be doing.

23 I mean these people -- unless I misunderstand the
24 schedule, all of these planes have different owners, that is
25 that the ultimate risk falls on different people.

1 MR. SCHELLIE: There are owner participants
2 represented by an owner trustee that has the ultimate ownership
3 interest but it is subject to the debt arrangements entered
4 into with the indenture trustee in which our clients are the
5 real economic parties-at-interest. They're in agreement that -
6 -

7 THE COURT: Well, I'm afraid I don't understand this.
8 I mean I thought Mickey Mouse owned one of these planes.

9 MR. SCHELLIE: Well, Disney does own, I believe, two
10 of the six MD11 aircraft as owner participants. However --

11 THE COURT: Okay.

12 But why are they an owner if they don't own anything?

13 MR. SCHELLIE: They have an interest if but only if
14 there is value left after the repayment of the debt and at
15 least several of those owner participants have indicated that
16 given the current market value of the aircraft and given the
17 amount of debt on the aircraft, it is unlikely that they have a
18 continued economic interest in the aircraft.

19 THE COURT: Okay.

20 MR. SCHELLIE: Meaning that the creditors can
21 effectively foreclose the interest out and are in economic
22 terms the real parties-at-interest. So that's the reason they
23 have been talking with World.

24 THE COURT: Okay.

25 You're saying that they're all the same people?

1 MR. SCHELLIE: They are a group of separate holders
2 at institutions that, most of which, have --

3 THE COURT: Okay.

4 But why are you representing them when they actually
5 are different people that hold those interests?

6 MR. SCHELLIE: Because we represent all of those who
7 have -- in fact in three of the planes, I believe, we represent
8 100 percent of the holders and ninety plus percent in the other
9 three. Of those, we have the --

10 THE COURT: Okay.

11 But don't you have a conflict of interest with
12 respect to representing multiple owners where the planes don't
13 necessarily end up doing the same thing?

14 MR. SCHELLIE: Insofar as those aircraft are
15 currently on lease and as with respect to the six MD11s are the
16 only airworthy aircraft of the six MD11s. Those three MD11s --

17 THE COURT: Well, what do you mean by "airworthy"? I
18 mean you can't fly a plane that doesn't have its engines on it
19 but that doesn't mean that if you put them on it's not
20 airworthy.

21 MR. SCHELLIE: We've tried to make that point in our
22 papers, Your Honor, that --

23 THE COURT: All right.

24 I'm trying to just deal with why it is you're
25 representing three groups of owners with respect to these three

1 planes that aren't the same and why it is that there isn't a
2 possibility that there's a conflict among those owners?

3 MR. SCHELLIE: If there were a competition as among
4 the creditors to become owners of those aircraft, then there
5 would be an economic tension between the groups.

6 THE COURT: Okay. So, fine.

7 So we are going to give you back those planes.

8 MR. SCHELLIE: So we have three aircraft that are on
9 lease with World Airways. There is active discussion that went
10 over on through the weekend with respect to the arrangement
11 with World.

12 THE COURT: Well, that's because attorneys who don't
13 work on the weekend get upset because their two and three and
14 four year olds annoy them.

15 MR. SCHELLIE: I would take that point, Your Honor.

16 But we agree with the debtor to a substantial degree
17 in terms of just letting the debtor get out of the middle of
18 the transaction with a major exception --

19 THE COURT: That's fine.

20 MR. SCHELLIE: -- which is that the order that
21 they've served up among other things --

22 THE COURT: I don't want to worry about the order
23 right now. I'm just trying to make sure that with respect to
24 those three planes the three groups want World to stay in the
25 picture.

1 MR. SCHELLIE: We believe those arrangements are
2 close to being finalized. The reason the order comes in is
3 that as it relates to the World --

4 THE COURT: Sir, the reason the order comes in is
5 because you want to talk about it. I don't want to talk about
6 the order. I just want to make sure that I understand whether
7 or not you're trying to get them in or you're trying get them
8 out.

9 MR. SCHELLIE: We want the debtor out but without
10 waiving rights.

11 THE COURT: Okay.

12 Because it's not clear to me, since no one has chosen
13 to give me any of the documents that put any of the deals
14 together, whether Delta had the right to sublease the plane.

15 MR. SCHELLIE: It did, Your Honor.

16 THE COURT: Okay. Good.

17 Then we're all set and those planes will go back to
18 you and we'll worry about the order. Right?

19 MR. SCHELLIE: Excuse me?

20 THE COURT: Those planes can go back to you and we'll
21 worry about the order and you'll get some document from Mickey
22 Mouse that says it's okay that you take possession because of
23 whatever it needs to be okay for and, you know.

24 MR. SCHELLIE: We believe that the aggregate
25 interests, however the economics flow, are in favor of the

1 transactions going forward and --

2 THE COURT: Well, I would think so. I mean better to
3 get something than nothing.

4 MR. SCHELLIE: We agree.

5 THE COURT: So unless you think you can sell them for
6 something more than, you know -- that's why I wanted to go into
7 that.

8 Now, I want to go into -- now, why are you people
9 standing there?

10 MR. BALDWIN: I represent World, Your Honor.

11 THE COURT: Oh, that's good.

12 MR. CROWLEY: Your Honor, my name is Leo Crowley. I
13 represent The Bank of New York which is the indenture trustee
14 for the debt that Mr. Schellie was referring to.

15 THE COURT: Okay.

16 Now, as I understand it you would like to keep the
17 three airplanes. Now, at least two of your airplanes have the
18 wrong engines.

19 MR. CROWLEY: Well, you put your finger on a problem
20 we have, Your Honor, with the engines which is that as you had
21 started to elude to with Mr. Schellie, the six aircraft -- the
22 MD11s in question -- are in six different trusts and --

23 THE COURT: Yes, but this particular engine situation
24 is one which -- the little bit I can gather from the agreements
25 -- would allow a return of the planes with the wrong engine

1 provided the engine it was returned with was as good as the
2 engine that should have been there.

3 MR. CROWLEY: I don't think the debtor is prepared to
4 live up to that, Your Honor, but I think that's what the
5 agreements provide.

6 THE COURT: Well, I think that one of the mix-ups is
7 between World and not World but I may be mistaken.

8 MR. CROWLEY: No, there are some several of the
9 engines that are associated with the non-World airplanes are
10 currently installed on the World airplanes and so for the
11 airplanes that are not a World, those engines might represent
12 some of the best collateral for those bondholders and for those
13 trusts and so they've either got to get those engines off the
14 World airplanes or they've got to get compensated.

15 THE COURT: Okay.

16 I have no idea how you take an engine off a plane but
17 I assume that there are people who know how to do that.

18 MR. SCHELLIE: Your Honor, one additional complexity
19 -- I regret for introducing it -- but of the three World
20 aircraft with nine engines, three of those engines are actually
21 owned by Delta and we were told over the weekend are subject to
22 liens in favor of other creditors. So there is a swap
23 provision.

24 THE COURT: Okay.

25 This is the only remedy which is to put -- I mean I

1 don't know how long it takes to take an engine off and
2 reinstall it. I assume it's something completely different
3 than overhauling an engine.

4 MR. CROWLEY: Correct.

5 THE COURT: And it doesn't take as long as
6 overhauling an engine and that somebody needs to, you know,
7 sort them by serial number and put them back where they were
8 supposed to be.

9 MR. SCHELLIE: In some cases, Your Honor, the engines
10 are as you heard in the previous hearing literally in parts, we
11 think, in a box as opposed to a paper bag.

12 THE COURT: Wait, wait, wait.

13 I think that that's a different situation.

14 MR. SCHELLIE: With respect to World --

15 THE COURT: Please.

16 What I said was if the engine just needs to be moved
17 from one plane to another that that is not the same amount of
18 work as overhauling an engine. When you overhaul an engine you
19 take all the little bits off and so at least one of these
20 engines -- and I think it's one of the ones in Montreal -- is
21 being overhauled and nobody should be moving that one because
22 if you move that engine the chances of your losing one of the
23 little bits is very high.

24 Now, I don't understand why there is a potential
25 problem with those two planes being in Canada.

1 MR. SCHELLIE: Your Honor, there are three aircraft -
2 - the airframes at least are in Canada. Most of their engines
3 are actually in Atlanta. Those are not the World aircraft.
4 Those are the three parked aircraft.

5 THE COURT: No, I'm just trying to find out what the
6 problem with being in Canada is.

7 MR. SCHELLIE: The problem is that the aircraft there
8 are not airworthy, they're not --

9 THE COURT: I understand they're not airworthy but
10 the papers all say, "Oh, we won't even be able to get them out
11 of Canada."

12 MR. SCHELLIE: That is correct, Your Honor.

13 THE COURT: Well, if you put them back together
14 again, presumably, they can fly out of Canada.

15 MR. SCHELLIE: If they are put back together again
16 and they have the appropriate authorizations and permits, that
17 is correct and that's what we're seeking.

18 THE COURT: Well, that's exactly what I assume
19 somebody is going to do.

20 Now, I'll tell you what they do down south when they
21 get a double-wide trailer. They put it on a big flat bed truck
22 and they have one go in front and say "caution" and they have
23 one in back and say "caution" and you just take it wherever
24 it's going.

25 Now, I think it's a little bigger than a double-wide

1 so I don't actually think there's any ground way to transport
2 it.

3 MR. CROWLEY: That's correct.

4 THE COURT: So the easiest way to transport that
5 airplane is to make it airworthy. I assume if it's made
6 airworthy that somebody will be able to obtain the right
7 permits to have it flown.

8 MR. SCHELLIE: That's correct, Your Honor.

9 THE COURT: So I don't consider it being in Canada a
10 problem unless Delta in its post office box fails to have a
11 person who can speak French. I mean I'm assuming that Delta
12 has some way of communicating with these people who have
13 increasingly decided to speak French rather than English but,
14 you know, the question with respect to the ones that are in
15 pieces seems to me to be very simple. If you put them back
16 together and you consider the cost of putting them back
17 together, would they be worth more than they are now or should
18 we just get the metal grinder to come in and call it a day?

19 MR. SCHELLIE: We believe, Your Honor, that in
20 airworthy condition the aircraft are worth considerably more
21 than salvage value.

22 THE COURT: Well, good. Then somebody has got to get
23 them in airworthy condition and I'm not going to direct that
24 Delta pay the money. You're going to have to pay the money and
25 put in an administration claim and if, as and when we get that

1 far I will consider this issue because I don't agree with you
2 people that somehow 1110 gives you a miracle right to have them
3 put it all back together again. I don't think that's what it
4 was intended for. What I believe that 1110 was intended for
5 was to preclude the lessee from using the planes and then
6 saying, "Rats, I don't have enough money to pay for the lease
7 payments," and that it was intended simply to say, "You can't
8 pay, I want it back. Give it back to me right now," and it
9 wasn't about in what condition, it was about when you got it
10 back which was to be sooner rather than later.

11 Now, I'm not saying that repairing the plane is
12 absolutely not an expensive administration. I really am not
13 prepared to consider that issue but I certainly don't think
14 that 1110 mandates it. I think it was intended to mandate an
15 immediate turnover rather than, "Oh, you know, I really need
16 this plane and I'm going to keep using it for a while even
17 though I can't pay you." You see, that makes it parallel to
18 365 in which you say to the tenant, "Look, you don't pay the
19 rent, you don't get to stay." Okay, "You don't pay the rent
20 you don't get to keep the plane."

21 MR. SCHELLIE: Your Honor, may we be heard on that
22 point?

23 THE COURT: No, because I'm not prepared to award you
24 expense of administration status at this time. I've gone
25 through all of your papers and the best I'm willing to do for

1 you is not rule against you.

2 Now, I told somebody this the other day whose got an
3 immigration problem and I said, "Look, there's three possible
4 answers; yes, no and I'll adjourn it." I said, "If you can't
5 get to yes, don't get to no and get to an adjournment." Okay?

6 I'm saying to you in my mind, in my view of this situation,
7 (1) it would be impossible for me to make any determination
8 about how much was due and, secondly, I don't actually think
9 that since you're supposed to turn it over immediately that
10 that means you're supposed to keep custody of it in order to
11 fix it and there's, to me, something kind of mixed up about the
12 idea "I'm supposed to turn it over immediately but before I do
13 that I'm supposed to paint it all white? Pink wouldn't work?"

14 I mean I'm just saying to me if they were supposed to turn it
15 over you get it immediately and you get it as is, where is.

16 Now, I don't need to determine today whether it is an
17 expense of administration but I read 1110 as being directed at
18 the same sort of thing that 365 is directed at with respect to
19 a landlord; "You can't pay the rent, you're out. You can't pay
20 the charter price, you're out" and then we worry about the
21 cost. I mean certainly there's going to be a claim of some
22 sort with a difference between what Delta agreed to pay and
23 what World will pay.

24 MR. HAHN: Recognizing Your Honor is pressed for time
25 this evening should we submit an order in the form --

1 THE COURT: Well, I really don't think trying to work
2 out an order today is really a very useful expenditure of my
3 time. I mean if you want to go back to somebody's office that
4 would be fine but I'm saying to you that it makes a lot of
5 sense to keep World in the loop on those three claims and
6 somebody will need to take over dealing with the ones that need
7 to have some parts put together.

8 MR. HAHN: I believe the form of order we've
9 submitted with our response is consistent on all points with
10 the position you just outlined, Your Honor.

