

Objection Deadline: May 18, 2006 at 4:00 p.m. (prevailing Eastern Time)
Hearing Date: May 31, 2006 at 2:00 p.m. (prevailing Eastern Time)

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

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In re: :
DELTA AIR LINES, INC., et al., : **Chapter 11 Case No.**
: **05-17923 (ASH)**
: **(Jointly Administered)**
Debtors. :
: :
----- x

**DEBTORS' MOTION PURSUANT TO SECTION 363
OF THE BANKRUPTCY CODE FOR AUTHORITY TO ENTER
INTO AMENDMENTS TO PILOT WORKING AGREEMENT
WITH AIR LINE PILOTS ASSOCIATION, INTERNATIONAL**

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 represent:

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.

Background and Jurisdiction

1. On September 14, 2005, 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.

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.

Relief Requested

3. Delta and the Air Line Pilots Association, International (“**ALPA**”) are parties to a collective bargaining agreement, signed June 21, 2001 and subsequently amended (the “**PWA**”), that sets forth the rates of pay, work rules and working conditions for Delta’s pilots. By this motion (the “**Motion**”), the Debtors seek authorization, pursuant to section 363 of the Bankruptcy Code, to enter into certain modifications to the PWA, as embodied in Letter of Agreement #51 between Delta and ALPA, attached hereto as Exhibit A (together with all attachments thereto, “**LOA #51**”). This Motion is subject to pilot ratification of LOA #51 and will be withdrawn if LOA #51 is not ratified by the pilots.²

4. ALPA has consented to and fully supports the relief sought in this Motion, subject to pilot ratification.

² The results of the ratification vote are expected on the morning of May 31, 2006.

History of Negotiations

5. In November 2004, as part of a broad out-of-court restructuring that all involved hoped would enable Delta to avoid the need to seek chapter 11 protection, Delta and ALPA amended the PWA by entering into Letter of Agreement #46 (“**LOA #46**”). Under LOA #46, Delta’s pilots agreed to various concessions valued at approximately \$1 billion per year for five years. Among other things, LOA #46 included a 32.5% pay cut for Delta’s pilots. The 2004 restructuring included labor cost savings from other Delta employees, including management, as well as vendor concessions, exchange offers and substantial new financing. Many of these transactions were expressly conditioned on Delta achieving \$1 billion of annual pilot cost reductions.

6. In the fall of 2005, having been constrained to file for chapter 11 protection despite its 2004 restructuring and a variety of other cost and revenue initiatives, Delta approached all of its major stakeholders for further concessions. When initial negotiations with ALPA failed to produce an agreement, Delta filed with this Court, on November 1, 2005, a motion pursuant to section 1113 of the Bankruptcy Code to reject the PWA. Hearings on Delta’s motion commenced on November 16, 2005 and continued on various dates thereafter.

7. Discussions between Delta and ALPA continued as the hearings progressed, and on December 12, 2005, Delta and ALPA reached a tentative interim agreement that was formalized as Letter of Agreement #50 to the PWA (“**LOA #50**”) and that was ratified by the ALPA Delta Master Executive Council (“**MEC**”) and the Delta pilots. LOA #50, *inter alia*, (i) provided for substantial immediate, interim reductions in pilot pay rates and other pilot costs, effective as of December 15, 2005, (ii) afforded Delta and ALPA additional time to attempt to reach a comprehensive agreement on long-

term changes to the PWA and (iii) established a process pursuant to which Delta's pending section 1113 motion would be decided by a panel of three third-party neutrals experienced in airline labor disputes (the "**Panel**") in the event that Delta and ALPA were not able to reach a comprehensive agreement within the agreed upon time.

8. Delta and ALPA also agreed in LOA #50 that, when negotiating toward a comprehensive agreement, (i) they would seek to reach agreement regarding both equity and profit sharing to be provided to the pilots upon Delta's emergence from chapter 11 and (ii) as part of those negotiations, Delta would "acknowledge," not only the further concessions being discussed at the time, but also the \$1 billion annual cost reductions that ALPA had provided Delta in 2004 under LOA #46. LOA #50—which expressly required Delta to acknowledge the billions of dollars of LOA #46 concessions—was signed off on by, among others, the Official Committee of Unsecured Creditors, and was approved by the Court on December 13, 2005. No party appealed the order approving LOA #50, and the order became final on December 23, 2005.

