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

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In re: :
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DELTA AIR LINES, INC., et al., : **Chapter 11 Case No.**
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Debtors. : **05-17923 (ASH)**
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**MOTION OF THE DEBTORS SEEKING A DETERMINATION THAT
THEY SATISFY THE FINANCIAL REQUIREMENTS FOR A DISTRESS
TERMINATION OF THE DELTA PILOTS RETIREMENT PLAN AND
APPROVAL OF SUCH TERMINATION**

TABLE OF CONTENTS

JURISDICTION AND VENUE..... 1

INTRODUCTION..... 2

FACTUAL BACKGROUND 9

 A. The Pilot Plan 9

 B. Contributions to the Pilot Plan 10

 C. The Pilot Plan’s Lump Sum Option 12

 D. Liquidity Shortfall and the Reopening of the Lump Sum Door..... 14

 E. ALPA, DP3 and the Creditors’ Committee Do Not Oppose
 Termination 17

LEGAL STANDARD FOR DISTRESS TERMINATION 19

ARGUMENT..... 21

I. UNLESS THE PILOT PLAN IS TERMINATED, DELTA WILL
 FACE AN IMMINENT OPERATIONAL AND FINANCIAL
 CRISIS THAT WILL THREATEN DELTA’S NEAR TERM
 SURVIVAL..... 21

II. EVEN IF DELTA SURVIVED THE NEAR TERM CRISIS, IT
 COULD NOT EMERGE FROM CHAPTER 11 UNLESS THE
 PILOT PLAN IS TERMINATED..... 28

Delta Air Lines, Inc. (“**Delta**”) and those of its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”),¹ respectfully submit this motion seeking this Court’s approval of the voluntary distress termination of the Delta Pilots Retirement Plan (the “**Pilot Plan**”) pursuant to 29 U.S.C. § 1341(c).

JURISDICTION AND VENUE

1. On September 14, 2005 (the “**Petition Date**”), each Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. By order of this Court dated as of the Petition Date, the Debtors’ chapter 11 cases are being jointly administered.

2. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and may be determined by the Bankruptcy Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

INTRODUCTION

3. The Debtors bring this motion for approval of the distress termination of the Pilot Plan because absent such termination Delta will face a

¹ The Debtors are the following entities: ASA Holdings, Inc.; Comair Holdings, LLC; Comair, Inc.; Comair Services, Inc.; Crown Rooms, Inc.; DAL Aircraft Trading, Inc.; DAL Global Services, LLC; DAL Moscow, Inc.; Delta AirElite Business Jets, Inc.; Delta Air Lines, Inc.; Delta Benefits Management, Inc.; Delta Connection Academy, Inc.; Delta Corporate Identity, Inc.; Delta Loyalty Management Services, LLC; Delta Technology, LLC; Delta Ventures III, LLC; Epsilon Trading, Inc.; Kappa Capital Management, Inc.; and Song, LLC.

crippling near-term operational and financial crisis. Even if the Debtors were to survive such a crisis, they could not emerge from chapter 11 or submit a “feasible” plan of reorganization unless the Pilot Plan is terminated. Absent termination of the Pilot Plan, the monumental efforts to restructure Delta into a viable enterprise, save tens of thousands of jobs and preserve value for employees, retirees, creditors, investors, other stakeholders and the traveling public would have been in vain.²

4. Importantly, the representatives of the majority of beneficiaries of the Pilot Plan do not oppose its termination. The Air Line Pilots Association, International (“**ALPA**”), which represents over 6,800 Delta pilots, has for some time acknowledged that termination of the Pilot Plan is necessary if Delta is to emerge from chapter 11, and does not oppose this motion. DP3, Inc., a Delaware not-for-profit corporation that represents that it has 2,700 retired Delta pilots as members, likewise has indicated that it will not oppose this motion. Moreover, the Official Committee of Unsecured Creditors (the “**Creditors’ Committee**”) also supports termination of the Pilot Plan (although it expressly reserves all of its rights with respect to any claims that may arise as the result of termination).

5. Unless the Pilot Plan is terminated, Delta will very soon face an operational and financial crisis that will prevent it from emerging from chapter 11. The Pilot Plan contains a “lump sum” feature whereby pilots, when they retire, can take 50% of the present value of their accrued retirement benefits in the

² Moreover, if the Pilot Plan is not timely terminated, the much larger Delta Retirement Plan, which covers over 90,000 non-pilot Delta employees and retirees, would need to be terminated as well.

form of an immediate, up-front payment. Under ERISA's "anti-cutback" rules, that lump sum option cannot be modified or eliminated, even if all affected parties unanimously consented.

6. Since October 2005, the Pilot Plan has been in what is known as "liquidity shortfall," and has therefore been precluded as a matter of law from making lump sum payments.³ The Pilot Plan emerged from liquidity shortfall by a small margin on July 1, 2006. If it did not, it is virtually certain to emerge by October 1, 2006. Upon such emergence, the lump sum option will again become available to retiring pilots unless the relief requested is granted by this Court. Under relevant ERISA rules, the payment of these lump sums has been suspended by the filing of a Notice of Intent to Terminate ("**NOIT**") on June 19, 2006. However, if this Motion is denied and the Pilot Plan is not terminated, the lump sum option will become available.

7. If the Pilot Plan is not terminated and the lump sum door reopens, Delta will immediately face a huge wave of pilot early retirements by its most senior pilots. These early retirements will likely come with little to no notice, because under the collective bargaining agreement between Delta and ALPA (known as the "**Pilot Working Agreement**" or "**PWA**"), pilots who are age 50 or older can submit a retirement notice at any time during a month, with their retirement effective as of the first day of the next month.

³ A liquidity shortfall is deemed to occur if the value of a plan's liquid assets is less than three times the plan's adjusted disbursements for the trailing (i.e., prior) 12 months. ERISA §§ 302(e)(5)(E)(i) and (ii); 29 U.S.C. §§ 1082(e)(5)(E)(i) and (ii). See also 29 U.S.C. § 1056(e).

8. The PBGC has already acknowledged to this Court that Delta will face a massive wave of early retirements if the lump sum option again becomes available. As the PBGC recently stated on page 10 of its Objection to the Debtors' section 363 motion for approval of Letter of Agreement 51 ("**LOA 51**"):

When the Pilots Plan comes out of liquidity shortfall and is again able to pay lump sums, it is expected that most of Delta's pilots eligible to retire will in fact retire and elect to receive their pension benefits in the form of lump sums.

9. The reasons why there would be a massive wave of pilot early retirements absent plan termination are straightforward. Pilots know that the distress termination of the Pilot Plan would permanently foreclose the payment of lump sums from the Pilot Plan.⁴ When the lump sum door opens, after having been closed for a year, pilots eligible for early retirement will understandably view this as their only remaining chance to obtain a lump sum payment, which for many pilots exceeds \$500,000, and for some exceeds \$1 million. The value of these up-front payments for pilots over 50, relative to the value of continuing to work at Delta until the mandatory retirement age of 60, is even greater than it had been in the past because of the pay cuts under LOA 46 and 51 (32.5% followed by 14% cuts to hourly wages), not to mention other substantial concessions that have had an economic and emotional impact on pilots.