11 THE COURT: Well, you know, look, once people stand
12 up in a courtroom they don't know whether the order was okay or
13 not and so I'd rather just make sure that I sign it when
14 everybody has had a chance to look at it.

15 MR. HAHN: Certainly, Your Honor.

16 THE COURT: Okay.

17 MR. HAHN: With respect to the aircraft as to which
18 we've reached a settlement.

19 THE COURT: Which are which ones?

20 MR. HAHN: The thirty Regional jets, Your Honor.

21 As much as I like the position you just outlined, we
22 have agreed on some modest additional undertakings with respect
23 to those planes. We have agreed that up to some caps --

24 THE COURT: Okay.

25 But whose going to take the thirty Regional jets?

1 MR. HAHN: They're going back to the controlling
2 party with respect to each plane which is, I believe, the debt
3 in each case but that's not an issue that's resolved in our
4 order, that's to be left to be dealt with amongst the parties.

5 THE COURT: Yes.

6 MR. HAHN: What we have agreed to do subject to some
7 caps is align the engines with the right airframes.

8 THE COURT: Well, I do believe that that is
9 appropriate. I would agree that if you don't do that -- that's
10 much easier for you to do because you have possession and
11 control of all of them then it is for them to do when they're
12 trying to deal with six ways to Sunday.

13 No, I don't have a problem with that.

14 MR. HAHN: Should we submit the agreed upon order to
15 --

16 THE COURT: You're welcome to give me any orders you
17 want. I just don't want to deal with the terms under them
18 today because I'm just going to get into a mess with people
19 over whether that was what they agreed to, whether it wasn't
20 what they agreed to.

21 MR. HAHN: We'll provide them to your chambers, Your
22 Honor.

23 THE COURT: Okay.

24 MR. HAHN: Thank you.

25 Your Honor.

1 THE COURT: Yes.

2 MR. HAHN: Just one last thing with this.

3 I'm reminded that we do have all of the parties as to
4 the Regional jets here and we would just like to confirm on the
5 record that they all agree to the form that we'll be submitting
6 to your chambers, Your Honor.

7 THE COURT: Okay.

8 Is that correct?

9 MR. EDELMAN: Your Honor, I believe it is correct.

10 This is Michael Edelman from Vedder, Price.

11 We represent the debt that is the controlling
12 interest on 23 of the thirty airframes.

13 We worked with the parties who had the debt on the
14 other planes and subject to one reservation of rights on the
15 record that the agreed order, which we circulated to all
16 parties of the debt, the debtors worked this out and also the
17 owner trustee had seen it.

18 This order is not meant to adjudicate issues between
19 the debt or the owner side -- the owner participant, the owner
20 trustee, the debt trustee or the debt participants -- and
21 that's the reservation of rights that we would like to set on
22 the record but, otherwise, the form of order is as worked out
23 between the parties and I think all parties are ready to have
24 that order entered because it is in agreed form.

25 THE COURT: Okay.

1 I don't like to enter orders when I'm in a courtroom
2 and I have not had the opportunity to read them carefully. I
3 find that somehow everybody else thinks they're okay and I
4 don't know whether they're okay and there is too much money
5 involved in this for me to just sort of sign off on it and not
6 be sure that I know what the order says.

7 MR. EDELMAN: We understand that.

8 We just wanted to state on the record that the
9 parties-in-interest with respect to these transactions are
10 comfortable with the order subject to your review.

11 THE COURT: Well, I'm assuming that they are.

12 Anybody want something to say about the order?

13 MR. WOFFORD: Your Honor, Keith Wofford from Kelley,
14 Drye & Warren appearing on behalf of Wachovia Bank, the owner
15 trustee.

16 I'd like to echo Mr. Edelman's comments that the form
17 of the order is subject to the reservation stated on the record
18 and acceptable to the owner trustee.

19 THE COURT: Okay.

20 MS. POLLIO: Marie Pollio from Shipman & Goodwin on
21 behalf of U.S. Bank National Association as loan trustee.

22 We agree with the form of order as stated and we
23 agree with the comments of Mr. Edelman and Mr. Wofford. We
24 have no further comment.

25 Thank you.

1 THE COURT: Okay.

2 MR. FOSTER: Your Honor, Wilbur Foster of Milbank,
3 Tweed, Hadley & McCloy on behalf of Kreditanstalt Fur
4 Wiederaufbau, a lender with respect to three of the aircraft --

5 THE COURT: How long did it take you to learn how to
6 pronounce that name?

7 MR. FOSTER: [Response in German] -- no so long.

8 A lender with respect to three of the aircraft and we
9 are comfortable with the form of the order and concur with Mr.
10 Edelman's comments.

11 THE COURT: Okay.

12 MS. ENGLUND: Alyssa Englund with Orrick, Herrington
13 & Sutcliffe.

14 I represent West LB. They're another one of the
15 lenders on two of the aircraft and we do concur with the form
16 of the order.

17 THE COURT: Okay.

18 MR. HAHN: Your Honor, I think we have one other
19 settlement quickly.

20 The Jetscape engine, which I know is one that
21 interested you, that's the one in parts. We have agreed with
22 counsel to Jetscape on a modified form of order under which we
23 will undertake to do the several things they asked for in their
24 most recent papers.

25 THE COURT: Take everything out of the boxes?

1 MR. HAHN: We have in fact provided them with an
2 extensive inventory. We will, as they request, meet with them
3 to discuss what documents they believe should be turned over.

4 THE COURT: Well, I mean the document situation is --
5 I have never seen a filing cabinet on an airplane and I think
6 I've been on a number of different airplanes. So I'm assuming
7 that the documents that the pilots must carry in order to
8 validate the plane fit in those little bags and that what you
9 are talking about in terms of the filing cabinets were the
10 documents going back ten or fifteen years and that they weren't
11 the current document that are needed to fly the plane.

12 MR. HAHN: They're not the documents that need to be
13 on the plane as it is flying but I understand that they need to
14 be available for the plane to be allowed to fly under FAA
15 regulations.

16 THE COURT: I'm not saying they don't. I'm just
17 saying to you that, you know, they could be available and the
18 planes could be flying out of Canada because they were
19 available in your office --

20 MR. HAHN: Yes.

21 THE COURT: -- if they had the right little things in
22 their little black bags.

23 MR. HAHN: And we have agreed at Jetscape's request
24 to meet with them to review what they believe to be some gaps
25 in those documents and to discuss how they might be resolved.

1 THE COURT: I mean these planes weren't leased five
2 years ago were they? It was longer than that.

3 MR. HAHN: That's correct, Your Honor.

4 THE COURT: Which would mean that you could collect
5 an awful lot of pieces of paper.

6 MR. HAHN: There is a great deal of paper, Your
7 Honor.

8 THE COURT: Okay.

9 "I put new oil in it today. Hydraulic fluid, okay."
10 I mean if you have to keep a record of everything that you've
11 done to the plane --

12 MR. HAHN: They're quite extensive.

13 THE COURT: They're quite extensive. Yes.

14 MR. HAHN: We have also agreed at their request to
15 allow them to inspect the engine against the inventory that
16 we've provided.

17 THE COURT: I would definitely suggest that they're
18 going to have to go up to Montreal the night before and in the
19 late afternoon so that they can arrive in time for dinner and
20 go out to the airport in the morning because no doubt those
21 people start working at 6:00 a.m.

22 MR. HAHN: Unfortunately, this particular engine is
23 in Atlanta so I don't think any French food will be available.

24 THE COURT: Well, that's too bad. I don't know that
25 Atlanta has any really --

1 MR. HAHN: I'm sure we'll provide them with some
2 equivalent.

3 MR. MORA: Your Honor, what I had suggested to
4 counsel and I thought was agreed was to attach to the agreed
5 order a schedule of the documents that were provided in my
6 client's affirmation filed on Friday night that would provide
7 an agenda list if you will so that we don't have to come back
8 to the Court for an interpretation.

9 THE COURT: You want to know something? If you come
10 back to the Court to me to look over your list of documents,
11 I'm going to send you out into the hall because I don't know
12 whether we've got the right ones or the wrong ones.

13 My theory on this subject is, okay, he says he's
14 given you everything. At that point then I say to him, "If you
15 think you've given him everything then let him come to your
16 office and see if he can find something else." I mean, you
17 know, when you go there and you find five more file cabinets
18 and he's in a bad way.

19 MR. HAHN: We're agreeable, Your Honor, to attach the
20 list as an agenda for the meeting and --

21 THE COURT: I'm not saying no but I'm saying it's not
22 really something that I can, I think, be useful with respect to
23 -- other than saying maybe there's somebody -- I mean there
24 must be somebody at the office who is responsible for keeping
25 these records in order and that a conversation with that person

1 could be very useful.

2 MR. HAHN: We'll do our best, Your Honor, so that
3 you're not bothered with us.

4 THE COURT: I'm just saying, you know, this is what I
5 do, this is my procedure, you know, whatever.

6 MR. MORA: Thank you, Your Honor.

7 MR. HAHN: Thank you.

8 One last item, Your Honor.

9 I'm reminded that we need guidance from you on, I
10 think, one other issue in order to agree on a form of order and
11 that is the effective date for the rejection. The debtors have
12 in their motions proposed a petition date. I believe that the
13 objectors feel that the proper date is the entry of an order
14 and I don't believe Your Honor has expressed a view on that.

15 THE COURT: Well, I actually think that there's
16 somewhere in between.

17 There's no question that within two or three days of
18 receipt of the notice that the person's whose planes were being
19 held by Worldcom were in a position to discuss the situation
20 with Worldcom. Probably in five or ten days, the people whose
21 planes were being held in Arizona were in a position to have
22 had somebody go out and look at what the situation was.

23 So I mean I think the debtor's proposed fifteen days
24 is not unreasonable. I realize why people don't want it but if
25 you don't want to have to take your stuff back then you can

1 make it take as long as you want. If they had wanted to take
2 their stuff back they would have been on top of World Airways
3 on day two.

4 So I really think that they were given the notice
5 that they needed and it shouldn't have taken this long to get
6 to the point where it did. I mean, yes, there were problems
7 with the engines but that's really easily solved, "Okay, John,
8 I'll give you the engine that's on my plane because it's your
9 engine but, John, the ones you've got on your right wing,
10 that's my engine."

11 MR. HAHN: Thank you, Your Honor.

12 THE COURT: Okay.

13 Thank you.

14 MR. SCHELLIE: Could I be heard briefly on the
15 effective date issue?

16 THE COURT: No.

17 I made up my mind. I thought about it. I realized
18 what you guys said and that's my view. My view is that you
19 didn't need to have a hearing. You knew the debtor was going
20 to reject these. There wasn't really any question that the
21 debtor didn't need them and I realize that you think they
22 should have flown them to wherever you were but they were in a
23 known location and could have been examined.

24 MR. SCHELLIE: But they're neither airworthy, nor are
25 they free from liens and, therefore, removable. So we did not

1 have any --

2 THE COURT: But what kind of liens did they have on
3 them?

4 MR. SCHELLIE: We were told they had storage liens
5 and also governmental liens that prevent them from even being
6 inspected, let alone removed, so that --

7 THE COURT: Well, what kind of governmental liens?

8 MR. SCHELLIE: -- not only does it not get --

9 THE COURT: What kind of governmental liens?

10 MR. SCHELLIE: We were told by the authorities at the
11 airfield --

12 THE COURT: What authorities?

13 MR. SCHELLIE: The Canadian air authorities at the
14 airfield in Mirabelle will prevent us from even looking at all
15 of the equipment because of unpaid fees and liens. So we don't
16 have --

17 THE COURT: How much money are we talking about?

18 MR. SCHELLIE: We don't have a definitive number,
19 Your Honor.

20 THE COURT: Well, do you have a non-definitive
21 number?

22 MR. SCHELLIE: No, ma'am, I do not.

23 THE COURT: Well, I mean, you know --

24 MR. SCHELLIE: Delta does.

25 THE COURT: -- in thirty days you haven't been able

1 to find that out.

2 I mean this is what I'm saying to you. They're
3 giving them back to you. If you think ultimately that they
4 should have paid the liens, file it as part of your
5 administration claim. Okay?

6 If it turns out to be \$10,000.00 then it's probably
7 easier for them to just pay it but I'm saying, you know, nobody
8 has bothered to file a document listing what liens there are,
9 listing what costs there might be.

10 Obviously, the engine that's being rebuilt, somebody
11 is owed something for that rebuilding and, presumably, there
12 was a price that was agreed upon because I rather doubt that
13 somebody gave it to them and said, "Well, you know, just fix it
14 up. Do anything you want. If you want to make those parts out
15 of silver or gold, well, we'd just be real happy you do that."

16 So, I mean the one thing I'll tell you is I will not
17 tolerate those places that are holding those pieces that can't
18 fly from charging you, you know, double and triple just because
19 they think they can. There's no doubt an agreed price and
20 that's what they're going to get.

21 I've seen a few cases where, you know, people think
22 that they can hustle you for a good deal more than they're
23 entitled to and you may make clear to them that I will not
24 tolerate it. It's not my style to let them do that.

25 MR. SCHELLIE: Thank you, Your Honor.

1 THE COURT: Okay.

2 Why don't I take a short break and let people get
3 reorganized so that we have the pilot situation.

4 (Recess.)