9. Delta and ALPA were not able to reach a comprehensive agreement by the deadline specified in LOA #50. Accordingly, the parties submitted the section 1113 dispute to the Panel. The dispute was presented to the Panel from March 13 through March 23, 2006. After the Panel proceeding ended, senior representatives of, and experienced counsel and advisors to, Delta and ALPA engaged in increasingly intense negotiations aimed at reaching a comprehensive agreement. These negotiations, which were exceedingly hard-fought and difficult, involved major compromises by both Delta and ALPA in many key areas. On April 14, 2006, shortly before the Panel was expected

to issue a decision, the negotiators reached a tentative agreement. It is embodied in LOA #51.

10. On April 21, 2006, the MEC approved LOA #51 and subsequently agreed to submit it to the full pilot membership for ratification. It is expected that the ratification vote will conclude on the morning of May 31, 2006. Subject to pilot ratification and this Court's approval, LOA #51 will take effect on June 1, 2006.

Terms of LOA #51

11. LOA #51 provides benefits to Delta that Delta has determined are essential to its reorganization. Among other things, it provides for reductions in pay and benefits and modifications to certain work rules that Delta has estimated will result in average annual cost savings of approximately \$280 million per year through December 31, 2009. In addition, LOA #51 contains provisions that provide Delta with important flexibility as to, among other things, its fleet structure and restructuring process. These provisions directly and materially enhance Delta's revenue generating capacity. LOA #51 also obviates the risk of a crippling and possibly fatal pilot strike. LOA #51 is therefore an exceedingly important milestone in Delta's efforts to emerge from bankruptcy as a viable company. The following briefly summarizes some of the major terms of LOA #51.³

12. *Compensation.* Among other compensation changes, ALPA has agreed that the 14% reduction in wages that was part of LOA #50 will remain in effect until January 1, 2007. This cut is in addition to the 32.5% wage reduction agreed to in LOA

³ This section of the Motion provides only a summary overview of LOA #51. LOA #51 itself, and not this Motion, governs the terms and conditions agreed to by Delta and ALPA. In the event of any inconsistency between this Motion and LOA #51, LOA #51 shall govern and this Motion shall not be referenced to resolve interpretive disputes. Failure to describe in this Motion any provision of LOA #51 shall not affect its enforceability.

#46. On January 1, 2007, Delta's pilot wage rates will increase by 1.5%. Then, on each of January 1, 2008 and January 1, 2009, Delta's pilots will receive a wage increase equal to the greater of 1.5% and a percentage based on a formula tied to Delta's operating income margin for the previous year.⁴ Finally, on December 31, 2009, Delta's pilots will receive a further 1% wage increase.

13. *Scope.* ALPA has agreed to permit Delta's regional airline partners to operate, under the Delta Connection brand, fifteen 76-seat jets in 2007 and thirty 76-seat jets beginning in 2008. In addition, in 2007 and thereafter, the Delta Connection program would be permitted to add three additional 76-seat jets for each aircraft added to Delta's mainline fleet. However, the 76-seat jets would have to be converted to 70-seat jets if any Delta pilot on the seniority list as of June 1, 2006 is placed on furlough after April 13, 2006. In addition, ALPA has agreed that the Delta Connection program can operate up to a total of 200 70-seat and 76-seat jets in the aggregate, *i.e.*, inclusive of the number of 76-seat jets permitted by the scope revisions.

14. *Pension.* ALPA has agreed that it will not oppose any voluntary, involuntary or distress termination of the Delta Pilots Retirement Plan or the Western Air Lines Pilots Defined Benefit Plan (together, the "**Qualified Plans**"), and that as of the effective date of the termination of the Delta Pilots Retirement Plan, ALPA would not oppose any termination of the Delta Pilots Bridge Plan or the Delta Pilots Supplemental Annuity Plan (together, the "**Non-Qualified Plans**"). ALPA has also agreed that no termination of any Qualified Plan or Non-Qualified Plan would require any waiver, relief,

⁴ The 2008 wage increase, to the extent based on 2007 financial performance, may also be reduced on January 1, 2009 based on 2008 performance, but not below the rates produced by compounding the 1.5% increases of January 1, 2007, 2008 and 2009.

consent, action or approval under the PWA, any section of the Bankruptcy Code or any other law (except, with respect to the Qualified Plans, any necessary waiver, relief, consent, action or approval under the Employee Retirement Income Security Act of 1974).⁵ The Money Purchase Pension Plan, which is a defined contribution benefit plan, would be terminated, and its assets distributed to participants as soon as practicable, in accordance with Attachment 26-1 to LOA #51. Finally, the Delta Pilots Retirement Plan, along with the Non-Qualified Plans, will be hard frozen 45 days after notice is given to participants.