10. Approximately 1,820 Delta pilots will be eligible to retire early on October 1, 2006. In addition, there are 126 pilots (mostly on disability) who are above age 60 and retirement eligible. Of these 1,946 pilots, 857 would be entitled

⁴ They are also aware that the PBGC could initiate "involuntary termination" proceedings against the Plan at any time, which would similarly foreclose the payment of lump sums.

to lump sum payments of \$500,000 or more, and another 712 would be entitled to lump sum payments of between \$250,000 and \$500,000. See Declaration of Edward H. Bastian, at ¶51 (“**Bastian Declaration**”); Declaration of Margaret M. McDaniel, at ¶31 (“**McDaniel Declaration**”). During the 12-months prior to Delta’s chapter 11 filing, approximately 1,100 pilots retired early, a total of approximately 45% of the 2,425 pilots eligible to retire. Even if only the same percentage of eligible retirees (45%) retired early when the lump sum door reopens, notwithstanding the far greater incentives now to do so, that would result in approximately 819 early retirements. If only an additional 10% retired early, the number of early retirements would be 1,001. See Bastian Decl., at ¶51. In light of all of the above, Delta believes that a reasonable estimate is that 800 to 1,000 pilots would immediately retire early if the lump sum door opens. In addition, the 126 other retirement eligible pilots over age 60 would also retire to secure their lump sums.

11. The simultaneous early retirement of hundreds of senior pilots would have an immediate and devastating impact on Delta’s operations. As set forth below, it would result in the cancellation of thousands of flights, and the grounding of a significant percentage of Delta’s entire fleet for a substantial period. These retirements would immediately cause a 29%-41% reduction in Delta’s overall mainline capacity, and would immediately slash Delta’s international capacity almost in half, by an estimated 43%-50%. See Declaration of David Watson, at ¶7 (“**Watson Declaration**”); Bastian Decl., at ¶52.

12. This operational disaster would leave hundreds of thousands of passengers stranded or unable to travel on flights for which they hold tickets all over the world. Delta estimates that 237,000 to 374,000 passengers would be affected in the first week, with 2.6 to 3.9 million affected over the ensuing weeks and months. See Watson Decl., at ¶11. The operational crisis would be exacerbated by the fact that pilots cannot be quickly retrained and certified to fly different aircraft. Under Delta's training procedures approved by the FAA, it takes about 6 weeks to train and certify a pilot for a new aircraft type. It would take about 14-16 months to complete training of replacements if 800 to 1,000 senior pilots retire early. See id., at ¶9. Moreover, as flights are canceled during this disruption, the Company estimates that between 6,000 and 10,000 Delta employees would be laid off for some duration of time. See Bastian Decl., at ¶54.

13. Delta likely could not survive an operational disruption of this magnitude. Grounding scores of aircraft for significant periods, being unable to fly its schedules, and stranding and adversely affecting millions of passengers would have a devastating impact on Delta and its prospects. Moreover, the lost operating cash flow that would be associated with the partial shutdown of its operations is estimated to be approximately between \$1.3 billion and \$2.1 billion. See Bastian Decl., at ¶55. This enormous liquidity drain would cause Delta to breach the financial covenants in its DIP loans in short order, which would likely cause the DIP lenders to exercise their rights and remedies under the loans (including their rights with respect to their collateral) and potentially lead Delta

on a quick path toward liquidation. See id., at ¶60; Declaration of Timothy R. Coleman, at ¶11 (“**Coleman Declaration**”).

14. Even if Delta somehow weathered the immediate crisis, it could not obtain the exit financing needed to emerge from chapter 11 without termination of the Pilot Plan. See id., at ¶¶13-17. Even assuming enactment of the favorable pension legislation just passed by Congress, Delta would owe approximately \$1.2 billion to \$1.5 billion to the Pilot Plan upon emergence. Within the first 12 months of emergence, Delta would owe an additional approximately \$195 million to \$220 million. In total, for the three and one-half years through the end of 2010, Delta would owe approximately \$1.5 billion to \$1.7 billion. Delta already pledged substantially all of its assets as collateral for its \$2.2 billion in DIP loans, the most it could secure. As discussed below, Delta would need between \$5.2 billion and \$6.6 billion in exit financing were the Pilot Plan not terminated. It is inconceivable that exit lenders would provide billions of dollars of incremental financing on the same collateral pool. See id., at ¶17.

15. Nor would this crisis be a one-time phenomenon. Subsequent waves of early retirements could be triggered at any time post-emergence from chapter 11, by a bad earnings quarter or any other event that adversely affects Delta’s financial results or resources in the minds of pilots. Approximately 550 to 650 additional pilots become eligible for early retirement each year over the next three years. See McDaniel Decl., at ¶37. This risk is yet another reason why Delta would not be able to procure the additional billions of dollars in exit

financing that would be required absent termination of the Pilot Plan. See Coleman Decl., at ¶15.

16. Title IV of ERISA permits a debtor to terminate its defined benefit pension plans if it meets the standard for a voluntary distress termination, which requires that “the bankruptcy court (or such other appropriate court) determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process and approves the termination.” 29 U.S.C. § 1341(c)(2)(B)(ii)(IV). That standard is easily satisfied here. If the Pilot Plan is not terminated and the lump sum option again becomes available, Delta will face an operational crisis that could challenge Delta’s survival; and in any event Delta will remain unable to emerge from chapter 11 due to billions of dollars in additional financing needs that will not be obtainable. Similarly, the enormous obligations to (and risks from) the Pilot Plan would prevent Delta, if it survived in the short term, from being able to submit a “feasible” plan of reorganization that would satisfy the standards of section 1129 of the Bankruptcy Code. See id. at ¶18.

17. This Motion seeks the distress termination of the Pilot Plan alone, and not the yet larger Delta Retirement Plan, a defined benefit plan that covers over 90,000 non-pilot employees and retirees and is also underfunded. Pension reform legislation has just been passed by Congress that includes airline relief provisions that would allow Delta to extend the time period to make required contributions to the non-pilot plan, which would dramatically reduce Delta’s near-

term funding burden. This legislation, if signed by the President (which is expected), should make it possible for Delta to emerge from chapter 11 without terminating the Delta Retirement Plan.⁵ The legislation would not, however, solve the unique problems facing the Pilot Plan, including the operational and financial crisis that would ensue absent its termination. The legislation would likewise not solve Delta's inability to fund the massive "liquidity shortfall" obligations to the Pilot Plan that would be due upon emergence and soon thereafter, since the legislation does not change the liquidity shortfall provisions of current law.

