In the Matter of the Arbitration Between

American Airlines, Inc. Grievance No. SS-32-2014-APFA-2

and VEBA Prefunding

Association of Professional Flight Attendants

Hearings held April 28,29,30, June 17-18, 2015

Before the System Board of Adjustment

Richard I. Bloch, Esq., Chair
Marcus Gluth, Association Appointed Member
Robert Clayman, Esq., Association Appointed Member
Paul Jones, Esq., Company Appointed Member
Lucretia Guia, Esq., Company Appointed Member

Appearances
For the Association
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For the Company
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Chris Hollinger, Esq.
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OPINION

Facts

In 1989, American Airlines (hereinafter "American", or "Company") and the Transport Workers Union first agreed to a Retiree Health Prefunding Program under which TWU-represented personnel contributed their own money to prefund a Voluntary Employee's Beneficiary Association ("VEBA") trust that would support a portion of the

cost of post-retirement medical benefits. In 1992, the Company agreed to match contributions.[1] The Company and the Association of Professional Flight Attendants ("APFA" or "Association") established a VEBA, which included employer matching contributions, in 2001. But in 2011, the Company filed for relief under Chapter 11 of the Bankruptcy Code. As part of an effort to secure a 20 percent across-the-board reduction in labor costs, so as to restructure and exit bankruptcy, American announced its intent to discontinue subsidizing retiree medical benefits for both current and future retirees, and this plan was ultimately agreed to as part of the parties' 2012 labor contract.[2] It was also agreed that, following termination of the retiree medical benefits for active flight attendants, the Company would return those attendants' own prefunding contributions, together with investment earnings generated by such funds.[3] A Side Letter to Article 35, directed to the refund of the employees' prefunding contributions , states, in relevant part:

> During the restructuring agreement negotiations, the parties agreed that upon implementation of the changes to the retiree medical plan program an active employee who currently pre-funds for retiree medical will be refunded the employees pre-funding account(which reflects an investment experience), excluding employees who have already received employee pre-funding refunds.

Additionally, it was understood that the Company's matching contributions, subject to certain conditions, would be distributed to the active employees. The second paragraph

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[1] Company matching contributions were maintained in separate accounts within the trust, but recorded notionally for each participant. (See Co. brief, p.13). The employer matching contributions, unlike the employee contributed portions, were not "owned" by the employee. While records were kept as to the amount of contributions applicable to an individual employee, those specific sums were not allocated for their individual use (see Tr., 395:14-20); rather, they were utilized to offset the costs of retiree expenses generally. In the event of an employee's severing their tenure with the Company, the employee would receive his or her own pre-funding contributions, but the Company matching sums remained in the Trust to support the medical benefits for the remaining retirees.

[2] See Article 35(C) of the American-APFA labor agreement, infra. p. 5.
[3] Id., ¶(C)2.

of the Side Letter contains that promise, together with a significant qualification that is central to the dispute in this case:

> In addition, the parties agreed that *contingent on the successful resolution of the Section 1114 process,* as soon as possible after termination of the Trust Agreement for the Group Life and Health Benefits Plan for Employees of Participating AMR Corporation Subsidiaries (Union employees), the Company pre-funding contributions for each participating active employee, and investment earnings attributable thereto, will be distributed to the employee (subject to applicable tax withholdings and/or excise tax), excluding employees who have already received refunds of their employee pre-funding accounts. The refund will be made to the employee following the successful conclusion of the 1114 process.[4]

The italicized language reflects the bargained contingency here at issue. To date, however, while the Company has exited bankruptcy, the matching funds have not been disbursed.[5] The Association contends the Company has failed to initiate the "Section 1114 process" and has, therefore, engendered an untenable delay that should not be countenanced by this Board. Accordingly, it seeks an order to the Company requiring distribution of the funds. Alternatively, APFA says the Company's successful 2013 exit from bankruptcy should be regarded as satisfaction of the contingency.

Issue: Did the Company violate the current agreements between APFA and American Airlines, including paragraph 6 of the MOU dated December 31, 2012; The "Retiree Health" provisions of the Conditional Labor Agreement ("CLA"); Article 35.C and the side letter agreement to Article 35 of the Collective Bargaining Agreement ("CBA") dated September 12, 2012 and any related articles of the CBA; and Attachment G to the Last Best Final Offer ("LBFO") dated July 19,2012? If so, what should be the remedy ?

