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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X		
In re	:	Chapter 11 Case No.
	:	
AMR CORPORATION, et al.,	:	11-15463 (SHL)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----X		
	:	
AMR CORPORATION, and	:	
AMERICAN AIRLINES, INC.,	:	
	:	
Plaintiffs,	:	Adv. Pro. No. _____
	:	
v.	:	
	:	
COMMITTEE OF	:	
RETIRED EMPLOYEES,	:	
	:	
Defendant.	:	
-----X		

**COMPLAINT UNDER 28 U.S.C. § 2201(a) AND FED. R. BANKR. P. 7001
FOR JUDGMENT DECLARING THAT RETIREES HAVE NO VESTED RIGHT
TO RETIREE HEALTH AND WELFARE BENEFITS AND THAT RETIREE HEALTH
AND WELFARE BENEFITS MAY BE UNILATERALLY MODIFIED BY DEBTORS**

AMR Corporation and American Airlines, Inc. (together, the "**Plaintiffs-Debtors**" or "**American**"), hereby bring this Complaint and allege as follows:

I. NATURE OF THE ACTION

1. By this Adversary Proceeding, the Plaintiffs-Debtors seek a declaration from the Court that, although they have historically chosen to provide retiree health and welfare benefits, they are under no legal compulsion to continue to do so. Under the law of this Circuit, a plan sponsor is required to continue providing retiree health and welfare benefits to a plan participant only where the plan sponsor has promised to provide benefits to the participant for life and has not reserved its right to modify the benefit plan. Here, the Plaintiffs-Debtors have not made any such promises, explicitly have reserved their rights to modify the benefit plans, or both. Therefore, American's retirees hold no vested right to the retiree health and welfare benefits American currently provides. Because the retiree health and welfare benefits are not vested, and because modifying retiree health and welfare benefits to reduce costs falls within American's sound business judgment, American may unilaterally modify health and welfare benefits for current retirees.

II. PARTIES

2. The Plaintiffs-Debtors, AMR Corporation and American Airlines, Inc., along with certain of their subsidiaries, are debtors and debtors in possession and their chapter 11 cases are being jointly administered under the above-captioned chapter 11 cases.

3. The Defendant is the committee of retired employees of the Debtors appointed by this Court pursuant to sections 1114(c) and (d) of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (the "**Bankruptcy Code**"), and is the authorized representative of persons receiving

"retiree benefits" covered by a collective bargaining agreement and persons receiving "retiree benefits" not covered by such an agreement (the "**Retiree Committee**"). Its members are Charles Marlett and Rita Kepple, non-union retirees appointed to the Retiree Committee pursuant to section 1114(d) of the Bankruptcy Code; Laura Glading, representative of the Association of Professional Flight Attendants; Robert Gless, representative of the Transport Workers Union of America; and James Sovich, representative of retired pilots.

4. Pursuant to section 1114(b)(2) of the Bankruptcy Code, the Retiree Committee has the power to enforce the rights of retirees under the Bankruptcy Code as those rights relate to retiree health and welfare benefits.

III. JURISDICTION AND VENUE

5. The Plaintiffs-Debtors bring this action as an adversary proceeding pursuant to Rule 7001(2) and Rule 7001(9) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") for a judgment declaring that (1) the health and welfare benefits they currently provide to retirees are not vested; (2) to the extent that modification of those retiree health and welfare benefits constitutes the use, sale, or lease, other than in the ordinary course of business, of property of the estate as described in section 363(b) of the Bankruptcy Code, modification of those benefits is a sound exercise of American's business judgment; and (3) American may unilaterally modify the health and welfare benefits it currently provides to retirees. The Plaintiffs-Debtors further bring this action pursuant to 28 U.S.C. § 2201(a). This action presents a case of actual controversy within this Court's jurisdiction.

6. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This Adversary Proceeding relates to the jointly-administered chapter 11 cases titled *In re AMR Corporation, et al.*, Ch. 11 Case No. 11-15463 (SHL), currently pending in the United States Bankruptcy Court for the Southern District of New York.

7. This is a core proceeding pursuant to 28 U.S.C. § 157(A), (B), (K), and/or (M).

8. Venue is proper before this Court pursuant to 28 U.S.C. § 1409.

9. The Plaintiffs-Debtors consent to the entry of final orders or judgments by this Court if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

10. This Court has personal jurisdiction over the Retiree Committee, which the Court has appointed under section 1114(b)(1) of the Bankruptcy Code to serve as the representative for persons receiving "retiree benefits" covered by a collective bargaining agreement and for persons receiving "retiree benefits" not covered by such an agreement. (ECF No. 2581)

IV. FACTUAL ALLEGATIONS

11. On November 29, 2011, the Plaintiffs-Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Plaintiffs-Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the chapter 11 cases.

12. Since 2001, the Plaintiffs-Debtors have incurred net losses of more than \$10 billion.

13. The Plaintiffs-Debtors currently provide retiree health and welfare benefits to five groups of retired employees: (1) retired non-union employees (the "**Non-Union Retirees**"); (2) retired pilots (the "**Pilot Retirees**"); (3) retired ground employees who had been employed in a variety of different positions (the "**TWU Retirees**"); (4) retired flight attendants (the "**Flight Attendant Retirees**"); and (5) retired employees of Trans World Airlines (the "**TWA Retirees**").

14. The Plaintiffs-Debtors' liability for retiree health and welfare benefits for current Non-Union Retirees, Pilot Retirees, TWU Retirees, and Flight Attendant Retirees, as reported on the Accountant's Statement appended to the pertinent plan's Form 5500 for the plan year 2010, was \$1,255,928,471. The Plaintiffs-Debtors' liability for retiree health and welfare benefits for current

TWA Retirees, as reported on the Accountant's Statement appended to the pertinent plan's Form 5500 for the plan year 2010, was \$111,403,985.

15. The retiree health and welfare benefits the Plaintiffs-Debtors currently provide to the Non-Union Retirees, the Pilot Retirees, the TWU Retirees, and the Flight Attendant Retirees consist of "pre-65" and "65 and over" medical coverage, funded in whole or in part by the Plaintiffs-Debtors, and life insurance coverage funded by the Plaintiffs-Debtors. The Plaintiffs-Debtors also provide "pre-65" and "65 and over" medical coverage to the TWA Retirees. Coverage for pre-65 TWA Retirees is funded with a combination of retiree and company contributions, while the 65 and over benefit is funded solely through retiree contributions. Life insurance for the TWA Retirees is paid for by the Plaintiffs-Debtors.

16. The retiree health and welfare benefits all are provided under "welfare plans" as defined by section 3(1) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* ("**ERISA**").

17. The welfare plans that govern provision of the retiree health and welfare benefits are established and maintained pursuant to written instruments, commonly known as "plan documents." The plan documents describe the benefits to be provided and establish rules for eligibility and costs of coverage.

18. For most years since the Plaintiffs-Debtors began providing retiree health and welfare benefits, a single plan document governed the provision of benefits to four of the retiree groups (the Non-Union Retirees, the Pilot Retirees, the TWU Retirees, and the Flight Attendant Retirees) at a given time (the "**Omnibus Plan Documents**").

19. In 1962, 1965, 1969, and 1975, the Plaintiffs-Debtors issued Omnibus Plan Documents that covered each of these four retiree groups.

20. In 1980, the Plaintiffs-Debtors issued a separate plan document covering Non-Union Retirees.

21. In 1982, the Plaintiffs-Debtors issued a separate plan document covering the retirees previously represented by the Transport Workers Union, which included certain Flight Attendant Retirees.

22. In 1983, the Plaintiffs-Debtors issued a separate plan document covering certain employees called flight engineers, who had historically received benefits under the documents covering the Pilot Retirees.