FACTUAL BACKGROUND

A. The Pilot Plan

18. Delta has maintained the Pilot Plan pursuant to its PWA with ALPA since 1972.⁶ The Pilot Plan is a "defined benefit plan" subject to the funding requirements of ERISA and the IRC, and is qualified under section 401(a) of the Internal Revenue Code of 1986, as amended (the "IRC"). A defined benefit plan guarantees participants a specified level of income at retirement. Employers contribute to their defined benefit plans, and these payments are

⁵ Unlike the Pilot Plan, the Delta Retirement Plan does not have a lump sum feature similar to that of the Pilot Plan and it is not in liquidity shortfall.

⁶ The Pilot Plan was supplemented by the Delta Pilots Bridge Plan (the "Bridge Plan"), the Delta Pilots Supplemental Annuity Plan (the "Supplemental Annuity Plan"), and the Delta Pilots Money Purchase Pension Plan (the "MPPP"). The Bridge Plan and the Supplemental Annuity Plan are non-qualified plans designed to provide benefits to pilots that exceed the benefits that can be paid from a qualified plan such as the Pilot Plan due to limitations imposed on qualified plans under ERISA and the Internal Revenue Code. The MPPP is a qualified defined contribution plan that was terminated pursuant to LOA 51; a new defined contribution plan, the Delta Pilots Defined Contribution Plan, was established in 2004 and will be amended pursuant to LOA 51. See McDaniel Decl., at n.2.

invested in income producing assets in a segregated trust fund.⁷ See McDaniel Decl., at ¶5.

19. Qualified defined benefit plans are partially insured by the PBGC, the federal governmental agency that administers the pension plan termination insurance program established by Title IV of ERISA. When a pension plan covered by Title IV terminates without sufficient assets to pay all of its accrued liabilities, the PBGC typically becomes trustee of the plan and pays plan participants their pension benefits, subject to certain statutory limits. See id., at ¶6.

B. Contributions to the Pilot Plan

20. As recently as 2002, the Pilot Plan's assets exceeded its liabilities determined on an ERISA current liability funding basis. Since that time, the funded status of the Pilot Plan has deteriorated dramatically. This has been the result of a variety of factors, including decreasing interest rates, lower than expected returns on assets, and – as described below – very large numbers of pilot early retirements and lump sum benefit payments to new retirees. As of July 1, 2006, the Pilot Plan was projected to have assets equal only to 39% of current

⁷ Because defined benefit plans guarantee a pre-determined benefit upon retirement, employers bear the risk of market fluctuations in the value of the plan assets. In this respect, defined benefit plans differ from defined contribution plans. In defined contribution plans, participants are not guaranteed any specified level of retirement income. Instead, the employer, the employee, or both make payments to an employee's individual account and the employee bears the risk of market fluctuations. As has been well publicized in recent years, defined contribution plans have largely replaced defined benefit plans, which increasingly have become unaffordable in many cases.

liability. Said differently, the plan has \$4.1 billion in liabilities but only \$1.6 billion in actuarial value of assets. See id., at ¶18.⁸

21. In 2004, in the face of Delta’s pressing financial troubles, ALPA and Delta agreed to freeze further accrual of benefits for future service under the Pilot Plan (a “soft” freeze). In conjunction with the soft freeze of the Pilot Plan, Delta agreed to establish a new defined contribution pension plan for pilots covering future pilot service at Delta (the Delta Pilots Defined Contribution Plan or “**DC Plan**”), under which Delta contributed an average of approximately 9% of each pilot’s earnings to an account in the individual pilot’s name. Pursuant to LOA 51, Delta and ALPA agreed to a “hard freeze” of the Pilot Plan (freezing the future accrual of all benefits) and fixed the defined contribution of the DC Plan at 9% of each pilot’s earnings. See Bastian Decl., at ¶46; McDaniel Decl., at ¶8.⁹

22. Prior to the Petition Date, Delta made all required contributions to the Pilot Plan. Delta has continued to make all required contributions attributable to post-petition labor (which have been small, totaling only \$4,702,861 through July 15, 2006, because of the soft freeze of the Pilot Plan), and has also continued to make all payments to the DC Plan, which are post-petition obligations. See McDaniel Decl., at ¶22; Bastian Decl., at ¶47.

23. After its bankruptcy filing, Delta ceased making contributions to the Pilot Plan that were allocable to past service liabilities, because these were

⁸ The exact percentage will not be known for some time.

⁹ Effective December 31, 2005, Delta also implemented a hard freeze of the Delta Retirement Plan (the non-pilot defined benefit plan). See Bastian Decl., at ¶42.

considered to be pre-petition costs.¹⁰ Moreover, had Delta made such payments, including the large Liquidity Contribution (as defined below) to the Pilot Plan that came due in October 2005, then, as described below, the Pilot Plan would not have gone into liquidity shortfall, the lump sum door would not have closed, and Delta would almost surely have experienced – last Fall – the fatal exodus of senior pilots now on the horizon if the Pilot Plan is not timely terminated. See Bastian Decl., at ¶47.

C. The Pilot Plan’s Lump Sum Option

24. The Pilot Plan provides annual benefits upon retirement in the amount of 60% of the pilot’s final average earnings.¹¹ See McDaniel Decl., at ¶8. Benefits are payable in the form of a monthly annuity for the life of the pilot (and his spouse, if any) unless the pilot elects a different form of payment. See id., at ¶13.

25. Since 1989, the Pilot Plan has provided that retiring pilots can elect to take 50% of the present value of their total accrued retirement benefit as a lump sum payment. For those who elect a lump sum, the other 50% of the retirement benefit is paid as a monthly annuity. See id., at ¶14.

¹⁰ By October 2005, the total amount of cash funding then projected to be required for Delta’s two defined benefit plans – the Pilot Plan and the Delta Retirement Plan – for the remainder of 2005 and all of 2006 was \$560 million (\$255 million for the non-pilot defined benefit plan and \$205 million for the Pilot Plan, including a special payment of \$145 million to make up for a liquidity shortfall, and \$100 million for the pilot non-qualified defined benefit plans). Delta’s DIP financing was predicated on not making these contributions to the Pilot Plan. Indeed, Delta would not have obtained the required DIP financing if it had intended to make such contributions. See Bastian Decl., at n.9.

¹¹ The amount is lower if a pilot has had less than 25 years of service or retires before age 60. See McDaniel Decl., at ¶7.

26. Delta pilots who are age 50 or older can submit a retirement notice at any time during a month, with their retirement effective as of the first day of the next month. Thus, Delta may — and often does — receive little advance notice of early retirements. See id.

