HISTORY OF THE DELTA PILOTS DISABILITY AND SURVIVORSHIP PLAN 1972-2007

(D&S PLAN)

By Ev Gost

Revised 8/19/13

The information contained in this article is based upon the research and opinions of the author. Although the information contained herein is believed to be accurate, no warrantees are made or implied as to its accuracy.

Prior to 1972, the disability benefits under the Delta pilot pension plan were minimal; therefore, financial protection against disability was obtained primarily through the purchase of loss of license insurance from either the Air Line Pilots Association (ALPA), or private insurance companies. In the 1972 contract negotiations, ALPA was interested in obtaining a disability plan as a replacement for the relatively expensive loss of license insurance. Additionally, ALPA desired to establish an early retirement benefit beginning at age 50. At the same time, Delta Air Lines, was interested in replacing the existing costly pension plan (combined defined benefit/defined contribution pension plans) with a less costly defined benefit pension plan.

A Letter of Agreement (LOA) dated May 2, 1972 (with an effective date of February 1, 1972), between Delta and ALPA accomplished mutual goals by amending and restating the Retirement Income Plan (sometimes referred to as the "Prior Plans") into a new or replacement Plan which included Retirement Benefits, Disability Benefits and Survivors Benefits. The LOA also specified that the replacement Plan included a variable benefit, deferred vested benefits for pilots who terminated employment other than by retirement (disability or death) and cash vesting benefits for pilots who were on the system seniority list as of February 1, 1972. Delta was required to pay for the full cost of the Plan and the following two trusts were established:

1. Retirement (qualified under section 401(a) of the Internal Revenue Code).
2. Disability and Survivorship (qualified under 501(c) (9) of the Internal Revenue Code).

Delta contributions were determined by using actuarial assumptions not to exceed 7% and a salary scale of 1.5% per year. Additionally, Delta guaranteed that "the total contributions to the Plan will not be less than the currently required contribution rate to the Prior Plans." The LOA specified that the replacement Plan would remain in full force and effect concurrently with the basic employment agreement between Delta and ALPA.

The original D&S Plan document varied somewhat from the LOA that established the Plan in that:

- The D&S Plan did not specify the actuarial assumptions relating to contributions stated in the LOA, but instead required an annual actuarial valuation upon which recommendations for contributions were to be based.
- The D&S Plan did not include provisions relating to deferred vested benefits and cash vesting benefits.
- The D&S Plan did not the reference the employment agreement with ALPA and the requirement to remain in full force and effect concurrently with the employment agreement, but instead provided for possible modification or discontinuance of the Plan. However, the Plan stated that, "No amendment shall deprive any person of his

right to any benefit to which he was entitled at the time of such amendment."[1]

The D&S Plan, the first of its kind in the airline industry, included three major provisions relating to benefits. First, the plan established a disability benefit that did not terminate upon retirement, but continued for the pilot's lifetime or until he regained his license to fly as an airline pilot. Secondly, the plan provided for a survivors' benefit that was distinct from, and in addition to, any joint life annuity that was elected under the retirement plan. Thirdly, the disability and survivorship benefits included a variable feature on one-half of the initial benefit payable under the D&S Plan. Accordingly, favorable investment performance of the D&S Trust could provide for increases in the variable benefit over time. The defined benefit retirement plan that was part of the replacement plan contained a similar variable benefit feature.

Other noteworthy features of the D&S Plan included the following provisions:

- A pilot was considered to be disabled when he lost his license to fly as an airline pilot because of accidental injury, sickness or disease, including natural deterioration.

---

[1]It can be inferred from this provision along with two other elements in the negotiations for the replacement plan that certain D&S Plan benefits were intended to be vested benefits. First, the D&S Plan was established as part of a replacement Plan for the previous pension plans under which retirement, disability and survivorship benefits were vested. Secondly, the replacement pension plan contained a joint life annuity reduction to the retirement benefit for married pilots, who were eligible for the minimum retirement benefit, without actually providing a joint life annuity form of benefit. In subsequent years, the ALPA Delta MEC explained the reduction by stating, "Under the terms of the minimum benefit negotiations in 1972, the company receives credit for survivors' benefits from the D&S Plan by applying an automatic Joint Life and Survivorship (J&S) reduction if the pilot is married at retirement."

