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**Hearing Date & Time: February 22, 2007, 2:30 p.m.**

-and-

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

In Re:

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

Debtors.

Chapter 11

Case No. 05-17923 (ASH)

(Jointly Administered)

**THE SECTION 1114 RETIRED PILOTS COMMITTEE'S  
REPLY TO OBJECTIONS TO MOTION TO APPROVE  
SUPPLEMENTAL TERM SHEET BETWEEN DEBTORS  
AND SECTION 1114 RETIRED PILOTS COMMITTEE**

TO: THE HONORABLE ADLAI S. HARDIN, JR.  
UNITED STATES BANKRUPTCY JUDGE

The Official Section 1114 Committee of Retired Pilots (the “Retired Pilots Committee” or “Committee”), by and through counsel, hereby files its reply to objections to the Motion to Approve Supplemental Term Sheet Between the Debtors and the Section 1114 Retired Pilots Committee (“the Motion”) [Docket No. 4267]. In support of this Response, the Retired Pilots Committee respectfully states the following:

**A.**

**PROCEDURES, OBJECTIONS AND RESOLUTIONS**

1. While perhaps initially startling, it really is not surprising that a fair number of objections were filed to the Motion. To date, the Committee is aware of 388 timely and untimely objections.<sup>1</sup> The Retired Pilots Committee represents a constituency of almost 10,000 people (hereafter “Pilot Retirees”) with many demographic variances. As a result, the Committee and Delta were faced with the difficult task of creating a claims methodology that would provide reasonable claims to those actually paying the increased cost of Section 1114 benefits under the Section 1114 Settlement reached between Delta and the Retired Pilots Committee. Further, the Committee and Delta sought to resolve the significant number of contingent and unliquidated claims of those who are not and were not enrolled – and may never enroll.

2. *The Committee wants to make clear that the Section 1114 claims issues are entirely unrelated to the exercise of future enrollment rights and do not affect any of its constituency’s future enrollment rights. Nothing in the Supplemental Term Sheet will change any rights to enroll in Delta retiree medical coverage in the future.*

3. On October 19, 2006, this Court reviewed and approved the 1114 Retired Pilots Settlement (“Settlement”) between Delta Airlines, Inc. (“Delta”) and the Retired Pilots

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<sup>1</sup> The Retired Pilots Committee has not distinguished between timely and untimely objections given complications due to weather and unrepresented parties. All objections have been duly considered.

Committee. As part of that Settlement, Delta and the Retired Pilots Committee agreed to negotiate in good faith to determine the amount of claims resulting from changes to 1114 benefits accomplished by the Settlement. After intensive negotiations, on January 22, 2007, Delta and the Committee reached agreement on the terms set forth in the Supplemental Term Sheet (Exhibit "A" to the Motion) to establish parameters for the method of calculation of claims. Delta notified each 1114 claimant of the amount of its 1114 claim and filed the Motion on January 24, 2007. Objections were originally due to be filed on February 9, 2007. Upon request from both the Retired Pilots Committee and DP3, Delta agreed to extend the objection deadline to February 12, 2007.

4. The Supplemental Term Sheet, as explained in the Motion, seeks to set a consistent and fair methodology for calculating almost 10,000 Section 1114 claims. Neither Delta nor the Retired Pilots Committee wanted an inefficient claims process that would require 10,000 Section 1114 claimants to each file proofs of claim, which would inevitably result in the assertion of different discount rates, mortality tables, and cost parameters for claims (if claimants even filed timely claims or provided any calculation at all), and would raise a substantial risk of disparate results. Given the very important proposed parameters for calculating a large number of claims, the Committee and Delta wanted to assure that retirees knew the deadline and had instructions for responding (which is why such instructions for filing objections were included in the Motion) in order to make sure that as many viewpoints as reasonably possible were heard and considered.

5. To date, the Committee is aware of 388 timely and untimely objections filed. If each of the objectors has a spouse (likely an over-estimate), this means that no more than 8% of

the constituency objected. This also means that about 92% of the constituency did not object. Overall, that indicates substantial approval of the Supplemental Term Sheet.