15. *Other Benefits.* ALPA has agreed that, beginning January 1, 2008, Delta will replace existing survivor benefits and basic life insurance with term life insurance in an amount of at least \$500,000 (which amount will decrease post-retirement). Also, certain sick leave and other eligible benefits would be permitted to be paid out of the Delta Pilots Disability and Survivorship Trust, up to a specified dollar limit. Disability benefits have also been significantly modified. Finally, there would be increased medical cost sharing and other restrictions for future pilot retirees.

16. *Other Compensation Provisions.* In substitution for foregone pay, benefits and work rules, LOA #51 provides contingent compensation in addition to rate adjustments tied to operating income margins as described in paragraph 12 above. Pilots (along with other employees) would benefit from a profit sharing plan that would provide an aggregate payout to eligible Delta employees of 15% of Delta's annual pre-tax income

⁵ Each of the Non-Qualified Plans expressly provides that the plan may be terminated at any time by Delta's board of directors or its delegate(s). The Debtors do not believe that court approval is required to terminate the Non-Qualified Plans. Nonetheless, out of an abundance of caution, the proposed order provides the Debtors with the authority to terminate the Non-Qualified Plans (after the effective date of the termination of the Delta Pilots Retirement Plan), in their sole discretion, without further court approval.

(as defined in LOA #51) up to \$1.5 billion and 20% of annual pre-tax income over \$1.5 billion. Upon the effective date of LOA #51, ALPA would have an allowed general non-priority unsecured claim in the amount of \$2.1 billion that would not be subject to reconsideration under section 502 of the Bankruptcy Code or otherwise (the “**ALPA Claim**”).⁶ In addition, if the Delta Pilots Retirement Plan is terminated, Delta will, within 120 days following exit from bankruptcy, issue \$650 million in senior unsecured notes with a term of up to 15 years and at an interest rate calculated to ensure that the notes trade at par on the day they are issued (the “**ALPA Notes**”).⁷ Importantly, the ALPA Notes have limited covenants, and Delta can prepay them at any time in part or in whole (even prior to issuance) without penalty.

17. Delta has agreed that it will not seek relief under section 1113 of the Bankruptcy Code with respect to the PWA in the present chapter 11 proceedings except in certain narrow circumstances. Delta also agreed to indemnify ALPA, its officers, agents, employees, counsel and representatives from certain claims and costs that may arise in connection with LOA #51. Delta, in paragraph 9 of Attachment 28-1 to LOA #51, also agreed that it would not propose or support any plan of reorganization that does not address certain key aspects of LOA #51, including providing for (i) the ALPA Claim, (ii) the ALPA Notes (if required to be issued), (iii) the assumption of the PWA (but not including any pension plans that may be terminated), as modified by LOA #51 and (iv) exculpation under any plan of reorganization as least as favorable as any exculpation

⁶ Delta has also agreed to credit ALPA with an amount to be negotiated, up to \$8 million, which will be a combination of cash and credit, for certain fees and expenses incurred by ALPA’s advisors, and to negotiate in respect of certain other fees.

⁷ Subject to certain restrictions set forth in LOA #51, the MEC has the right to determine the manner of allocation of the ALPA Claim and the ALPA Notes among Delta’s pilots.

provided to Delta representatives. ALPA, in turn, has agreed that the terms of LOA #51 are in complete satisfaction of any and all claims and rights of ALPA in connection with all of the concessions in LOA #51, including without limitation, the salary reductions, benefit and work rule changes and the termination of the Delta Pilots Retirement Plan, the Western Air Lines Pilots Defined Benefit Plan, the Delta Pilots Bridge Plan or the Delta Pilots Supplemental Annuity Plan.

18. In requesting this Court's approval under section 363 of Delta's entry into LOA #51, the Debtors are not seeking to assume the PWA at this time. Pursuant to LOA #51, however, Delta has agreed to assume the PWA (but not including any pension plans that may be terminated), as modified by LOA #51, as part of any plan of reorganization filed with this Court. Moreover, the parties have agreed that neither the entry of an order approving this Motion nor Delta's entry into LOA #51 shall alter the order or priority of any claim under the Bankruptcy Code or convert any pre-petition or unsecured claim into a priority claim, secured claim, post-petition claim or administrative claim.

