

Bankruptcy

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ASSOCIATION OF PROFESSIONAL FLIGHT ATTENDANTS
OFFICE OF THE PRESIDENT

Dear Flight Attendant,

November 29, 2011 will forever be one of the most momentous days for American Airlines. Indeed, other dates in our past remain indelibly etched in our very hearts and consciousness for other, deeply seated reasons. Nonetheless, 11.29.11 will undoubtedly be looked back upon as a turning point in AMR's history.

Many emotions accompany the events now occurring within American. No two of us will see and feel what has transpired and what will develop in exactly the same way. There is one emotion though, above all, which we each must adamantly refuse to embody. We must banish from our thoughts any sense of hopelessness.

Our task ahead will not be easy and there will be much speculation and disagreement, argument and denial, anger and resignation. But we are most decidedly not without hope for our profession and our futures.

AMR's filing for bankruptcy protection did not take us by complete surprise. Because of this, we were not caught unprepared and APFA is taking all steps necessary to protect the interests of our members.

Every company which goes through a bankruptcy reorganization does it somewhat differently. However, for all such cases, it is first and foremost a defined, legal process. Just as AMR will use it to reshape the company in ways yet to be seen, APFA members not only have an interest but have rights within the bankruptcy proceedings.

To start with, during the reorganization process, our contract remains in place with no immediate changes to wages and benefits. Nevertheless, what the future may bring for our contract is surely the greatest source of concern for members. No one can tell you that the company will not make tremendous demands, but APFA will always work towards the best possible outcome for you and your families. Any contract changes will be negotiated as part of the legal process and will need to be ratified by the membership or, failing that, approved by the court. In this publication, our legal team and our Negotiators explain how this works in detail—both the bankruptcy process itself and any effect on our Collective Bargaining Agreement.

As it's been the focus of press reports and has played a significant role in airline bankruptcies before AMR's—especially over the last decade—the fate and future of our pensions have generated the most speculation and questions. There is no hard and fast answer to the concerns; bankruptcy is not a “one size fits all” proposal. Owing to the specific interest on the pension aspects—you'll find in another article a detailed explanation on what safeguards are in place to protect this vital benefit to the fullest extent.

We hope that what we have gathered from various resources and provided here can serve as a “hard copy” reference when questions arise in the weeks and months ahead. Much of this information has been shared already on our website and as new questions come in from our members, we will continue to update the online Q&A.

APFA Flight Attendants have a larger role in what emerges from this bankruptcy than simply waiting to see what American hands us. On December 5, APFA was named to the Committee of Unsecured Creditors by the U.S. Trustee. It is a small committee with a vital role which is more fully explained in the first article of this booklet. APFA is one of only nine entities on the committee. We are joined by: APA, TWU, Manufacturers and Traders Trust Co., Wilmington Trust Co., Bank of New York Mellon, the Pension Benefit Guaranty Corp., Hewlett-Packard Enterprise Services LLC, and Boeing Capital Corp.

With all three major unions at American serving on the Creditors' Committee, labor does have a voice in our futures, in our company and in our careers that we have built through our work, our time, our dedication, our lives.

We have never wavered from our position that we have given enough, that American's labor force is not the problem. Throughout the past eight years, while it squandered the billions of dollars that APFA members and other employees sacrificed—and still sacrifice to this date—to save American Airlines, management was always at the ready to place blame for the company's woes on labor. But while many of the executives who so misled this company have left or are now packing their bags to go, we are still here. Competitive and skilled, with a dedication unequalled, APFA members stand firm in our resolve to secure the best for our futures.

We have been through some very difficult times together. We are tenacious, resilient and we have proven time and time again that we are able to face difficult challenges—and to not only survive, but to prevail. If we remain strong and unified we can succeed.

In unity.

A handwritten signature in cursive script that reads "Laura Glading".



OVERVIEW: WHAT IS BANKRUPTCY?

by Jeffrey A. Bartos – Partner at Guerrieri, Clayman, Bartos & Parcelli, P.C.

You are receiving this material because American Airlines has filed for bankruptcy. This is a very loaded word with many possible meanings, so we thought it helpful to provide an overview of what a corporate bankruptcy actually means and does not mean.

The Bankruptcy Code. There is a nationwide federal law governing bankruptcy called the Bankruptcy Code. The basic purpose of the Code is to provide a structure and set of rules and procedures for a person or a business (or even a local government) to restructure their obligations to creditors and others with whom it does business. There are different “Chapters” of the Bankruptcy Code, each dealing with different situations. American Airlines has filed under Chapter 11 of the Code, which applies to companies which intend to continue operating their business during the bankruptcy and to “reorganize” as part of the bankruptcy and ultimately leave or exit bankruptcy. A company which files under Chapter 11 is sometimes called the “debtor in possession,” because it continues to run its own business during the period of bankruptcy.

The Chapter 11 Bankruptcy Process. A company starts the Chapter 11 bankruptcy process by filing a document in court called a “Petition.” This filing formally starts the process and fundamentally changes the way in which the company does business going forward. It also changes the relationships between the company and its creditors and the rest of the world as well. By filing for bankruptcy the company gives up its right to run its own business without outside supervision. All expenditures and major corporate decisions are subject to review by creditors and require approval by the bankruptcy court. At the same time, the bankruptcy filing also affects all of the creditors: they will only get paid if the bankruptcy court approves payment, and they will most likely end up getting paid less than they are owed and perhaps not until after a long wait. The bankrupt company can, with court approval, “reject” or terminate contractual obligations. And all litigation against the bankrupt company is put on hold by a rule known as the “automatic stay,” and can proceed only upon bankruptcy court approval.