Association Position

APFA claims the Company should have proceeded with a "Motion to Modify" under §1114 of the Bankruptcy. Instead, American filed an Adversary Proceeding against the Section 1114 Creditors' Committee, seeking a declaratory judgment that

[4] Id., italics supplied.

[5] Current employees' contributions have been returned. However, the trust continues to retain the pre-funding contributions of Flight Attendants who retired before Nov. 1., 2012, together with the Company's matching contributions. (Jt. Ex. 43).

current retirees had no vested rights to health plan benefits; and that the benefits could therefore be unilaterally modified (including elimination of the financial subsidy entirely). The Motion was denied, and the matter remains currently unresolved in the court. In reliance of those facts, the Association claims that, because the Company has failed to follow through with the promise to engage the §1114 process at all, it should not be permitted to seek shelter behind the process not being "successfully resolved". Alternatively, APFA claims that American's successful 2013 exit from Bankruptcy should be regarded by this Board as sufficient grounds for requiring the Company's compliance with its promise.

The Association requests that American be ordered to distribute the employer matching funds to current flight attendants who participated in prefunding. In the event of a legal or a practical impediment to the timely distribution of these monies, flight attendants should be made whole through money damages in an amount equivalent to the prefunding match money held in trust on their behalf, it is argued. Alternatively, affected flight attendants should be put in the position they occupied *status quo ante* to the agreement at issue, such that the matching funds will remain in trust to be used to defray the retiree health costs for the active flight attendants when they retire.[6]

Company Position

The Company claims its agreement to distribute the matching contributions to active flight attendants was premised on the central assumption it would be fully relieved of the obligation to pay medical costs for retirees. However, it was unable to

[6] See APFA brief, p.44.

obtain relief on this point through the bankruptcy process. Contrary to the Association's contention, says the Company, it had no obligation to file a particular type of motion. Its decision to file the Adversary Proceeding, as distinguished from a Motion to Modify, was a reasonable, albeit unsuccessful, attempt to reach a "successful resolution" of the §1114 process. As a result, the Company denies any obligation to distribute the matching contributions here sought. The Company requests that the grievance be denied.

RELEVANT CONTRACT POSITIONS

A. American's Last Best and Final Offer ("LBFO") to the APFA (July 19, 1 2012, updated July 27,2012): Article 35 (Jt. EX. 25.)

Attachment G - Retiree Medical & Life -- Flight Attendant

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4. A participant who currently prefunds for retiree medical will be refunded the employee's prefunding account (which reflects investment experience).

5. Contingent on the successful resolution of the Section 1114 process, as soon as practicable after termination of the Agreement for the Group Life and Health Benefits Plan forEmployees of Participating AMR Corporation Subsidiaries (Union Employees), the Company prefunding contributions for each participating active employee, and investment earnings attributable thereto, will be distributed to the employee (subject to applicable tax withholdings), excluding employees who have already received refunds of their employee prefunding accounts.

B. American-APFA CBA (September 12, 2012): Article 35 (Jt. EX. 30.)

C. RETIREE HEALTH CARE

Retiree Medical Coverage for Flight Attendants Retiring On or After November 1, 2012

1. Notwithstanding any other collective bargaining agreement provisions, and all other agreements, past practices, and arbitration awards between the parties, the

Company is not required to maintain, fund, or provide for retiree medical or retiree life insurance benefits.

2. Effective October 31, 2012, the retiree medical prefunding program will be discontinued for Flight Attendants who retire on or after November 1, 2012. Flight Attendants who are prefunding as of October 31,2012 will be refunded their prefunding contributions (to the extent not already refunded) plus investment experience within 120 days.

3. Retiree Medical Coverage For Flight Attendants Ages 55 through 64 Who Retire On or After November 1, 2012. Flight Attendants retiring on or after age 55 and through age 64 will have access to a Company-sponsored retiree medical option. Retiree contribution rates for this coverage will be 100% of projected annual expenses (which includes administrative expenses) using data, assumptions, and methodologies for calculating future retiree healthcare costs. For the remainder of 2012, the Company will offer the pre—65 plan design (which includes a provider network) offered to management retirees. Although it is the Company's intention to continue to make available access to medical coverage for retirees from age 55 through age 64, the Company reserves the right to modify, amend, or terminate the Retiree Medical Plan at any time.

4. Retiree Medical Coverage For Flight Attendants Age 65 and Older Who Retire On or After November 1, 2012. Retiree Medical Coverage shall cease when the retired Flight Attendant attains age 65. Retirees age 65 and over will be offered access to purchase, at the retiree's expense, a guaranteed issue Medicare supplement plan through a third party administrator, to the extent available.