27. Since the lump sum option became available under the Pilot Plan (up until the suspension of lump sum payments described below), the vast majority of retiring pilots have understandably taken advantage of the option in order to receive very substantial lump sum payments, in many instances over \$500,000 and in some instances over \$1 million. See McDaniel Decl., at ¶15. Since 2001, as Delta's financial condition deteriorated, the number of pilots who chose to retire early and take lump sums has increased dramatically. See id., at ¶16; Bastian Decl., at ¶45. This has resulted from a combination of favorable interest rates and/or concern that the Pilot Plan might be terminated (as happened at US Airways and United Airlines), and that as a result, the availability of lump sum payments would be lost and the total amount of benefits would drop very substantially. The number of early retirements continued to increase dramatically in 2004-2005, in anticipation of a possible bankruptcy filing by Delta, and increasing concerns about the potential for plan termination. In the 12-month period prior to Delta's chapter 11 filing, approximately 1,100 Delta pilots retired early, causing \$865 million in assets to drain from the Pilot Plan. Approximately 720 retired early during 2005 before the lump sum prohibition took effect on October 15, 2005. Of the 720 who retired in 2005, for example, 710 elected the

lump sum option, equating to over \$570 million in lump sum payments from the Pilot Plan. See McDaniel Decl., at ¶26.

D. Liquidity Shortfall and the Reopening of the Lump Sum Door

28. Lump sum payments became unavailable in October 2005 when the Pilot Plan went into “liquidity shortfall.” When this occurred, early retirements came to a virtual halt: In contrast to the approximately 1,100 early retirements in the 12 months prior to the bankruptcy filing, there have been only 14 early retirements of active pilots (and another 37 of inactive pilots on disability) in the roughly 10 months that the Pilot Plan has been in liquidity shortfall and the lump sum option unavailable. See id., at ¶26-28.

29. A liquidity shortfall is deemed to occur if the value of a plan’s liquid assets is less than three times the plan’s adjusted disbursements for the trailing (i.e., prior) 12 months. For this purpose, a plan’s “adjusted disbursements” include all annuity payments and a portion of the plan’s lump sum payments. If a plan pays lump sums, the plan’s assets are of course reduced and its trailing adjusted disbursements increase.

30. ERISA requires that the Plan’s assets and trailing adjusted disbursements be measured on the last day of each calendar quarter. If the Pilot Plan has a liquidity shortfall on the last day of a quarter, the sponsor has 15 days to contribute the amount of the shortfall (the “**Liquidity Contribution**”) into the trust fund. If the shortfall is not contributed, the Pilot Plan is prohibited from paying lump sums until the earlier of the end of the calendar quarter in which the

Pilot Plan comes out of liquidity shortfall, or the date the Liquidity Contribution is made. See id., at ¶25.

31. In light of the large number of pilot early retirements and accompanying lump sum payments that occurred in the 12 months preceding Delta's bankruptcy filing, the Pilot Plan went into liquidity shortfall for the quarter ended September 30, 2005. Absent Delta's bankruptcy petition, a Liquidity Contribution of approximately \$145 million would have been required on October 15, 2005. Delta determined that this Liquidity Contribution was a pre-petition obligation that Delta was not required (or permitted) to then pay under applicable bankruptcy law. As a consequence, Delta did not make the Liquidity Contribution. Since that date, the Pilot Plan has been in liquidity shortfall status, and has made no lump sum payments. See id., at ¶27-28.

32. Once the suspension of lump sums took effect, the trailing 12-month adjusted disbursements from the Pilot Plan began to drop. As each quarter passed with no additional lump sum payments being made, the number of lump sums in the prior 12 months decreased, and the required amount of liquid assets in the Pilot Plan decreased correspondingly. The best estimate of the Pilot Plan's actuary, as set forth in the accompanying McDaniel Declaration, is that the Pilot Plan emerged from liquidity shortfall by a small margin on July 1, 2006 and, if not, is virtually certain to do so on October 1, 2006 after the next quarterly calculations are done on September 30, 2006. See id., at ¶29.¹²

¹² Under Delta's approach to calculating "liquid assets," the Pilot Plan unquestionably emerged from liquidity shortfall on July 1, 2006; it very likely emerged under the Independent (...continued)

33. As noted above and as explained further below, if the Pilot Plan is not terminated, the opening of the lump sum door is expected to result in many hundreds of Delta's most senior pilots immediately taking early retirement with little or no notice to Delta, since they will understandably view this as their only remaining chance to obtain a lump sum benefit. In the event that Delta somehow survived this massive wave of early retirements, and the associated operational and financial crisis it would cause, Delta would be required by statute to make a Liquidity Contribution to the Pilot Plan upon exit from bankruptcy. Based on Delta's best estimate that 800 to 1,000 pilots would take early retirement, the total amount owed to the Pilot Plan at exit (currently assumed at March 30, 2007) and within the first 12 months thereafter would be approximately \$1.4 billion to \$1.7 billion.¹³ See McDaniel Decl., at Table 3.

34. In light of these exigent risks and circumstances, a NOIT for the Pilot Plan was issued on June 19, 2006, and Delta filed this Motion seeking a determination from this Court that the financial standard for distress termination of the Pilot Plan under 29 U.S.C. § 1341(c)(2)(B)(ii)(IV) is satisfied. Under PBGC regulations, the issuance of the NOIT suspends the Pilot Plan's obligation to make lump sum payments during the pendency of termination proceedings.

(continued...)

Fiduciary's approach as well. Under either approach, the Plan is virtually certain to emerge from liquidity shortfall as of October 1, 2006. See McDaniel Decl., at n.12.

¹³ These numbers assume, solely for purposes of this motion, that legislation recently passed by Congress to *lower* the burden of pension obligations for airlines is enacted. Absent this legislation, the total amount owed at exit and through the end of 2008 would be even *higher*, approximately \$1.5 to \$1.8 billion, and Delta would also owe an additional \$165 million to \$510 million through 2010. See McDaniel Decl., at Table 2. The calculations also assume that the 126 retirement eligible pilots over age 60 also retire to secure their lump sums.

See 29 C.F.R. § 4041.42(b)(2). On June 19, 2006, a Form 600 was also filed with the PBGC, notifying the PBGC of the intent to distress terminate the Pilot Plan.

35. If the Court were to deny this Motion, the PBGC would be required to deny Delta's application to terminate the Pilot Plan. This, in turn, would trigger the operational and financial crisis because the Plan Administrator of the Pilot Plan would resume lump sum payments if the Pilot Plan is not then in liquidity shortfall status, and many hundreds of Delta's most senior pilots would immediately retire to secure their lump sum benefits.

E. ALPA, DP3 and the Creditors' Committee Do Not Oppose Termination

36. Importantly, while they do not speak for every beneficiary, the representatives of the majority of the beneficiaries of the Pilot Plan do not oppose its termination. Since at least November 2005, ALPA's representatives have taken the position that termination of the Pilot Plan is necessary.¹⁴ In LOA 51, the hard-fought and critical agreement between Delta and ALPA that was approved by this Court on May 31, 2006, ALPA agreed not to oppose termination of the Pilot Plan and told this Court that its termination is "an event ALPA considers both inevitable and almost certainly necessary for Delta's operational

¹⁴ See, e.g., Evid. Hr'g on Mot. to Reject ALPA CBA Tr. 132, Nov. 16, 2005 ("Your Honor, everyone in this courtroom and . . . and the union and the company fully expects that before long Delta's pension plan will be terminated."); Sec. 1113 Arb. Hr'g Tr. 149, Mar. 13, 2006 ("Again, you will hear a lot of testimony in great length, but the cold simple fact is that the keystone to the Delta pilots' retirement program is, has been, the defined benefit pension plan. And that plan is doomed. It will be terminated. It will not be saved by any conceivable outcome on Capitol Hill, it will not be saved by any conceivable outcome of direct negotiations between ALPA and Delta. We acknowledge that.").

survival.”¹⁵ Moreover, as expressly provided in the order approving LOA 51 entered by this Court on May 31, 2006, upon termination of the Pilot Plan, Delta will be permitted to terminate the non-qualified pilot plan without further approval.