5 THE COURT: You may be seated.

6 I have gotten this joint statement.

7 The stipulated facts, although DP3 did not agree that
8 certain facts --

9 MR. HUEBNER: Your Honor, Marshall Huebner of Davis,
10 Polk for Delta Airlines.

11 A couple of very quick things before we begin about
12 pension motion if I may.

13 Number one, as I understand it from chambers that our
14 de minimis litigation order with changes referencing Delta's
15 continued internal controls is acceptable now and we would ask
16 that that be entered if convenient for the Court?

17 THE COURT: Okay.

18 MR. HUEBNER: Thank you very much, Your Honor.

19 THE COURT: I'd like to ask you a question.

20 MR. HUEBNER: Yes, Your Honor.

21 THE COURT: Can you explain to me what it is that
22 PBGC would pay if they were to take over the --

23 MR. HUEBNER: Qualified pilot plan?

24 THE COURT: Yes.

25 MR. HUEBNER: Your Honor, the answer varies depending

1 on the nature of the beneficiary.

2 THE COURT: Let's start with pensioners who are of
3 the age of seventy and above.

4 I would understand that they would never have been
5 eligible for a lump sum payment or would they have been?

6 MR. HUEBNER: No, I think they would have, Your
7 Honor.

8 If you'll give me a minute I can try to get out my
9 understanding of it and then if I'm wrong, people can correct
10 me.

11 THE COURT: Okay.

12 I'm trying to figure out how far down the age ladder
13 do you have to go before there is a group of people who need in
14 any way to be concerned with the possibility that PBGC would
15 take over the fund and that somehow they would lose some
16 portion of their pension?

17 MR. HUEBNER: Your Honor, assuming that -- let me say
18 this -- non-qualified benefits only began in --

19 THE COURT: I'm not talking about non-qualified. I'm
20 only interested in the qualified PBGC situation and I'm
21 interested in what age approximately could people reasonably
22 stop worrying that they won't get their pensions?

23 MR. HUEBNER: Let me consult with the experts for
24 just a moment.

25 (Pause in proceedings.)

1 MR. HUEBNER: Your Honor, as I expected,
2 unfortunately, the answer is not as simple as a numerical
3 answer. There is a status known as PC3 which is federal law
4 PBGC concept --

5 THE COURT: Right.

6 MR. HUEBNER: -- and their benefits vary and so there
7 could be older pilots who have pensions that are below the PBGC
8 guaranty amounts and, therefore, would suffer no loss at all in
9 the event of plan termination.

10 THE COURT: Okay.

11 MR. HUEBNER: There are also both younger and older
12 pilots who could suffer a loss depending on both the amount of
13 their pension and whether they qualify for this PC3 category in
14 the eyes of the federal regulatory structure.

15 THE COURT: Okay.

16 Do we know what the PC3 number is?

17 MR. HUEBNER: You mean the number of people who have
18 PC3 status?

19 THE COURT: No, I mean do we have any idea what it is
20 the cutoff is?

21 MR. HUEBNER: Well, my understanding, again, is that
22 PC3 status depends on the funding level -- the level of funded
23 PC3ness [sic] as it were, depends on the level of funding of
24 the plan at the time of its termination so that there's almost
25 like a first call of the actual plan's assets in termination

1 for people in the PC3 category and they do better than people
2 that are not in the PC3 category and in fact may not be subject
3 to the PBGC's caps because the caps in general relate to monies
4 paid out by the PBGC out of its own fisc and not out of the
5 plan's assets when taken over.

6 I got that right.

7 THE COURT: Okay.

8 Are we getting a single that that's correct?

9 MR. HUEBNER: We are, Your Honor, a vigorous head
10 nodding.

11 THE COURT: Okay.

12 MR. HUEBNER: Your Honor, what I thought I might do
13 and as requested by chambers is take a minute before we begin
14 oral argument and just lay out what I think the parties agree
15 are the uncontested facts.

16 THE COURT: Okay.

17 MR. HUEBNER: I would propose to do that in a way
18 that as requested by chambers contains no advocacy but merely
19 frames the issues as a factual matter before the Court today.

20 I will save my oral argument for after the movant and
21 their supporters have spoken.

22 THE COURT: Okay.

23 MR. HUEBNER: Perhaps, most importantly, Your Honor,
24 as set forth in Paragraph 4 of the stipulation, the parties all
25 agree that the issue before the Court today is a pure issue of

1 law. It's an interpretive question about what Rule 13(b)(f)
2 means and does not mean. Thus, while the pension funding and
3 payment facts are, indeed, exceedingly complex the good news, I
4 guess, is that we all agree that it in fact boils down to a
5 rather simple legal question. Does Section 1113(f) and other
6 Code sections read in conjunction therewith make the retiring
7 pension plans at issue administrative in nature or, as Delta
8 and the committee assert, that the payments remain pre-petition
9 claims under 507 at this time because in Delta's view the
10 underlying labor that earned these pension benefits was, of
11 course, performed pre-petition, in some cases years or even
12 decades pre-petition.

13 There are two kinds of payments by Delta that are at
14 issue today, Your Honor; one is contributions by Delta to the
15 qualified pilot plan, the other is payments directly by Delta
16 to retired pilots who have non-qualified pension benefits. I
17 will briefly address each in turn before turning over the
18 podium.

19 THE COURT: Can I ask you something because it
20 doesn't seem clear to me, where do medical benefits fit into
21 this situation?

22 MR. HUEBNER: Your Honor, medical benefits have no
23 relationship of any kind to today's situation. This is only
24 about pensions. Medical benefits are paid completely
25 differently. They have nothing to do with non-qualified

1 pension benefits, nothing to do with the qualified pension
2 plan. Absolutely, completely unrelated.

3 THE COURT: Okay.

4 Because 1114 --

5 MR. HUEBNER: Requires that the debtor shall --

6 THE COURT: 1114 does not have anything to do with
7 pensions.

8 MR. HUEBNER: We quite agree, Your Honor.

9 THE COURT: It only has to do with --

10 MR. HUEBNER: Retiree health, medical and life
11 insurance.

12 THE COURT: Correct.

13 MR. HUEBNER: I will get to that in my oral argument
14 at some length.

15 THE COURT: I mean it just is not relevant so that
16 the people who seem to have volunteered for the retirees
17 committee are not even necessarily eligible for it.

18 MR. HUEBNER: The retiree committee motions are on
19 for the 27th and we'll have a lot to say about 1114 on that day
20 but I think we are all agreed that the pension payments at
21 issue today have nothing to do with the 1114 process at all.

22 THE COURT: Okay.

23 I just want to make clear that if we're going to
24 appoint a committee under 1114 they're not dealing with the
25 pensions.

1 MR. HUEBNER: That is certainly our view and we will
2 argue that next week. I believe that the U.S. Trustee and the
3 creditors committee and probably ALPA will all agree with us
4 as well.

5 THE COURT: Okay.

6 MR. HUEBNER: Your Honor, in 1972 Delta established
7 the qualified pilot plan. The pilot plan is an ERISA qualified
8 plan that currently has approximately \$1.89 billion in assets.
9 These assets are --

10 THE COURT: It sounds like a lot of money.

11 MR. HUEBNER: I will stay away from adjectives. I
12 learned my lesson at the last hearing.

13 THE COURT: Well, I mean it sounds like a lot of
14 money but, unfortunately, if you're paying out a million
15 dollars a pop you can get up to \$100,000.00 with just 100
16 retirements.

17 MR. HUEBNER: Again, I'm going to try very hard not
18 to engage in any advocacy during these first two minutes but we
19 obviously have very strong views about the lump sums and the
20 risks to the plan and the company.

21 THE COURT: Well, I think that we have to be clear
22 that with respect to the qualified plan there would be no
23 problem with the qualified plan but for the lump sums.

24 MR. HUEBNER: That's not true, Your Honor.

25 THE COURT: You don't think so.

1 MR. HUEBNER: No.

2 The qualified plan even in the absence of lump sums
3 would have \$31.4 million due on October 15th that in Delta's
4 view is entirely attributable to pre-petition labor. It also
5 has hundreds of millions of dollars of contributions due over
6 the next year and a half that are not in our business plan.

7 THE COURT: Wait, wait, I'm trying to get at
8 something.

9 As I understood the numbers, that \$600,000.00 number
10 has to be dependent upon that \$800,000.00 to \$1 million being
11 paid and that's why I'm saying if those numbers were taken out
12 it's not at all clear to me that the plan is in fact
13 underfunded.

14 MR. HUEBNER: Well, Your Honor --

15 THE COURT: Now, I understand that you're telling me
16 I can't take them out but I'm --

17 MR. HUEBNER: No, no, it's actually -- if I can
18 explain for just a moment?

19 THE COURT: Yes.

20 MR. HUEBNER: May I hand up a yellow copy of the stip
21 that actually points out the exact facts you're asking about?

22 THE COURT: Well, just tell me what page they're on.

23 MR. HUEBNER: Sure.

24 If you turn to Paragraph 20 and you look at the final
25 sentence of it, you'll that there are well --

1 THE COURT: Paragraph 20, I'm sorry.

2 MR. HUEBNER: Page 4.

3 THE COURT: Wait, wait, wait.

4 Page 4, okay.

5 MR. HUEBNER: There are well over \$1 billion of
6 payments that will come due to this plan over essentially the
7 life of the bankruptcy even in the absence of lump sums.

8 THE COURT: Wait a minute.

9 I don't quite understand -- I mean you apparently
10 have 24,000 other retirees but they're not paid out of this
11 plan?

12 MR. HUEBNER: That's correct, Your Honor.

13 The pilot plan under ERISA's funding rules, Delta has
14 made every payment ever called for under ERISA since 1972.
15 Despite that, that does not mean that the plan is "fully
16 funded" on a current liability basis.

17 THE COURT: No, I understand that.

18 MR. HUEBNER: So even though --

19 THE COURT: What's TFEA interest rate?

20 MR. HUEBNER: There was special legislation passed by
21 Congress of a temporary nature that allowed certain industries
22 temporary relief from certain funding obligations and those are
23 about to sunset and so what Paragraph 20 sets forth is even if
24 you assume that there are no lump sums going out anymore and,
25 therefore, no supplemental contributions which would be

1 required to top up due to the lump sums, this \$1.5 billion or
2 more than that is the amount that is otherwise inexorably due
3 to the plan. Delta believes that about 99 percent of this is
4 due to pre-petition labor because the plan was frozen as to
5 service credit almost a year ago.

6 THE COURT: Okay.

7 Can you explain to me what "frozen as to service
8 credit" means?

9 MR. HUEBNER: Absolutely, Your Honor.

10 There are three main attributes that relate to a
11 retiring pilot's final pension, what's called the total formula
12 in the stipulation, as of their retirement date; one is years
13 of service to Delta which is an extremely important metric --
14 like all industries we expect a certain amount of longevity
15 from our workforce and incentivize them to work until
16 retirement date -- the second is actual chronological age at
17 the time of retirement -- like all industries we hope and trust
18 that our workforce will work until a certain age and in this
19 case because the FAA sets pilot retirement age at sixty so does
20 our pension plan -- and the third is final earnings. So when
21 you go to calculate a pilot's pension formula you look at how
22 many years of service they have, what their final earnings were
23 and how old they are.

24 As of January 1, 2005 when there was a major
25 restructuring and renegotiation of Delta's contract with ALPA,

1 we moved them over to an average eight percent pay-as-you-go
2 defined contribution plan. In other words, it's sort of like a
3 401(k), although the ERISA lawyers hate when I say that because
4 it's not technically, and what we agreed to was that the
5 qualified pilot plan is not fully frozen in the sense that
6 exactly what you were owed on January 1, 2005, that's your
7 benefit for all time, but the most significant of the three
8 attributes which is years of service is frozen. So that
9 however many years you worked for Delta as of January 1, 2005,
10 your service credit, if it was only twelve years and that caps
11 you at a very small pension, that's all you're going to see
12 because you can't -- no matter how much more you work you can't
13 keep getting more years of service credit. Therefore -- and
14 this will hopefully make it more clear -- the reason that we
15 owe anything at all to the pilot qualified plan that we believe
16 is post-petition in nature is because small incremental
17 benefits are in fact still being earned and as to the October
18 15th payment a quarter of one percent, \$417,000.00 of the \$160
19 million --

20 THE COURT: Okay.

21 I don't understand why somebody would have agreed --

22 MR. HUEBNER: Because they got an eight percent
23 401(k) as a swap. We said, "We'll do a new plan for, a defined
24 contribution plan, and we'll give you an average of eight
25 percent pay-as-you-go," just like many of us have 401(k)s or

1 HR10s and they traded out further substantial increases in
2 benefits on the qualified plan that we're talking about today
3 for a new plan. That new plan -- it's very important to tell
4 Your Honor -- we are paying every penny of. We didn't miss a
5 payment, we didn't hold a payment, we didn't pro rate a
6 payment. That payment which is truly pay-as-you-go so that as
7 they earn another two weeks of wages they earn eight percent of
8 that into this new defined contribution plan. That has
9 continued uninterruptedly. Delta takes very seriously as you
10 will hear about when I get to oral argument that pre is pre and
11 post is post.