C. American-APFA CBA (September 12, 2012): Article 35 Side Letter (Jt. Ex. 30.)

"Employee and Company Prefunding Contributions"

Dear Laura [Glading],

During the restructuring agreement negotiations, the parties agreed that upon implementation of the changes to the Retiree medical plan program an active employee who currently prefunds for retiree medical will be refunded the employee's prefunding account (which reflects investment experience), excluding employees who have already received employee prefunding refunds.

In addition, the parties agreed that contingent on the successful resolution of the Section 1114 process, as soon as practicable after termination of the Trust Agreement for the Group Life and Health Benefits Plan for Employees of Participating AMR Corporation Subsidiaries (Union Employees), the Company prefunding contributions for each participating

active employee, and investment earnings attributable thereto, will be distributed to the employee (subject to applicable tax withholdings and/or excise tax), excluding employees who have already received refunds of their employee prefunding accounts. The refund will be made to the employee following the successful conclusion of the 1114 process.

D. US Airways-APFA Conditional Labor Agreement ("CLA") (April 12,2012) (Jt. Ex. 31.)

Retiree Health:
1. Eliminate current provisions.

2. For FAS on the AA seniority list as of the Plan Effective Date only — VEBA seeded with current balance of FA and AA contributions per Pre-funding provisions of CBA.

E. US Airways-APFA Memorandum of Understanding ("MOU") (December 31, 2012) (J t. Ex. 32.)

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6. As a result of the prior return by American of employee prefunding contributions pursuant to the New CBA [i .e., the September 12, 2012 American-APFA CBA], the provisions in the CLA under Retiree Health, Paragraph 2 relating to a VEBA will not be implemented and are deemed void. It is the intent of the parties to maintain the retiree Medical program provided for in the New CBA.

Analysis

The essence of the Association's claim is that, during discussions leading up to the Company's exit from bankruptcy, American promised to distribute the employer's share of the VEBA contributions to bargaining unit members (as contrasted with leaving it in the Trust to offset costs). The parties agree the Company's promise was conditioned on the Company's achieving a "successful resolution of the Section 1114 process." APFA concedes that, to date, there has been no "successful resolution", but

claims the Company has been dilatory in pursuing that process, that it has failed to initiate the §1114 process and that, and, as a result, it must follow through on the obligation to distribute the funds at issue. Alternatively, says, APFA, the successful exit from Bankruptcy should be seen as satisfying the contingency. For the reasons to be discussed below, we conclude the grievance lacks merit.

In November 2011, American Airlines filed for bankruptcy relief under Chapter 11 of the Bankruptcy Code, in the Southern District of New York.[7] In the course of restructuring, the United States Trustee appointed an "Unsecured Creditor's Committee", a group charged with "overseeing the kind of reorganization and any restructuring the Company was doing."[8] Additionally, in March of 2012, the Bankruptcy Court directed that a "Committee of Retired Employees pursuant to U.S.C. § 1114" be appointed to represent then-current retirees who were receiving health and welfare benefits from the Company.[9]

Early in 2012 the Company entered into negotiations with each of its unions as part of the restructuring process.[10] The talks were aimed at avoiding the Company's pursuing Section 1113 motions to reject the collective bargaining agreements. The goal was to reach agreement on concessions of 20 percent cost reductions for each workgroup, amounting to $230 million per year in savings from the APFA–represented flight attendants[11] and some $1.25 billion per year in savings from all active employees.[12]

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[7] United States Bankruptcy Court, Southern District of New York, Case No. 11-15463 (SHL).
[8] Tr. 238:10-12.
[9] 11 U.S.C. § 1114(b); Jt. Ex. 47.
[10] Jt. Ex. 46.
[11] See Union Ex. 21.
[12] *Id.*

The Company also sought to meet cost reduction goals by "eliminating all subsidies for retiree medical for active employees going forward".[13] Additionally, American announced its intention to eliminate its existing obligation to cover the medical expenses of then-retired employees, which, [14] according to the record, then accounted for some $3 billion of the Company's overall liabilities.[15] From the evidence, there can be no real question as to the Company's goals in restructuring, including total termination of retiree health subsidies not only for current retirees, but for active flight attendants as well.[16] In meetings with Union representatives in February 2012, the Company repeatedly expressed its need to divest itself of all such retiree medical expenses. Testifying before this Board, Mary Anderson, the Company's Managing Director of Health and Welfare, recounted her conclusion that she told the assembled unions the Company needed that burden "off [its] books"[17]. This, she testified, meant the Company would have "no liability, no cash expense, [and] no accounting expense" for any retiree medical expenses.[18] The new proposal would retain the Company-