A key player in the bankruptcy process is a Committee representing all of the unsecured creditors of the company. This **Official Committee of Unsecured Creditors** (see the next page) is appointed by a representative of the federal government (the United States Trustee), and has special status among all of the other parties in the case. (The APFA, along with APA and TWU have been appointed to the Committee in American Airlines' bankruptcy.) The Committee has its own legal counsel and economic advisors and has a voice in every aspect of the bankruptcy process which is given special consideration by the court.

After filing for bankruptcy and the initial adjustments to contracts, debts and payments are made, the bankrupt company will, in most cases, eventually come up with a plan to leave bankruptcy. This "Plan of Reorganization" sets forth how all creditors will get paid and how the new business will operate going forward. The Plan of Reorganization addresses all of the pre-bankruptcy debt of the company, establishes how much creditors will be paid, and determines whether payment will be in the form of cash, new stock, or new debt. The Plan of Reorganization is typically negotiated with the major creditors and is subject to legal challenges as well as a voting process by creditors, and ultimately requires court approval. It is also possible that the Creditors' Committee, or other parties, might, after a certain amount of time has passed, propose their own Plan of Reorganization for court review.

If a Plan of Reorganization is approved, the company may then exit bankruptcy with a "clean slate;" all of its preexisting debt is accounted for under the Plan of Reorganization, and its contractual relationships have been restructured.

Labor and Employment Issues in Bankruptcy. Union-represented employees and retirees have special protections under the Bankruptcy Code, and labor contracts in particular are subject to a unique protection and procedure, called "Section 1113," which is discussed at greater length later. For this article, we note that the filing for bankruptcy does not change or terminate collective bargaining agreements. The Code requires the debtor to continue honoring its labor contracts just as it did prior to filing for bankruptcy, and it forbids the debtor from unilaterally terminating a labor contract. However, the Code does establish a procedure through which the debtor may propose changes to a collective bargaining agreement. If this procedure is invoked, the union is required to negotiate with the debtor in a good faith effort to reach an agreement. If the negotiations fail to meet the company's needs, the company can ask the court to permit it to "reject" the collective bargaining agreement. This can only happen after a court hearing, only if specific procedures are met, and only if the court finds that changes to the contract are needed for the debtor to reorganize. It is important to note that even if a debtor "rejects" a collective bargaining agreement, it has not eliminated the collective bargaining relationship or even most of the terms of an agreement. Rather, as the courts have held over the years, even after contract "rejection," a debtor can only make those changes to wages, benefits and work rules which it has proven to the court are necessary to its reorganization. ▲



THE CREDITORS' COMMITTEE

A key player in the bankruptcy process is a committee representing all of the unsecured creditors of the company. This Official Committee of Unsecured Creditors is appointed by a representative of the federal government (the United States Trustee), and has special status among all of the other parties in the case. The Committee has its own legal counsel and economic advisors and has a voice in every aspect of the bankruptcy process which is given special consideration by the court. The Committee has a key role in negotiating with the debtor regarding fundamental business decisions affecting the restructuring process, with the objective of maximizing recovery to the unsecured creditors as a whole. As explained by the Administrative Office of the U.S. Courts, *“Creditors’ committees can play a major role in [bankruptcy] cases. Among other things, the committee: consults with the debtor in possession on administration of the case; investigates the debtor’s conduct and operation of the business; and participates in formulating a plan. ... A creditors’ committee can be an important safeguard to the proper management of the business by the debtor in possession.”*

The Committee receives information from the debtor about its intended actions and can influence key decisions that affect creditors as a whole and employees in particular. Having a vote on the Committee is of tremendous value because the decisions and legal positions of the Committee are given extraordinary weight by the bankruptcy court.

In these proceedings, the Unsecured Creditors’ Committee professionals include: Skadden, Arps, Slate, Meagher & Flom LLP (Counsel); Mesirrow Financial (Financial Advisors) and Moelis & Co. (Investment Banking).



APFA's Team of Advisors

Though the Creditors' Committee as an entity maintains legal and financial advisors, APFA itself retains a team of professionals to ensure our membership will be well represented and counseled during AMR's bankruptcy process.

Our legal team is drawn from two distinguished Washington, DC based firms specializing in the needs of organized workers. From the firm Guerrieri, Clayman, Bartos & Parcelli, P.C. (www.geclaw.com): **Attorney Robert S. Clayman** is currently lead counsel for the APFA Negotiating Team, a position he also held in 1992-1995. His over thirty years of representation for workers includes acting as counsel for labor in more than fifteen airline bankruptcies. Working with Rob will be firm partners **Jeffrey A. Bartos** and **Carmen R. Parcelli**. Jeff brings over fifteen years of dedicated work for labor unions, employees and consumers, including involvement on behalf of labor unions on creditors' committees in recent airline cases, as well as litigation the areas of ERISA (retirement income security) and the Bankruptcy Code. Carmen's areas of legal expertise include labor law in the bankruptcy context. She was the recipient of the John F. Kennedy Labor Law Award. Firm Associates joining the team are **Paul E. Knupp III** and **N. Skelley Harper**. Paul's practice focuses on labor union representation and litigation in federal court and before federal agencies on a broad range of labor matters, including the protection of collective bargaining agreements in the bankruptcy context. Skelley focuses on representation of labor unions in federal court and administrative agency proceedings arising under the Railway Labor Act.