12 THE COURT: You aren't in oral argument yet?

13 MR. HUEBNER: I am not, Your Honor.

14 I'm trying very hard but you're asking me questions
15 about it so if I could finish --

16 THE COURT: Okay.

17 I still would like an answer to a question that still
18 doesn't make sense to me.

19 MR. HUEBNER: Sure.

20 THE COURT: I still do not understand why if you
21 don't have to make any lump sum payments the amount that would
22 be due in 2008 would be \$750 million?

23 MR. HUEBNER: Let me answer Your Honor in a different
24 way.

25 There are a wide variety of U.S. companies that many

1 analysts believe have gone into bankruptcy because they can no
2 longer afford their qualified plans. People are living much
3 longer than expected, assets have not performed as well as
4 expected and the ERISA rules require that you constantly match
5 assets to liabilities.

6 THE COURT: I understand that.

7 MR. HUEBNER: Almost very, very few qualified plans
8 have lump sum rights at all. This is a rather unusual feature.

9 THE COURT: No, I understand that and it just seems
10 to me really hard to understand how you could go for \$430
11 million in 2007 and then \$750 million in 2008 and none of that
12 be attributable to lump sum payments?

13 MR. HUEBNER: The answer is that there are certain
14 funding holidays under ERISA that when the plan is funded as to
15 a certain level for a certain period of time you're given a bit
16 of breathing room under the funding rules and then when that
17 holiday ends you have to start paying back in again.

18 These are the plan's actuary's numbers. These are
19 not advocacy numbers --

20 THE COURT: I still don't understand why there aren't
21 people who still have rights under the former plan to get lump
22 sum payments because it seems as if in the last year they've
23 been doing it.

24 MR. HUEBNER: Two answers, Your Honor, if I may.

25 To answer your point with one more fact on why the

1 number jumps to \$750 million, that's because this temporary
2 PFEA legislation which is about to sunset actually gave Delta
3 and certain other industries and companies a special funding
4 holiday that then ends and then we have to make it up. So
5 that's one of the reasons that, again, completely apart from
6 lump sums, the numbers in Paragraph 20 are the actual
7 contributions.

8 THE COURT: Okay.

9 MR. HUEBNER: As to your question as to how the lump
10 sums work and why they're stopping and what would restart them,
11 the lump sum right under ERISA and under the actual statute and
12 the legislation is a fully vested, qualified benefit. ERISA's
13 anti-cutback rules -- and we all agree on this -- say that
14 nobody can take away a fully vested, qualified benefit
15 including a benefit as to timing and form of payment.

16 THE COURT: Okay.

17 Can I ask you a question?

18 MR. HUEBNER: Yes, Your Honor.

19 THE COURT: How much more does Delta expect to have
20 to pay in lump sum payments?

21 MR. HUEBNER: As of right now, Your Honor, we believe
22 that the lump sums have been frozen because the plan has gone
23 into what is called liquidity shortfall. Should you rule
24 against us and obligate us to pay in this \$160 million, the
25 stipulation sets forth our views which are the lump sums would

1 restart and we would owe -- if half of the pilots entitled to a
2 lump sum took it in the coming months we would owe over \$1
3 billion in January.

4 THE COURT: Okay.

5 Can I ask you another question?

6 MR. HUEBNER: Yes, Your Honor.

7 THE COURT: Let's assume I'm a sixty year old pilot
8 and I'm putting my retirement papers together with you and I
9 say, "Look, I'm a gambler and I don't want to get this much
10 money at once because I know what will happen to it so I want
11 you to pay my lump sum out at \$150,000.00 a year to me." Now,
12 is that something that person has the right to do?

13 MR. HUEBNER: Absolutely, Your Honor.

14 The average sixty year old pilot who retired this
15 year with 25 years of service had a \$305,000.00, I believe,
16 final average earning. That would get split into qualified and
17 non-qualified and unless they took the lump sum option it would
18 absolutely be paid as an annuity under the qualified plan.

19 THE COURT: But what if they took the lump sum option
20 and said, "I want my lump sum to be paid over five years or ten
21 years."

22 MR. HUEBNER: To say it a different way, if they
23 didn't want the money right away they would say, "I do not
24 elect the lump sum option, I want it as an annuity." They
25 wouldn't only get it for five or ten years, they'd get it for

1 the rest of their lives. That's the whole point.

2 THE COURT: But what I'm asking is why can't they
3 make a decision about how and when they would like to get paid
4 the lump sum?

5 MR. HUEBNER: Well, I mean they already have an
6 unusual choice which is to take their pension either as a
7 lifetime annuity or a lump sum.

8 THE COURT: I'm not saying that. I'm asking whether
9 they have the voluntary right --

10 MR. HUEBNER: To take a customized sum.

11 THE COURT: Yes, to take a customized sum.

12 MR. HUEBNER: In a sense they do because what they
13 could do -- and I would note by the way that a hundred percent
14 of the pilots, I think, for the last two years have chosen lump
15 sums so none of them see it that way but assuming that they did
16 --

17 THE COURT: I didn't say that any of them would. I
18 did sort of think that there was some possibility that there
19 might be some people in the future that might come to realize
20 that it would be better to see things that way.

21 MR. HUEBNER: What I think people would probably do
22 in that situation, Your Honor, is they would elect the lump sum
23 and then they could roll it over into an IRA and buy an annuity
24 product infinitely customizable from any number of providers.
25 In other words, they would take the cash but then, "I don't

1 want it. I want it paid to me over time" and they'd go to Bank
2 of America or Mass Life or Unum, or whoever, and buy a variable
3 or other annuity.

4 In other words, pension plans don't themselves
5 provide infinitely customizable options --

6 THE COURT: No, okay, but that's what you're saying
7 to me.

8 Okay, that's what I wanted to know.

9 MR. HUEBNER: Okay.

10 Back to my couple of pages.

11 The assets held by the qualified plan are wholly
12 separate and apart from the assets of Delta and can be used
13 only to satisfy the claims of the plan's beneficiary. Thus,
14 the vast majority of pension benefits earned by retired pilots
15 are paid directly to retirees by the plan and not by Delta.
16 Rather, as I think we already discussed, the plan is funded by
17 Delta on a periodic basis.

18 Delta did have a payment that came due on or about
19 October 15th to the qualified plan. This payment by Delta to
20 the plan as the stipulation sets forth would have been \$31.4
21 million but a series of lump sums taken out of the plan added
22 \$129 million additional dollars to the tab for a total that's
23 set forth in the stip of about \$160 million that would have
24 been due.

25 Delta and the plan's actuaries in the recent days

1 calculated exactly how much of this \$160 million was under our
2 view of the law attributable to post-petition benefit accruals
3 -- that small slice. It came to \$417,000.00 out of the \$160
4 million or one quarter of one percent. Because our view of the
5 law is that we must pay post-petition obligations that arise
6 under a CBA, we paid it in full.

7 The movants, of course, believe that because the
8 obligation to maintain and fund the plan arises under the CBA
9 the whole --

10 THE COURT: You're going to have to slow down.

11 I don't think people can hear you in the back.

12 MR. HUEBNER: Sorry, Your Honor.

13 The movants, of course, believe -- and this would be
14 for argument -- that because the obligation to maintain the
15 plan, itself, arises under the CBA all \$160 million must be
16 paid until 1113 relief is granted.

17 As Paragraph 40 of the stips made clear, Your Honor,
18 the failure to make the payment does not impact the plan's
19 ability or its legal obligation to keep paying all monthly
20 qualified pension payments when due.

21 THE COURT: This is why I asked you the first
22 question I asked you which is is there some age at which people
23 can could stop worrying about this?

24 MR. HUEBNER: No, they get their pensions for life
25 even if they live to be 140.

1 THE COURT: But I think what I'm trying to say to you
2 is DP3 appears to be suggesting in their literature that pilots
3 are at risk no matter how old they are and I'm not clear that
4 the ones that are older -- I mean in say the seventy plus range
5 -- really have a problem.

6 MR. HUEBNER: Your Honor, I don't want to overspeak
7 but I believe it to be the case that the oldest pilots receive
8 pensions -- the oldest retired pilots or their survivors
9 receive amounts that are low enough that even in PBGC
10 termination they would continue to be paid. For example, I
11 will ask others to address this but just looking at the facts
12 that we provided Your Honor over the weekend about the oldest
13 retirees we could find, because their average monthly benefit
14 is \$1,160.00, that puts their average annual benefit at around
15 \$13,500.00.

16 THE COURT: Okay.

17 Just read aloud what those four ages are.

18 MR. HUEBNER: The four oldest living retired pilots
19 range in age from 81 to 96 years. The average monthly benefit
20 for these individuals --

21 THE COURT: No, but I'm just saying let's look at
22 that, 81 to 96, I mean four people? You know, that's not a lot
23 of people.

24 MR. HUEBNER: I understand that.

25 THE COURT: So, presumably, there is a bigger crowd

1 between seventy and eighty.

2 MR. HUEBNER: Yes and if their overall pension rights
3 -- and you might want to extrapolate out from this \$13,000.00 -
4 - for these four are below the PBGC limits they, presumably,
5 would suffer no declination in pension were it to be taken over
6 by the PBGC.

7 THE COURT: Okay.

8 MR. HUEBNER: In fact, Your Honor, the plan is
9 absolutely obligated to keep paying under ERISA all monthly
10 qualified benefits as long as it exists.

11 What Delta's failure to make the full payment on
12 October 15th does do as set forth in the stip is cut off the
13 rights of retiring pilots to take lump sums out of the plan.
14 Earned invested rights in the pension plan --

15 THE COURT: I'm sorry, you're going to have to slow
16 down.

17 Back up because I missed what you just said -- about
18 the last three sentences.

19 MR. HUEBNER: Sure.

20 Your Honor, the qualified pilot plan is absolutely
21 obligated under ERISA, notwithstanding Delta's non-payment of
22 any of the \$160 million. The qualified plan must under ERISA
23 keep paying all monthly qualified benefits to pilots as long as
24 --

25 THE COURT: Subject to the PC3 problem?

1 MR. HUEBNER: No, that's only a plan termination
2 issue.

3 THE COURT: Oh.

4 MR. HUEBNER: Unless and until the plan is terminated
5 every retired pilot --

6 THE COURT: Okay.

7 The PC3 number comes in once the plan assets are
8 depleted.

9 MR. HUEBNER: Yes.

10 What I thought Your Honor was asking me is the PC3
11 takes --

12 THE COURT: No, I wasn't ask you that, I was asking
13 you --

14 MR. HUEBNER: No, let me be very clear because this
15 is an important point.

16 The qualified plan is absolutely obligated under
17 ERISA to pay all monthly qualified pension benefits to every
18 single participant unless and until the plan is actually
19 terminated. Irrespective of how much or how little Delta pays
20 in the plan must use its \$1.89 billion to pay all monthly
21 benefits until terminated.

22 The annual payments, I would note, as also set forth
23 in the stip total \$240 million for those monthly pension
24 payments to pilots covered by the plan.

25 THE COURT: Does that include any lump sums?

1 MR. HUEBNER: No, that is merely the annual bill for
2 the monthly pension payments.

3 So, Your Honor, the consequence -- and, again, so far
4 I think and I will leave others to correct me but I think I am
5 saying nothing that is not agreed fact.

6 What Delta's failure to make the full contribution on
7 October 15th does do -- the only thing it does right now is cut
8 off the rights of retiring pilots to take lump sums. The only
9 way to stop a lump sum, Your Honor, is for a plan to have a
10 funding level that is called liquidity shortfall which means
11 that based on the measurement of the outflows from the plan in
12 recent periods versus its assets, if it dips below a certain
13 level it's called liquidity shortfall and lump sum rights are
14 turned off by ERISA.

15 I would note that for the first time in the plan's 33
16 year history the failure to make this payment which, again, we
17 believe and will argue is pre-petition, this is the only time
18 in the plan's history since 1972 that it's ever gone into
19 liquidity shortfall.

20 THE COURT: Okay.

21 But if that happens so they can't take their one time
22 lump sum, they would they also be entitled to this annuity
23 payment of \$45,000.00?

24 MR. HUEBNER: Absolutely, Your Honor.

25 If a pilot retires tomorrow -- if we win today and

1 you say that we don't have to make these payments because for
2 whatever reason you rule, I won't sneak into the law -- the
3 pilot that retires tomorrow will not be allowed to choose their
4 lump sum. They will, however, get 100 percent of their
5 qualified pension benefit paid directly from the qualified plan
6 for so long --

7 THE COURT: Which, as I see, on your example for
8 somebody who that had average final earnings of \$250,000.00
9 would mean that they got \$165,000.00 annually?

10 MR. HUEBNER: I think that's correct, Your Honor.

11 THE COURT: I mean that's just based on the example
12 that's attached to the stipulation.

13 MR. HUEBNER: Yes.

14 If you look at Exhibit A and if the pilot retired
15 with \$250,000.00 the qualified part of it would be \$120,000.00
16 and they would get that like clockwork from the plan unless and
17 until the plan were terminated.

18 THE COURT: Okay.

19 MR. HUEBNER: Because, again, that's not a Delta
20 payable.

21 THE COURT: It's just that it's very complicated.
22 Everybody in this room has read all sorts of documents.
23 They've been talking about this for two years.

24 MR. HUEBNER: I agree, Your Honor.

25 THE COURT: I think I'm entitled to at least two or

1 three minutes.