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[13] Tr. 405:8-406:14; U. Ex. 27.
[14] Tr. 405:20-406:14.
[15] See U. Ex. 27, Pages 17-18.
[16] Testifying for APFA, President Laura Glading read the Company's LBFO, ¶5 (see p. 5, supra) to represent the Company's intent to pursue any such changes through the §1114 process:

> I thought it referred to the fact that the company had every intention of following an 1114 process. And whether there was a settlement or agreement reached prior or a Judge's decision that gave them what they needed to exit bankruptcy – that would be the ... successful conclusion of the 1114 process. (Tr.,p.262)

There is no reason to question that the Association's assumption (and, for that matter, the Company's as well) that the goal of eliminating subsidies would proceed via §1114. That is, after all, the provision of the Act dealing specifically with retiree rights. Neither, however, do we read the agreement as precluding other legal approaches that could yield the same result.
[17] Tr., 243:14-244
[18] Tr. 402:3-20. The witness acknowledges she may not have explicitly detailed "successful resolution" as meaning "total elimination of retiree health obligations" (Tr., p. 419) during discussions with APFA. And, the Company's Last Best Final Offer (see Attachment G, supra, p. 5) in July of 2012 is also not specific in defining the standard by which "successful resolution" must ultimately be measured. These, however, were experienced negotiators: With due regard for the absence of extended discussion on the precise parameters of "successful resolution", one could reasonably know that comments like "off the books", and other pronouncements , (see, for example, "AMR's Plan for Success" , distributed in the course of "Road shows" with the Association, which announces, unqualifiedly, that "The elimination of debt and the

sponsored medical plan, but it would be funded entirely by employee retiree contributions.[19] At its heart, the essential question is not whether the Company was at liberty to discontinue those benefits in their then-current form, but whether it was contractually obliged to pursue those dramatic modifications *only* through the §1114 processes, and whether, and to what extent, it did so here.

During negotiations between the Company and the Association, the Company initially proposed that, in the course of discontinuing pre-funding for active employees, those flight attendants would receive a refund of their own contributions, but the matching Company contributions would remain in the VEBA trust. The Association countered by suggesting that all contributed funds be transferred to a new VEBA that would cover the retiree medical benefits of current flight attendants.[20] Following additional negotiations and the exchange of several subsequent proposals[21], the Company proposed, as part of its July, 2012 Last, Best, Final Offer ("LBFO") the distribution of Company matching contributions:

> Contingent on the successful resolution of the Section 1114 process, as soon as practicable after termination of the Trust Agreement for the Group Life and Health Benefits Plan for Employees of Participating AMR Corporation Subsidiaries (Union Employees), the Company pre-funding contributions for each participating active employee, and investment earnings attributable thereto, would be distributed to the employee (subject to applicable tax withholdings), excluding employees who have already received refunds of their employee pre-funding accounts.[22]

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termination of retiree benefits are critical to attaining a competitive cost structure." (at p.49)) strongly suggested the removal of all existing additional financial obligations.

[19] See Jt. Ex. 8, p.4.

[20] Jt. Ex. 9.

[21] See Jt. Ex.11 and 14.

[22] See p. 5, *supra*.

The parties concede the above language was lifted in its entirety, unedited, [23] from negotiated labor agreements between American and the Transport Workers' Union. Moreover, the record in this case reflects there was little, if any subsequent discussion of the language prior to the parties' agreement to submit the LBFO for ratification by the membership, which ratified the deal on August 19, 2012.[24] The critical language from the Company's proposal, complete with an the inadvertent reference to the TWU trust agreement, was restated in the Article 35 Side Letter.