23. In 1985, the Plaintiffs-Debtors issued a separate plan document covering the Pilot Retirees.

24. In 1988, the Plaintiffs-Debtors once again issued an Omnibus Plan Document that covered the Non-Union Retirees, the Pilot Retirees, the TWU Retirees, and the Flight Attendant Retirees within a single plan document.

25. In 1992, 1999, 2005, 2010, 2011, and 2012, the Plaintiffs-Debtors issued Omnibus Plan Documents covering each of these four retiree groups.

26. The Omnibus Plan Document issued in 2012 is currently in effect for each of these four retiree groups.

27. Each of the Omnibus Plan Documents contains a provision reserving the Plaintiffs-Debtors' right to unilaterally make changes to the plan of benefits, as follows:

Omnibus Plan Document Title	Year	Reservation of Rights Language
Group Insurance Plan	1962	"The Company hopes and expects to continue this plan indefinitely, but necessarily must reserve the right to modify or cancel it at any time."
Group Insurance Plan	1965	"The Company retains the right to re-establish or increase employee contributions and/or to pass on to the employees any increase in costs under the Plan." "The Company expects to continue this plan indefinitely, but necessarily must reserve the right to modify or cancel it at any time."
Group Insurance Plan	1969	"The Company retains the right to re-establish or increase

		<p>employee contributions and/or to pass on to the employees any increase in costs under the Plan."</p> <p>"The Company expects to continue this plan indefinitely, but necessarily must reserve the right to modify or cancel it at any time."</p>
Group Life and Major Medical Expense Benefits Plan for Retirees	1975	"The Company hopes and expects to continue the Plan indefinitely. However, an unqualified commitment for continuation without modification is impossible. The Company, therefore, reserves the right to modify, suspend or terminate the Plan at any time such action may become necessary."
Retiree Group Life and Medical Expense Benefits Plan	1988	"American hopes and expects to continue this plan indefinitely. However, an unqualified commitment for continuation without modification is impossible. The Company, therefore, reserves the right to modify, suspend or terminate the Plan at any time such action may become necessary."
Retiree Group Medical and Life Booklet	1992	"The Company hopes and expects to continue this plan indefinitely. However, an unqualified commitment for continuation without modification is impossible. The Company, therefore, reserves the right to modify, suspend or terminate the plan at any time."
Health and Life Benefits Guide for Retirees of Participating AMR Corporation Subsidiaries	1999	"The Company reserves the right to alter, amend, modify, or terminate the plan, any program described in this guide, or any part thereof at its discretion."
Health and Life Benefits Guide for Retirees of Participating AMR Corporation Subsidiaries	2005	"The Company reserves the right to modify, amend or terminate any of the Plans, any program described in this Guide, or any part thereof, at its sole discretion."
Retiree Benefits Guide	2010	"The Company reserves the right to modify, amend or terminate any of the Plans, any program described in this Guide, or any part thereof, at its sole discretion."
Retiree Benefits Guide	2011	"The Company reserves the right to modify, amend or terminate any of the Plans, any program described in this Guide, or any part thereof, at its sole discretion."
Retiree Benefits Guide	2012	"The Company reserves the right to modify, amend or terminate any of the Plans, any program described in this Guide, or any part thereof, at its sole discretion."

A. Documents Pertaining to the Non-Union Retirees

28. From 1962 to the present, except from 1980 to 1988, the Non-Union Retirees' benefits were and are governed by the applicable Omnibus Plan Documents, each of which contains, as set forth above, a reservation of the Plaintiffs-Debtors' right to make changes to the plan of benefits.

29. From 1980 to 1988, the Non-Union Retirees' benefits were governed by The Group Life and Medical Expense Benefits Plan of American Airlines, Inc. for Retired Officer, Management and Specialist, Non-Management Salaried and Guard Employees (Dec. 1980) (the "**1980 Non-Union Plan Document**").