From the firm Bredhoff & Kaiser, P.L.L.C. (www.bredhoff.com): **Attorney Jeffrey R. Freund's** experience with APFA includes work as lead counsel on APFA Negotiating Committees and General Counsel duties. Jeff brings wide ranging experience with labor unions in negotiations, litigation and as general counsel, in and out of the airline sector. Along with Jeff, another attorney with extensive knowledge of the APFA membership is **Roger Pollack**. Roger has direct experience with our Union, including assisting past Negotiating Teams. His work with labor groups includes the areas of interest arbitrations and collective bargaining agreements. Working with both Jeff and Roger, **Mady Gilson** brings over 35 years representational experience and currently serves as APFA's General Counsel. Her work experience with the APFA Officers, Executive Committee and Board of Directors, and her knowledge of APFA's history and our membership, is unequalled.

In the area of airline economics, **Daniel W. Akins** of Akins and Associates continues his long-time role as APFA's Airline Economist and Industry Analyst. Dan is a familiar face to members attending many of our past road shows or viewing our YouTube videos during this round of negotiations. His widely respected analyses of American's economic reports have been vital in supporting our positions and in countering AMR's corporate spin.

Along with Dan Akins, APFA has also engaged for these proceedings the global investment banking firm **Jefferies** for its expertise in analyzing corporate finances and business plans. Jefferies brings past experience working side-by-side with representatives of organized labor on Unsecured Creditors' Committees. With its counsel and insight into the inner workings of the process, Jefferies is a strong addition to APFA's team of advisors.

1113 – What’s It All Mean?

What happens if AMR wants to alter or reject our contract?

Contributors: Rob Clayman – APFA Negotiating Team Lead Counsel
APFA Negotiating “Table Team” Members:
Anne Loew, Chief Negotiator
Clint Breen
Becky Kroll
Jaimie McNeice
Mario St. Michel

Section 1113 of the Bankruptcy Code establishes the method by which a debtor (here: AMR) can reject a Collective Bargaining Agreement (CBA). In considering a debtor’s Section 1113 motion, the bankruptcy court will review certain actions the debtor has taken since the filing of its bankruptcy petition. Before authorizing rejection of a CBA, the debtor must demonstrate to the court that it has satisfied each of the following requirements:

1. The debtor must make a proposal to the union to modify the CBA. American has indicated that it intends to make such a proposal. In his letter to APFA, American’s Senior Vice President Jeff Brundage stated:

“American must now prepare to seek further changes to its APFA Agreement pursuant to Section 1113 of the Bankruptcy Code. We will notify you promptly when we are prepared to present new proposals which reflect our changed circumstances.”

2. American’s proposal must be based on the most complete and reliable information available at the time of the proposal.
3. The proposed modifications must be necessary to permit American’s reorganization.
4. The proposed modifications must assure that all creditors, the debtor and all of the affected parties are treated fairly and equitably.

5. American must provide APFA such relevant information as is necessary to evaluate the proposal.
6. Between the time American makes its proposal and the time the hearing on American’s request to reject the existing CBA, it must meet at reasonable times with APFA.
7. At these negotiation sessions the debtor must confer in good faith in attempting to reach mutually satisfactory modifications of the collective bargaining agreement.
8. If an agreement is not reached, APFA must have refused to accept American’s proposal without good cause.
9. The balance of the equities must clearly favor rejection of the collective bargaining agreement.
10. From the day the Section 1113 court hearing begins, the bankruptcy court judge has thirty days to render a decision. If the court grants American the right to reject the CBA, it can at that time implement its proposal.

Under Section 1113 (e) of the Bankruptcy Code, emergency short-term relief may be granted on an expedited basis without a full negotiating process if the court finds that the relief is “essential” to the continuation of business or to avoid “irreparable harm” to the bankruptcy estate.

The APFA Negotiating Team is meeting regularly to take all necessary steps to prepare for the collective bargaining that is an integral part of the 1113 process. No two bankruptcies are identical and this case is no different. For example, unlike when our colleagues at US Airways, United, Delta and Northwest went through the bankruptcies of their respective companies, we have been living under substantial concessions for more than eight years as we begin the process following AA's filing. Secondly, in no other airline case had all the unions been engaged in bargaining under the Railway Labor Act for three or more years. These and other unique considerations will be taken into account as we prepare our strategies and responses to American's likely effort to obtain larger cuts than are warranted.


Where our colleagues at other airlines stand as far as pay rates and work rules is a source of conversation among our members and generates continued questions to the Negotiating Team and our APFA reps. Of course, what other Flight Attendant groups have confronted during their company's bankruptcies, and the end results of their negotiations and court decisions, does not mean we will see the same here at AA. We maintain that labor costs are not the true issue at AMR. We made the sacrifices needed in 2003 and are still living under those sacrifices today. As President Glading wrote in her opening letter:

"We have never wavered from our position that we have given enough, that American's labor force is not the problem. Throughout the past eight years, while it squandered the billions of dollars that APFA members and other employees sacrificed—and still sacrifice to this date—to save American Airlines, management was always at the ready to place blame for the company's woes on labor."

As a Negotiating Team, we do communicate regularly with our sisters and brothers at other carriers and Flight Attendant unions and we use the information gathered extensively in preparing our negotiations with American. This practice will, of course, continue—even increase—and it becomes even more vital as we approach the coming months and talks under bankruptcy.

A comparison of airline contracts was done in 2006, after the bankruptcies of US Airways, United, Northwest and Delta. Touching on areas of pay rates, work rules, benefits and retirement, among other issues, it was mailed to all APFA Flight Attendants as part of the Fall 2006 issue of **Skyword** and has remained readily available online to our members since that time as part of the **Skyword** archives and also as a separate document on the Contract Coordinator's page under the National Departments menu of APFA.org.

Since the time of publishing, pay rates have changed several times (and to a lesser extent so have some work rules and benefits), both at AA and the comparison carriers. In the following pages we have included updated comparisons of the of the pay rates now in effect at AA and our major comparator airlines: CO, UA, DL, US (both East and West divisions) and WN.