2 MR. HUEBNER: Your Honor, whether it is case law or
3 fact, there is no question I will not answer.

4 THE COURT: No, I understand that.

5 I mean I'm trying to find out, you know, there's
6 definitely two different things going on here and then there's
7 also a disability and survivorship plan and I don't know where
8 that fits in to this or that's what we're going to talk about -
9 -

10 MR. HUEBNER: That's on -- that has nothing, nothing,
11 nothing to do with pensions.

12 THE COURT: Okay. That's on the t?

13 MR. HUEBNER: The 27th.

14 THE COURT: Okay.

15 MR. HUEBNER: Your Honor, I would note that Paragraph
16 40 of the stipulation sets out this fact about the fact that
17 the plan will and must continue to pay all annuity payments.
18 So the only thing that people have -- I view this from the
19 qualified side -- is the right to take it right away fifty
20 percent of their lump sum.

21 THE COURT: Okay.

22 Can I read to you something and ask you whether you
23 think it's correct?

24 MR. HUEBNER: Yes, Your Honor.

25 THE COURT: "If the Delta pilots retirement plan is

1 terminated in a distress or involuntary termination, most
2 likely non-qualified retirement benefits will be eliminated and
3 there will be a reduction in the qualified retirement benefit
4 being received by most retired Delta pilots."

5 MR. HUEBNER: Your Honor, there is a clause in there
6 that is clearly incorrect but I think on the main it is
7 correct.

8 The termination of the qualified plan per se, I'm not
9 sure, has a direct legal impact on the non-qualified benefits
10 but the rest of it --

11 THE COURT: Okay.

12 Let me read it without that.

13 "If the Delta pilots retirement plan is terminated in
14 a distress or involuntary termination, most likely there will
15 be a reduction in the qualified retirement benefit being
16 received by most retired Delta pilots from the qualified plan."

17 MR. HUEBNER: Yes, that statement is correct.

18 If somewhere during the length of these proceedings
19 or otherwise, pursuant to a different law with different
20 parties, the qualified plan is actually terminated under ERISA,
21 then that statement is quite right. ERISA caps and the PBGC
22 regulations cap at certain levels the amounts that people can
23 get from the PBGC's own fisc.

24 THE COURT: Okay.

25 But it isn't correct insofar as it fails to make the

1 distinction between the amounts that are in the trust fund and
2 the amounts that the PBGC might have to add to it?

3 MR. HUEBNER: Well, that's number one.

4 I think it also fails to note the rather gargantuan
5 step between the funding of pre-petition claims issues that
6 we're actually here today to litigate and the fact that some
7 time in the future somebody might bring plan termination
8 proceedings but it would be their own very intense litigation
9 and if that separate legal proceeding went to fruition that
10 would have an impact.

11 Today's issue is only about whether Delta needs to
12 pay claims that it believes the law very clearly says are pre-
13 petition. It has nothing to do with plan termination. That
14 statement is about plan termination which is governed by
15 Section 4041 of ERISA and also, arguably, by 1113 of the
16 Bankruptcy Code --

17 THE COURT: Well, unfortunately, let me just tell you
18 where I'm at.

19 I have been looking at the DP3 website and they have
20 recently solicited in addition to the \$150 membership fee,
21 \$500.00 from everybody for the purpose of raising money for
22 attorneys fees. But when I read the site I don't think there's
23 adequate distinction between those people for who the \$500.00
24 chip-in makes sense from those people for whom -- I mean
25 they've got one person that's a member that's 41 years old.

1 That's nine years from retirement.

2 MR. HUEBNER: That's true, Your Honor.

3 Again, clearly, I would ask that you address your
4 questions on --

5 THE COURT: No, I'm asking you because I want to make
6 sure that whoever I'm --

7 MR. HUEBNER: If the Court's question is the 98 year
8 old that they referenced, if they would still get their full
9 benefit even if the plan was terminated, should they be paying
10 the \$500.00? That's a fair question, it's just not a fair
11 question for me.

12 THE COURT: Why isn't it a fair question for you?

13 MR. HUEBNER: Okay.

14 I'll answer it.

15 THE COURT: All right.

16 MR. HUEBNER: Perhaps a disclaimer that says, "For
17 certain retired pilots the events in the bankruptcy might not
18 make a difference in the ultimate recovery from the qualified
19 pension plan." It would be appropriate -- I'm really
20 speculating outside of --

21 THE COURT: Well, okay, because we have something in
22 the bankruptcy court that we call the Rockmanis [Ph.] plea.
23 When all else fails and you think it moral you go for the
24 Rockmanis plea and then when the judge gives it to you you say,
25 "I didn't judge the bench," and in my judgment no one in their

1 nineties should have to worry one minute about whether they're
2 going to get paid their pension.

3 MR. HUEBNER: Your Honor, we agree and I was just
4 handed a note by our ERISA expert that says as follows:
5 "Highly likely that older retirees could not be at risk. The
6 benefit that they are entitled to is low and the guaranty at
7 the PBGC gets higher and higher as you get older and older."

8 THE COURT: Okay.

9 All I'm saying is if for some reason something went
10 terribly awry and these four oldest people somehow were left, I
11 would accept the Rockmanis plea for paying them directly.
12 Okay? I would think that it would be inappropriate not to do
13 something like that.

14 MR. HUEBNER: Again, Your Honor, we're very --

15 THE COURT: I mean I realize that it's not very usual
16 but I am saying to you I, for example, dislike the fact that I
17 do believe that DP3 suggesting to people that they should be
18 learning about this when in all candor they really shouldn't
19 and if for some reason you gave over the pension fund and for
20 some reason there was some peculiarity that caused them not to
21 be paid, I would probably direct you to pay them directly
22 because it's not a huge amount of money.

23 MR. HUEBNER: I don't disagree, Your Honor.

24 Again, we're not at plan termination or even near it
25 but I would note that based on the facts that we did retrieve

1 at your request over the weekend, given that their average
2 pension benefit is \$13,000.00 a year which is way, way below
3 the PBGC cap, I would be shocked to learn that any of them
4 would suffer.

5 THE COURT: All I'm saying is I was curious because I
6 thought to myself why would somebody at that age --

7 MR. HUEBNER: Yes.

8 The 98 year old by the way, I've been told by Mr.
9 Christy, is actually the widow of the pilot which is why our
10 oldest living retired pilot is 96 but they have a member who is
11 the widow of a surviving pilot [sic].

12 THE COURT: Okay.

13 How much does a widow get?

14 MR. HUEBNER: It would probably be about the same
15 because if this group which is 81 to 96 averages --

16 THE COURT: But see, once again, I think the DP3 has
17 an obligation to someone like that to advise them that they
18 don't need to worry about their pension, that before they get
19 to 112 -- I don't know, I'm -- at any rate, well, we can keep
20 going.

21 MR. HUEBNER: Your Honor, the second type of payment
22 at issue today are the so-called non-qualified benefits. Those
23 are the pension benefits, Your Honor, that --

24 THE COURT: That you get to pay directly.

25 MR. HUEBNER: Correct, Your Honor.

1 They total about \$84 million a year.

2 THE COURT: \$84 million a year.

3 MR. HUEBNER: Correct.

4 The reason that 3,485 retired pilots and 66, I might
5 note, non-pilot retirees receive non-qualified pension benefits
6 from Delta or received them, I should say, as of the petition
7 date is because, again, as set forth in the stipulation and
8 this is not controverted in any way, their income when they
9 retired was high enough that under ERISA and under the tax code
10 they were not allowed to get all of their benefit --

11 THE COURT: Can I ask you a question?

12 MR. HUEBNER: Yes, Your Honor.

13 THE COURT: There have been some scandals with
14 respect to both the police department and fire department
15 because of the fact that the pensions are based on the last two
16 or three year's average and these people had put in huge
17 amounts of overtime in order to increase their salary average.
18 Is this a problem with respect to your pilots?

19 MR. HUEBNER: Your Honor, I would prefer if I can to
20 avoid words like either "scandal" or "problem." It isn't a
21 matter of --

22 THE COURT: I didn't say anything about that as to
23 Delta. I said that because it has been viewed as being
24 improper here and it's their regulations or their regulations.
25 I don't know what yours are and I have no idea what your

1 pilots normally receive.

2 MR. HUEBNER: Sure.

3 Let me give you the facts as I understand them. I'd
4 just prefer to avoid adjectives --

5 THE COURT: I mean I'm not trying to mischaracterize
6 it, I'm merely trying to --

7 MR. HUEBNER: No, it's a fair question and I think I
8 have the answer which is many pilots do in fact work somewhat
9 harder and in some cases a fair bit harder as they end their
10 career with Delta because in fact they do get to pick the
11 highest 36 month period out of the last ten years of work to
12 use as the base calculation for their pension and so if --

13 THE COURT: Can they skip years?

14 MR. HUEBNER: No.

15 THE COURT: They have to take the highest three year
16 period?

17 MR. HUEBNER: In a row.

18 So that if you, again -- and I would very studiously
19 avoid words like either "scandal" or "problem" but the economic
20 reality is that if a pilot is 57, they have a strong incentive
21 to work an awful lot those last three years because that's
22 going to be the measuring three year period for their pension
23 and they can boost their pensions potentially very
24 substantially through the incremental work.

25 THE COURT: Only because what was happening in -- I

1 mean there was sort of an understanding apparently in the
2 police and fire departments in some areas where, "Okay, you
3 give me your hours and then you'll get them back from somebody
4 else in the future."

5 MR. HUEBNER: No.

6 THE COURT: Then there were people who had normal
7 salaries of say \$45,000.00 who somehow managed to end up
8 having final salaries of \$125,000.00.

9 MR. HUEBNER: Again, Your Honor, our collective
10 bargaining agreement does allow for people to work above
11 certain thresholds --

12 THE COURT: Well, they're limited ultimately in how
13 much they can work.

14 MR. HUEBNER: Yes.

15 At some point they hit -- I believe the FAA mandated
16 cap with the number of hours, rest periods, time between
17 flights and the like. But, again, those --

18 THE COURT: Yes, and don't drink on the job.

19 MR. HUEBNER: Yes, I think we and ALPA can agree on
20 that one.

21 THE COURT: I don't know what those two pilots
22 thought they were doing.

23 MR. HUEBNER: Yes.

24 To finish up and then I will turn it over, the non-
25 qualified payments to pre-petition retirees -- the non-

1 qualified part -- totals about twenty percent as set forth in
2 the stip of the pensions of people who get both qualified and
3 non-qualified. Of the overall pilot retiree population, the
4 non-qualified benefits only total about thirteen percent of the
5 total pensions paid by Delta or the plan to retired pilots.

6 THE COURT: Okay.

7 It is your intention not to pay the non-qualified
8 portions either?

9 MR. HUEBNER: Except to the extent, Your Honor, that
10 they are attributable to post-petition labor and so --

11 THE COURT: Well, but considering that we started
12 this case on what, the 15th of September? They've worked a
13 month.

14 MR. HUEBNER: That's correct, Your Honor.

15 THE COURT: And they can't be retired. You couldn't
16 be retired and work.

17 MR. HUEBNER: Yes, I was answering in not a snapshot
18 way but a go forward way.

19 As of now all of the non-qualified benefits have been
20 earned by people who retired prior to the petition date. It is
21 our view that the people who retired prior to the petition
22 date, they cease providing service prior to the petition date.

23 THE COURT: That's what my view would be.

24 MR. HUEBNER: Yes, we would propose not to pay any of
25 those at this time. That's correct.

1 I do have a lot of argument, Your Honor, because we
2 feel rather strongly about the law and you will hear that --

3 THE COURT: Well, okay, but I want to just make sure
4 that I understand some factual things so if I take my little
5 chart you've got at the end for me --

6 MR. HUEBNER: Yes.

7 THE COURT: -- if you don't pay anything, qualified
8 or non-qualified, this person would get \$120,000.00 from the
9 qualified pilot benefit plan --

10 MR. HUEBNER: For life unless and until --

11 THE COURT: Okay.

12 Now, the ones that retired before the 15th presumably
13 would have chosen their one time lump sum and had been paid
14 that but if they were to retire now and it wasn't sufficient --
15 your funding levels on the qualified plan didn't allow lump sum
16 choices -- they could either work until they can get a lump sum
17 choice but they can't work past sixty anyway, they would get
18 the \$120,000.00 plus the \$45,000.00?

19 MR. HUEBNER: No, Your Honor.

20 The \$45,000.00 only kicks in -- that's why it's on
21 the next line -- if you choose a lump sum.

22 A pilot who retired as of November 1st with FAU of
23 \$250,000.00 would get \$120,000.00 a year for life from the
24 qualified plan unless and until the qualified plan were ever
25 terminated pursuant to ERISA. If it were never terminated they

1 would get that as a monthly annuity of \$10,000.00 a month every
2 year for life until they died.