30. The 1980 Non-Union Plan Document states:

Upon retirement from the Company you will be eligible for coverage under the Group Life and Medical Expense Benefits Plan for Retired Employees if you have completed at least 10 years of membership under the Group Life and Health Benefits Plan for active employees and have met either of the following conditions: a) You have reached an early retirement age under the Company's Retirement Benefit Plan, or b) You are receiving disability benefits under the Social Security Act.

....

The Company has assumed the entire cost of the Plan.

31. The 1980 Non-Union Plan Document contains no language capable of being interpreted as a promise of lifetime benefits.

B. Documents Pertaining to the Pilot Retirees

32. From 1962 through 1985, and from 1988 through the present, the Pilot Retirees' benefits were and are governed by the applicable Omnibus Plan Documents, each of which contains, as set forth above, a provision reserving the Plaintiffs-Debtors' right to make changes to the plan of benefits.

33. In 1985, the Pilot Retirees' benefits were governed by the American Airlines, Inc. Group Life and Medical Expense Benefits Plan for Retired Pilot Employees (the "**1985 Pilots' Plan Document**").

34. The 1985 Pilots' Plan Document reserved the Plaintiffs-Debtors' right to make changes to the plan of benefits, stating, "The Company hopes and expects to continue the Plan indefinitely. However, an unqualified commitment for continuation without modification is impossible. The Company, therefore, reserves the right to modify, suspend or terminate the Plan at any time such action may become necessary."

35. The retired flight engineers historically received benefits under the plan documents covering the Pilot Retirees and were covered under the Omnibus Plan Documents.

36. In 1983, the Plaintiffs-Debtors issued a separate plan document for retired flight engineers called the Group Life and Medical Expense Benefits Plan for Retired Flight Engineer Employees (the "**1983 Flight Engineer Plan Document**").

37. The 1983 Flight Engineer Plan Document states:

Upon retirement from the Company you will be eligible for coverage under the Group Life and Medical Expense Benefits Plan for Retired Employees if you have completed at least 10 years of membership under the Group Life and Health Benefits Plan for active employees and have met either of the following conditions: a) You have reached an early retirement age under the Company's Retirement Benefit Plan, or b) You are receiving disability benefits under the Social Security Act.

....

The Company has assumed the entire cost of the Plan.

38. The 1983 Flight Engineer Plan Document contains no language capable of being interpreted as a promise of lifetime benefits.

C. Documents Pertaining to the TWU Retirees

39. The TWU Retirees were covered by the applicable Omnibus Plan Documents, each of which, as set forth above, contains a provision reserving the Plaintiffs-Debtors' right to make changes to the plan of benefits.

40. From 1982 until a new Omnibus Plan Document took effect in 1988, the TWU Retirees were covered by the 1982 Group Life and Medical Expense Benefits Plan for Retired Employees Who Were Formerly Represented by The Transport Workers Union of America, AFL-CIO (the "**1982 TWU Plan Document**").

41. The 1982 TWU Plan Document states:

Upon retirement from the Company you will be eligible for coverage under the Group Life and Medical Expense Benefits Plan for Retired Employees if you have completed at least 10 years of membership under the Group Life and Health Benefits Plan for active employees and have met either of the following conditions: a) You have reached an early retirement age under the Company's Retirement Benefit Plan, or b) You are receiving disability benefits under the Social Security Act.

...

The Company has assumed the entire cost of the Plan.

42. The 1982 TWU Plan Document contains no language capable of being interpreted as a promise of lifetime benefits.

D. Documents Pertaining to the Flight Attendant Retirees

43. The Flight Attendant Retirees were covered by the applicable Omnibus Plan Documents during all times that the Omnibus Plan Documents were in effect and that the Flight Attendants were eligible to receive retiree health or welfare benefits.

44. The Omnibus Plan Documents, as set forth above, each contains provisions reserving the Plaintiffs-Debtors' right to make changes to the plan of benefits.