Also we have provided a chart outlining the bankruptcies of US, UA, DL and NW and the principle outcomes and effects on Flight Attendants at these legacy carriers. 

A note on the following charts: The pay scale and the bankruptcy history charts included on the following four pages are in no way intended to suggest or predict any particular outcome of these bankruptcy proceedings. The pay charts are provided here solely in direct response to members' inquiries concerning our current standing in hourly rates among our major competitors. Recall that hourly pay rates are but one component of overall Flight Attendant compensation. The bankruptcy history chart is for historical perspective only and again responds to requests for the information from our membership.

Current Flight Attendant Pay per Hour – DOMESTIC

	BASE RATES												INCENTIVE		
	AA	CO	DL	UA	US E	US W	WN	AA	CO						
	2011	Sep-11	2011	2011	2011	2011	Jun-11								
1	20.24	20.49	20.67	18.46	19.91	16.18	25.62	23.28	25.49						
2	21.98	23.93	21.49	19.51	21.05	17.40	28.26	25.28	28.93						
3	23.81	25.28	22.96	20.75	22.38	18.08	30.31	27.38	30.28						
4	25.04	27.26	24.84	21.34	23.01	19.18	32.78	28.80	32.26						
5	27.97	29.25	27.37	24.20	26.08	20.27	35.45	32.17	34.25						
6	32.32	33.94	29.43	31.82	32.06	21.38	40.43	37.17	38.94						
7	34.95	36.06	34.65	33.54	33.79	22.96	42.73	40.19	41.06						
8	36.83	38.01	35.77	34.37	34.62	24.47	44.90	42.35	43.01						
9	38.37	39.44	36.76	35.49	35.74	26.31	47.57	44.13	44.44						
10	39.89	41.44	38.12	36.63	36.89	28.23	50.36	45.87	46.44						
11	41.20	42.71	39.18	37.42	37.69	30.24	52.92	47.38	47.71						
12	42.65	44.83	41.04	38.31	38.59	34.74	56.65	49.05	49.83						
13	43.83	46.51	45.73	39.14	39.44	35.72	60.61	50.40	51.51						
14	44.90	48.45	45.73	39.75	40.30	36.67	64.11	51.64	53.45						
15	46.00	50.59	45.73	39.75	40.30	37.59	64.11	52.90	55.59						
16	46.00	52.53	45.73	39.75	40.30	37.59	64.11	52.90	57.53						

Notes: WN (Southwest): Pay converted to hourly by a factor of 1.15 TFP per hour
 CO: Incentive rates apply for hours above 75 up to 110
 US E (east): Final contractual structural pay increase of 3% on 1/1/2012

Current Flight Attendant Pay per Hour – INTERNATIONAL

	BASE RATES										INCENTIVE	
	AA	CO	DL	UA	US E	US W	WN	AA	CO			
	2011	Sep-11	2011	2011	2011	2011	Jun-11					
1	22.13	21.49	21.92	19.00	22.91	17.43	25.62	25.45	26.49			
2	23.50	24.93	22.74	20.06	24.05	18.65	28.26	27.03	29.93			
3	25.04	26.28	24.21	21.31	25.38	19.33	30.31	28.80	31.28			
4	26.39	28.26	26.09	21.89	26.01	20.43	32.78	30.35	33.26			
5	30.46	30.25	28.62	24.74	29.08	21.52	35.45	35.03	35.25			
6	33.85	34.94	30.68	35.42	35.06	22.63	40.43	38.93	39.94			
7	37.64	37.06	35.90	37.11	36.79	24.21	42.73	43.29	42.06			
8	39.88	39.01	37.02	37.86	37.62	25.72	44.90	45.86	44.01			
9	41.43	40.44	38.01	39.11	38.74	27.56	47.57	47.64	45.44			
10	42.70	42.44	39.37	39.88	39.89	29.48	50.36	49.11	47.44			
11	44.27	43.71	40.43	40.77	40.69	31.49	52.92	50.91	48.71			
12	45.78	45.83	42.29	41.78	41.59	35.99	56.65	52.65	50.83			
13	47.50	47.51	46.98	42.57	42.44	36.97	60.61	54.63	52.51			
14	48.31	49.45	46.98	43.14	43.30	37.92	64.11	55.56	54.45			
15	49.14	51.59	46.98	43.14	43.30	38.84	64.11	56.51	56.59			
16	49.14	53.53	46.98	43.14	43.30	38.84	64.11	56.51	58.53			

Notes: WN (Southwest): Single pay scale DOM/INTL; pay converted to hourly by a factor of 1.15 TFP per hour

CO: Incentive rates apply for hours above 75 up to 110

US E (east): Final contractual structural pay increase of 3% on 1/1/2012

US E (east): INTL rates [\$3 override] apply trans-Atlantic only until 1/1/2012, then all over water

DOMESTIC		Blended 75 Hours		INTERNATIONAL	
	AA	CO		AA	CO
1	20.44	20.82	1	22.35	21.82
2	22.20	24.26	2	23.74	25.26
3	24.05	25.61	3	25.29	26.61
4	25.29	27.59	4	26.65	28.59
5	28.25	29.58	5	30.76	30.58
6	32.64	34.27	6	34.19	35.27
7	35.30	36.39	7	38.02	37.39
8	37.20	38.34	8	40.28	39.34
9	38.75	39.77	9	41.84	40.77
10	40.29	41.77	10	43.13	42.77
11	41.61	43.04	11	44.71	44.04
12	43.08	45.16	12	46.24	46.16
13	44.27	46.84	13	47.98	47.84
14	45.35	48.78	14	48.79	49.78
15	46.46	50.92	15	49.63	51.92
16	46.46	52.86	16	49.63	53.86

Blended hours pay:

This chart indicates the effective hourly rate for 75 hours paid using the formula for paying incentive at AA (incentive for hours over 70) and the rates for both AA and CO, comparing what our formula would yield per hour at CO rates.