19. The Debtors request that the Court retain jurisdiction over all matters arising from or relating to the implementation of LOA #51.⁸

Applicable Authority

20. Section 363(b)(1) of the Bankruptcy Code authorizes a debtor, after notice and a hearing, to "use" property other than in the ordinary course of business. Courts in the Second Circuit and elsewhere have required that decisions to use property outside of the ordinary course of business be based upon the sound business judgment of the debtor. As Judge Lifland has written, "[w]here the debtor articulates a reasonable basis for its

⁸ Such jurisdiction, other than as to Attachment 28-1 to LOA #51, the ALPA Claim and the ALPA Notes, does not by itself limit a party's grievance and arbitration rights under the PWA.

business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986); *see also In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (a judge determining a section 363(b) application must find from the evidence presented a good business reason to grant such application); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003) (“courts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence” (citing *Official Comm. of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992))); *Official Comm. of Unsecured Creditors of Enron Corp. v. Enron Corp. (In re Enron Corp.)*, 335 B.R. 22, 27–28 (S.D.N.Y. 2005) (standard under section 363(b) is evidence of a good business reason); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986) (holding that a bankruptcy court can authorize an action under section 363(b)(1) “when a sound business purpose dictates such action”); *Official Comm. of Unsecured Creditors v. Raytech Corp. (In re Raytech Corp.)*, 190 B.R. 149, 151 (Bankr. D. Conn. 1995); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting that standard for determining a section 363(b) motion is “good business judgment”); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (stating that judicial approval of a section 363 motion requires that a good business reason exist for the requested relief).

**Entry Into LOA #51 Is an Exercise of Sound
Business Judgment and Should be Approved**

21. Entry into LOA #51 is clearly in the best interests of the Debtors, their estates, their creditors and other parties in interest. Nor can there be any real question that this exceedingly complex, hard-fought deal on amendments to a multi-billion dollar contract with a critical and valued employee group meets the requirements of section 363 of the Bankruptcy Code; it is supported by a “good business reason” and is not tainted by “bad faith, self-interest, or gross negligence.” As soon as it becomes effective and for the life of the agreement, LOA #51 will save the Debtors hundreds of millions of dollars a year, which is vital to the Debtors’ transformation and long-term survival. It also contains important amendments to the PWA’s scope provisions and other amendments that give Delta important flexibility in the restructuring process and will substantially enhance revenues. At the same time, the Agreement provides what the Debtors consider fair and reasonable terms of employment for the pilots, including an opportunity to share in Delta’s future success in exchange for their substantial concessions. LOA #51, the type of compromise strongly favored in chapter 11, strikes a balance between the Debtors’ need for significant, long-term pilot cost savings in order to successfully restructure, and fairness to the pilots, who have made a very substantial additional investment in Delta as well as painful sacrifices in agreeing to these modifications.

22. Moreover, the approval of LOA #51 by this Court will enable Delta and all of its stakeholders to avoid the risk of a crippling, and possibly fatal, pilot strike. In the weeks before Delta and ALPA reached agreement on LOA #51, ALPA’s membership voted overwhelmingly to authorize a strike if Delta succeeded in rejecting the PWA through the section 1113 Panel process. The Chairman of the MEC made it clear in

numerous media interviews and in testimony under oath before the Panel that if Delta rejected the PWA, the pilots *would* strike. Delta believes that the financial impact of a pilot strike would have been devastating. While Delta and ALPA strongly disagree over whether a pilot strike under those circumstances would have been lawful, entry by Delta into LOA #51 avoids this threat to Delta's very survival.

23. Another immediate and substantial benefit to Delta of LOA #51 was ending the escalating and very costly uncertainty about a pilot strike in the mind of the traveling public. Even the mere threat of a pilot strike was costing Delta millions of dollars per week in lost sales, as concerned passengers and shippers booked flights on other airlines. This run rate of lost sales might well have climbed yet higher as the Panel process continued with no announced agreement.