6. The total of 388 objections may be summarized (descriptions discussed below) as follows:<sup>2</sup>

Current Enrollees	20
Opt Outs	273
Post-Retirement Pilots:	17
2006 COBRA:	40
2006 Partial Enrollee	13
<u>Hardship Group</u>	<u>25</u>
Total	388

7. **Current Enrollees.** The Supplemental Term Sheet provides that those enrolled in Delta retiree medical coverage in (any part of) 2006 or 2007 receive a fully calculated Section 1114 claim for the difference in cost between Delta coverage prior to the 1114 Settlement and after the 1114 Settlement. There are 20 objections by Current Enrollees. Some enrolled retirees that are getting the fully calculated 1114 claims objected that the claims were not high enough, or that their claims in comparison to other Delta retirees were too small. Most of these objections were generic and did not provide any specific basis for a claimed error in calculation. Some erroneously assumed, without analysis, that their claims were decreased because they had elected less expensive coverage for 2007. Claim calculations are highly dependent upon the individual's age, date of retirement, marital status, and other factors. As no two people are identical, neither will the claims be identical. However, the Court need not review each of the claims today. There is a separate deadline of March 12, 2007 by which any claimant that contends that their claim is incorrectly calculated based on their individual data may file a proof

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<sup>2</sup> These numbers are the most accurate the Committee has at this time. Because of late objections and continuing analysis and updating of data, some of these objections may ultimately be placed in different categories.

of claim and ask Delta to recalculate the claim if there is an error in a retiree's individual data. Objections on this basis should be deferred and treated as claim issues to be resolved or litigated individually.

8. **Opt Outs.** Of the objections received, about 273 of them<sup>3</sup> are filed by retirees that are not and were not enrolled in Delta retiree medical coverage for either 2006 or 2007 (and do not otherwise qualify for the Hardship Group discussed below). That is, such objectors "opted out" of Delta retiree medical coverage and are not incurring any increased expense *today* as the result of the 1114 Settlement. As a result, claims by non-enrollees or "Opt Outs" are wholly contingent and unliquidated. The Opt Out objections complain that these wholly contingent and unliquidated claims have not been settled for enough money. The Supplemental Term Sheet provides that, even though it cannot be known whether such retirees would ever enroll in Delta retiree medical coverage in the future or for what duration, Opt-Outs will receive a "settled" claim for their contingent and unliquidated claim in the amount of \$2,100 (husband and wife would total \$4,200).

9. Within the Opt Out group are objections from retirees who are married to active Delta employees. These retirees are not enrolled in a Delta retiree medical plan, but are enrolled as spouses in the **active** Delta medical coverage. As a result, none of these objectors is currently impacted or paying for any of the changes to Section 1114 medical benefits implemented by the 1114 Settlement. They are all using active coverage, not retiree coverage. As a result, they are

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<sup>3</sup> There are seven claims with unusual facts. Three of these claims are made by current enrollees on behalf of their spouses who are not enrolled under the retired pilot's Delta coverage. The Committee believes these claims should simply be treated as Opt-Outs. Additionally, three claims are made by survivors. The Committee is not clear on what these claims are for. To the extent they are not simply Opt Out claims, the Committee believes they should be dealt with separately along with the current enrollee claims. Finally, there is one claim which appears to be an attempted appeal of a disability determination in an improper forum; to the extent it states any objection, the Committee believes it should be treated as an opt-out.

considered “opt outs”, just as if the retiree had elected to use outside medical coverage (e.g. TriCare or other spouse employer coverage). In total, including parties who did not object, about 1874 retirees and spouses are Opt Outs. Of the 1874 retiree Opt Outs, 1029 are under the age of 60. Of the 273 objections received from Opt Outs, about 200 objections were from retirees under age 60.