Note, however, that the actual formula for paying incentive rates at CO pays incentive for hours over 75 (not 70), up to 110.

Airline Bankruptcy	Dates	Corporate Structure	Flight Attendant Contract Changes	Effect on Wages & Benefits	Effect on Flight Attendant Pensions
US Airways (I)	Filed August 2002 Emerged March 2003	Same.	Contract concessions negotiated and ratified.	18% reduction in annual labor costs. 5% reduction in Flight Attendant pay.	No change to Flight Attendant Pension Plan.
United	Filed December 2002 Emerged February 2006	Same.	Contract concessions negotiated and ratified.	30% reduction in annual labor costs. 20% reduction in Flight Attendant pay.	Flight Attendant Pension Plan terminated and taken over by the PBGC.
US Airways (II)	Filed September 2004 Emerged September 2005	Acquired by AmericaWest	Contract concessions negotiated and ratified.	25% reduction in annual labor costs. 21% reduction in Flight Attendant pay.	Flight Attendant Pension Plan terminated and taken over by the PBGC.
Northwest	Filed September 2005 Emerged May 2007	Same.	After twice failing to ratify negotiated concessions, bankruptcy court approved rejection of CBA; ten months later contract changes were negotiated and ratified.	37% reduction in annual labor costs. 21% reduction in Flight Attendant pay.	Flight Attendant Pension Plan frozen and replaced with defined contribution plan.
Delta	Filed September 2005 Emerged April 2007	Same.	Cuts imposed by company on non-union workforce.	22% reduction in annual labor costs. 19% reduction in Flight Attendant pay.	Flight Attendant Pension Plan closed to new entrants and frozen for future benefit accruals.

WHAT HAPPENS TO MY PENSION?

Contributors: Patrick Hancock – APFA Retirement Specialist
Carmen R. Parcelli – Partner at Guerrieri, Clayman, Bartos & Parcelli, P.C.

Since well before AMR's filing for bankruptcy protection under Chapter 11 on November 29, speculation was rampant in the business press over the fate of the pension plans of American's employees should a filing come to pass. The level of concern among our membership was understandably elevated as a result, and the advent of the filing increased the number of calls and inquiries to APFA immeasurably.

Members understandably have a great interest in their pension plan. After all, a pension is an important source of income security in retirement. Over the decades our pension program has existed, APFA has consistently sought to insure that Flight Attendants can enjoy a financially secure retirement, recognizing the importance of pension benefits to our members. Although the specifics of the individual queries about our Flight Attendant pension plan may vary, all come down to one basic question:

What could happen to our pensions now that AMR is in bankruptcy?

Any filing typically does not have an immediate effect on a defined benefit pension plan such as ours. Active employees will not lose currently vested pension benefits as a result of bankruptcy and retirees receiving a benefit will continue to do so. Beyond the immediate, there is no firm answer yet, but there are three main possible scenarios: (1) the pension plan could continue essentially as it exists today; (2) the pension plan could be frozen in whole or in part; or (3) the pension plan could be terminated. Within each of these scenarios there also exist variations.

First, the pension plan could continue to operate as it is currently, contractually defined for present and future employees. A variation on this would be keeping the pension plan essentially intact as it is, but with relatively minor modifications that don't really change its structure, function or its availability to current and future employees. We've made changes like this in negotiations as the plan has been in existence throughout the years. Suffice it to say, if everything stays generally the same, then there is little further to explain.

Let's therefore move on to the other two major scenarios and discuss their possible variations. Again, these are hypothetical. The likelihood of any one of the scenarios over another is not the question addressed here. As detailed in an earlier article, we have a contract requiring the company to negotiate changes to our pension plan. Even in bankruptcy, there are substantial restrictions on the company's ability to make changes without union and/or bankruptcy court involvement.

So, what are the other two scenarios?

They come down to, briefly: a pension plan **freeze** or a pension plan **termination**. Though the two function differently, they have the same general goal: the substantial reduction or elimination of any more growth in a company's pension obligations in the future. The two scenarios are similar in that in both benefits already accrued by members in the plan are paid out, usually in their entirety, though in some cases only partially.

The two differ primarily in that one—a pension freeze—keeps the pension plan under the control of the sponsoring company. The other—a pension termination—removes administration of the pension from the company altogether.

Some examples from recent history in our own industry following the bankruptcies since 2002 of US Airways, United, Northwest and Delta: two of the companies (Northwest and Delta) froze their Flight Attendant pension plans while the other two (US Airways and United) terminated theirs.

What does it mean to freeze a pension plan?

Freezing a pension plan is not a legally defined process, so there is no hard and fast rule. It is more of a descriptive term of what has occurred with some major plans, including those of the airlines mentioned above. Since it involves keeping the pension plan within the company, exactly how it works varies from company to company, even plan to plan within companies where different employee groups have different plans. The government agency which insures private sector pension plans (the PBGC, which will be discussed later) doesn't dictate how plans are frozen, but it does gather statistical data on frozen plans and has, in published reports, made some observations. From one such PBGC report:

*“[A Frozen Plan is] an ongoing pension plan in which the plan sponsor “freezes” benefits, that is, stops some or all future benefit accruals. A plan can be frozen in several ways. Under a **partial freeze**, a plan can be frozen for some, but not all, current participants based on, for example, years of service [or] job classification Under a **soft freeze**, benefits typically are increased for wage growth, but not for additional service. Under a **hard freeze**, no participant accumulates any further benefits.*

“Most frozen plans are closed to new entrants. A plan can be closed to new participants without restricting future benefit accruals of participants already in the plan. Generally, such closures also are viewed as a type of plan freeze.”