24. The \$2.1 billion general unsecured ALPA Claim, profit sharing, contingent rate adjustment and \$650 million in ALPA Notes are negotiated conditions of continuing employment, not merely the settlement of a pre-petition contract claim, as they would be with a counterparty to a rejected contract. These terms substitute contingent compensation, equity and unsecured debt for a portion of the very material cash compensation, benefits and work rules that the pilots have given up. They are integral terms of employment compensation for the thousands of pilots on the seniority list that were negotiated for the pilot group under LOA #51. Such employment terms are subjects that the debtor and the union as the pilots' representative are plainly entitled to negotiate and indeed have traditionally negotiated for over 65 years.

25. These terms, furthermore, are fair and justified by the level of concessions and other restructuring benefits granted by Delta's pilots. This is particularly so when

one acknowledges, among other things, (a) the hundreds of millions of dollars in annual cash savings provided by LOA #51, (b) the many other provisions of LOA #51 that substantially enhance Delta's revenue generating, operational and corporate flexibility and (c) the myriad additional benefits that Delta receives by having reached consensual agreement with ALPA on these critical concessions, including improvements in employee morale, ending very costly "book aways" prompted by the strike threat and, of course, avoiding the risk of an actual strike. LOA #51 also settles a sharply-contested dispute over the effect of the Bankruptcy Protection Letter in LOA #46, which ALPA contended severely constrained Delta's ability to seek section 1113 relief. While Delta strongly disagrees, and believes it would have prevailed on this issue, fully resolving the issue is yet another benefit of LOA #51. Moreover, should the Qualified Pension Plans and Non-Qualified Pension Plans terminate, in addition to all of the pilots' other concessions, the pilots would also lose hundreds of millions of dollars of pension benefits. All of these concessions are, of course, in addition to the billions of dollars of concessions given by the pilots in 2004, concessions that Delta expressly agreed – in the court-approved and creditors' committee-supported LOA #50 – to "acknowledge" when negotiating the consideration to be provided to ALPA under LOA # 51.

26. In light of the foregoing, the Debtors respectfully request that the Court authorize Delta's entry into LOA #51 under section 363(b)(1) of the Bankruptcy Code as a sound exercise of the Debtors' business judgment. While neither Delta nor ALPA achieved all of their goals, LOA #51 represents a judicious exercise of business judgment well within the standard of section 363 of the Bankruptcy Code. Moreover, as this Court has noted, "[c]onsensual resolution of litigation has been favored in the law from time

immemorial, whether by the parties themselves, or through mediation or other techniques of dispute resolution.” *In re Hass*, 273 B.R. 45, 50 (Bankr. S.D.N.Y. 2002) (Hardin, J.) (approving settlement of claims under section 727(a) in chapter 7 liquidation case); *see also Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (“[c]ompromises are a normal part of the process of reorganization. In administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims as to which there are substantial and reasonable doubts.”).

27. Nor can there be any question that it is the Debtors—and no other party—whose judgment appropriately guided the resolution of these complex and serious pilot issues on behalf of the Debtors’ estates, and that the Debtors’ judgment is entitled to very substantial deference. In addition to the black letter law under section 363 of the Bankruptcy Code that governs this Motion, in *Smart World Techs., LLC v. Juno Online Services, Inc. (In re Smart World Techs., LLC)*, 423 F.3d 166 (2d Cir. 2005), the Second Circuit resoundingly reaffirmed the deference and primacy given to the decisions and compromises reached by debtors in possession, as opposed to all other parties in a chapter 11 case. In that strongly-worded decision, the Second Circuit reversed a ruling that had allowed a creditors’ committee to settle a cause of action over the debtor’s objection. The court explained at some length that the Bankruptcy Code places only the debtor—and no other party—in the role of steward and fiduciary for the entire enterprise, unlike a “creditors’ committee [which] owes a fiduciary duty [only] to the class it represents, but not to the debtor, other classes of creditors, or the estate.” *Id.* at 175 n.12.

The court explained at some length that the Bankruptcy Code repeatedly and emphatically vests decisions such as the one at bar in the debtor, and no other party:

[There are] numerous provisions in the Bankruptcy Code establishing the debtor’s authority to manage the estate and its legal claims. For instance . . . 11 U.S.C. § 362(a)(3) . . . allows the debtor-in-possession to take control of the estate’s property in order to “assure an equitable distribution of the property among creditors,” and it evinces Congress’s desire to leave administration of the chapter 11 estate solely in the hands of the debtor-in-possession.

....

In making the debtor-in-possession accountable for the estate’s legal claims, Congress vested the debtor with the responsibility to determine how best to handle those claims.