37. DP3, Inc., which counts 2,700 retired Delta pilots as members, has also informed Delta’s counsel that it will not oppose termination of the Pilot Plan. Delta believes that this is because the termination of the Pilot Plan, under the present circumstances, is also in the best interest of Delta’s retired pilots. If the Pilot Plan were not terminated until after the lump sum door opened and, as anticipated, hundreds of Delta pilots took early retirement, hundreds of millions of dollars would be drained from the Pilot Plan and would become unavailable to current retirees, who would lose substantial benefits when the Pilot Plan was then terminated. See McDaniel Decl., at ¶31. If, however, the Pilot Plan is terminated prior to the lump sum door reopening, retirees are expected to receive, on average, 85-90% of their qualified plan benefits.¹⁶

38. Finally, the Creditors’ Committee also supports termination of the Pilot Plan (although it expressly reserves all of its rights with respect to any claims that may arise as the result of termination thereof).

¹⁵ Reply of ALPA to PBGC’s Objection to Mot. For Authority to Enter into Amend. to Pilot Working Agreement and to Non-Pilot Comm.’s Conditional Non-Opp’n to Delta’s Mot. to Amend Pilot Working Agreement, May 29, 2006, at 2.

¹⁶ Even assuming that retired pilots had no further recoveries in connection with their non-qualified pension benefits, current pilot retirees will recover, on average, approximately 75% to 80% of their total qualified and non-qualified pension benefits (including the benefit associated with the lump sums previously paid). See id., at n.4.

LEGAL STANDARD FOR DISTRESS TERMINATION

39. Under Title IV of ERISA, a debtor may terminate a defined benefit pension plan, such as the Pilot Plan, if it satisfies the standard for a voluntary distress termination set forth in 29 U.S.C. § 1341(c)(2)(B)(ii). The standard is met if:

the bankruptcy court (or such other appropriate court) determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process and approves the termination.

29 U.S.C. § 1341(c)(2)(B)(ii)(IV).¹⁷

40. Section 1341(c)(2)(B) directs the PBGC to determine whether the criteria for a distress termination are met, but it is for the Court to make a factual determination that the debtor satisfies the financial test in 29 U.S.C. § 1341(c)(2)(B)(ii)(IV) set forth above. See generally In re Sewell Mfg. Co., 195 B.R. 180, 185 (Bankr. N.D. Ga. 1996). The PBGC will be bound by a final order of the Bankruptcy Court reaching a determination that the financial requirements for distress termination under § 1341(c)(2)(B)(ii)(IV) are met. See 29 C.F.R. § 4041.41(d)(1)(iv).

41. In essence, the test for a voluntary distress termination is whether the debtor can exit from bankruptcy, and stay out of bankruptcy, without terminating the pension plan. Accordingly, courts have looked for evidence that

¹⁷ Apart from this substantive requirement, ERISA includes certain additional procedural requirements, which are satisfied. The Debtors are in chapter 11 and their cases have not been dismissed (see 29 U.S.C. § 1341(c)(2)(B)(ii)(I)-(II)); all required information has been and will be provided to the PBGC, including a copy of this Motion (see 29 U.S.C. § 1341(c)(2)(A), (B)(ii)(III)); and notice of intent to terminate has been provided to the relevant parties more than 60 days prior to the proposed termination date of September 2, 2006 (see 29 U.S.C. § 1341(a)(2)).

the debtor will be unable to obtain exit financing and win plan confirmation in the absence of terminating the plan. See In re U.S. Airways Group, Inc., 296 B.R. 734 (Bankr. E.D. Va. 2003) (granting distress termination motion where exit financing was dependent on cash flow projections that could only realistically be met through plan termination and, thus, the only realistic plan of reorganization would require such termination); In re Wire Rope Corp. of Am., 287 B.R. 771 (Bankr. D. Mo. 2002) (granting distress termination motion after finding a debtor could not obtain exit financing necessary to confirm a plan and would be forced to liquidate absent termination); In re Sewell Mfg., 195 B.R. at 186 (granting distress termination motion after finding the debtor would be unable to pay its debts or continue business outside chapter 11 unless its qualified plan was terminated). The debtor need not already have submitted a plan of reorganization prior to seeking a distress termination finding under § 1341(c)(2)(B)(ii)(IV). See In re Sewell Mfg., 195 B.R. at 184.

42. Moreover, as the Third Circuit held in a decision published just last week, the PBGC's views on whether the financial test of section 1341(c)(2)(B) is satisfied are entitled to no deference by the Court:

[D]eference to the PBGC [in applying the distress termination test] is improper because the PBGC has neither the expertise nor the authority to determine when a plan should be terminated under the reorganization test. Issues relating to an employer's bankruptcy and reorganization are within the expertise of bankruptcy courts, not the PBGC.

In re Kaiser Aluminum Corp., 2006 U.S. App. LEXIS 18746, at *47 (3d Cir. July 26, 2006).

ARGUMENT

I. UNLESS THE PILOT PLAN IS TERMINATED, DELTA WILL FACE AN IMMINENT OPERATIONAL AND FINANCIAL CRISIS THAT WILL THREATEN DELTA'S NEAR TERM SURVIVAL

43. As of July 1, 2006, the Pilot Plan emerged from liquidity shortfall.

If not, it is virtually certain to do so on October 1, 2006. As a result, if this Motion were to be denied, the lump sum option will again become available to all Delta pilots over age 50. Unless this Motion is granted and the Pilot Plan is terminated, hundreds of Delta's most senior pilots will immediately retire early in order to avail themselves of what will be understood to be their last chance to receive large lump sum retirement benefits they have earned.