3 THE COURT: Okay.

4 But the \$45,000.00 says it's a qualified pilot plan
5 benefit.

6 MR. HUEBNER: Right.

7 The way the \$45,000.00 kicks in is if you have chosen
8 the lump sum so that fifty percent of your total remaining
9 pension has to be paid as an annuity, the way that fifty
10 percent would get split if you chose a lump sum is \$45,000.00
11 from the qualified plan and \$30,000.00 from the non-qualified
12 plan. But if you're not choosing a lump sum and under our
13 world [sic] you're not allowed to, you stop at the line right
14 above and they get the \$120,000.00 a year for life as a
15 qualified --

16 THE COURT: Okay.

17 So you don't get the \$45,000.00 that you could get.

18 MR. HUEBNER: Exactly. That's the non-lump sum part
19 of the qualified benefit if you chose a lump sum.

20 THE COURT: I don't know. This doesn't make a lot of
21 sense to me.

22 MR. HUEBNER: Let me say it a different way if I may.

23 The lump sum is only fifty percent of your total
24 pension right. So this pilot's total pension totals
25 \$2,130,000.00. They can take --

1 THE COURT: Where do you get \$2 million?

2 MR. HUEBNER: I just doubled the lump sum and hoped
3 my arithmetic was right. In other words --

4 THE COURT: Okay.

5 But what I'm saying is I don't understand why if
6 somebody who were to retire now and who couldn't get the lump
7 sum because it wasn't available wouldn't then get the annuity
8 payment?

9 MR. HUEBNER: No, they would. They'd get the much
10 bigger one in the line above.

11 Give me one second to say it my way and, hopefully,
12 it will be more clear and I apologize.

13 The pilot's total pension benefit is \$150,000.00 a
14 year for life. Of that, \$120,000.00 can be paid by the
15 qualified plan but 3%
16 % s the excess amount that blows the IRS limits so that has to
17 be paid directly by Delta. If they retired right now and we
18 prevailed today, they would get the \$120,000.00 because that's
19 from the qualified plan but they could not get the \$30,000.00
20 because in our view that's a pure pre-petition claim --

21 THE COURT: I'm not interested in that, I'm
22 interested in whether they could get the \$45,000.00.

23 MR. HUEBNER: I'll get there in a second.

24 The \$45,000.00 comes up because if you retires and
25 you were able to choose a lump sum your \$150,000.00 annual

1 benefit, fifty percent of it is \$75,000.00 a year, would be
2 lump summed into a present value of \$1.65 million and you would
3 get that as a lump sum.

4 The other \$75,000.00 that you're still entitled to as
5 an annuity, that's where the \$45,000.00 comes up. It's
6 \$45,000.00 plus the \$30,000.00 non-qualified benefit.

7 THE COURT: Okay.

8 Let me just ask you a really simple question.

9 MR. HUEBNER: Okay.

10 THE COURT: What is the interest rate for --

11 MR. HUEBNER: The present value?

12 THE COURT: Yes.

13 MR. HUEBNER: Your Honor, the contract gives them a
14 three month look back, I think. It's currently 4.29 percent
15 and that's as set forth in the CBA and the plan.

16 THE COURT: Okay.

17 How many people want to say anything today?

18 What time do we need to finish? Four?

19 MR. HUEBNER: At 5:10, Your Honor.

20 THE COURT: 5:10.

21 Okay.

22 How many people would like to speak?

23 FEMALE VOICE: I think there's five of us.

24 THE COURT: Okay.

25 Well, then pick your order.

1 MR. CHRISTY: Good afternoon, Your Honor.

2 I'm John Christy along with Dean Booth and Jason
3 Grand. We represent DPE the movants and I wanted to clarify
4 just a couple of things before going to the argument if I might
5 and that is what we are asking for.

6 We have moved the Court for Delta to be ordered to
7 make the minimum funding contribution, that is \$31 million,
8 that's to the qualified plan. Not the \$160 million but the \$31
9 million. We're also asking that Delta be ordered to reinstate
10 the non-qualified payments. As Mr. Huebner said, those are
11 approximately \$7 million per month.

12 I wanted to also observe just a couple of things in
13 the colloquy with the Court concerning what Mr. Huebner had
14 said and that is, for example, why is the plan short? I think
15 there are a number of reasons; there can be interest rate
16 fluctuations and poor investments and others. So there's a
17 number of reasons why and to the extent as Mr. Huebner, I
18 think, referred that the plan is not fully funded and that
19 while Delta has made all -- as we understand it -- of its
20 legally obligated payments it did receive some deferral of
21 those payments so what you see is a catch-up why that number
22 rises.

23 THE COURT: Well, but you know, the question of
24 funding becomes the work of an actuary and actuaries are boring
25 and they do boring work and they, you know, sit there and

1 figure out if we're going to use this interest rate or that
2 interest rate, this age or that age. You change the age of
3 death of your retirees, you change the numbers you need.

4 I mean we could sit here and work out what difference
5 it would make if we used different assumptions.

6 MR. CHRISTY: Certainly, Your Honor.

7 I think it's also worth mentioning that with respect
8 to the status of the plans the concern that we have and why the
9 minimum funding payment ought to be made is because, frankly,
10 the plan can run out of money. If you're adding more retirees,
11 even if they're getting just annuities and not lump sums --

12 THE COURT: The plan will run out of money because of
13 the lump sum payments. Okay. I mean when you add \$1 million
14 and you have 3,000 people to take that million dollars you end
15 up with \$3 billion. There's no way that there's \$3 billion in
16 it. I mean the bottom line is this plan is underfunded because
17 of the lump sum payments. So either the pilots will decide to
18 find a way to keep the plan funded so that their lump sums can
19 be paid, perhaps, not all at once, or they'll us a first-
20 come/first-serve method and those that are at the end of the
21 line won't get it and, you know, they're either going to go as
22 a group or they're going to decide, "I don't really care. I'm
23 going to get my money" and so far a billion dollars has been
24 paid out on lump sums if I read the papers correctly and I mean
25 you work the numbers out and they just don't work. They eat up

1 the whole \$1.9 million.

2 On the other hand, if you took those numbers out you
3 wouldn't eat up the whole \$1.9 million or you would come pretty
4 close to not eating it up and I'm just saying I think that in
5 order to save this plan the only thing that will save this plan
6 will be for the pilots to determine that on an individual or
7 group basis that they're prepared to take their lump sums in
8 something other than a one-time lump sum so that the debtor has
9 a longer period of time over which to pay into the plan and I'm
10 not even sure that that will work but I'm saying to you as long
11 as what you want is the lump sums and as long as that's what
12 you think -- they're going to run out. It's just going to
13 happen and it isn't going to happen too long from now because,
14 you know, a lot of them -- I mean I don't know how the age
15 break on your pilots are but I expect that there are a lot of
16 them between the age of fifty and sixty because those pilots
17 were -- many of them were military pilots and now they're
18 moving into having to move into some other categories -- but
19 it's that lump sum payment that simply makes the plan not %' '
20 70*0 we can either pretend we can't see the pink elephant in
21 the living room or we can recognize that the pink elephant is
22 there and that's where it's at and this is why I asked the
23 question that I did which was whether or not a pilot could say,
24 "Well, I'd like to have mine paid over time."

25 So I don't see where any amount of funding really

1 works. You're going to run out of money because Delta does not
2 have the money to fund the plan at the level that would be
3 required to fund it to pay off all of these pilots.

4 MR. CHRISTY: Well, Your Honor, in response to that
5 (1) the plan is presently in liquidity shortfall, we're advised
6 by the independent fiduciary for the plan, which means that the
7 lump sums have stopped. Until the plan goes back into
8 financial liquidity lump sums cannot recommence.

9 If Delta were to pay the \$31 million scheduled
10 payment it would not put the plan into financial liquidity. We
11 are advised by the independent fiduciary that it's not
12 necessary for Delta to pay the full \$160 million, it could
13 easily pay the \$31 million.

14 Now, why is that important? It's important (1) to
15 insure that the plan can survive. Congress is --

16 THE COURT: Trust me, they get paid that \$31 million
17 a year from now [sic] and right now, what it does is it cuts
18 off lump sum payments. Now, is that fair or is it not fair? I
19 don't know but I don't really see why I should direct that
20 Delta make the payment when they can make it in and of a time
21 and when the payments they would have to make in the next two
22 years or so are so large.

23 MR. CHRISTY: Well, may I respond to that, Your
24 Honor?

25 THE COURT: Certainly.

1 MR. CHRISTY: No. 1 is the \$31 million payment,
2 again, will not open the bank if you will to allow lump sum
3 withdrawals, (2) there is a concern -- I think it's a
4 legitimate concern -- as to what action the PBGC may take for
5 the seriously underfunded plan, whether they may take action to
6 involuntarily terminate the plan.

7 THE COURT: You know something, I don't actually
8 think the PBGC is going to take any action too quick here
9 because after all, they already got plenty of money they just
10 got snookered by United with and they'd rather not have another
11 airline right this minute, I think.

12 But if I multiplied 3,000 by \$1 million, I get \$3
13 billion. So let's assume it should have been a little bit
14 lower than \$1 million, some of the won't get \$800,000.00 but
15 what I'm saying to you is no matter what you say \$3 billion is
16 an awful lot bigger than \$1.9 billion and so I think that the
17 problem is that at some point somebody will have to sit down
18 and work out something because I'm not aware that Delta has the
19 money available either now or expectantly in the future to put
20 up \$3 billion.

21 I mean let me just make sure that they're telling me
22 they don't.

23 Yes, yes.

24 MR. HUEBNER: Your Honor, just to answer that
25 quickly, what the stip sets forth is that if even half of them

1 left we would owe \$1 billion by this January. As you will hear
2 in oral argument we most definitely do not have a spare billion
3 dollars for pre-petition claims that are not in our post-
4 petition business plan.

5 THE COURT: Wait, wait, and I'm not trying to get the
6 last little bit, I'm just saying if I calculate 3,000
7 retirements and they all get \$1 billion, which is a little high
8 --

9 MR. HUEBNER: That's high.

10 THE COURT: That's \$3 billion.

11 MR. HUEBNER: There are 1,531 pilots that have a
12 right to lump sum payments that range from \$1.442 million down
13 to just a few thousand dollars to people that just turned fifty
14 and I think the total of all those payments is probably
15 somewhere in the \$1 billion to \$2 billion range.

16 THE COURT: Okay.

17 MR. HUEBNER: And, no, we don't have it.

18 MR. CHRISTY: What we're losing track of here, Judge,
19 though is that the door for lump sums is closed. Making the
20 \$31 million payment will not reopen that door, it will stay
21 closed. Delta is not going to have a \$1 billion or \$3 billion
22 liability if this pension payment is made.

23 Now, that pension payment if it's made is to the
24 benefit of everyone including those people who are not getting
25 lump sums because they're now going to retire, they're going to

1 get their full annuity out of the plan because they cannot get
2 a lump sum but the plan is now going to be that much more
3 underfunded because we were adding more recipients but we're
4 not making the contribution that was due in October. Delta
5 also has a very real possibility as do all companies of pension
6 relief from Congress. Now, there's talk about whether they'll
7 extend or defer the deferred payments over fourteen or twenty
8 or --

9 THE COURT: Well, I want to ask you a question and
10 that is that pension relief isn't going to help the pensioners.
11 I mean I don't quite know what this pension relief will do.

12 MR. CHRISTY: Well, what it will do, Your Honor, is
13 prevent -- let's assume Delta has a \$700 million payment coming
14 up and Delta says, "We can't make it. We're just going to
15 terminate our plan and put it to the PBGC, adios." If under
16 the ERISA rules they now have instead of \$700 million that's
17 due in 2006 or 2007, twenty years or fifteen years to amortize
18 that, that gives them the ability to save the plan and that is
19 definitely inures to the benefit of the retirees.

20 THE COURT: Okay.

21 But, see, I think the problem is that right now
22 because of this lump sum situation I don't know that it can
23 ever -- unless the lump sum is just completely given up, that
24 is the only thing that will save the plan.

25 MR. CHRISTY: Let me say two things in response to

1 that, Your Honor, (1) some of the bills in Congress eliminate
2 lump sums; that ability to take a lump sum is part of the
3 pension relief to get limited. Now, they may argue about
4 fourteen or twenty or 25 years to amortize deferred payments
5 but eliminating the lump sum is an easy way to create to solve
6 a big problem.

7 The second issue is 1113. We've heard a lot from Mr.
8 Huebner about Delta's financial distress. It strikes me that
9 the issue we have here is Delta's position that these pension
10 payments are pre-petition obligations --

11 THE COURT: No, no, their position -- they do say
12 that but I say that their position from the point of view of
13 the collective bargaining agreement is that basically as used
14 in this section, the collective bargaining agreement does not
15 include these agreements that sort of flow out of the
16 collective bargaining agreement.

17 MR. CHRISTY: What I've taken from their briefs, Your
18 Honor, is slightly different from what you're saying is that
19 the obligation that are owed to the pensions are on account of
20 pre-petition labor and as a consequence it's a pre-petition
21 debt and, therefore, they cannot pay it and that they don't
22 even implicate Section 1113 at all, yet, the bulk of the
23 argument that I hear Mr. Huebner making --

24 THE COURT: If they don't implicate 1113 in all of
25 them how do you think they're going to get paid?

1 MR. CHRISTY: Well, I'm going to get to that.

2 I think my point is they do implicate 1113. The
3 argument concerning Delta's financial extremis seems to go to
4 the showing that a debtor has to make if it wants to modify
5 and/or terminate pension benefits under Section 1113.

6 THE COURT: See, the problem I have with this is none
7 of this money is going to any employee and right this minute
8 there's nothing that suggests that it would be going to any
9 employee and so it seems to me that to some degree you have to
10 start with the idea that these things are going to the
11 employees.