45. From 1982 until the Omnibus Plan Document in 1988, certain Flight Attendant Retirees were covered by the 1982 TWU Plan Document, which was "applicable to eligible

employees who were formerly represented by the Transport Workers Union of America, AFL-CIO and who retired on or after January 1, 1969." The Flight Attendants were formerly represented by the Transport Workers Union.

46. The 1982 TWU Plan Document states:

Upon retirement from the Company you will be eligible for coverage under the Group Life and Medical Expense Benefits Plan for Retired Employees if you have completed at least 10 years of membership under the Group Life and Health Benefits Plan for active employees and have met either of the following conditions: a) You have reached an early retirement age under the Company's Retirement Benefit Plan, or b) You are receiving disability benefits under the Social Security Act.

...

The Company has assumed the entire cost of the Plan.

47. The 1982 TWU Plan Document contains no language capable of being interpreted as a promise of lifetime benefits.

E. Documents Pertaining to the TWA Retirees

48. In 2001, 2002, and 2010, the Plaintiffs-Debtors issued plan documents for the plan covering the TWA Retirees (the "**TWA Plan Documents**"). The TWA Plan Documents are the only applicable plan documents for the TWA Retirees.

49. The 2010 TWA Plan Document is currently in effect.

50. The 2001 TWA Plan Document reserved the plan sponsors' right to make changes to the plan of benefits, stating, "TWA Airlines LLC reserves the right to alter, amend, modify, or terminate the plan, any program described in this Summary Plan Description (SPD), or any part thereof at its discretion."

51. In a separate "Special Note to Retirees", the 2001 TWA Plan Document states: "American Airlines, Inc. assumed certain welfare liabilities in connection with the purchase of assets from Trans World Airlines, Inc. and has reserved the right after 2001 to make changes to

benefit coverage and levels, in order to assure that the liabilities it assumed are not enlarged or otherwise adversely affected."

52. The 2002 TWA Plan Document reserved the Plaintiffs-Debtors' right to make changes to the plan of benefits, stating, "The *Company* reserves the right to alter, amend, modify, or terminate the TWA Retiree Health and Life Benefits Plan, any program described in this benefits guide, or any part thereof at its discretion." (emphasis in original)

53. The 2010 TWA Plan Document reserved the Plaintiffs-Debtors' right to make changes to the plan of benefits, stating, "The Company expects to continue these plans and programs, but reserves the right to alter, amend, modify or terminate any of the plans or programs described in this Guide, or any part thereof, at its sole discretion."

**F. Modifying Retiree Health and Welfare Benefits
Is a Sound Exercise of American's Business Judgment**

54. American must control costs to emerge successfully from chapter 11 and to compete effectively in the airline industry.

55. American's benefit costs are the highest in the industry.

56. American's reorganized network carrier competitors all sought modifications of their retiree health and welfare benefits in bankruptcy.

57. Most of American's competitors have eliminated their retiree medical programs. Most, if not all, of those airlines that do provide access to a company-sponsored program pass on all or most of the cost of coverage to the retirees.

58. Because bringing American's retiree health and welfare benefit costs in line with those of its competitors increases the likelihood of a successful reorganization, modification of retiree health and welfare benefits is a sound exercise of American's business judgment.

V. CLAIMS FOR RELIEF

COUNT 1: DECLARATORY JUDGMENT

59. The Plaintiffs-Debtors repeat and reallege the allegations contained in paragraphs 1 through 58 of this Complaint as if fully set forth herein.

60. Under ERISA, the health and welfare benefits American provides to current retirees are welfare benefits.

61. Welfare benefits only vest where the plan sponsor (1) promised to provide benefits for life and (2) did not reserve its right to modify or terminate those benefits.

62. In order to vest benefits, a promise must be a specific written pledge to continue benefits for the remainder of the participants' lives. Statements merely describing the benefits to be provided and the current cost structure of the plan do not create a vested right to benefits.