44. There can be no reasonable dispute that these early retirements would occur. During the 12 months leading up to Delta's bankruptcy filing, as pilots became increasingly concerned that the lump sum option might become unavailable, approximately 1,100 pilots retired early, representing approximately 45% of the 2,425 pilots eligible to do so. See McDaniel Decl., at ¶28; Bastian Decl., at ¶50. Current circumstances have greatly heightened the pressure on, and incentive for, pilots immediately to retire early if the lump sum option again becomes available. As a consequence, there would undoubtedly be a concentrated wave of mass early retirements as soon as the option became available that would be unlike anything Delta or any other airline has previously experienced. Among other things:

(1) Since the bankruptcy filing, ALPA has repeatedly stated that the Pilot Plan needs to be – and will be – terminated. By filing this motion, Delta has likewise taken the same position. Moreover, the lump sum benefits would be based on the full amount of the pilot's accrued benefit unreduced

by the statutory ceiling on pension benefits that can be paid from a terminated plan being administered by the PBGC;

(2) the pent-up demand for early retirements has grown because the lump sum door will have been closed for a year;

(3) as pilots retire early and take lump sums, assets begin to drain from the Pilot Plan, increasing the chances that the Pilot Plan will re-enter liquidity shortfall (and the lump sum door will close again) at the time of the next quarterly calculation. Thus, each successive pilot's decision to take early retirement makes it more likely that other pilots will retire early as well;

(4) in light of the very substantial concessions in LOA 46 and 51 (including a 32.5% pay cut followed by a 14% pay cut), the lump sum has grown much more valuable as compared to an individual pilot's estimated remaining earnings until mandatory retirement at age 60; and

(5) if the proposed pension legislation is enacted, as of January 1, 2008, the discount rate used to calculate lump sums will be increased, causing the value of lump sums taken after 2007 to decrease.

45. Approximately 1,820 Delta pilots will be eligible to retire early on October 1, 2006. In addition, there are 126 pilots (mostly on disability) who are above age 60 and retirement eligible. Of these 1,946 pilots, 857 would be entitled to lump sum payments of \$500,000¹⁸ or more, and another 712 would be entitled to lump sum payments of between \$250,000 and \$500,000. See Bastian Decl., Ex. A. Even if only the same percentage of eligible pilots who retired early in the 12 months prior to the Petition Date retire early when the lump sum door reopened – notwithstanding the far *greater* incentive to do so now – a total of approximately 819 pilots would retire early (45% of 1,820). If only an additional 10% retired early, the number of early retirements would be 1,001. In light of all of the above, it is reasonable to estimate that 800 to 1,000 pilots will immediately

¹⁸ 133 of these are eligible to receive payments of \$750,000-\$1,000,000, and 60 are eligible to receive payments of over \$1,000,000. See Bastian Decl., Ex. A.

retire early when the lump sum door reopens. See Bastian Decl., at ¶51. While it is impossible to predict this number with precision, there can be no doubt that many hundreds of pilots will immediately retire early, possibly more than the 800 to 1,000 estimate.

46. It is well settled that under ERISA’s “anti-cutback rules,” the lump sum benefit cannot be modified or eliminated from the Pilot Plan, even if the affected parties were to agree unanimously to do so. See Treas. Reg. §§ 1.411(d)-3(b), 1.411(d)-3(g)(15), 1.411(d)-4 (Q&A (2)(a)(1)) (as amended in 2005) (“A plan is not permitted to be amended to eliminate or reduce a section 411(d)(6) protected benefit that has already accrued, except as provided in Sec. 1.411(d)-3 or in this section. This is generally the case even if such elimination or reduction is contingent upon the employee’s consent.”).

47. The many hundreds of senior pilots who would elect to retire early if the lump sum option becomes available could do so with little or no notice to Delta, because under the PWA retirements can be submitted at any time during a month, effective as of the first day of the next month.¹⁹ This means, for example, that even if a Captain is scheduled to fly a 777 from Atlanta to Tel Aviv at 8 a.m. on October 1, and then back to Atlanta on October 3, Delta could literally receive notice on September 30 at 11 p.m. that that pilot has just retired and will not be flying his schedule. Unless another qualified and available Delta pilot can be

¹⁹ Traditionally, many pilots who retired in the past sent in their early retirement notices near the very end of the month preceding their retirement.

found (and travel in time to the relevant airport) to fly those flights, both flights will have to be canceled.

48. The effect of many hundreds of Delta's most senior pilots immediately retiring would be an operational disaster that would ground a large percentage of Delta's entire fleet and leave hundreds of thousands of passengers stranded all over the world. If 800 to 1,000 pilots eligible for the largest lump sum payments retired early effective October 1, 2006, a total of 62-91 of Delta's largest aircraft would be grounded, and the disruptions would last for over a year. See Watson Decl., at ¶7. While the aircraft are grounded, Delta would have to cancel the thousands of flights those aircraft would normally service, equating to a 29%-41% reduction in Delta's mainline capacity, including a 43%-50% reduction in Delta's international capacity (since Delta's most senior pilots fly the larger aircraft used on Delta's international routes). See Watson Decl., at ¶7 & Ex. A. Said differently, half of Delta's international flying would be shut down.

49. Assuming 800 to 1,000 pilot early retirements, it would take approximately 14-16 months to complete the training necessary to replace all those retired pilots. See Watson Decl., at ¶9. Pilots are only allowed to fly one aircraft type at a time. Under a program approved by the FAA, promotions to new aircraft types generally require additional pilot training. Retraining a single pilot on a new aircraft takes approximately six weeks. Moreover, each pilot who is promoted is generally leaving a position that must be filled in turn. The resulting domino effect creates a series of openings and requires several pilots to

be retrained for every pilot who retires. This is particularly true for large aircraft types flown by the most senior pilots. For example, the backfill of one Boeing 777 Captain position requires seven pilots to be retrained (i.e., a 757/767 Captain backfills the Boeing 777 Captain position, then a 737-800 Captain backfills the newly open 757/767 Captain position, etc.). Furthermore, given that the pilots who will be promoted to fill the openings are current Delta pilots, their training must be coordinated to minimize yet further disruptions to Delta's operations. See id., at ¶10.

50. Exhibit B of the accompanying Watson Declaration (see "Aircraft Count Below Plan") illustrates the time it would take to train pilots and bring the grounded aircraft back into service. For example, if these early retirements occurred on October 1, 2006, it would take until July 2007 to train enough Boeing 777 Captains to bring all 7 grounded Boeing 777 aircraft (out of a total fleet of 8) back into service, and until December 2007 (for 800 early retirements) or February 2008 (for 1,000 early retirements) to bring back all the grounded Boeing 767-300ER aircraft. See Watson Decl., at Ex. B.

51. The grounding of these aircraft would also have a significant and system-side impact on Delta's passengers, as set forth in Exhibit C of the Watson Declaration. Assuming 800 to 1,000 early retirements occurred as of October 1, 2006, in the first week of October 2006 alone the cancellations would adversely affect between 237,000 and 374,000 passengers. See Watson Decl., at ¶11 & Ex. C. Many of those passengers would likely be stranded for some time as they were forced to compete for limited space on board other airlines in order to reach their

destination. Over time, as aircraft remained grounded while pilots were being retrained to fill the vacancies, an estimated 2.6 to 3.9 million Delta passengers would be adversely affected. See Watson Decl., at ¶11 & Ex. C. In addition, dozens of small cities and regional destinations would lose Delta service altogether as Delta would be forced to reallocate smaller planes to service the large markets that are served by larger (grounded) planes. Finally, as flights are canceled during this disruption, the Company estimates that between 6,000 and 10,000 Delta employees would be laid off for some period. See Bastian Decl., at ¶54.