> ...[T]he parties agreed that contingent on the successful resolution of the Section 1114 process, as soon as practicable after termination of the Trust Agreement for the Group Life and Health Benefits Plan for Employees of Participating AMR Corporation Subsidiaries (Union Employees), the Company pre-funding contributions for each participating active employee, and investment earnings attributable thereto, will be distributed to the employee (subject to applicable tax withholdings and/or excise tax, excluding employees who have already received refunds of their employee pre-funding accounts. The refund will be made to the employee following the successful conclusion of the 1114 process.[25]

"Successful Resolution"

The term "successful resolution of the Section 1114 process", while not necessarily ambiguous, is at least imprecise when viewed in the light of these parties' bargaining history, particularly the respective expectations surrounding disposition of the funds at issue. One turns first to the question of what constitutes the "Section 1114 process." From the record, it is clear enough that both parties had anticipated a

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[23] The reference to excluding from distribution employees who had already received funds of their employee pre-funding accounts was erroneous, the parties agree. (See Tr. 482:5-15.) However, as will be discussed below, the mistake is of some relevance in considering the virtual total lack of any bargaining or even extended discussion of this language either before or after its implementation.

[24] Jt. Exhibits 25, 73.

[25] The last sentence of the Side Letter (unlike the remainder of the text) was drafted by these parties. For our purposes, we read the term "successful conclusion" as synonymous with "successful resolution". In either case, the Association's protest is that the §1114 process was not engaged at all.

§1114 process that may well have included the Company's filing a "Motion to Modify" the retiree health plan under Section 1114. That motion was never filed. According to the evidence, the Company concluded that, in light of the prospect of merging with U.S. Airways, it was doubtful it could show the requisite "necessity" inherent in such a motion.[26] Instead, on the theory that retirees possessed no vested rights to the health benefits in the first place, and that, therefore, the benefits could be terminated unilaterally, without court approval, the Company filed an action for a Declaratory Judgment and, subsequently, a motion for Partial Summary Judgment. This action was based on American's belief this Adversary Process would secure the sought-after relief from the burden of the retirement program's costs.[27]

The parties differ as to whether this Adversary Proceeding should properly be considered part of the §1114 process. The Company claims it was[28], the Association disagrees.[29] It is unnecessary for this Board to untie those knots. The telling portion of the contract language, we conclude, is that related to "successful resolution," and while one might quibble as to whether the Company's actions were or were not technically within the "Section 1114 process," the clearly announced, and clearly understood goal, which is adequately reflected in the words "successful resolution", is whether the Company could be relieved of the retiree health benefits subsidies. To be sure, the §1114 proceeding was specifically dedicated to retiree rights. But the Company's resort to the Adversary Action was aimed at terminating the subsidies for all flight attendants, active

[26] See 11 U.S.C.§1114(g), which states that a court shall grant a Motion to Modify if, among other things, "...such modification is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor, and all of the affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities."

[27] In response to the question of why it would not file the Motion to Modify concurrent with the other motions, the Company stated that it was concerned the filing of such motion, which would recognize an existing right on the part of the retirees, would send mixed messages to the court.

[28] Co. brief, p. 37.

[29] Assoc. brief, p.16, *et seq*.

and retired, and if successful, would have allowed, indeed required, the disbursement of funds sought here. Inclusion of the adjective "successful" can only be read as supporting the Company's argument that it would not be sufficient for it to have gone through the "resolution process", however defined, and failed to have gained relief. In the final analysis, then, it doesn't matter whether the Adversary Procedure should be considered in or outside the §1114 process. Had the court granted the sought-after declaratory judgment concerning the lack of retiree vested rights, the Company would certainly have been obliged to carry out the disbursement, whether or not it was considered part of the §1114 process. Under any reasonable reading of "successful resolution", the contingency would, under those circumstances, have been satisfied.[30] The record establishes that, in discussions with the Association, references to the Company's needs in this context were clear and consistent, and the evidence is clear on the fact that, to date, the Company's sought after relief from retiree medical funding has not been achieved.

This is not to say the Company could have chosen, then or now, to ignore the promise to seek a resolution in good faith; that obligation was inherent in both the promise to disburse and the included contingency. The finding here is that, taken in their entirety, the Company's actions may not be said to represent evasion or avoidance of its promise to APFA in this case. The Adversary Proceeding motion was filed in early July of 2012, but not decided by the court until mid-April of 2014, by which time the

[30] We recognize, in so stating, an apparent split of opinion between the 2nd and 3rd Circuits as to whether, assuming the Adversary Action were not considered a §1114 matter, the Company would have had to proceed with a Motion to Modify, even if the benefit had not vested. See *In re Visteon Corporation*, 612 F.3rd 210(3rd Cir. 2010), *but see In re Delphi Corp.*, No. 05-444481(RDD), (Bankr. S.D.N.Y. 1999). But the Adversary Action motion was denied, and the Motion to Modify under §1114 is moot, at this point, since the Bankruptcy proceeding itself is concluded.

