

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
Four Times Square  
New York, New York 10036  
Jay M. Goffman

- and -

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
155 North Wacker Drive  
Chicago, Illinois 60606  
John Wm. Butler, Jr.  
John K. Lyons  
Felicia Gerber Perlman

Proposed Attorneys for the Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	: Chapter 11
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AMR CORPORATION, <u>et al.</u> ,	: Case No. 11-15463 (SHL)
	:
	: (Jointly Administered)
Debtors.	:
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LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO MOTIONS OF (I) AMR RETIREES PENSION PROTECTION CORPORATION AND (II) AD HOC COMMITTEE OF PASSENGER SERVICE AGENTS EACH REQUESTING THE APPOINTMENT OF A COMMITTEE OF RETIREES PURSUANT TO 11 U.S.C. § 1114(D)

(UCC'S LIMITED OBJECTION TO APPOINTMENT OF RETIREES' COMMITTEE)

The Official Committee of Unsecured Creditors (the "Committee") hereby submits this limited objection (the "Objection") to (i) AMR Retirees Pension Protection Corporation ("ARPPC") Motion Pursuant to 11 U.S.C. §1114(d) for Appointment of a Committee of Retired Employees (Docket No. 869) ("ARPPC Motion") and (ii) Ad Hoc Committee Of Passenger Service Agents ("Ad Hoc PSA") Motion for Appointment of a Retirees Committee Pursuant to 11 U.S.C. §1114(d) (Docket No. 1132) (together, the "Motions"). In support of this Objection, the Committee respectfully represents as follows:

Preliminary Statement

1. On January 27, 2012 and February 14, 2012 respectively, ARPPC and Ad Hoc PSA (together, the "Movants") each filed Motions requesting the appointment of a retiree committee pursuant to section 1114(d) of the Bankruptcy Code (a "Section 1114 Committee"). ARPPC asserts that the Debtors' statements regarding "labor-related costs" and the lower cost structure of the Debtors' reorganized competitors demonstrate the Debtors' intention to modify or terminate retiree benefits. (ARPPC Motion ¶ 12.) Ad Hoc PSA argues that the appointment of a Section 1114 Committee is appropriate at this time because the Debtors have stated that they are seeking to reduce total labor costs by 20 percent in each working group and have submitted modification proposals to unions which include modifications to retiree medical and insurance benefits. (PSA Motion ¶ 11-12.) The Motions also list members of each group that have expressed an interest in serving on any retiree committee appointed. Consistent with the above assertions, the Debtors have publicly stated that they are seeking to reduce total costs by 20 percent in each working group and will no longer provide employer-paid retiree benefits to

active employees when they retire.<sup>1</sup> Notwithstanding this, the Debtors have informed the Committee that they intend to file an objection to the Motions, requesting that the Motions be denied without prejudice and asserting it is premature for the Court to appoint a retiree committee to represent either non-union or union retirees as the Debtors had not yet initiated any proceedings pursuant to section 1114 to terminate or modify retiree benefits.

2. In light of the foregoing and the Movants' representations regarding the Debtors' intentions to modify retiree benefits, the Committee disagrees with the Debtors and supports the Movants' request to form a Section 1114 Committee and believes that the request is timely. In connection with the Committee's review of the Motions, the Debtors reported to the Committee that the retiree benefits at issue are not terminable at will, which suggests that 11 U.S.C. § 1114 is likely to be implicated.<sup>2</sup>

3. Should the Court grant the Movants' Motions and determine that a Section 1114 Committee is needed at this time, the Committee requests that only a single retiree committee be appointed to serve as the "authorized representative" for retirees whose section 1114 benefits may be modified. A single retiree committee, populated by a small but diverse group of representatives, including, without limitation, representatives of those unions willing to serve as the authorized representatives of retirees formerly affiliated with their union, would adequately represent both non-union and union retirees. Moreover, a single retiree committee would lessen the financial burden on the Debtors and their estates and provide for focused, efficient negotiation of any modifications to the retirees' benefits.

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<sup>1</sup> See American Airlines, Inc., <http://restructuringamr.com/our-people-retirees.asp> (last visited February 22, 2012).

<sup>2</sup> The Committee has requested the underlying plan documents, but has not yet received those documents. Accordingly, the Committee cannot independently verify whether the plans at issue are terminable at will.

4. The Committee also requests that the Court clearly define the scope of any retiree committee's authority and require the retiree committee to establish a budget subject to objection by the Debtors and the Committee. Until such time as a proposal is made by the Debtors to modify retiree benefits, the Committee proposes that any work performed by a Section 1114 Committee be subject to a \$500,000 aggregate cap. Additionally, the Committee requests the Court to direct that any Section 1114 Committee, if appointed, be comprised of non-union retirees, authorized union representatives, and retirees affiliated with unions that elect not to serve as authorized representatives. The Committee requests that the retiree committee be broadly representative and that no appointment preference be granted to the members of ARPPC, Ad Hoc PSA, or any other group representing retirees.