12 MR. CHRISTY: Well, certainly, the non-qualified
13 benefits are being paid directly to the employees. The
14 qualified get paid to the plan and the employees are the direct
15 beneficiaries of that plan because they get their payments from
16 the plan but it seems to me that Delta's argument concerning
17 its inability to make these payments or the financial extremis
18 that will be imposed on them implicates Section 1113 and says
19 what we're really talking about is Section 1113(b), that it's
20 necessary to have these modifications, necessary to stop making
21 these payments, we can't make them, it's necessary to permit
22 the reorganization but we're not here on that motion. Delta
23 has not filed that motion and the purpose of our motion is that
24 we are entitled -- the plan is entitled and the retired pilots
25 are entitled to receive their pension benefits until such time

1 as Delta has complied with 1113, that it is negotiated -- the
2 underpinning in one of the basic tenants of labor law -- to go
3 and negotiate with your retirees. In Century Brass [sic]
4 retirees are considered employees for the purposes of Section
5 1113 and entitled to the rights and protections thereunder and
6 representation in that process.

7 Delta has done a very skillful end-around 1113 by
8 concocting a legal rubric that this is a pre-petition debt when
9 in fact these pension payments arise out of a pilot's working
10 agreement which is a collective bargaining agreement by which
11 line pilots -- those folks flying the airplanes every day --
12 are providing labor and services on a post-petition basis
13 pursuant to an integrated --

14 THE COURT: I understand but this is the whole point.
15 Your papers mix up qualified, non-qualified, people who have
16 retired, not retired, you know, you've got to tell me which
17 group you're worried about. You seem to be representing
18 everybody.

19 MR. CHRISTY: Well, Your Honor, the folks who are
20 getting benefits, whether they be retired pilots or whether
21 they be survivors, are receiving pensions that their spouses
22 would have received if they are in the case of survivors or if
23 they're retirees they're getting pensions and we're asking the
24 Court -- we're moving on both the qualified and the non-
25 qualified pension benefits and we think as a matter of law that

1 Delta is obligated to continue making those payments.

2 This is part of the dynamic that the Congress set up
3 in response to Bildisco [sic]. It said, "A collective
4 bargaining is not deemed unenforceable on the filing of a
5 bankruptcy," it is enforceable and if you accept those benefits
6 then you take the contract cum onere -- with all the burdens.
7 Delta doesn't have 10,000 contracts with different folks, it
8 has one master agreement pursuant to which pilots fly aircraft,
9 pension benefits are provided and --

10 THE COURT: No one has bothered to provide me with
11 the entire agreement so I am unable to determine whether they
12 are provided for under the agreement or not.

13 MR. CHRISTY: Your Honor, we tried to in the
14 stipulation provide you with what we thought --

15 THE COURT: I understand that but what I'm saying is
16 when you filed your papers -- I mean everybody research this to
17 hell and back but very few people decided to look at the
18 contract and I always think that's a good place to start.

19 MR. CHRISTY: Well, Your Honor, on the absence of any
20 objections from the other parties involved in this matter, we'd
21 certainly have no objection to --

22 THE COURT: But all I'm saying to you is you're
23 sitting here telling me it's part of the collective bargaining
24 agreement. I don't know whether it's part of the collective
25 bargaining agreement or not. I mean it may just be a

1 subparagraph that says that the parties shall enter into a
2 separate retirement plan.

3 MR. CHRISTY: Well, Paragraph 6 of the stipulation,
4 Your Honor, states that Section 10.02 of the qualified pilot
5 plan states "the contributions of the employing company shall
6 be paid at reasonable periodic intervals taking into
7 consideration the recommendation attained and the latest actual
8 evaluation." It goes on to say Section 26 of the pilots'
9 working agreement states that "The company will pay the entire
10 cost of providing retirement benefits for pilots."

11 But we certainly can provide Your Honor with the
12 complete copy of the agreement and all the side letters that go
13 with it.

14 THE COURT: I'm just talking to you about the fact
15 that the way contracts are drafted differ.

16 MR. CHRISTY: Yes, Your Honor, I understand.
17 Certainly.

18 Your Honor, I can sympathize with you in terms of
19 having all this dumped on you when everyone has been studying
20 it for some period of time and familiarizing themselves --

21 THE COURT: I only have fourteen black binders in all
22 which include, you know, two other cases and they're all three
23 inches thick and that's since September.

24 (Pause in proceedings.)

25 MR. CHRISTY: I think the issue that we face as to

1 whether Delta's position is meritorious is whether or not these
2 pension payments that are provided and arise pursuant to the
3 collective bargaining agreement arise from the labor being
4 provided by the folks who are flying the airplanes today.

5 Our position is that the collective bargaining
6 agreement is an integrated document that you cannot take bits
7 and pieces and --

8 THE COURT: Wait, wait, wait.

9 What you're telling me is that you think it's the
10 people today who are providing money for somebody else's
11 pension?

12 MR. CHRISTY: No, what I'm saying, Your Honor, is
13 that the collective -- if I misspoke, I apologize -- the
14 collective bargaining agreement is an integrated document. It
15 provides pilots to fly Delta aircraft at wages and benefits and
16 so forth and it provides retiree pensions. Delta is accepting
17 the labor from the pilots pursuant to the collective bargaining
18 agreement --

19 THE COURT: For which the pilots are being paid in
20 accordance with the terms of the collective bargaining
21 agreement.

22 MR. CHRISTY: Which includes an obligation by the
23 company to make pension benefits which these flying pilots will
24 share in when they retire because they will be able to get
25 benefits from this plan.

1 THE COURT: Okay.

2 But there's absolutely nothing that requires Delta to
3 set up any trust for non-qualified benefits.

4 MR. CHRISTY: No, but --

5 THE COURT: With respect to the qualified benefits,
6 you know, it's really hard to say whether they would or
7 wouldn't get paid. It could be a matter of a lot of things.

8 MR. CHRISTY: Well, Your Honor, for the purpose of
9 today's hearing it doesn't matter. That fact does not matter,
10 I would submit to the Court, and the reason for that is as a
11 matter of law does Delta have to continue making the payments
12 to perform its obligations under the collective bargaining
13 agreement if its accepting the benefits of that contract? If
14 Delta wants to say, "We can't make these payments or it's
15 necessary to permit the reorganization" and so forth and want
16 to file a motion under 1113, that's their prerogative and in
17 fact what Delta seeks to do is to go back to the pre-Bildisco
18 days and they can essentially impose on labor modifications or
19 changes to a collective bargaining agreement, "We're not going
20 to pay these pension payments anymore, forget about it." Well,
21 that's not what Bildisco permits. Congress, in response to
22 Bildisco set up 1113 to create this dynamic -- to put pressure
23 on the company that it has to keep honoring its obligations
24 until such time as it moves the Court for relief and that's
25 what Delta is trying to avoid.

1 Now, it may be because Delta doesn't feel at this
2 point in the case that it can satisfy its burden of proof that
3 these modifications are necessary and necessary to permit the
4 reorganization. I don't know, we don't know.

5 THE COURT: I think if you look at their financial
6 statements you could come to the conclusion that they could
7 almost certainly meet that test.

8 MR. CHRISTY: Well, Judge, the point is though they
9 say it's zero. They unilaterally say it's zero.

10 THE COURT: What's zero?

11 MR. CHRISTY: Well, they're saying, "We're not making
12 anymore pension payments to the fund or the non-qualified
13 benefits so you're getting zero." We say it should be \$31
14 million to the fund and the \$7 million a month. It is the
15 classic binary negotiation --

16 MR. HUEBNER: Just to be clear, we said exactly how
17 much we were paying. We paid \$417,000.00. It's not zero.

18 THE COURT: I mean these things don't really bug me.
19 I don't really listen to them so don't worry about it.

20 I mean you get too dramatic and I just cut it out.

21 MR. CHRISTY: Well, the point is, Your Honor, is that
22 it's the classic negotiation where one side is one end of the
23 spectrum and the other is on the other and that's what Congress
24 intended.

25 THE COURT: But you see, I think if you read

1 1113(b)(1)(a) and you read 1113(e), they're referring to
2 authorized representatives of the employees. Retirees are not
3 employees and it's the same thing in (e). Okay -- that they
4 need to change the work rules with respect to the collective
5 bargaining agreement and I don't think that this rule is
6 dealing with issues that don't involve employees and if you're
7 retired you're not an employee.

8 MR. CHRISTY: Your Honor, our response to that would
9 be the Century Brass decision which was the 1986 case in the
10 Second Circuit. The Second Circuit held that retirees should
11 properly be characterized as employees for purposes of applying
12 Section 1113. In that particular case the issue was whether or
13 not the union was a suitable representative.

14 THE COURT: But that's a different issue. I mean
15 that has to do with the way the union representation works,
16 etc., etc., etc., and I don't really think that that is -- I
17 mean it seems to me that if you look at the next section, 1114,
18 and it doesn't say anything at all about the pension payments,
19 its just going on about health and welfare payments and so you
20 sort of come down to the conclusion that -- I mean this section
21 clearly talks about retiree benefits and the other section
22 clearly talks about employees. So it seems to me that there's
23 no section that just says okay. As I see it, they can make the
24 payments later.

25 MR. CHRISTY: Your Honor, let me just say this for

1 1114. 1114 covers folks who are not covered by collective
2 bargaining agreements as well. 1113 deals only with collective
3 bargaining agreements. 1114, as the Court probably knows from
4 all the briefs, was enacted in response to the LTV bankruptcy
5 where LTV cut off health benefits for their retirees on the day
6 or the day after they filed bankruptcy and that statute ensued
7 and it covers both, as I said, people covered by collective
8 bargaining agreements and those not. In fact, if you look and
9 study the legislative history there's some suggestion that some
10 members of Congress were surprised that an 1113 didn't already
11 address this issue and that they couldn't believe that there
12 wasn't any ambiguity with respect to retiree benefits because
13 those are many times included within the collective bargaining
14 agreement but it would not have included folks who are not
15 unionized and don't have --

16 THE COURT: Okay.

17 But we're talking Manville, right?

18 MR. CHRISTY: The LTV case?

19 THE COURT: Yes, LTV.

20 I mean we're talking about cases that were
21 confronting problems for the first time when we had -- we had
22 had big cases before then but we were starting to get a lot
23 more and these issues were being introduced [sic] for the first
24 time and, needless to say, you know, I don't necessarily think
25 that cases that were decided in 1986 are good law. I mean I

1 think that what has happened -- you have to remember that
2 before the Bankruptcy Code was adopted that there was no
3 reporting system for cases since some time in the thirties.
4 The only you could get a copy of a case was to know somebody
5 who knew the reporter or there was a referee journal that put a
6 few cases in but the result was that you got this burst of
7 reported decisions that were talking about a totally new
8 statute by judges who had never written decisions before and I
9 still think we're having way too many decisions written where
10 there is no novelty to the issue and where they're not
11 supplying any need. I mean it's useful if they go on line and
12 there's 35 people that want to read them but so I really don't
13 necessarily think that you can take these twenty year old
14 decisions and use them as if nothing has happened since then.

15 But, you know, okay, I mean how much longer do you
16 think you need?

17 MR. CHRISTY: I'll wrap it up in less than five
18 minutes, Your Honor.

19 THE COURT: Okay.

20 MR. CHRISTY: I just wanted to mention one thing to
21 you in that we did rely upon the Adventure Resources cases
22 which is a 4th Circuit case in 1998. That's a case in which
23 the debtor neither assumed nor rejected, really didn't do much
24 of anything with respect to the collective bargaining agreement
25 and in that particular case the Court --

1 THE COURT: Okay.

2 Let me ask you a question.

3 How big a company was that?

4 MR. CHRISTY: Your Honor, it's a number of --

5 THE COURT: What state is it from?

6 MR. CHRISTY: West Virginia, Your Honor.

7 THE COURT: West Virginia.

8 MR. CHRISTY: Coal companies.

9 THE COURT: Okay.

10 What? About \$2 million or \$3 million of debt?

11 MR. CHRISTY: Your Honor, the opinion is unclear as
12 to how much --

13 THE COURT: Okay.

14 Let me just -- do you know the little clue about
15 decisions?

16 There aren't very many big cases in West Virginia and
17 when somebody gets one of them they want to write on it because
18 they never get a chance and there's not too many districts that
19 get a number of large cases. Chicago, Delaware, New York City,
20 California, at least Los Angeles, Texas and those cases,
21 honestly, you have to just ignore them. I mean you just have
22 to say, "Well, they're not in the Second Circuit or something"
23 because a lot of them are written by people who don't have any
24 experience in working with big cases and what they're doing is
25 they're looking at a statute and they're applying it exactly

1 the way they see it of being applied and, you know, these big
2 cases, you know, you have to work the case to try to make it
3 work. I mean it's not in your client's best interests to see
4 Delta fall and so, you know, we ultimately have the same goal,
5 to try to figure out how to keep Delta alive, and I can direct
6 Delta to pay \$31 million next month, I can direct them to pay
7 it six months from now when we had a little better idea of what
8 was happening in the Delta case. I mean it seems to me that
9 it's premature for me to make these choices. I don't know
10 whether it's going to be operating at a loss, I don't know
11 whether it's going to have excess cash and I think they're
12 correct that they don't have to make these payments. That
13 doesn't necessarily mean that it would be unlawful for them to
14 make these payments. But right now I don't think there's any
15 way to tell whether it's a good way to spend their money or not
16 because it's just going to be very hard to know and I think it
17 will take quite a while before we can figure out whether or not
18 they can make themselves into a competitive airline and if they
19 can whether they can deal with a pension or whether they're
20 going to give it away just like United did.