- Temporary disability benefits (based upon 50% of average weekly earnings over the 3 months immediately prior to the disability), which were payable after a 7 day waiting period, extended for 25 weeks. The temporary disability benefits were reduced by workmen's compensation or other cash payments under disability law and were not payable for any period during which the pilot performed work of any kind.
- No offsets were applied to disability benefits.
- Disabled pilots could elect to receive either the disability benefit or the retirement benefit, but not both.
- Long term disability benefits did not commence until 12 months after cessation of income paid by the company.
- Eligibility for disability benefits excluded conditions caused or contributed by intentional self injury, habitual use of narcotics or alcoholic beverages, crop dusting or military service exceeding 60 days in any 12 month period.
- Periodic proof of disability was required during the period which the pilot retained and accrued seniority.
- Depending upon the number of eligible survivors and the age of the pilot at the time of his death, survivor benefits ranged from 25% to 35% of the average highest 60 consecutive months earnings out of the last 10 years of earnings. For pilots who deceased after retiring, the survivor benefit was adjusted for service of less than 25 years and for early retirement.
- In order to be considered eligible for survivor benefits, a spouse had to be married to the pilot as of the date of his retirement or prior to his date of disability (unless the pilot subsequently returned to active employment with Delta).
- Survivor's benefits were specified to continue for the lifetime of an eligible spouse unless the pilot deceased before retirement or while disabled (in such cases the survivor's benefit ceased if the surviving spouse married).

- No offsets were applied to survivors' benefits.
- The variable benefit was based upon benefit units determinable as of the date of disability for disability benefits and the earlier of the date of death or date of retirement for survivor benefits. The value of the benefit units were to be recalculated annually and the variable benefit adjusted accordingly. However, the variable benefit could never be reduced below the initial value of the variable benefit.

MODIFICATIONS TO THE D&S PLAN

In most cases, amendments to the D&S Plan were negotiated with ALPA and are documented by historical changes cited in the Pilot Working Agreement. The 1974 Pilot Working Agreement did not specify any modifications to the D&S Plan. The first amendment to the D&S Plan was dated December 31, 1975. Benefits under the Plan were not altered as the changes relate mainly to administration of the Plan. The following additional provision was added relating to amending the Plan: "No amendment shall be effective unless the Plan as so amended shall be for the exclusive benefit of participants and their beneficiaries."

The second amendment to the D&S Plan, which was signed on March 14, 1978, but effective as of July 1, 1976, amended and defined certain benefits as follows:

1. The disability benefit was defined as 50% of the average monthly earnings over the previous 12 months; however, the disability benefit was reduced dollar for dollar by any benefit that the disabled pilot actually received from the Delta Pilots Retirement Plan.[2] If the pilot

[2] ERISA regulations probably necessitated this modification to the D&S Plan. Previously a disabled pilot who was at least 50 years of age had a choice of receiving either the disability benefit or the retirement

elected a joint life and 50% survivor annuity from the retirement plan, the reduction applied to the disability benefit was the amount that would have been payable as a single life annuity.

2. The D&S Plan monthly income survivor benefit was defined as 50% of the disability benefit currently payable to the pilot immediately prior to his death.
3. The temporary disability benefit was offset by workmen's compensation or government disease related benefits to which the disabled pilot was entitled.

The 1979 Pilot Working Agreement stipulated the following changes to the D&S Plan:

1. The disability benefit became payable 6 months after the expiration of company paid sick leave.
2. At age 60, the disability benefit was reduced dollar for dollar by retirement income actually received from the Delta Pilots Retirement Plan in a single life annuity form or the equivalent (if retirement benefits were paid in the joint and fifty percent (50%) survivor annuity form).
3. Deferred vested benefits were defined as relating to the Delta Pilots Retirement Plan.

The 1982 Pilot Working Agreement modified the time frame of the final average earnings to be used in calculating survivor benefits.

---

benefit, but not both benefits. Under ERISA regulations, an accrued retirement benefit could not be forfeited, but it could serve as a dollar for dollar offset against disability benefits. Under this modification, the offset was applied when the pilot actually began receiving benefits from the retirement plan.

An amendment to the D&S Plan effective September 1, 1982, redefined earnings as regular compensation paid for personal services excluded reimbursement for expenses, and income relating to disability or retirement.

In the 1986 Pilot Working Agreement, the required contributions specified in the original LOA were defined as being applicable to the Delta Pilots Retirement Plan.