#### Background

5. On November 29, 2011 (the "Petition Date"), the Debtors filed with this Court voluntary petitions for relief under the Bankruptcy Code. Together with their non-Debtor affiliates, the Debtors form one of the largest global airlines based in the United States. The Debtors continue to operate their respective businesses and manage their properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

6. On December 5, 2011, the United States Trustee for the Southern District of New York (the "United States Trustee") interviewed prospective Committee members and appointed nine members to the Committee (each a "Member").<sup>3</sup> Among these members are three collective bargaining representatives who represent a large portion of the Debtors' union

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<sup>3</sup> The Committee consists of the following entities: the Allied Pilots Association, the Association of Professional Flight Attendants, Bank of New York Mellon, Boeing Capital Corporation, Hewlett Packard Enterprise Services, LLC, Manufacturers and Traders Trust Company, the Pension Benefit Guaranty Corporation, the Transportation Workers Union of America, and the Wilmington Trust Company.

employees and who are currently negotiating with the Debtors regarding proposed modifications of the collective bargaining agreements at American Airlines. The Debtors have informed American Eagle pilots that they are deferring the negotiation of modifications to collective bargaining agreements with Eagle until negotiations at American Airlines have been completed. The Committee selected its professionals to represent it in the chapter 11 cases, subject to this Court's approval of retention applications.<sup>4</sup>

#### Limited Objection

7. Prior to filing an application seeking to modify retiree benefits, section 1114(f) of the Bankruptcy Code requires the Debtors to negotiate with the "authorized representatives" of its retirees. At the request of a party in interest, this Court has the discretion to order the appointment of a retiree committee to serve as the authorized representative for retirees receiving retiree benefits not covered by a collective bargaining agreement. 11 U.S.C. § 1114(d). Such non-union retirees do not have labor organizations to serve as their authorized representative in section 1114 proceedings. Likewise, at the request of a party in interest the Court may also appoint a retiree committee to serve as the authorized representative of retirees whose labor organization has elected not to serve as their authorized representative. 11 U.S.C. §1114(c)(2).

8. While the Committee supports the Movants' Motions, as highlighted above, the Committee has certain issues concerning the mandate of the proposed Section 1114 Committee. If the Court appoints a Section 1114 Committee at this time, the Committee believes that it would be appropriate to appoint only one committee for retired employees

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<sup>4</sup> The Committee selected Skadden, Arps, Slate, Meagher and Flom LLP as its primary legal counsel; Togut, Segal & Segal LLP as co-counsel for conflicts and other matters; Moelis & Company LLC as its investment banker; and Mesirov Financial Consulting, LLC as its financial advisor.

entitled to receive retiree benefits. Disparate interests can be adequately represented by a single committee, as seen in the analogous context of the appointment of additional official committees of creditors. In In re Dana Corp., 344 B.R. 35, 40 (Bankr. S.D.N.Y. 2006), for example, the court declined to appoint a separate committee under section 1102(a) for unsecured creditors with asbestos claims where the proposed committee could not present any evidence that they were not adequately represented by the existing official committee of unsecured creditors—where the asbestos claimants held one representative spot on the committee. Similarly, here, the interests of different groups of the Debtors' retirees may be adequately represented by a single retiree committee. Moreover, the ability of one Section 1114 Committee to adequately represent the potentially different interests of groups of retirees is supported by past appointments in this district of a single Section 1114 Committee to represent both non-union and unrepresented union retirees. See, e.g., In re Ionsphere Clubs, Inc., 134 B.R. 515, 518 (Bankr. S.D.N.Y. 1991) (single retiree committee appointed "to represent (1) Retirees under collective bargaining agreements . . . and (2) "Non-Contract" retirees, made up of non-union management and clerical retirees); In re Northwest Airlines Corp., No. 05-17930 (Bankr. S.D.N.Y. Nov. 17, 2005) (order appointing a single committee of retirees); In re Solutia Inc., No. 03-17949 (Bankr. S.D.N.Y. Sept. 28, 2004) (order stating that retiree committee of non-union retiree also represents all unrepresented union retirees); see also In re US Airways, Inc., No. 04-13819-SSM (Bankr. E.D. Va. Oct. 28, 2004) (order appointing a single committee of retirees including union and non-union members).

9. Appointing a single Section 1114 Committee, rather than appointing multiple committees, is important because a single retiree committee would reduce the cost to the Debtors' estates. See 11 U.S.C. §1114(b)(2) (official retiree committee may seek to have its fees and costs of its advisors, as well as its reasonable expenses, paid out of the bankruptcy

estate). Additionally, whereas multiple Section 1114 Committees would unnecessarily complicate the negotiation process, a single Section 1114 Committee would allow the Debtors to efficiently negotiate any modifications to retiree benefits.