21 MR. CHRISTY: The one thing I wanted to say, Your
22 Honor, with respect to the retired pilots.

23 They understand that sacrifice is necessary from
24 everyone. They've been a group of loyal employees over the
25 years. They've flown Delta's passengers safely and they have a

1 great deal of devotion and love for this company and it's not
2 their intention to pang Delta or to hurt Delta. They realize
3 that Delta's success -- their success ultimately is keyed to
4 Delta's success and they understand and appreciate that but
5 what they're asking for is the opportunity under 1113 to talk
6 to Delta and what Congress has done is set up this procedure --

7 THE COURT: I'm afraid you and I aren't on the same
8 page because if what they want to do is to talk to Delta, then
9 you tell me that they want to talk to Delta, then I say to
10 Delta, "Delta, would you please sit down and talk with them.
11 Pick somebody that naturally has some authority and isn't going
12 to sit there and go no, no, no, and see what whether there's
13 anything that you can talk about." I don't know. Maybe, you
14 know, you sit down there and talk and you start to reach some
15 agreements.

16 I understand that what went on last year was very
17 harsh and difficult negotiations but I'm saying you can't start
18 until you call up somebody and make an appointment.

19 MR. CHRISTY: And our point, Your Honor --

20 THE COURT: And they're not going to call you. Trust
21 me, they're not going to call you.

22 MR. CHRISTY: Exactly.

23 THE COURT: And I'm saying to you it's unreasonable
24 of you to think they're going to call you. It really is; (1)
25 when you file a Chapter 11 it is busier than all get out at the

1 high levels. They're not going to call you because they don't
2 have anything that they happen to want to say to you. You have
3 some things you'd like to talk to them about and it's really
4 your burden to call them and say, "You know, I certainly would
5 ask that somebody meet with me and sit down and talk about
6 whether there are any ideas that make any sense" but it may
7 just be that they're just real busy.

8 MR. CHRISTY: Well, Your Honor, with all due respect
9 I think under 1113 it's Delta's obligation to make the proposal
10 if they want to reduce those benefits because if they simply
11 reduce them --

12 THE COURT: I just told you something!

13 MR. CHRISTY: I understand, Your Honor.

14 THE COURT: I don't agree that those benefits need to
15 be paid because I don't agree that's part of what 1113 is
16 talking about. But I do agree that whether they're under 1113
17 or not that Delta -- that they create a problem for Delta that
18 is a significant problem that will have to be resolved and,
19 therefore, they're not going to call you up. They're going to
20 expect you to call them up. So don't wait around thinking
21 they're going to call because they've got other things to do.

22 What are they going to do? Are they going to call
23 you up and say, "You know, I need you guys to know I'm not
24 planning to pay you a dime." Right? "I mean I need you guys
25 to understand that" -- you know, it's not the same kind of

1 thing as negotiating over how many hours a day somebody has to
2 stand and whether the machine is going to work this way or that
3 way. It really is up to you to get them to sit down with you
4 and start a dialogue, not a labor negotiation.

5 Delta won't be out of bankruptcy for at least a year
6 -- I'm sorry, maybe that's not what you wanted me to say.

7 MR. CHRISTY: Ask Mr. Huebner.

8 THE COURT: I meant to him.

9 I mean it's unlikely that it would be out of here in
10 less than a year. Correct?

11 I know, you promised him six months.

12 MR. HUEBNER: Your Honor, I did promise my wife six
13 months but that's probably not right.

14 If recent cases are any guide we probably will not be
15 out in under a year.

16 THE COURT: I mean I can see where you could be out
17 in eighteen months but twelve is really tight because aside
18 from everything else before you can confirm this case you need
19 to see whether the changes you're making are working. There's
20 no point in my letting you get out of here and you saying, "Oh,
21 yeah, well we fixed up all of our affairs and we fixed up this"
22 but you've only been doing it for three weeks.

23 MR. HUEBNER: Your Honor, let me make a
24 representation that might help you on this point.

25 Delta has in fact been meeting and even reaching out

1 to DP3 and the other retiree groups. In fact, we're sending
2 management to attend and speak at a presentation at a large
3 meeting they're hosting on October 28th and we will in fact
4 continue to be interactive with them. We also agree with you
5 that that is quite separate and apart from today's legal issue
6 as to whether these are benefits protected by 1113.

7 THE COURT: So there you are. Maybe you weren't on
8 the party list.

9 MR. CHRISTY: Well, it's pretty hard to be on the
10 party list when they tell you, "You guys are not going to get
11 paid for benefits from the beginning --

12 THE COURT: But you want to know something, if you're
13 going to take the position, "If you don't pay me I'm not going
14 to talk to you," you're going to get nowhere. I mean honestly,
15 you're going to get nowhere. It's not going to go anywhere at
16 all because it just isn't going to go anywhere.

17 I mean I can think of a lot of things that you could
18 say that might go somewhere.

19 I mean I think that but if you say, "Well, I'm not
20 going to talk to you unless you start paying me," that's the
21 end of any discussion.

22 MR. CHRISTY: Of course, and that's not our position,
23 Your Honor, but what I think in response to your statement is
24 that when a side says the dynamic is lost, someone is able to
25 say, "1113 doesn't apply. I don't have to make these payments

1 so, goodbye" as opposed to --

2 THE COURT: I'm sorry to say something to you.

3 I don't agree with that. I think if you should stomp
4 your foot on the floor and you say, "You have to pay me every
5 penny that's owed to me," you won't get anywhere. I could see
6 somebody might decide that they could go for something else
7 than 100 cents on the dollar. I mean I can see where there are
8 other possibilities but if it's an all or nothing deal, then
9 you've got nothing.

10 MR. CHRISTY: It isn't and that's the point and what
11 we're suggesting --

12 THE COURT: And I'm sorry to say I don't really think
13 it matters whose conference room you hold it in. Okay?
14 Because this case is a complicated case and the pensions are
15 only part of what's at issue. If they can't get the fare and
16 cost structure to work it's all over. So there are a lot of
17 possibilities for things that could be done that might help
18 that. I mean there may actually even be some ideas that the
19 pilots might have that might help. I don't know but I'm just
20 saying I don't think you could take the view, "Well, if they're
21 not going to pay me I'm not going to play."

22 MR. CHRISTY: We're not, Your Honor, and the point is
23 --

24 THE COURT: Wait, you're not going to play or you're
25 not going to take that position?

1 MR. CHRISTY: We're not taking that position because
2 Congress realized that labor is always at a disadvantage to
3 management and what Congress did is it put a burden on
4 management --

5 THE COURT: I'm sorry, sir, I've already ruled
6 against you on that matter.

7 MR. CHRISTY: All right.

8 THE COURT: But I don't believe that in the context
9 of the bankruptcy court that it matters and this is because I
10 believe that I can tell people to go and meet with people and
11 when they don't and they come back and they say they didn't do
12 it, I can tell them again to do that and I can tell them there
13 will be consequences for them not doing that and sooner or
14 later we get something going and there is no question
15 whatsoever that the pilots are part of the problem. If they're
16 a part of the problem they've got to be part of the solution in
17 terms of what the debtor does.

18 I mean if they're all going to retire at fifty -- if
19 that's what they're going to do is they're all going to retire
20 at fifty then, you know, there's probably nothing that can be
21 done but, you know, if they get talked into thinking that that
22 somehow if they don't do that they're going to lose out, that's
23 another thing and I think that it's just necessary to think in
24 a number of different ways to try to get this thing -- try to
25 get something that would work.

1 I mean I don't believe they're required to make the
2 payments. That doesn't mean that there wouldn't come a time
3 when -- I mean, after all, the retired pilots are getting
4 \$120,000.00 a year. \$120,000.00 is way above the median
5 income. I know it's not what they were getting before but it's
6 still hard to say it's not money.

7 So the people who are potentially, you know, the ones
8 out of luck are the ones who would want to retire now and
9 aren't going to get their lump sum possibly.

10 That's why I'm saying I think there's a lot to talk
11 about and I think that if you somehow think that 1113 -- the
12 fact that they have to make a proposal to you under 1113 is
13 important then I think you and I don't still agree on how these
14 things work.

15 MR. CHRISTY: Well, ma'am, my point was -- and I know
16 the Court disagrees with that -- that the obligation to pay is
17 what brings the company to the table and they prove what they
18 can or cannot pay and they say, "We're not going to pay on the
19 --

20 THE COURT: Well, I think that if you think they're
21 going to come to the table and no show you the money route,
22 then they're going to be in a big problem because if they don't
23 show you why they can't pay it then where are they going to be?
24 Because, after all, if they can't persuade me, they can't get
25 anywhere anyway.

1 MR. CHRISTY: But our read of the law is that's what
2 1113 is for. They say they can't pay --

3 THE COURT: I don't think it's for that with respect
4 to retirees.

5 MR. CHRISTY: Your Honor, one more --

6 THE COURT: Okay.

7 I want to find out if anybody else wants to have
8 anything to say?

9 MR. CHRISTY: I just want to say one thing, Your
10 Honor.

11 To the extent of my remarks I suggested that Delta
12 wasn't making it's post-petition payments on post-petition
13 labor, I did not mean to suggest that. I was simply referring
14 to the folks who had already retired -- the retirees -- not the
15 folks flying the line now for whom Delta is making
16 contributions.

17 THE COURT: Okay.

18 MR. SIMON: Your Honor, my name is Bruce Simon with
19 the firm of Cohen, Weiss & Simon. We represent the Airline
20 Pilots Association, the exclusive collective bargaining
21 representative of the pilots employed by Delta.

22 Your Honor, I have been listening carefully. I
23 understand your stated views but I believe your stated views
24 are based upon fundamental misconceptions about facts which
25 have been stipulated to by the parties and I would simply like

1 to bring them to your attention and then proceed to argue from
2 what I believe the agreed --

3 THE COURT: Wait, wait.

4 Can you just tell me what you think I have
5 misunderstood?

6 MR. SIMON: Yes, Your Honor.

7 Among the things I think you misunderstood was your
8 statement that if Delta's position that the collective
9 bargaining agreement does not include the pension plan (a)
10 that's not Delta's position, and (b) it's not the fact.

11 THE COURT: I didn't say that.

12 What I said was since I don't have the entire
13 agreement I don't know exactly how the two documents are put
14 together.

15 MR. SIMON: If Your Honor, please, Paragraph 5 of the
16 stipulation of facts between the parties states that the
17 collective bargaining agreement incorporates by reference the
18 retirement plan including both the qualified --

19 THE COURT: Okay, but this is what I'm trying to tell
20 you is that there are two different agreements. Yes, you can
21 say they're incorporated by reference but there are two
22 different agreements.

23 MR. SIMON: No, Your Honor, it's the same agreement.

24 Delta will not contest, I believe, that the
25 collective bargaining agreements include the requirements with

1 regard to maintaining the pension plans, both qualified and
2 non-qualified --

3 THE COURT: Okay.

4 I'm going to go take a break and re-read the
5 stipulation but I mean the fact of the matter is I think the
6 question of what is the collective bargaining agreement for the
7 purposes of 1113 may not be the same as what is the collective
8 bargaining agreement for the purposes of whether they have to
9 fund these payments right now?

10 MR. SIMON: If Your Honor please, I believe the
11 stipulation provides and I believe Delta would agree that the
12 collective bargaining agreement includes both the qualified and
13 non-qualified plans and the obligation to make the
14 contributions --

15 THE COURT: Well, then why don't you just tell them
16 to go pay it!

17 MR. SIMON: Your Honor, that's what we're here trying
18 to do.

19 THE COURT: Well, just tell them that they've got to
20 pay it!

21 MR. SIMON: That's what we're here trying to do.

22 THE COURT: Why don't you tell them that?

23 MR. SIMON: May I also --

24 THE COURT: We're taking a ten minute recess.

25 (Recess.)

1 THE COURT: You may be seated.

2 I have decided to make a ruling.

3 MR. SIMON: Does that mean, Your Honor --

4 THE COURT: If you'll just be quiet.

5 While I was out I re-read 1113. 1113 requires that
6 the movant be the debtor and the debtor is not the movant and,
7 therefore, there's nothing in 1113 that's relevant because the
8 debtor is not the movant and that's that.

9 MR. SIMON: With all due respect, Your Honor, if I
10 may be heard momentarily?

11 THE COURT: If it's momentarily, yes.

12 MR. SIMON: Section 1113(f) requires that the company
13 may not unilaterally change a provision of the agreement.

14 THE COURT: And that would require a declaratory
15 judgment.

16 MR. SIMON: No, Your Honor, because --

17 THE COURT: As far as I'm concerned if you want that
18 relief it would require the commencement of an adversary
19 proceeding because it is seeking declaratory judgment.

20 MR. SIMON: Your Honor, with respect, the --

21 THE COURT: I'm sorry, with respect I have ruled.
22 That is it.

23 Thank you.

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I certify that the foregoing is a transcript from an electronic sound recording of the proceedings in the above-entitled matter.

SHARI RIEMER

Dated: October 18, 2005