10. **Post-Retirement Pilots (“PRPs”).** As a result of certain adjustments to Delta’s data (regarding Post Retirement Pilots or “PRPs”), 17 objections have been resolved. PRPs who are otherwise qualified will receive fully recalculated Section 1114 claims. A PRP is a retiree that, under a special Delta program, was immediately rehired for a relatively short period of time after retirement. In the case of these particular objectors, their years of service prior to retirement were inadvertently omitted from the initial calculation of their claim. The adjustment for PRPs was a data adjustment that will result in over 106 retirees receiving recalculated claims.

11. **2006 COBRA and 2006 Partial Enrollees.** There were 40 objecting 2006 COBRA enrollees, and 13 objecting 2006 partial year enrollees. Again, such objections have been resolved by Delta’s discovery and correction of data relating to these claimants. Such claimants will receive full Section 1114 claims. As a result, these 53 objections are resolved.

12. **The Amendment to the Supplemental Term Sheet.** On February 19, 2007, Delta and the Retired Pilots Committee reached agreement on the Amendment to the Supplemental Term Sheet (the “Amendment”). Such Amendment was negotiated in response to certain comments and objections that pointed out two issues.

13. **Hardship Group.** The first issue addressed by the Amendment is that certain retirees that were enrolled in Delta retiree medical coverage in 2005 did not re-enroll in 2006 because Delta ceased making non-qualified pension distributions on September 1, 2005, and

such retirees deemed themselves unable to afford to continue in Delta coverage (this group is hereafter referred to as the “Hardship Group”). Some retirees in the Hardship Group pointed out that they had actually been enrolled in 2005, and it was unfair to limit the full Section 1114 claim eligibility to those enrolled in 2006 and 2007 when Delta’s own actions likely adversely impacted their decision or ability to enroll in 2006. There are 25 objections from members of the Hardship Group.<sup>4</sup> The Committee and Delta believed this issue to have merit. The Amendment to the Supplemental Term Sheet provides that retirees in the Hardship Group will receive full Section 1114 claims instead of a settlement of a contingent and unliquidated claim. This resolves an additional 25 objections (and provides full claims to an additional approximately 60 retirees and spouses).

14. **New Settlement for Under 60 Opt Outs.** The second issue addressed in the Amendment is that retirees under age 60 as of January 1, 2007, who were not enrolled in 2006 or 2007, claim that the settlement of contingent and unliquidated Section 1114 claims for \$2,100 was too low a number. They argue that a significant percentage of those under age 60 (currently paying 100% for Delta coverage) would enroll when they reached age 60 because the cost of coverage would drop to 51% under the 1114 Settlement (an increase from 28% prior to the 1114 Settlement). About 200 objectors are in this category and contended that they should receive a higher claim. Delta, the Official Unsecured Creditors Committee, and the Section 1114 Retired Pilots Committee all further reviewed this issue and have agreed to increase the settlement for such contingent and unliquidated claims in an effort to resolve the issue. An Amendment to the Supplemental Term Sheet (which is attached to Delta’s Reply to the Motion) provides that retirees under the age of 60 as of January 1, 2007, who are not otherwise entitled to a fully

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<sup>4</sup> The Hardship Group has not been included in the “Opt Out” group as they are separately treated.

calculated Section 1114 claim, shall receive an increased claim amount in settlement of their contingent and unliquidated claim. The Amendment provides that the under 60 Opt Outs (not otherwise entitled to a full Section 1114 claim) will share pro rata, in proportion to their fully calculated claims -- claims totaling \$18.8 million. Delta projects that each under 60 Opt Out will therefore receive a claim in excess of 50% of what would have been such retiree's full Section 1114 claim, instead of the settlement amount of \$2,100 each.