The D&S Plan was revised and restated in 1986, presumably to incorporate amendments that were consistent with changes negotiated in the Pilot Working Agreement. One provision that was deleted does not appear to have been negotiated with ALPA under the Pilot Working Agreement. As stated previously, the original version of the D&S Plan contained the provision that "No amendment shall deprive any person of his right to any benefit to which he was entitled at the time of such amendment." That provision was deleted and the wording of a provision added in the amendment to the Plan dated December 31, 1975, was altered to read, "No change shall be effective unless under the Plan as so amended no part of the net earnings of the Plan may inure to the benefit of the Company or any shareholder of the Company except through the payment of benefits otherwise payable under the Plan."

There was a supplemental agreement to the Pilot Working Agreement in 1987 in order to address the merger between Delta and Western Airlines. Effective on October 1, 1987, the D&S Plan was amended with two separate amendments to incorporate the following provisions with regard to former Western pilots:

1. The assets of the Western Pilots Disability and Survivors Benefit Plan Trust were merged into the D&S Trust with all future benefits paid from the D&S Trust.

2. The amount of service with Delta Air Lines on or after October 1, 1987, was used for determining post-retirement survivor income calculations for survivors of former Western pilots.
3. Disability benefits beyond the normal retirement date were reduced to a benefit based upon 50% of final average earnings multiplied by the fraction of actual months of Delta service (after October 1, 1987) divided by 300 months of service.
4. The dollar for dollar retirement benefit offset against disability benefits was based upon benefits actually paid from the Delta Pilots Retirement Plan (DPRP) and the Western D-Plan (to the extent that Western D-Plan benefits constituted a reduction to the DPRP).

An amendment effective March 2, 1989, deleted the requirement that an eligible spouse must be dependent upon the Employee for more than 50% of her support and made minor modifications to temporary disability and death benefits.

An amendment effective on August 1, 1990, redefined eligibility for benefits relating to the first 30 days of furlough and during certain periods when an Employee was ordered to military active duty.

An amendment effective October 1, 1990, defined a grievance process for the denial of a claim for disability or survivor's benefits which exceeded $1,500.

As of January 1991, the D&S Plan reflected the following changes:

1. A lump sum survivor benefit was payable from the D&S Plan in the amount of $50,000 with equal reductions in the 5 years following retirement to a remaining benefit in the amount of $10,000. In cases

where a pilot retired before his normal retirement date, the lump sum benefit decreased in equal amount over 5 years to a remaining benefit in the amount of $5,000.

2. The temporary disability benefit was based upon 50% of the average of the highest consecutive 12 months earnings out of the last 36 months of earnings.
3. In order to be eligible for benefits, a spouse must not have been divorced on the Event Date.

Following the acquisition of Pan Am, the D&S Plan was amended effective September 1, 1991, to include former Pan Am pilots under the provision that applied to former Western pilots relating to (1) a reduction in disability benefits at age 60 (the subsequent disability benefit was based upon 50% of earnings adjusted by a ratio of months of Delta service compared to 300 months) and (2) survivor benefits for death after retirement being based upon actual credited Delta months of service as compared to 300 months of service.

The Plan was amended retroactively to June 1, 1992, to redefine the date of reduction in disability benefits for former Western and Pan Am pilots as the later of age 65 or 5 years after the commencement of disability benefits. [3]

The Plan was amended effective August 1, 1992, with minor modifications to the administration of the Benefit Fund and investments of that fund.

An amendment effective on August 1, 1994, redefined earnings used in the calculation of D&S Plan benefits.

---

[3] This amendment, which was made retroactive to June 1, 1992, appears to have been required in order to comply with the Age Discrimination in Employment Act.

An amendment in 1995 excluded eligibility for disability benefits if the illegal use of drugs caused or contributed to the pilot's illness.

The D&S Plan was revised and restated in 1996, following the signing of the Pilot Working Agreement, to incorporate the following changes:

1. The temporary disability period was modified to begin on the date of disability and last for 26 weeks without the payment of benefits while a pilot was receiving full pay during sick leave, accident leave or vacation time (if taken).
2. The long term disability benefit was modified to begin 13 weeks after sick leave expired or upon expiration of temporary disability benefits whichever occurred later.
3. A pilot on long term disability was allowed to remain on the seniority list for up to 10 years following his disabling event date and accrue longevity under the retirement plan for up to 7 years following the event date.
4. The lump sum survivor benefit for pilots who retired before their normal retirement date was aligned with the benefit of pilots who retired normally. The $50,000 lump sum survivor benefit was reduced in equal increments in the 5 years following retirement to an amount of $10,000 in the 6th year following retirement and thereafter.
5. The definition of reduction to disability benefits relating to retirement benefits was defined as the "amount of retirement benefits that are actually paid to or on account of the Employee from the Retirement Plan, Money Purchase Plan, Bridge Plan, Supplemental Annuity Plan, and any other nonqualified retirement benefit maintained by the Company, plus the gross amount actually

paid from the Western Pilots Defined Benefit Plan (D-Plan) which constitutes an offset to the benefit paid from the Retirement Plan.[4] If such retirement benefits are paid in a form other than a single life annuity, then for the purposes of this Section 4.03(c) such amount shall be converted to an actuarially equivalent single life annuity …"

6. The exclusion from disability benefit for conditions relating to the use of alcohol was deleted.
7. For pilots who decease prior to retiring, the survivor's monthly income benefit was reduced by the actuarial equivalent of the pilot's vested account balance in the Money Purchase Plan at the time of the pilot's death which exceeds the amount of lump sum survivor benefit.
8. Special provisions relating to 5 years of credited service or age were included for pilots who were accepted into the Special Early Retirement Program for June 1996.
9. There was the deletion of a special provision that provided survivor benefits to a spouse who was married to a disabled pilot but subsequently divorced from that pilot.

The year 2000 Pilot Working Agreement included a number of provisions that modified the D&S Plan and the related amendment to the Plan generally was effective as of September 1, 2001. Some of those modifications were as follows:

---

[4] The addition of the words, "or on account of" appear to be related to benefits attributable to the Money Pension Purchase Plan (MPPP) which was established in 1996. The normal form of benefit from the MPPP was a lump sum distribution. An alternative form of benefit was an actuarially equivalent annuity. For the purpose of defining the appropriate offset to the D&S Plan disability benefit, the equivalent annuity value of the MPPP was considered to be on account of the employee. The annuity value of the lump sum distribution from the DPRP also remained on the account of the employee. That annuity value was determined at the time of retirement as one-half of the retirement annuity value (variable benefit). Subsequently, increases in the variable benefit were used as an adjustment to the amount that was "on account of the Employee."

1. Delta obtained the option of using accumulated surplus funds in the D&S Trust to pay for the company provided portion of post-retirement medical and dental claims. For this purpose, surplus funds were considered to be those in excess of 110% of the present value of future liabilities.
2. The documentation of eligibility for disability benefits was modified for disabling event dates occurring after September 1, 2001.
3. The remarriage penalty was deleted for survivors of pilots who died after the effective date of the agreement. Prior to that date, benefits of survivors of pilots who did not retire directly from active service, ceased if the surviving spouse remarried.
4. The reduction in disability benefits of former Western and Pan Am pilots at age 65 (or 5 years after the disability event date) was deleted for benefits payable after September 1, 2001.
5. The survivor monthly income benefit was adjusted to address provisions of the recently established Pre-Retirement Spousal Benefit and the Supplemental Pre-Retirement Spousal Benefit payable from the Delta Pilots Retirement Plan.
6. The definition of “Earnings” was modified to include additional compensation.
7. Survivor monthly income benefits for disabled pilots who die before retiring was defined as the greater of (1) 50% of the disability benefit, before offset for retirement benefits, payable immediately prior to the pilot’s death or (2) 25%, 30% or 35% (depending upon the pilot’s age at the time of death and the number of eligible survivors) of the pilot’s final average earnings.
8. The threshold for the grievance of a denied claim was reduced to $1,000.
9. Survivor’s benefits were defined as continuing until the eligible surviving spouse dies.

10. Domestic Partners were added as eligible family members.

11. A provision was added to allow participants the option of repaying overpayments from the Plan over a 48 month period without interest.

12. The proof of continuing eligibility for disability benefits was modified for pilots who were removed from the seniority list on or after October 1, 2002. For disabled pilots whose event dates occurred after September 1, 2001, and who were removed from the seniority list on or after October 1, 2002, proof of continuing disability could be required for up to two years following the retirement date.

In an amendment signed on June 27, 2003, minor modifications were made to the earnings that were considered in calculating monthly income survivor's benefits.

In November 2004, Delta and ALPA agreed to modify disability benefits for event dates occurring after November 11, 2004 including the following modifications:

1. The monthly disability benefit was defined to be the lesser of

   (a) 80 hours of the composite hourly rate in effect at the time of the pilot's event date, or

   (b) 50% of the average monthly earnings (highest 12 consecutive months out of the last 36 months).