52. It would be difficult to overstate the devastating impact on Delta and its prospects of: (a) grounding a significant portion of its fleet (including almost half of its international capacity, where a major international *expansion* lies at the heart of Delta's transformation and survival strategy); (b) stranding hundreds of thousands of passengers all over the world, and adversely affecting millions; and (c) being rendered unable to fly its schedules and being forced to drop out of critical markets. This partial shutdown of Delta would, of course, garner front-page headlines, and do immeasurable damage to Delta's ability to survive.

53. Moreover, this partial shutdown and the associated loss in operating cash flow would quickly cause Delta to violate its DIP covenants. See Bastian Decl., at ¶60; Coleman Decl., at ¶11. The DIP financings require Delta to maintain a gradually increasing minimum level of EBITDAR (Earnings Before Interest, Taxes, Depreciation, Amortization, and Aircraft Rent), which is a

commonly used measure of cash flow. Based on an estimated 800 to 1,000 pilot early retirements and the associated reduction in Delta's flight capacity, the resulting loss in net operating cash flow would total approximately between \$1.3 and \$2.1 billion. See Bastian Decl., at ¶¶ 55 to 58 & Ex. B.²⁰ Assuming 800 to 1,000 early retirements, if the lump sum door were to open on October 1, 2006, Delta would default under its EBITDAR covenant by January – March 2007.²¹ See Coleman Decl., at ¶11; Bastian Decl., at ¶60.

54. Under these dire circumstances and in light of the covenant breaches, the DIP lenders could well decide to exercise rights or remedies to protect their more than \$2 billion in loans, including remedies with respect to their collateral. Were this to come to pass, it could lead to a liquidation of Delta. See Bastian Decl., at ¶60; Coleman Decl., at ¶12.

55. Absent termination of the Pilot Plan, not only would Delta “be unable to pay all its debts pursuant to a plan of reorganization,” 29 U.S.C. § 1341(c)(2)(B)(ii)(IV), and “unable to continue in business outside the chapter 11 reorganization process,” id., but it could well be on a quick path to liquidation. In

²⁰ As set forth in greater detail in the Bastian Declaration and Exhibit B thereto, the lost revenue associated with each grounded aircraft was calculated using historical data for the revenues generated by that aircraft and the historical occupancy rate (Load Factor). Certain expenses that would not be incurred if the planes were not flying, including reductions in fuel, labor, passenger variable and maintenance costs, were deducted from this number. In addition, the net number factors in: (a) Delta's ability to recapture some of the lost revenue by increasing revenue on other flights on the same route as the cancelled flights; and (b) an assumption that, following widespread cancellations, revenue in the various segments does not immediately snap back to pre-reduction levels, but instead ramps up over time. Of course, it is likely that a highly publicized partial shutdown of Delta amidst mass pilot retirements during chapter 11 proceedings would cause many customers never to return to Delta at all. See Bastian Decl., at ¶57 & Ex. B.

²¹ Moreover, in the event there are 1,000 early retirements, the Aggregate Cash on Hand covenant in the DIP financings would also be breached by April 2007 (or earlier if there were more than 1,000 early retirements).

that event, not only would the Pilot Plan still be terminated, but the Delta Retirement Plan covering all other employees would be lost as well, not to mention the jobs of all Delta employees and the prospect for recoveries by creditors and investors. Accordingly, there can be no serious question that the standard for distress termination under 29 U.S.C. § 1341(c)(2)(B)(ii)(IV) is met.

II. **EVEN IF DELTA SURVIVED THE NEAR TERM CRISIS, IT
COULD NOT EMERGE FROM CHAPTER 11
UNLESS THE PILOT PLAN IS TERMINATED**

56. Even if Delta survived the near-term operational and financial crisis, the distress termination standard of 29 U.S.C. § 1341(c)(2)(B)(ii)(IV) would still be met because, without terminating the Pilot Plan, Delta would not be able to obtain the exit financing needed to successfully emerge from chapter 11 or submit a “feasible” plan of reorganization.

57. In order to emerge from bankruptcy, Delta will require approximately \$2 billion to repay the then outstanding amount on its DIP loans. See Coleman Decl., at Table 1. As a result of the financial and operational crisis described above, Delta would suffer an enormous liquidity drain of an estimated \$1.3 billion to \$2.1 billion, which would need to be replenished in order for Delta to have the liquidity necessary to run its business and provide a minimum cash cushion to protect against future shocks and the seasonality that exists within the airline industry. See id., at ¶ 10. On top of these amounts, if the Pilot Plan is not terminated, assuming the proposed legislation is signed by the President, and an estimated 800 to 1,000 pilots retire early (in addition to the 126 other eligible pilots), Delta would be required to contribute approximately \$1.4 billion to \$1.7

billion to the Pilot Plan at exit from chapter 11 and within the 12 months thereafter (most of which would be due immediately upon exit). See McDaniel Decl., at Table 3.²²

58. In order to repay the DIP loans, maintain minimum liquidity, and satisfy its financial obligations to the Pilot Plan and otherwise in the first 12 months following its emergence from bankruptcy, Delta would require between \$5.2 billion and \$6.6 billion of exit financing, an amount that vastly exceeds what Delta could obtain under any conceivable scenario. See Coleman Decl., at ¶13; Bastian Decl., at ¶63. If a slightly higher number (1,200) of pilots retired, the amount of exit financing required would be \$7.7 billion. Delta pledged substantially all of its assets as collateral in order to secure the \$2.2 billion in DIP financing that it obtained. Delta has virtually no unencumbered collateral against which to secure an additional \$3.0 billion to \$4.4 billion in financing above the level of its DIP financing. See Coleman Decl., at ¶¶13, 16. Even if the financial impact of the wave of early retirements was lower than anticipated, so that an amount less than \$5.2 billion in exit financing were needed, lenders would be unwilling to provide billions of dollars in incremental exit financing, especially where well over a billion will not be invested in the Company to improve Delta's ongoing prospects, but will immediately leave the Company – already

²² As noted above, solely for purposes of this Motion, these amounts assume the enactment of legislation just passed by Congress to lower the burden of pension funding obligations. If such legislation is not enacted, the amounts owed by Delta would be even higher (approximately \$1.5 billion to \$1.8 billion). See McDaniel Decl., at Table 2.

dramatically weakened by the operational crisis – in the form of pension funding.

