This newsletter is the first in what will be a series addressing questions and concerns regarding the recent filing of Chapter 11 reorganization by AMR. The purpose of these newsletters will be to help you understand what has happened and what is likely to happen in the future. The focus initially will be bankruptcy questions and answers as well as a time line of what is likely to occur during the next few months. We will be supplementing this information with updates to our ALPA website and e-mails. Our goal is to provide a timely stream of information regarding the bankruptcy.

**AMR FILING**

On the morning of November 29, AMR filed for Chapter 11 bankruptcy protection in the Southern District of New York. Much of the law governing bankruptcy proceedings in this district is considered to be pro-business and this district has been the venue used in the past by other airlines when filing for Chapter 11 reorganization. As part of the Chapter 11 reorganization, AMR has indicated its intent to use the processes of Section 1113 of the Bankruptcy Code to make changes to our existing contract. This section of the Bankruptcy Code provides the company with an ability to renegotiate and potentially require, if authorized by the bankruptcy court, changes to terms provided by a labor agreement, changes which would otherwise not be permitted under the Railway Labor Act.

**WHAT IS CHAPTER 11?**

The U.S. Bankruptcy Code includes rehabilitative provisions. Chapter 11 of the Code contains a series of such provisions that are applied to a “reorganization” bankruptcy. Reorganization is typically used to restructure a failing business as an ongoing business, under the premise that the business is of great value, socially and economically, as a going concern rather than in liquidation. AMR has stated that it seeks to have a seamless continuation in operations so that customers do not experience any adverse impact on services. This process will allow AMR to seek the rehabilitation and reorganization that nearly all other major airlines have done already.
The bankruptcy case begins when a bankruptcy petition is filed with a bankruptcy court. AMR has said that it voluntarily filed for Chapter 11 reorganization in an effort to become more cost effective and profitable again. During this process, AMR will keep operating its business as usual with scheduled service and uninterrupted payment to all employees; however, AMR’s actions and decisions fall under the supervision of the bankruptcy court now. Any decision that falls outside of the “ordinary course” of business must be approved by the court. It is important to note that while the bankruptcy judge plays a very important role in the process, he does not manage the company’s operations. It is his responsibility to interpret the law and facts as they relate to the company’s requests for relief during the bankruptcy and its ultimate request for approval of a plan of reorganization to successfully emerge from bankruptcy.

**THE NEXT STEP**

Your MEC leadership immediately retained bankruptcy counsel from Cohen, Weiss and Simon LLP, a firm devoted exclusively to the interests of labor and working people. Cohen, Weiss and Simon partner Richard Seltzer, who attended the first day hearing in New York, is overseeing the proceedings in ALPA’s representation of Eagle pilots. He has a wealth of experience working within the bankruptcy field, having represented ALPA in bankruptcy proceedings for more than 25 years.

Along with the Strategic Planning, Negotiating, and Communications committees, your MEC leadership has been working hard to educate ourselves on the process so we can educate the Eagle pilots.

Our counsel attended the organizational meeting of the official Unsecured Creditors Committee (herein called the Creditors Committee), which under the law plays an oversight role on behalf of all creditors. The Creditors Committee is appointed by the United States Trustee, an official of the Justice Department, and typically consists of unsecured creditors who hold the largest unsecured claims against the debtor. While ALPA, along with dozens of other AMR creditors, sought appointment to the Creditors Committee, we were not selected (also passed over were Airbus and Rolls Royce, along with other significant creditors). We are continuing to seek a nonvoting position on the Creditors Committee which would give us a good window on the process.
The MEC held a meeting on December 6 and 7 at the ALPA National office in Herndon. In attendance were the entire MEC and committee representatives, as well as ALPA national leadership, Legal, Communications, Economic and Financial Analysis, Strategic Planning, and our bankruptcy attorneys Richard Seltzer and Tom Ciantra. The meeting consisted of a briefing from the bankruptcy attorneys on the legal process and developing a strategy going forward.

We understand that many pilots have never gone through bankruptcy and it’s important that everyone understands the process and the possible outcomes. Therefore, we are providing the following FAQs:

**FREQUENTLY ASKED QUESTIONS AND ANSWERS:**

**What can happen to our contract in Chapter 11 bankruptcy?**

Under Section 1113 of the Bankruptcy Code, the debtor may ask the bankruptcy court for authority to reject labor contracts, and it can thereby seek to modify any provision in a labor contract, including both economic and noneconomic terms.

The debtor must go through a negotiation and litigation process before it can obtain rejection of a labor contract. First, a proposal must be provided to the relevant union prior to the company’s filing the motion to reject in court. Among the statutory requirements are that the proposal must provide only for “necessary” modifications that are “necessary” to permit reorganization and assure “fair” and “equitable” treatment of all parties. The company must also provide the union with such relevant information as is necessary to evaluate the proposal. Then, within 2 to 3 weeks of filing this motion (unless the company agrees otherwise, which sometimes happens), during which negotiations take place, a full-scale bankruptcy court hearing is held where all interested parties can be heard. Negotiations often continue during the hearing. If no settlement is reached, the court’s decision on rejection of contracts will be made within 40 to 51 days of the filing of the motion unless the debtor agrees to extend this period.

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 company has met
the very high standard of showing that the relief is “essential” to the continuation of business or to avoid “irreparable harm” to the bankruptcy estate.

Who else is involved in a company’s bankruptcy filing?

The unsecured creditors have a formal role in a Chapter 11 bankruptcy. As discussed above, an official body called the Unsecured Creditors Committee is appointed to represent the interests of unsecured creditors. This committee can hire professionals, often including lawyers and accountants or investment bankers, to monitor a company’s actions. This cost is paid for by the debtor.

Any creditor can appear on any matter before the bankruptcy court, and the court tends to pay special attention to the views of the committee.

What happens in the Chapter 11 bankruptcy process?

When a company files a petition for Chapter 11, the automatic stay takes effect and creditors’ efforts to collect monies due—including lawsuits—are put on hold (an exception is that grievances and system board proceedings may take place, although any financial remedy may be subject to the bankruptcy process). The company immediately comes under the supervision of the bankruptcy court. The debtor may ask the court for the authority to reject or assume contracts. The company ultimately negotiates a Plan of Reorganization (POR) with creditors and other involved parties in the bankruptcy. The POR is a legal document that provides how the company will pay creditors and how it will be governed following emergence from bankruptcy.

How is the POR approved?

The company’s management has the exclusive right to file a POR for the first 120 days after filing the petition, although the bankruptcy court may shorten or extend that “exclusive” time period, up to 18 months. Before a POR may take effect, it must be approved by the bankruptcy court and gain the required positive vote of various classes of creditors. There are usually prolonged negotiations over the POR between the company and various groups involved in the bankruptcy, including the Creditors Committee. The approval of the POR is the goal of the process and typically marks the end of the major part of the bankruptcy proceeding.
How is a company financed under Chapter 11?

A company filing for Chapter 11, now called the debtor-in-possession (DIP) because the debtor is still in possession of the business, often seeks new financing, called DIP Financing, which is often provided by pre-petition lenders who seek improved terms and collateral. Some companies may have sufficient cash to operate on the basis of that cash; such is the case with AMR.

What is the role of the bankruptcy judge?

The judge oversees the process and must review the debtor’s “non-ordinary course” decisions, which includes any requests for rejecting labor contracts or selling substantial assets. The judge will defer to the debtor’s business judgment on many decisions and will typically encourage the parties to settle disputes.