2. The reduction to the LTD benefit for retirement benefits included an actuarial equivalent for the value of the defined contribution retirement plan.

3. Disability benefits were limited to a total of 24 months for disabilities related to alcoholism, drug abuse or psychiatric conditions.

In an amendment effective December 31, 2004, there were minor changes to the Plan provisions relating to administration of the Plan and the Benefit Fund.

After Delta filed for bankruptcy in September 2005 and ceased paying non-qualified retirement benefits, there was a practical interpretation and application of the D&S Plan relating to offsets to D&S Plan disability benefits. The Administrative Committee determined, in a special meeting in December 2005, that the offset to disability benefits would not include amounts attributable to the non-qualified retirement benefits because such benefits no longer were being paid.

During bankruptcy proceedings Delta and ALPA negotiated Letter of Agreement #51 which included the following changes to the D&S Plan.

1. Disability benefits were modified to cease at the mandatory FAA retirement age. Alternatively, disabled pilots received defined contributions to their retirement account in the amount of 22% of their LTD benefit.
2. Offsets to LTD benefits were redefined.
3. Beginning in Jan 2008, survivorship benefits under the D&S Plan were replaced with Term Life Insurance.
4. Delta was authorized to spend $60 million annually from the D&S Trust to pay for pilot sick and vacation pay.
5. Delta became an additional source of payment of D&S Plan benefits.
6. Beginning in 2011, if the assets of the D&S Trust fell below $1.2 billion, Delta would be required to make annual contributions to the trust in the amount of 4% of Free Cash Flow, but not to exceed $60 million annually.

A provisional amendment was drafted to have an effective date of June 1, 2006, if the bankruptcy court approved LOA #51. That provisional amendment, known as Amendment #6, stated the following:

> "If LOA 51 is ratified by the ALPA membership and if the Bankruptcy Court approval is obtained on the Company's Section 363 motion concerning LOA 51, the Plan thereafter will be restated to provide in further detail the terms and conditions of the payment of sick pay and vacation benefits from the Plan and the application and interpretation of paragraphs (b) through (i) of Section Q of LOA 51. If LOA 51 is not ratified by the ALPA membership or if Bankruptcy Court approval of LOA 51 is not obtained, then this amendment will be null and void and will not take effect and no restatement of the Plan will occur."

The Bankruptcy Court approved LOA #51 with the stipulation that the provisions of LOA #51 were not enforceable on retired pilots (including disabled, but not retired, pilots over age 60) before either receiving approval of the Section 1114 committee or an order of the bankruptcy court. Additionally, there was a recognized disagreement relating to the legality of the annual expenditure of $60 million of D&S Trust assets to pay pilot sick pay and other legally permissible benefits. Delta subsequently withdrew proposals to alter the D&S Plan benefits of existing retirees (including those contained in LOA#51), but the annual expenditure of $60 million for pilot sick leave was approved by the bankruptcy court.

As bankruptcy proceedings progressed, the pilot retirement plans (qualified and non-qualified plans) were terminated and the following interpretation of the D&S Plan became applicable.

1. The bankruptcy court settlement for the loss of non-qualified retirement benefits excluded disabled pilots from that settlement to the extent that they would receive payments from the D&S Plan relating to non-qualified retirement benefits. Accordingly, this stipulation by the bankruptcy court codified the Administrative Committee's decision in December 2005 to cease reducing disability benefits by amounts no longer being paid from non-qualified retirement plans.[5]
2. When the DPRP was terminated in a distress termination and turned over to the PBGC, many pilots experienced a reduction in benefits. The reduced qualified retirement benefit paid by the PBGC became the applicable offset to the D&S Plan disability benefit.

This history does not go into details of the amendments to the D&S Plan following Delta's emergence from bankruptcy.

[5] The bankruptcy claim for the loss of non-qualified retirement benefits was based upon the net present value of the income stream from the non-qualified benefits over the remaining life expectancy of the pilot. Disabled pilots were excluded from that claim because they were to receive an equivalent income stream from the D&S Plan; therefore, the terms relating to the bankruptcy claim imply that the disability income will remain in force for the lifetime of disabled pilots. Delta's reservation of the right to amend or terminate the D&S Plan appears to be in conflict with the terms and conditions specified in this portion of the bankruptcy proceedings.