63. In determining a participant's right to benefits under an ERISA plan, the plan's governing document controls. Any language capable of being read to promise benefits for life must be found, if anywhere at all, in the plan document.

64. The Omnibus Plan Documents and the 1980 Non-Union Plan Document are the only documents relevant to the determination of whether the Non-Union Retirees' benefits are vested.

65. The Omnibus Plan Documents reserved the Plaintiffs-Debtors' right to modify retiree health and welfare benefits for Non-Union Retirees.

66. The 1980 Non-Union Plan Document did not contain a promise of lifetime benefits.

67. The Omnibus Plan Documents, the 1985 Pilots' Plan Document, and the 1983 Flight Engineer Plan Document are the only documents relevant to the determination of whether the Pilot Retirees' benefits are vested.

68. The Omnibus Plan Documents and the 1985 Pilots' Plan Document reserved the Plaintiffs-Debtors' right to modify retiree health and welfare benefits for Pilot Retirees.

69. The 1983 Flight Engineer Plan Document did not contain a promise of lifetime benefits.

70. The Omnibus Plan Documents and the 1982 TWU Plan Document are the only documents relevant to the determination of whether the TWU Retirees' benefits are vested.

71. The Omnibus Plan Documents reserved the Plaintiffs-Debtors' right to modify retiree health and welfare benefits for the TWU Retirees.

72. The 1982 TWU Plan Document did not contain a promise of lifetime benefits.

73. The Omnibus Plan Documents and the 1982 TWU Plan Document are the only documents relevant to the determination of whether the Flight Attendant Retirees' benefits are vested.

74. The Omnibus Plan Documents reserved the Plaintiffs-Debtors' right to modify retiree health and welfare benefits for the Flight Attendant Retirees.

75. The 1982 TWU Plan Document did not contain a promise of lifetime benefits.

76. The TWA Plan Documents are the only documents relevant to the determination of whether the TWA Retirees' benefits are vested.

77. The TWA Plan Documents reserved the Plaintiffs-Debtors' right to modify retiree health and welfare benefits for the TWA Retirees.

78. The Non-Union Retirees, the Pilot Retirees, the TWU Retirees, the Flight Attendant Retirees, and the TWA Retirees do not hold vested rights to retiree health and welfare benefits because, at all times, the Plaintiffs-Debtors reserved their right to modify the benefits, did not promise lifetime benefits, or both.

79. Because modification of retiree health and welfare benefits will allow American to successfully emerge from chapter 11 and to compete more effectively in the airline industry, modification of retiree health and welfare benefits is a sound exercise of American's business judgment.

80. The Plaintiffs-Debtors are entitled to a judgment declaring that the retiree health and welfare benefits the Plaintiffs-Debtors currently provide to the Non-Union Retirees, the Pilot Retirees, the TWU Retirees, the Flight Attendant Retirees, and the TWA Retirees are not vested, that modification of their retiree health and welfare benefits is a sound exercise of American's business judgment, and that the retiree health and welfare benefits may be unilaterally modified by Plaintiffs-Debtors.

VI. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs-Debtors respectfully request as follows:

- i. the entry of an order declaring that: (1) the retiree health and welfare benefits the Plaintiffs-Debtors currently provide to the Non-Union Retirees, the Pilot Retirees, the TWU Retirees, the Flight Attendant Retirees, and the TWA Retirees are not vested; (2) to the extent that modification of those retiree health and welfare benefits constitutes the use, sale, or lease, other than in the ordinary course of business, of property of the estate as described in section 363(b) of the Bankruptcy Code, modification of those benefits is a sound exercise of American's business judgment; and (3) American may unilaterally modify retiree health and welfare benefits; and
- ii. such other relief as this Court deems just and proper under the circumstances.

Dated: July 6, 2012
New York, New York

Respectfully submitted,

WEIL, GOTSHAL & MANGES LLP

/s/ Stephen Karotkin

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