Since there is no legally set manner for freezes—or even complete uniformity on what to call them—modification of the various types can and do occur.

How could the company freeze the pension plan?

Regardless of the type of freeze the company might want to impose it could not do so unilaterally given the terms of the APFA contract. Outside bankruptcy it would have to negotiate such a modification which would be subject to membership ratification. In bankruptcy, American could not make any change to the collective bargaining agreement unless it had complied with the requirements of Section 1113. First, it would have to attempt to reach an agreement to freeze the plan through negotiations with APFA and ratification by the membership. If bargaining failed, it would have to file a Section 1113 motion with the bankruptcy court requesting that it be permitted to freeze the pension plan.

What does a plan termination mean?

In a nutshell, a plan termination involves removing current and future administration of the plan from the company. It effectively ends the plan as an employee benefit, although as you will see, not the payout of some (usually all) accrued benefits under the plan. There are variations of the plan termination scenario, and they depend largely on whether the plan has sufficient assets to satisfy its benefit liabilities, that is the current pension obligations of the plan. The two variations are then: a “standard termination” if there are sufficient assets, and a “distress termination” if there are not. It is important to note that a company may cover different employee groups under different plans, each with its own assets and liabilities, so one plan within a company may be terminated, while another is not.

Can't American just terminate our pension plan? Isn't that the point of the bankruptcy?

No. It bears repeating that under our Collective Bargaining Agreement, the company can only amend the pension plan (including a freeze or a termination) with APFA's agreement. As a part of a restructuring under bankruptcy, American could attempt to end the plan, though APFA would vigorously oppose any such action. The company must meet certain stringent conditions specified in the Bankruptcy Code before the court could permit American to terminate the plan without APFA's consent.

Again, even if the company gained permission for a termination, the plan generally would be obligated to pay benefits already earned by current and future retirees. If the plan does not have sufficient assets to pay for these benefits, the Pension Benefit Guaranty Corporation (PBGC) would guarantee payment of benefits, subject to certain regulations and maximums. (see box: “What is the PBGC?”)

“What is the PBGC?”: *The Pension Benefit Guaranty Corporation (PBGC) is an agency of the Federal Government, created in 1974, that protects the retirement incomes from private-sector defined benefit pension plans. PBGC is not funded by general tax revenues. PBGC collects insurance premiums from employers that sponsor insured pension plans, earns money from investments and receives funds from pension plans it takes over. The maximum pension benefit guaranteed by PBGC is set by law. (source: www.pbgc.gov)*

What is the difference between the two types of plan terminations: “standard” and “distress?”

The simplest explanations of these two terms come directly from the PBGC website:

“Standard Termination: *The employer can end the plan in a standard termination but only after showing PBGC that the plan has enough money to pay all benefits owed to participants. The plan must either purchase an annuity from an insurance company (which will provide you with lifetime benefits when you retire) or, if your plan allows, issue one lump-sum payment that covers your entire benefit. Before purchasing your annuity, your plan administrator must give you an advance notice that identifies the insurance company (or companies) that your employer may select to provide the annuity. PBGC’s guarantee ends when your employer purchases your annuity or gives you the lump-sum payment.*

“Distress Termination: *If the plan is not fully funded, the employer may apply for a distress termination if the employer is in financial distress. To do so, however, the employer must prove to a bankruptcy court or to PBGC that the employer cannot remain in business unless the plan is terminated. If the application is granted, PBGC will take over the plan as trustee and pay plan benefits, up to the legal limits, using plan assets and PBGC guarantee funds.”*

Both of the two types of termination described above are initiated by the plan sponsor, the company. They are “voluntary terminations.” However, in some circumstances the PBGC can take action to terminate a plan. This is termed an “involuntary termination.” Again, from the agency’s website:

“When PBGC terminates a pension plan: *In certain instances, PBGC may take action on its own to end a pension plan. Most terminations initiated by PBGC occur when PBGC determines that plan termination is needed to protect the interests of plan participants or of the PBGC insurance program. PBGC can do so if, for example, a plan does not have enough money to pay benefits currently due.”*

Other factors to note: the Employee Retirement Income Security Act of 1974, as amended (ERISA), requires that the plan administrator provide 60-day advance written notice to all affected parties of its intent to terminate a plan. If the PBGC is advised that the proposed plan termination violates a Collective Bargaining Agreement and that the termination is being challenged under procedures specified in the Collective Bargaining Agreement, the PBGC will suspend the termination proceeding until resolution of the challenge. However, the PBGC still has the authority to proceed with an “involuntary termination,” if the requirements of an involuntary termination are met.

If the PBGC does take over the pensions, how is my pension calculated?

From the PBGC site: *“PBGC pays benefits according to the terms of each pension plan. For most participants in trustee plans, PBGC guarantees the full benefits promised by their plans.”* If there have been no improvements to the plan in the last five years, your pension is calculated using the formula in our contract up to the PBGC maximum. As we have had no improvements made to our plan in the last five years, this rule would apply.

What is the PBGC maximum?

It varies based upon your age when the PBGC starts paying you. (If you are already receiving checks when the PBGC takes over, this date is November 29, 2011, regardless of when you actually start getting checks from the PBGC.) The agency provides a chart indicating the maximums it will guarantee. Note this chart starts with age 45, but that does not change our plan provisions on when pension payments can begin; our plan still requires you be at least age 55. It's just meant to cover all insured plans and some start benefits earlier than ours.

