

Hearing Date: January 5, 2006 @ 2:30 p.m. EST
Objection Deadline: December 29, 2005 @ 5:00 pm. EST

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

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: In re: : Chapter 11
: :
: DELTA AIR LINES, INC., et al., : Case No. 05-17923 (PCB)
: :
: Debtors. : (Jointly Administered)
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**LIMITED OBJECTION TO THE APPLICATION OF THE SECTION 1114
COMMITTEE FOR AN ORDER AUTHORIZING NUNC PRO TUNC
EMPLOYMENT AND RETENTION OF ACTUARIES**

The Official Committee of Unsecured Creditors (the “Creditors’ Committee”) of Delta Air Lines, Inc. (“Delta”) and its affiliated debtors and debtors in possession in the above captioned chapter 11 cases (collectively the “Debtors”), by and through its counsel, hereby files this Limited Objection to the Application of the Section 1114 Committee to Retain Barbara Niehus and Mitchell I. Serota as Actuaries, Nunc Pro Tunc to October 27, 2005 (the “Objection”) and respectfully states as follows:

I. BACKGROUND

A. **Background of Case.**

1. On September 14, 2005 (the “Petition Date”), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On September 28, 2005, the Office of the United States Trustee for the Southern District of New York appointed the Creditors’ Committee pursuant to section 1102 of the Bankruptcy Code.

B. **Employment Application.**

3. On October 27, 2005, this Court orally approved the appointment of an official committee under Section 1114 (the “1114 Committee”). The order appointing the 1114 Committee was entered on November 10, 2005.

4. On December 21, 2005, the 1114 Committee filed its Application to Retain Barbara Niehus and Mitchell I. Serota as Actuaries, Nunc Pro Tunc to October 27, 2005 (the “Application”).

II. ARGUMENT

5. The 1114 Committee states that it needs the services of Barbara Niehus and Mitchell I. Serota (the “Actuaries”) to assist the 1114 Committee in analyzing the Debtors’ proposed modifications to the retirees’ benefits and that the Actuaries will assist the 1114 Committee by: (i) analyzing the Delta Air Lines Family-Care Disability and Survivorship Plan Trust (the “Trust”) and documentation related thereto; (ii) analyzing the impact on the retiree

benefits of (a) a potential sale of the Debtors, either in whole or in part, and (b) the Debtors' chapter 11 plan(s) or any other chapter 11 plan(s); (iii) providing such specific advice, valuation or other analyses as the 1114 Committee may require in connection with the Debtors' chapter 11 cases; (iv) representing the 1114 Committee in negotiations with the Debtors, the Committee and third parties with respect to any of the foregoing; and (v) providing testimony in court on behalf of the 1114 Committee with respect to any of the foregoing, if necessary.

6. Since the retention of an actuary by a retiree committee appointed under Section 1114 is fairly typical in other bankruptcy cases with issues similar to those faced by Delta, the Creditors' Committee does not object to the 1114 Committee's retention of an actuarial firm. However, the Creditors' Committee does object to the 1114 Committee's retention of two actuarial firms, as it appears to be unnecessary and is likely to lead to duplication of efforts. Indeed, notwithstanding the 1114 Committee's one line assurance in paragraph eleven of the Application that there will be no duplication of efforts, there seems to be an inherent overlap in duties as described in the Application.

7. Due to our concerns regarding the necessity of retaining two actuarial firms as well as the potential for unnecessary duplication of work, we requested further information from the 1114 Committee. In response to our concerns, the 1114 Committee has informed the Creditors' Committee that: (i) the Actuaries are solo practitioners who share office space and often collaborate on projects and really function more like a single firm than two separate firms; and (ii) these two Actuaries will be the only two timekeepers in the case.

8. While the Creditors' Committee believes that this response is helpful, the Creditors' Committee subsequently requested that the 1114 Committee provide a detailed list of

more carefully/narrowly described tasks that each of these Actuaries will perform in these cases. As of the time of this filing, the 1114 Committee and the Creditors' Committee have been having discussions to try to reach an agreement on the scope of tasks that will be performed by these Actuaries. Thus far, however, we have been unable to reach an agreement.

9. The Creditors' Committee's position that two firms performing essentially the same services is unacceptable is supported by ample law. See, e.g., H.R. Rep. No. 595, 95th Cong, 1st Sess. 402 (1977); S. Rep. No. 989, 95th Cong, 2d Sess. 114 (1978)(noting that although the Code speaks in terms of "one or more" attorneys and others, (citation omitted), normally the services of one attorney for a committee should suffice, and cause must be shown to depart from this standard); In re Cumberland Farms, Inc., 142 B.R. 593 (Bankr. D. Mass. 1992)(real estate lenders' committee's application to employ counsel was denied where proposed services of such counsel would be duplicative of those to be performed by debtor's counsel or unsecured creditors' committee's counsel, and any benefit would be dwarfed by the huge legal bill).

WHEREFORE, the Creditors' Committee requests that the Court: (a) deny the retention of both Actuaries as not in the best interest of the estates and limit the 1114 Committee's retention of an actuary to a single firm; and (b) grant the Creditors' Committee such other and further relief as justice requires.

Dated: December 29, 2005
New York, New York

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

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