15. The Committee believes that the revised proposed settlement of the otherwise contingent and unliquidated claims of Opt Outs under the age of 60 is a reasonable resolution of the 200 objections raised by this group. A full claim for such non-enrollees is not reasonable because it cannot be known whether such retirees, that are not currently enrolled, will ever really enroll in Delta retiree medical coverage, or for how long. Based upon a review of historical re-enrollment data, Delta reports a re-enrollment rate of approximately 20% by retirees that were not previously enrolled in Delta's retiree medical coverage, upon reaching the age of 60. For those that never re-enroll, there are no actual damages incurred because such retirees have not and may never pay any additional cost as the result of the Section 1114 Settlement.<sup>5</sup>

16. Normally, in a Chapter 11 case, a contingent and unliquidated claim is, at best, estimated under 11 U.S.C. §502(c), and is commonly disallowed entirely. The Supplemental Term Sheet, along with the Amendment, provides a reasonable settlement of the contingent and unliquidated claims, and the Court should overrule any continuing objections to such proposed solution. Alternatively, the Court should estimate such claims under 11 U.S.C. §502(c) as proposed in the Supplemental Term Sheet and Amendment thereto.

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<sup>5</sup> Once a retiree reaches the age of 60, if such retiree has not enrolled in Delta retiree medical coverage, Delta's records reflect that it is very unlikely that such retiree will ever re-enroll in Delta retiree medical coverage. As a result, the settlement amount for contingent and unliquidated claims for retirees over age 60 is left unchanged from the original \$2,100 in the Supplemental Term Sheet.

17. The Court is asked to overrule any other unresolved remaining objections to the Supplemental Term Sheet and Amendment thereto. In the event an objection raises issues regarding individual claim data or calculation, the Committee respectfully requests that such objections be treated as objections to individual claims (as opposed to an objection to the methodology) and reserved until the appropriate point in the claims proceeding process.

**B.**

**ARGUMENT AND LEGAL AUTHORITIES**

18. Of the 388 objections, 95 (PRP, 2006 COBRA, 2006 Partial, and Hardship Group) have been resolved completely.

19. There are 17 objections by Current Enrollees. Current Enrollees are fully protected and receive fully calculated and allowed claims under the Supplemental Term Sheet. None has raised any meritorious objection to any of the actuarial parameters, mortality tables, discount rate, or other assumptions. None of the Current Enrollees have standing to assert claims or objections on behalf of others. To the extent objections of Current Enrollees raise individual data issues (mistakes concerning date of birth, date of retirement, etc.), such objections may be reserved until the appropriate time in the claims process.<sup>6</sup> Otherwise, objections by Current Enrollees should be overruled.

20. That leaves the remaining 273 objections by Opt Outs, retirees that are not currently enrolled in Delta retiree medical coverage and were not enrolled for any time during 2006 (that are not in the Hardship Group). Opt Out claims are fully contingent and unliquidated because such retirees are not currently paying, and may never pay, any increased cost for medical benefits as the result of the changes occasioned by the Section 1114 Settlement between Delta

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<sup>6</sup> Claimants that dispute their individual claims on the basis of mistakes or miscalculations based on individual data may file proofs of claim by March 12, 2007 and raise such issues. Also, this Court may order individual data types of objections reserved until that claims process.

and the Retired Pilots Committee. Usually, such retirees do not enroll in Delta retiree medical coverage because they have more affordable coverage available elsewhere, *i.e.* coverage under a spouse's employer's medical policy or military retiree coverage under TriCare.

21. As contingent and unliquidated claims, such claims are eligible for estimation under 11 U.S.C. §502(c). Indeed, Section 502(c)(1) declares that contingent and unliquidated claims "shall be estimated for purpose of allowance..." in order to avoid undue delay in administration of the case.

22. In reviewing the method by which a bankruptcy court has ascertained the value of a claim under Section 502(c)(1), an appellate court may only reverse if the bankruptcy court has abused its discretion. See, Addison v. Lanston (In re Brints Cotton Mktg., Inc.), 737 F. 2d 1338, 1341 (5<sup>th</sup> Cir. 1984); Bittner v. Borne Chemical Co., Inc., 691 F. 2d 134, 136 (3<sup>rd</sup> Cir. 1982). In Bittner, the Third Circuit affirmed the bankruptcy court's estimation of stockholder tortious interference claims at zero, citing that the chances of the stockholders' success in the underlying state court action were "uncertain" at best.