Similarly, the debtor’s duty to wisely manage the estate’s legal claims is implicit in the debtor’s role as the estate’s only fiduciary. As fiduciary, the debtor bears the burden of “maximiz[ing] the value of the estate,” including the value of any legal claims. Courts have thus concluded that in some instances, fiduciary duty requires the chapter 11 debtor to pursue a cause of action, but in other instances may require settlement.

In short, Rule 9019, which by its terms permits only the debtor-in-possession to move for settlement, is in complete harmony with the provisions of the Bankruptcy Code delineating the chapter 11 debtor’s role. It is the debtor-in-possession who controls the estate’s property, including its legal claims, and it is the debtor-in-possession who has the legal obligation to pursue claims or to settle them, based upon the best interests of the estate.

Id. at 174–75 (internal citations and footnotes omitted).

Section 1114 Is Not Implicated by LOA #51

28. The provisions contained in LOA #51 modifying Section 25 of the PWA (Medical Benefits) and certain provisions modifying Section 26⁹ of the PWA (Retirement and Disability Benefits) on their face address benefits that, as to retirees, are the types of health, life insurance and disability benefits within the ambit of section 1114 of the

⁹ The relevant provisions of section 26 are the clauses (c)–(g) that appear on pages 20–21 of LOA #51 (together with all of the provisions of section 25, collectively, the “**1114 Provisions**”).

Bankruptcy Code. As to pilots who retired on or before the June 1, 2006 effective date of LOA #51, Delta is of course aware of its obligations under section 1114, and therefore expressly agreed with ALPA that none of the 1114 Provisions shall become effective as to pilots who retired on or before June 1, 2006 without either an order of the Court under section 1114 of the Bankruptcy Code or the agreement of the Official Section 1114 Committee of Pilot Retirees. To avoid needless confusion, anxiety and legal expense, the Debtors have already communicated this to counsel for the Official Section 1114 Committee of Pilot Retirees.

Notice

29. 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 notice of this Motion on (i) the Core Parties (as defined in the Case Management Order), (ii) ALPA, (iii) the Official Section 1114 Committee of Pilot Retirees, (iv) DP3, Inc., d/b/a Delta Pilots' Preservation Organization, (v) Jim Dean Johnson, Capt. (retired) and Verne Anton Eling, Capt. (retired) and (vi) the Non-ECF Service Parties (as defined in the Case Management Order). 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.

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

WHEREFORE, the Debtors respectfully request the Court grant the Debtors the relief requested herein and such other and further relief as is just and proper.

Dated: New York, New York
May 9, 2006

By: /s/ Marshall S. Huebner
Marshall S. Huebner (MH 7800)

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Debtors in Possession

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

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In re: :
: **Chapter 11 Case No.**
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DELTA AIR LINES, INC., et al., : **05-17923 (ASH)**
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: **(Jointly Administered)**
Debtors. :
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**ORDER AUTHORIZING DEBTORS TO ENTER INTO
AMENDMENTS TO PILOT WORKING AGREEMENT
WITH AIR LINE PILOTS ASSOCIATION, INTERNATIONAL**

Upon the motion dated May 9, 2006 (the “**Motion**”)¹ of Delta Air Lines, Inc. (“**Delta**”) and those of its subsidiaries that are debtors and debtors in possession (collectively, the “**Debtors**”),² pursuant to section 363(b) of the Bankruptcy Code, for an order authorizing Delta’s entry into LOA #51, as described more fully in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the requested relief being

¹ Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Motion.

² 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.

a core proceeding that the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b)(2); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors, their estates, their creditors and all other parties in interest in these cases; and entering into LOA #51 representing a prudent exercise of the Debtors' business judgment; and the Debtors having articulated good, sufficient and sound business justifications and compelling circumstances for entering into LOA #51; and the Court having reviewed the Motion and having held a hearing with appearances of parties in interest noted in the transcript thereof; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED that the relief requested in the Motion is hereby granted; and it is further

ORDERED that the Debtors, in their sole discretion, are authorized to enter into LOA #51 and execute, deliver, implement and fully perform any and all obligations under LOA #51 and all related instruments, documents and papers and to take any and all actions reasonably necessary or appropriate in connection thereto; and it is further

ORDERED that the failure to specifically describe or include any particular feature of LOA #51 in this Order shall not diminish or impair the effectiveness of such feature, it being the intent of this Court that LOA #51 be approved in its entirety; and it is further