This PBGC maximum amount goes up with inflation so there is a chart prepared for each new calendar year. But once there is a distress termination, you use the chart of maximums for the year of the termination. If the termination occurs during a bankruptcy, the date of the bankruptcy filing sets the year. For us, this means we will use the 2011 chart, regardless of when you actually retire.

Some examples (life annuity with no survivor benefits): for plan terminations occurring in 2011 and using the chart available from the PBGC.gov website:
... if you are 65 when you begin receiving payments, your PBGC maximum is \$4,500 a month (\$54,000 a year)
... if you are age 55 when you begin receiving payments, your PBGC maximum is \$2,025 a month (\$24,300 a year)

Check out:

<http://www.pbgc.gov/wr/benefits/guaranteed-benefits/maximum-guarantee.html>

Having explained basically how PBGC trusteeship (taking over) of a pension plan works, following are some questions from our members that more specifically address certain individual circumstances.

How might the impact of a bankruptcy on our pensions be different for different age groups in our workforce?

If the pension is frozen, the answer would depend on the type of freeze: partial, soft, hard, or the way different aspects of these might be combined in whatever the company and union negotiate and ratify, or is imposed by the court absent an agreement.

If the pension is terminated, or if it is hard-frozen allowing no more accrual of benefits, then future benefits to be received essentially become a "snapshot" of what a member had accrued either on the date of bankruptcy filing (in the case of a termination) or possibly on a different date (in the case of a freeze where a different date is agreed upon or imposed.)

So someone more senior now, already having more years of credited service, would lose less of what they were expecting since they likely had fewer years remaining to accrue service before their retirement than someone more junior, who has built up less pension credit so far.

Likewise someone who'd been already flying their maximum pensionable hours at the highest pay rate will have a greater Final Average Compensation figure to use in their benefit calculation than someone flying less and/or at a lower rate who planned on increasing their pensionable income later in their career to boost their pension.

I pulled a pension estimate projecting my pension if I retire in two years. Is that dollar amount insured if the pension goes to the PBGC?

No. As explained in the previous answer, if the pension is turned over to the PBGC, your pension stopped growing on the day AA filed for bankruptcy, so your estimate that assumes you will continue to accrue credited service for two more years, would be too high.

We currently have several different options when selecting how we want to receive our pension, such as Level Income Option, Period Certain, etc. Will these all still be available options if the PBGC takes over the plan?

No. Generally, PBGC does not guarantee any monthly pension amount that is greater than the monthly benefit your plan would have provided if you had retired at your normal retirement age. This means that the level income options would no longer be available or would be severely restricted. More information on PBGC payout options is at:

<http://www.pbgc.gov/wr/benefits/payments/your-pbgc-benefit-options.html>

Can I name someone other than a legally married spouse as a joint annuitant under the PBGC rules?

Yes. PBGC allows all future retirees, whether married or not, to elect a benefit form that provides joint and survivor benefits and to name anyone as a beneficiary at that time. If you are already retired and have named a non-spouse joint annuitant, the PBGC will honor that election as well. The amount of benefit the PBGC will guarantee when there is a joint annuitant is also indicated on the maximum benefit charts available on their website.

If you are legally married to a person of the opposite gender (a heterosexual marriage) your spouse will receive a survivor benefit from your pension if you die before you retire. (NOTE: If you are in any other relationship—gay marriage, domestic partners, non-marital spouses, etc.—your joint annuitant will receive nothing if you die before you retire and begin your benefit.)

I am 60 years old. I have heard that the PBGC has a “normal” retirement age of 65, and if I leave before age 65 under the PBGC, that I will take a 7%-per-year reduction in my benefit, not the zero percent reduction that we have under the current contract. I have heard I have to retire before the PBGC takes over if I want to avoid the 7%-per-year reduction. Is that true?

No. The 7%-per-year reduction between ages 60 and 65 is ONLY in the PBGC maximum, *not in the benefit calculation*. The PBGC will use the early retirement reduction table in our plan even if you retire years after the PBGC takes over the plan. Once they have calculated your reduced benefit based upon our plan, they then apply the PBGC maximum. So if you are age 60, they calculate your benefit (FAC X YCS X 1.66%) then apply the plan reduction of zero. Then they compare that number to the PBGC Maximum for age 60, which on the 2011 chart is \$2,925.00. You get the lesser of the calculated benefit or the PBGC maximum.

I have turned in my papers to retire soon. With all that's going on, I may want to wait and see what happens. Can I change my mind?

Yes. You can withdraw your retirement instructions any time before the "PTR" is processed on the date of your retirement.

Am I still entitled to a pension prior to reaching age 65 if the pension plan is terminated and taken over by the PBGC?

Yes, provided that you meet the requirements under the plan for an early pension benefit at the time of the bankruptcy filing. The requirements under the plan include having at least ten years of credited service (for starting your pension at age 60-64) or 15 years credited service (for starting your pension at age 55-59). Remember, *"PBGC pays benefits according to the terms of each pension plan, up to the guaranteed maximums."*

Not all of the questions that have come into APFA about retirement have concerned the pension plan. The two most frequent of these questions address AMR stock and the 401(k) Super Saver plan:

What happens to American's stock in bankruptcy?

The shares probably will become worthless or even more diluted in bankruptcy.

What about my 401(k) Super Saver plan?

The vested benefits under the Defined Contribution Plan—the 401(k) Super Saver—are not affected by the bankruptcy filing.

Want more information? The information provided above is just a brief summary of PBGC benefits. For specific plan and information for your situation, visit their website at www.pbgc.gov. It is a good resource for the answers to questions about what they do and how they work. A place to start is the link: "New to PBGC" from the "New Visitor?" menu on their main page. Also check their "Workers & Retirees" heading from their top menu bar for quick links.