23. Indeed, this Court is no stranger to claims estimation and has discussed the applicable standards and authority at some length in In re Enron Corp., 2006 WL 544463 (Bankr. S.D.N.Y. 2006). In Enron, Judge Gonzalez estimated unsecured "Reserve Claim Amounts" at zero. Enron summarizes:

Thus, the estimation of claims promotes the purpose of setting the amount of claims that are to receive distributive shares. In re Thomson McKinnon Securities, Inc., 143 B.R. 612, 619 (Bankr. S.D.N.Y. 1992). In meeting this need, a bankruptcy court is free to use the best method available to it under the circumstances to value the claim. Addison v. Lanston (In re Brints Cotton Mktg., Inc.) 737 1338, 1341 (5<sup>th</sup> Cir. 1984).

Enron, supra, op. at 4.

Enron further explains:

While state law ordinarily determines whether a claim is valid and the obligations that remain, nevertheless, a bankruptcy court may, when authorized by the Code, “determine how and what claims are allowable for bankruptcy purposes, in order to accomplish the statutory purpose of advancing a ratable distribution among creditors.” [Brints, at 1341].

Enron, supra, op. at 4.

24. There are many other cases in which courts have estimated contingent and unliquidated claims at zero. While not helpful to list them all, some examples are: Chausse v. Lyngholm (In re Lyngholm), 24 F. 3d 89 (10<sup>th</sup> Cir. 1994); McDuffy v. Novak, (In re DeGeorge Financial Corp.), 2002 WL 31096716 (D. Conn. 2002); Colorado Mtn. Express, Inc. v. Aspen Limousine Service, Inc. (In re Aspen Limousine Service, Inc.), 193 B.R. 325 (D. Colo. 1996).

25. The airline industry is no stranger to the claim estimation process. The district court in In re Frontier Airlines, Inc., 137 B.R. 811 (D. Colo. 1992), affirmed the bankruptcy court’s estimation of the value of claims of Frontier’s employees for lost pass privileges to travel free of charge on flights when space was available. The bankruptcy court found there was no contractual right to passes and valued such claims at zero. In that case, the district court cited with approval the bankruptcy court’s express findings as to the need for estimation given the vast number of potentially invalid claims and the delay and risk of inconsistency that could result from an individualized liquidation process. Id. at 814. These same concerns about the sheer number of pilot retiree Section 1114 claims, the potential for a chaotic claims process, and the need to assure a ratable distribution exist in this case.

26. The only remaining unresolved objections are by the Opt Outs. As discussed, the Opt Out claims are contingent and unliquidated because such claimants are not currently enrolled, are not suffering any current damage on account of the 1114 Agreement, and, since

they were not enrolled during 2006 either, there is no objective indicator that they would ever enroll. In the event that no proposed settlement of the Opt Out claims had been negotiated between Delta and the 1114 Committee, there is every possibility that this Court, like many other courts that have considered contingent claim issues, would have assigned a value of “zero” to such contingent and unliquidated claims because it could not be known whether such retirees would ever enroll in Delta retiree medical coverage, or for what duration. However, the Committee did not want to leave such contingent contract rights completely uncompensated and, as a result, negotiated the Supplemental Term Sheet which originally assigned a value to such claims of \$2,100 each in settlement.

27. Upon receipt of the objections, 200 objectors under age 60 complained that because the premium rates for coverage would drop from 100% (for under age 60) to 51% (an increase from 28% pre 1114 Settlement) at age 60, the Supplemental Term Sheet had seriously undervalued the contingent re-enrollment rights of those under age 60. Further, such objectors pointed out that those under age 60 had lost the right to participate in the monthly subsidies for coverage commencing at age 65, and that such loss of rights further compounded the contingent damages inflicted upon this group by the 1114 Settlement. Delta, the Unsecured Creditors Committee, and the Retired Pilots Committee considered the merits of these objections. Delta determined that historically there was a re-enrollment rate of about 20% of under 60 retirees upon reaching age 60. In view of this, Delta and the Retired Pilots Committee agreed to the Amendment on February 19, 2007, providing an increased “fund” of \$18.8 million in claims to those Opt Outs under 60 as of January 1, 2007, with claims to be assigned pro rata based on calculation of the full 1114 claims in this group. The pro rata share is expected to exceed 50% of the full Section 1114 claim. This is a very reasonable settlement of contingent and unliquidated