ORDERED that nothing in LOA #51 or in this Order shall constitute, or be deemed to constitute, an assumption under section 365 or any other section of the Bankruptcy Code of the PWA, LOA #51 or any other agreement. Nothing in LOA #51 or this Order shall alter the order or priority of any claim under the Bankruptcy Code or shall convert any pre-petition or unsecured claim into a priority claim, secured claim, post-petition claim or administrative expense claim. Except as expressly provided for in LOA #51 or in this Order, ALPA and the Debtors shall retain all rights available to them under chapter 11 of the Bankruptcy Code or otherwise; and it is further

ORDERED that, other than the obligation to comply with LOA #51, neither ALPA nor the Debtors shall have any liability to any creditor or party in interest as a result of their entry into and performance under LOA #51 or the PWA as modified by LOA #51; and it is further

ORDERED that the voluntary, involuntary or distress termination of any of the Qualified Plans or the Non-Qualified Plans shall not require any waiver, relief, consent, action or approval under the PWA, under any section of the Bankruptcy Code, or under any other law (except, with respect to the Qualified Plans, any necessary waiver, relief, consent, action or approval under the Employee Retirement Income Security Act of 1974); and it is further

ORDERED that ALPA shall not at any time oppose or object to any voluntary, involuntary or distress termination of any Qualified Plan, and that as of the effective date of the termination of the Delta Pilots Retirement Plan, (i) ALPA shall not oppose or object to any termination of any Non-Qualified Plan and (ii) the Debtors shall have no

further obligation to maintain, and may terminate, any Non-Qualified Plan in their sole discretion without any further order of the Court; and it is further

ORDERED that ALPA shall be entitled to an allowed general non-priority unsecured claim in those chapter 11 proceedings in the amount of \$2.1 billion that is not subject to reconsideration under section 502 of the Bankruptcy Code or otherwise; and it is further

ORDERED that, if the Delta Pilots Retirement Plan is terminated, the Debtors shall issue the ALPA Notes in accordance with, and to the extent required by, the terms of LOA #51; and it is further

ORDERED that Delta is authorized to indemnify and hold harmless ALPA, its officers, agents, employees, counsel and representatives in the manner and to the extent described in paragraph 3 of the Bankruptcy Protection Covenant, Attachment 28-1 to LOA #51; and it is further

ORDERED that the Debtors are authorized to pay fees and expenses of ALPA as set forth in LOA #51; and it is further

ORDERED that the consideration agreed to in LOA #51 is in complete satisfaction of any and all claims and rights of ALPA in connection with all of the concessions in LOA #51, including without limitation, the salary reductions, benefit and work rule changes and the termination of the Delta Pilots Retirement Plan, the Western Air Lines Pilots Defined Benefit Plan, the Delta Pilots Bridge Plan or the Delta Pilots Supplemental Annuity Plan; and it is further

ORDERED that none of the 1114 Provisions shall become effective as to pilots retired on or before June 1, 2006 without an order of the Court under section 1114 of the

Bankruptcy Code or the agreement of the Official Section 1114 Committee of Pilot Retirees; and it is further

ORDERED that this Court shall retain jurisdiction over all matters arising from or related to this Order or the implementation of LOA #51 (understanding that such jurisdiction, other than as to Attachment 28-1 to LOA #51, the ALPA Claim and the ALPA Notes, does not by itself limit a party's grievance and arbitration rights under the PWA); and it is further

ORDERED that the effect of this Order shall survive the conversion, dismissal and/or closing of these chapter 11 cases, appointment of a trustee herein, confirmation of a plan of reorganization and/or the substantive consolidation of these chapter 11 cases with any other case or cases; and it is further

ORDERED that this Order shall be binding upon any chapter 11 trustee or similar entity operating with the equivalent authority of a chapter 11 trustee that may be appointed in these chapter 11 cases; and it is further

ORDERED that the notice procedures satisfy Bankruptcy Rules 2002, 6004 and 9014, and Local Rules 6004-1(a) and 9006-1 by providing the counterparties with notice and an opportunity to object and be heard at a hearing; and it is further

ORDERED that notwithstanding the possible applicability of Bankruptcy Rule 6004(g), 7062 or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: _____, 2006
White Plains, New York

UNITED STATES BANKRUPTCY JUDGE