Bankruptcy Q&A

As questions arise during AMR's bankruptcy, members are encouraged to contact APFA—our Representatives here at APFA HDQ or at your base. We will work to get you the answers that you need and frequently asked questions will be included on website in our “Bankruptcy Q & A” document accessible through a link on the main page of APFA.org.

Here are a few of those questions we've heard from many of you already.

Will we continue to get paid when the airline is in bankruptcy?

Yes. Things like wages, salaries, and sick leave are considered normal administrative expenses while in bankruptcy. The bankruptcy laws assure that employees will continue to be paid for their services during the reorganization.

I understand what happened with the bankruptcies of US, UA, NW and DL. But what happened to the Flight Attendant contracts in the Continental and TWA bankruptcies?

Continental Airlines filed for bankruptcy protection in 1983 and 1991. In the first bankruptcy, Continental eliminated the Collective Bargaining Agreement and replaced it with unilaterally created work rules. Wages were cut by 60%, and vacation, sick and other benefits also were drastically reduced.

These actions were taken before Section 1113 was added to the bankruptcy code, when there were no special procedures in place relating to a debtor's rejection of a labor contract.

A year after the second bankruptcy filing, the Flight Attendants were able to negotiate their first Collective Bargaining Agreement in nine years. That contract, however, primarily incorporated most of the then existing work rules which management had imposed. Wages were increased but remained at 50% of what they were in 1983, before the first bankruptcy filing. Under that agreement, the highest wage rate in the contract's first year was \$14.00/hour, vacation peaked at 21 days after 10 years and there were no trip or duty rigs.

Prior to its purchase by American Airlines, TWA had undergone three bankruptcies: in 1992, 1995 and 2001.

At the time of the first bankruptcy, the Flight Attendants had not negotiated a contract since their strike in 1986. In August 1992 the Flight Attendants reached an agreement with management that deferred wage increases until 1995. However, by August 1994, it had become clear that because of the carrier's financial condition it would not be able to pay for the scheduled wage increases. Instead, Flight Attendants, along with the other labor groups, negotiated a second concessionary contract that remained in place until 1999.

One and half years later, in January 2001, TWA again sought bankruptcy protection. As part of the transaction with American, the unions agreed that their contracts could be changed so as to mirror the equivalent provisions in the American labor agreements. Also American demanded that the scope and successorship provisions in the TWA Collective Bargaining Agreements be eliminated.

Can someone make an offer for American Airlines in bankruptcy?

Yes. If American Airlines decides to sell its assets, another airline or interested party can make an offer for American as a whole or only for certain assets it deems valuable. The judge would have to approve any sale and, if there were more than one competing offer, would determine which competing bid to approve.

What happens to our contract if American sells its assets?

If American decided to satisfy its debts by selling off the pieces of its assets, any and all successors must recognize the APFA - American Flight Attendant Contract. The standard National Mediation Board certification, which covers APFA representation at American, applies to the carrier and its successors. Absent unusual circumstances, any successor employer would have to recognize APFA as the bargaining agent for the Flight Attendants and would have to honor the APFA - American Contract.

What happens to our retirement health and life insurance benefits under Chapter 11 bankruptcy?

A filing does not have an immediate impact on retiree medical benefits. They are not guaranteed by a governmental agency. However, they are part of the Flight Attendant Collective Bargaining Agreement. The company may not modify benefits unless APFA agrees to such modification or unless the court specifically authorizes modification. Similar to the requirements that must be met to modify any Collective Bargaining Agreements, the bankruptcy code sets certain procedures to obtain permanent modifications to these benefits. Section 1114 of the bankruptcy code covers union and non-union retiree health and life insurance benefits. The procedures are similar to Section 1113.

A Closing Message

from Patty French, APFA's EAP Representative and Specialist

We have all made difficult sacrifices in hopes of avoiding working for a bankrupt carrier and yet here we are. No one wanted this. We all have plenty of anxiety and questions about what is going to happen to our jobs, our pay, pensions and work rules.

It will take time to understand what bankruptcy will mean to our work lives. It is easy to feel like a passenger on trip we never wanted to take. In the coming months, it will be essential to have a stress plan in place to help regulate emotions and manage stress.

What follows are some tips on how to manage stress.

- Get factual information to plan for your future.
- Connect with empathetic family and friends to build hopefulness and strength.
- While you can't change the bankruptcy, you can change how you respond to it.
- Focus on what you can change.
- Develop realistic goals and do something each day to move toward them.
- Look for opportunities to find a sense of personal strength, wisdom and self-worth as a result of this event.
- Nurture a positive view of yourself and focus on problem solving.
- Keep things in perspective.
- Visualize what you want, not what you fear.
- Attend to your own needs and engage in activities you enjoy.
- Exercise regularly and get plenty of rest.
- Get professional help when you need it.

The APFA EAP Desk, with trained and dedicated specialists around our system, remains available for confidential discussions or to help you with a referral to a health professional in your area. Call: 817.540.0108 ext 8701.

*“It is worth remembering
that the time of greatest gain
in terms of wisdom and inner strength
is during the time of greatest difficulty.”
– The Dalai Lama*

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Association of Professional Flight Attendants

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Address Service Requested

Bankruptcy Informational Base Visits

Check the APFA website, HotLines and APFA Bulletin Boards for dates and times of base visits to provide the membership with information about bankruptcy. President Glading will be joining members of the APFA Negotiating Team, Retirement Department and Legal Counsel to share what we know now and what to expect, to address your concerns and answer your questions.

Visit APFA.org regularly for updates to the bankruptcy Q & A.

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