claims. In the event such objectors continue to object to such proposed settlement of their claims, the Committee requests that this Court estimate such claims in accordance with the Amendment under 11 U.S.C. §502(c)(1), and overrule the objections.

28. As to the objections by Opt Outs which are age 60 and over, such contingent claims are still proposed to be settled at \$2,100. Unlike the Opt Outs under age 60, there is little expectation by Delta that such retirees will return to Delta coverage, as the most significant discount in premium expense has already occurred for such retirees upon reaching age 60. Further, unlike the group under age 60, the group age 60 and over, if they enroll in coverage after reaching age 65, will receive a monthly subsidy under the 1114 Settlement. As a result, both Delta and the Retired Pilot Committee, after significant deliberation, determined that settlement of the contingent and unliquidated claims for those age 60 and over as of January 1, 2007 would not be increased from the \$2,100 each, as agreed in the Supplemental Term Sheet.

29. The Committee believes this settlement amount to be fair and reasonable given that all in this group are not currently, and may never actually pay increased medical costs, as they are not enrolled in Delta Retiree coverage. They will continue to have their annual enrollment rights; the settlement merely sets the settled claim amount to be paid for the contingent and unliquidated claim. The Committee requests that the remaining 73 objections in this group be overruled.

### C.

#### **CONCLUSION**

30. The Committee and Delta have reached a settlement which establishes a reasonable methodology for calculating claims of retired pilots who are actually damaged. No objector has proposed a workable alternative methodology – indeed, other offered proposals do

nothing more than seek to allocate Section 1114 claims evenly, without regard to individual damage calculations considering actual damage. In addition, the Committee and Delta have reached an agreement which takes into account the possible damage which *contingent* claimants might suffer, and which awards contingent claimants amounts consistent with their likelihood of ever re-enrolling. In the time since the agreement was first struck, the Committee has seen hundreds of additional retirees receive full claims, and the total amount of the settlement increase by about 20% (from approximately \$410 million to approximately \$490 million). This is a settlement that has expanded and strained to fairly include every retired pilot. In the absence of an objection by a non-retiree creditor of Delta, the settlement certainly appears to be a reasonable exercise of Delta's business judgment.

31. If the Supplemental Term Sheet and Amendment, as agreements between the Retired Pilots Committee and Delta regarding the method of claim calculation, is not sufficient for the Court to overrule any and all unresolved objections, then this Court has all the power necessary to estimate the Opt Out claims under 11 U.S.C. §502(c)(1) consistent with the agreements proposed.

**WHEREFORE**, the Retired Pilots Committee respectfully requests that this Court grant Delta's Motion for Approval of the Supplemental Term Sheet, now with the Amendment to the Supplemental Term Sheet, reached between Delta and the Retired Pilots Committee, and order that all contingent claims of those covered by the Supplemental Term Sheet are estimated for purposes of allowance in accordance therewith.

Dated: February 20, 2007

By: /s/ Mark G. Ledwin  
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Counsel for the Official Section 1114  
Committee of Retired Pilots

TO: ALL PARTIES ON THE  
ATTACHED CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

Mark G. Ledwin, an attorney duly admitted to practice before this Court, hereby certifies that on the 20<sup>th</sup> day of February 2007, I caused true and correct copies of the foregoing Reply to be served on all interested parties via the Court's ECF system and by electronic mail upon each of the persons included on the Non-ECF Service List established for this case.

Dated: February 20, 2007.

*/s/ Mark G. Ledwin*  
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Mark G. Ledwin (ML-6873)