See id., at ¶17.²³

59. While these facts alone preclude the availability of exit financing, additional factors would make the risk to exit lenders even worse. First, dramatic industrywide changes in recent years have substantially increased competition and decreased profits in the airline industry. Price competition from Low Cost Carriers (“LCCs”) such as Southwest Airlines, JetBlue and AirTran, and historically high and volatile jet fuel prices have made it even more important than ever before to have a competitive cost structure and adequate liquidity. See Bastian Decl. at ¶62. The various LCCs have never had qualified defined benefit pension plans, and other legacy carriers such as United Airlines and US Airways terminated their plans during their respective bankruptcy reorganizations. Apart from Delta simply not having the collateral to support \$5.2 billion to \$6.6 billion in exit financing – \$3.0 billion to \$4.4 billion more than its DIP financing, which was secured by the same collateral – lenders will not consider Delta a viable lending prospect if Delta is forced to compete with these carriers while simultaneously funding massive obligations to the Pilot Plan. See Coleman Decl., at ¶16.²⁴

²³ In addition to the amounts needed to fund the Pilot Plan, in the absence of termination Delta would also owe large amounts to the non-qualified pilot plan. Under LOA 51, ALPA agreed to the termination of the non-qualified plan if, but only if, the qualified plan is terminated. Absent termination of the Pilot Plan (i.e., the qualified plan), Delta would also owe approximately \$130 million to the non-qualified plans upon emergence and approximately \$95 million to \$100 million per year thereafter in the ensuing years. See McDaniel Decl., at ¶35.

²⁴ Assuming Delta remains able to preserve the non-pilot plan (the Delta Retirement Plan) based on the enactment of the proposed legislation, Delta would owe approximately \$95 million to the non-pilot plan within the first 12 months after emergence (including \$25 million of which would be due within 15 days following exit), and approximately \$400 million through the (...continued)

60. Moreover, the problem of early retirements and significant operational disruptions would not disappear after the initial wave of early retirements. Large payments out of the Pilot Plan to the first wave of retirees would send the Pilot Plan back into liquidity shortfall, which would cut off lump sum payments; in turn, the disbursements out of the Pilot Plan would then drop over time and the Pilot Plan would again emerge from liquidity shortfall. In the meanwhile, hundreds of additional pilots will have newly become eligible for early retirement, and many would likely retire early when the door reopened, since the continued availability of lump sum benefits (and their employer's survival) would remain uncertain. Delta would continue to remain exposed to the operational and financial crises associated with waves of early retirements by senior Delta pilots. See Coleman Decl., at ¶17; Bastian Decl., at ¶65. In addition to the retirement-eligible pilots who may choose not to retire during the pendency of these chapter 11 proceedings, between 550 and 650 Delta pilots per year become newly eligible for early retirement over the next three years alone, representing an incremental increase in payable lump sums of between \$175 million to \$275 million per year. See McDaniel Decl., at ¶37.

61. In short, even if Delta survived the near-term operational and financial crisis when the lump sum door reopened, it would not be able to get the exit financing necessary to emerge from chapter 11, and this is an independent reason why the distress termination standard of 29 U.S.C. § 1341(c)(2)(B)(ii) is

(continued...)
end of 2010. This nevertheless builds additional risk into Delta's credit profile. See McDaniel Decl., at ¶36.

satisfied. See In re U.S. Airways, 296 B.R. at 745-46 (inability to get exit financing satisfies distress termination test); In re Wire Rope, 287 B.R. at 778-79 (same).

62. Similarly, absent termination of the Pilot Plan, no Delta plan of reorganization could meet the “feasibility” standard of section 1129 of the Bankruptcy Code. Even, *arguendo*, ignoring the billions of unattainable exit financing, with the risks and liabilities associated with continuation of the Pilot Plan on its balance sheet, Delta would be uniquely vulnerable to an economic downturn, an unexpected market event, and the continued risk of operational and financial disruptions associated with successive waves of pilot early retirements each time the Pilot Plan comes out of liquidity shortfall. Absent termination of the Pilot Plan, Delta could not submit a plan of reorganization to the Bankruptcy Court that would “not likely . . . be followed by liquidation or the need for further financial reorganization” Kane v. Johns-Manville Corp., 843 F.2d 636, 649 (2d Cir. 1988) (reciting “feasibility” standard under section 1129) and likewise could not “continue in business outside the chapter 11 reorganization process,” 29 U.S.C. § 1341(c)(2)(B)(ii)(IV).

63. Finally, Delta would not be able to secure the \$3.0 billion to \$4.4 billion in additional financing, above and beyond the amount of its then outstanding DIP financing, by making additional cost cuts or seeking additional revenue improvements. Given the massive cost cutting and the exhaustive efforts to achieve financial improvements that Delta has undertaken in all areas of its business, both prior to and during bankruptcy, and given the intense competitive

forces that Delta faces in the airline industry, there is no realistic way for Delta to raise an additional \$3.0 billion to \$4.4 billion in liquidity, even if Delta could survive its nearer term operational and financial crisis.

64. As described in greater detail in the accompanying Bastian Declaration, from 2003 to 2005 Delta implemented initiatives to achieve close to \$5 billion in financial improvements per year, including cuts of \$1.8 billion per year in non-pilot labor costs, and a pilot agreement that cut pilot labor costs by \$1 billion per year. See Bastian Decl., at ¶¶29 to 32. Delta's in-court business plan targeted an additional \$3 billion in annual financial improvements. See id., ¶¶ 38 to 41. Delta is on track to cut non-pilot labor costs by an additional \$605 million per year beyond pre-filing levels, and it reached agreement with ALPA on a new contract that resulted in Delta obtaining approximately \$280 million in annual cost savings. Delta has also moved aggressively to cut costs in all other areas, including approximately \$450 million per year in targeted aircraft savings and very substantial targeted savings from airport leases. There is simply no way for Delta to afford to fund its Pilot Plan obligations, or fill massive new liquidity holes caused by an operational crisis, through additional cost cutting. See Bastian Decl., at ¶41.

WAIVER OF MEMORANDUM OF LAW

65. Because the relevant issues of law are addressed herein, the Debtors respectfully request that the Court waive the requirement pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy

Court for the Southern District of New York that the Debtors file a separate memorandum of law in support of this motion.

NOTICE

66. Consistent with the procedures described in the Court's Order Approving Notice, Case Management and Administrative Procedures entered October 6, 2005 (the "**Case Management Order**"), the Debtors have served this Motion and its associated Declarations on (i) the Core Parties (as that term is defined in the Case Management Order), (ii) the PBGC, (iii) Fiduciary Counselors, Inc., the independent fiduciary for the Pilot Plan, (iv) ALPA, the bargaining representative of the over 6,800 pilots employed by Delta and (v) DP3, Inc., a Delaware not-for-profit corporation that represents that it has 2,700 retired Delta pilots as members. The Debtors have also served all known participants in the Pilot Plan with a notice of this Motion, the objection deadline, the hearing date and instructions on how they can obtain copies of the pleadings. The Debtors have also posted this Motion and its associated Declarations on Delta's retiree web site and on their Case Information Website, located at www.deltadocket.com.

67. Pursuant to the Case Management Order, the relief requested herein may be granted without a hearing if no objections are timely filed and served in accordance with the Case Management Order.

68. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

69. WHEREFORE the Debtors respectfully request the Court grant their motion for a determination that they satisfy the financial requirements for a

distress termination of the Pilot Plan pursuant to 29 U.S.C. § 1341(c) and for approval of such termination.

New York, New York
Dated: August 4, 2006

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