bankruptcy case[31] was long concluded, although the Adversary Proceeding[32], while evidently dormant, remains extant. The inaction of the court has put this issue in limbo and for now, at least, deprived active members of the bargaining unit of the disbursements that represent their benefits of the bargain. It is equally true, however, that the relief sought by the Company, which was central to its side of the deal, has not yet occurred and, contrary to the Association's assertions, the delay cannot be laid at the feet of the Company. As noted earlier, the Company's concerns, which included the possibility that, given the impending merger, a Motion to Modify would have been futile, were neither frivolous nor irrational, nor was the decision to invoke the Adversary Process, under the circumstances.[33]

In the overall, then, there is no evidence on the record that the Company has somehow gamed the system to thwart what was otherwise a clear underlying premise of the condition -- termination of the Company's financial obligations to support retiree health insurance. While the Association questions the Company's having invoked the Adversary Process (the declaratory judgment) to terminate the obligation, a "successful" outcome on that motion would have been fully consistent with the agreed-upon goal of terminating the retiree health subsidy, a goal that likely would not have been achieved through a "Motion to Modify."[34] Nor, contrary to the Association's contention, may one

[31] United States Bankruptcy Court for the Southern District of New York, Case No. 11-15463.
[32] United States Bankruptcy Court for the Southern District of New York, Case No. 12-01744.
[33] In the interim between filing the Adversary Proceeding Motion and the court's decision, the Company continued to prepare for the Motion to Modify in the event its declaratory judgment motion was denied. However, it was advised by counsel that prevailing on the Motion to Modify would have created a $1.3 billion claim, (see APFA Ex. 8, see also Tr., 529,543) representing retiree medical obligations, that would have been due and payable immediately upon exit from bankruptcy rather than over the lives of the then-current retirees.
[34] There would have been no apparent benefit to be derived by avoiding such relief and the accompanying disbursement obligation. The Company would not have been able to retain the monies for its own use.

conclude that American's successful exit from Bankruptcy should somehow be considered the effective equivalent of having "successfully resolved the 1114 process." Whatever lack of clarity attends the words here at issue, the basic goal of gaining relief from retiree health insurance funding obligations is clear, for the reasons set forth above. The Company emerged from Bankruptcy, it is true, but that funding obligation remains.

In sum, the Company's promise to return the matching funds at issue was qualified by the sole, but very significant, contingency that the Company be relieved of any and all obligations to subsidize the remaining health benefits fund. The borrowed (from the AA/TWU contract) language utilized by the parties referenced the anticipated route ("the Section 1114 process") by which the relief would be sought. But neither that language nor any other evidence persuades the Board that the parties intended that process to be the exclusive means of achieving the agreed upon result. Even assuming, without deciding, that the Adversary Proceeding did not fit within the precise boundaries of a §1114 process, the Company's actions were not unreasonable, in no way designed to avoid its commitment and, while unsuccessful, cannot be seen as having breached the intent of the contracting parties.

See Joint Exhibit 43, "Trust Agreement for the Group Life and Health Benefits Plan for Employees of Participating AMR Corporation Subsidiaries Represented by the Association of Professional Flight Attendants", which states, in relevant part:

> Except as provided herein, no portion of the principal or the income of the Trust Fund shall revert to or be recoverable by the Company or any Employer or ever be used for or diverted to any purpose other than for the exclusive benefits of Participants in the Plan. (Article Two,¶2.6.)
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> See also Article Four, ¶ 10.1:
> [N]o instrument of termination or amendment shall authorize…any part of the corpus or income of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of such Participants and their beneficiaries.

Care should be taken in reading this Board's decision. We do not conclude that the Company has somehow been released from its obligation to disburse the matching contributions. The finding here is limited to the observation that (1) the stated contingency of a "successful resolution" has not occurred and (2) there is no showing that the Company has somehow operated in bad faith or otherwise breached its bargained commitments by engaging in the procedural mechanisms discussed herein during the pendency of the Bankruptcy proceedings. Under the current circumstances, we conclude that the Company can properly continue to claim that the bargained contingency has not yet been satisfied. For these reasons, the grievance will be denied.

AWARD

The grievance is denied.

Richard I. Bloch, Esq., Chair

Marcus Gluth, Association Appointed Member (Dissenting)

Robert Clayman, Esq., Association Appointed Member (Dissenting)

Paul Jones, Esq., Company Appointed Member (Concurring)

Lucretia Guia, Esq., Company Appointed Member (Concurring)

Date: March 1, 2016