10. If a Section 1114 Committee is appointed at any point during these chapter 11 cases, the Committee requests that this Court provide that the scope of the committee's authority is expressly limited to representing retirees in connection with their rights under section 1114 of the Bankruptcy Code. See In re Nortel Networks Inc., No. 09-10138 (Bankr. D. Del. June 21, 2011) (order appointing retiree committee "for the sole purpose of serving as the authorized representative of such Retirees in connection with their rights under section 1114 of the Bankruptcy Code and for no other purpose"); In re Delta Air Lines, Inc., No. 05-17923 (Bankr. S.D.N.Y. Feb. 6, 2006) (court confirms at hearing appointing retiree committee that the committee is "for 1114 purposes only"). A clear mandate on any Section 1114 Committee's scope of authority would ensure that its work is narrowly focused on the retiree benefits defined in section 1114(a) of the Bankruptcy Code. Moreover, such direction would also deter unnecessary future litigation over the scope of a Section 1114 Committee's responsibilities. See In re Delta Air Lines, Inc., No. 05-17923 (Bankr. S.D.N.Y. Oct. 24, 2005) (official unsecured creditors committee's objection to motion to appoint a retiree committee under sections 1113 and 1114 arguing that the scope of a retiree committee must be limited to section 1114 rights).

11. The Committee additionally requests that, no later than 45 days after the formation of a Section 1114 Committee and concurrently with the filing interim fee applications thereafter by the Section 1114 Committee's professionals pursuant to the Professional Compensation Order (defined below), any Section 1114 Committee and each of its retained professionals be required to file and serve a quarterly budget on the notice parties identified in

this Court's Order Pursuant to 11 U.S.C. §§105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (Docket No. 905) (the "Professional Compensation Order").<sup>5</sup> Each of the notice parties would then have 10 days to review the proposed budget and object in accordance with the procedures set forth in the Professional Compensation Order. The budget, along with fees requested pursuant to any interim fee applications, would necessarily be limited to providing services associated with activities within the Section 1114 Committee's narrow scope of authority. As set forth above, until such time as a proposal is made by the Debtors to modify retiree benefits, the Committee proposes that any work performed by a Section 1114 Committee be subject to a \$500,000 cap.

12. In addition, the Committee believes that the Movants should not be afforded any preference in the appointment process. See In re Delta Air Lines, Inc., No. 05-17923 (Bankr. S.D.N.Y. Mar. 7, 2006) (United States Trustee report recommending appointment of a retiree committee with some, but not all members associated with movant's non-profit retiree group). It is not clear at this time whether the Movants are representative of their particular retiree groups, or if they have the support of a sufficient number of their fellow retirees. See In re Delta Air Lines, Inc., No. 05-17923 (Bankr. S.D.N.Y. Feb. 6, 2006) (United States Trustee requested to evaluate whether a non-profit retiree group represented a large percentage of retirees).

13. Finally, any Section 1114 Committee should be broadly representative of non-union and union retirees. Pursuant to section 1114(d) of the Bankruptcy Code, once the Court orders the appointment of a Section 1114 Committee, the United States Trustee is to

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<sup>5</sup> Specifically, the notice parties include the Debtors, counsel for the Debtors, counsel for the Committee, and the United States Trustee.

appoint members. The Committee therefore proposes that the Court direct the United States Trustee to adopt procedures to facilitate adequate representation of the Debtors' retirees on any Section 1114 Committee. Specifically, these procedures may include consulting with the Debtors concerning retiree lists, establishing procedures for unions to elect to serve on the retiree committee as authorized representatives for their affiliated retirees, providing retirees with questionnaires and the opportunity to request to serve on the retiree committee, and, finally, appointing representatives for non-union retirees and unrepresented union retirees. See, e.g., In re Northwest Airlines Corp., No. 05-17930 (Bankr. S.D.N.Y. Dec. 1, 2005) (order appointing a single retiree committee consisting of non-union retirees, union authorized representatives, and unrepresented union retirees); In re US Airways, Inc., No. 04-13819-SSM (Bankr. E.D. Va. Sept. 15, 2004) (order establishing similar procedures); In re UAL Corp., No. 02-B-48191 (Bankr. N.D. Ill. Jan. 21, 2004) (debtors' motion proposing similar procedures)..

WHEREFORE, the Committee respectfully requests that the Court enter an order granting the relief requested in the Objection and such other and further relief as may be just and proper.

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SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

By: /s/ John Wm. Butler, Jr.  
Jay M. Goffman  
Four Times Square  
New York, New York 10036  
(212) 735-3000

- and -

155 North Wacker Drive  
Chicago, Illinois 60606  
(312) 407-0700  
John Wm. Butler, Jr.  
John K. Lyons  
Felicia Gerber Perlman

Proposed Attorneys for the Official Committee of  
Unsecured Creditors