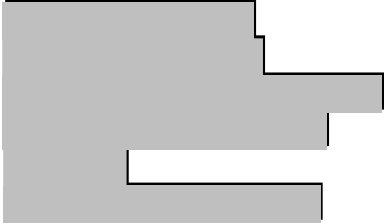




Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

December 14, 2009



Re: Case No. 199334; Retirement Income for Pilots of US Airways, Inc. ("Plan"); Consolidated Appeals Board Decision for 83 Appellants ("Consolidated Decision 3")

Dear [REDACTED]:

This decision, Consolidated Decision 3, responds to 13 letters you filed between May 14, 2009 and November 20, 2009 on behalf of the 83 appellants listed in Enclosure 1. PBGC had issued revised benefit determination letters to each of the 83 appellants between March 31 and October 9, 2009.<sup>1</sup>

The Appeals Board exercised its discretion under section 4003.56 of PBGC's regulations and has consolidated these 83 appeals.<sup>2</sup> For the reasons stated below, we are denying the appeals for all 83 appellants. Thus, they have exhausted their administrative remedies, and this decision becomes PBGC's final action for all 83 appellants.

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<sup>1</sup> In Enclosure 1, we show: (1) the appellant's appeal number; (2) the date of the revised benefit determination letter; (3) the date of the appeal; and (4) whether PBGC's revised benefit determination resulted in a benefit increase. Enclosure 2 lists each appellant according to the 13 appeals letters you submitted. We further note that 80 of the 83 appellants are retired pilots, and the remaining three appellants are the estates of retired pilots who are now deceased. Enclosure 3 contains copies of all 13 letters.

We are not deciding the appeal of [REDACTED], who was one of the 40 appellants you listed in an appeal letter dated May 14, 2009. In other correspondence with the Appeals Board, you raised a disability issue on behalf of [REDACTED]. We will respond to [REDACTED] appeal [REDACTED] in a separate decision that will address his disability issue and the other issues you raised on his behalf.

<sup>2</sup> 29 Code of Federal Regulations ("C.F.R.") § 4003.56. The Board concluded that the 83 appeals arise out of the same or similar facts and that they seek the same or similar relief.

## **Background concerning PBGC's Determinations and Your Appeals**

Your law firm represents a large number of Plan participants and beneficiaries whose appeals previously were decided by the Appeals Board. In a letter dated February 29, 2008, the Appeals Board issued a decision ("Consolidated Decision 1") that addressed 10 of the 11 issues that legal counsel had raised on behalf of the 769 individuals.<sup>3</sup> The only issue the Appeals Board did not address in Consolidated Decision 1 was the disability issue.

While Consolidated Decision 1 is a final Appeals Board decision for most of the 769 appellants, it is not a final decision for any of the 83 appellants in this Consolidated Decision 3. Rather, for the reasons explained on pages 22-26 of Consolidated Decision 1, the Appeals Board decided that each of the 83 would receive a new benefit determination with a new 45-day appeal right.<sup>4</sup> After we issued Consolidated Decision 1, PBGC issued new benefit determinations to the 83 appellants and you filed timely appeals for them. Through this Consolidated Decision 3, all 83 appellants are now receiving a final Appeals Board decision.

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<sup>3</sup> The "Consolidated Appeal" is the appeal filed on March 23, 2007 by the law firm of [REDACTED] ([REDACTED]). On February 29, 2008, the Appeals Board issued Consolidated Decision 1, which applies to 769 individuals who were named in the Consolidated Appeal. Shortly after the Appeals Board issued Consolidated Decision 1, your law firm replaced [REDACTED] as the representative of the appellants in the Consolidated Appeal.

<sup>4</sup> Enclosure 1 of Consolidated Decision 1 purports to list 85 appellants in the Consolidated Appeal who would receive new benefit determinations. The Appeals Board later realized that it had listed [REDACTED] twice, so there actually are 84 names on that Enclosure. Also, we failed to include two appellants ([REDACTED] and [REDACTED]) on our list. In other words, 86 appellants were entitled to receive new benefit determinations under Consolidated Decision 1. With its issuance of three determinations on October 9, 2009, PBGC finished issuing new benefit determinations to all 84 individuals listed on Enclosure 1 of Consolidated Decision 1, plus [REDACTED] and [REDACTED].

This Consolidated Decision 3, however, does not apply to three appellants who are listed in Enclosure 1 of Consolidated Decision 1. As stated above, [REDACTED] will receive a separate decision. Also, we have not included [REDACTED] and [REDACTED] in this Consolidated Decision 3. PBGC issued [REDACTED] a new benefit determination on March 31, 2009, and [REDACTED] was issued one on August 25, 2009. The Appeals Board, however, did not receive an appeal of the revised determination for either individual. Thus, PBGC's new determinations for [REDACTED] and for [REDACTED] have become PBGC's final agency actions with respect to their benefits, since they did not timely appeal their new determinations. See 29 C.F.R. § 4003.22, "Effective date of determination."

Finally, the Appeals Board notes that [REDACTED] was mistakenly informed in a letter dated March 26, 2008 that he was one of the participants who had his appeal denied based on the Consolidated Decision 1. The Appeals Board sent [REDACTED] a letter on June 8, 2009 informing him that he was one of the participants who would be receiving a new benefit determination. On August 10, 2009, PBGC issued [REDACTED] the new determination, and he is listed on Enclosure 1 as [REDACTED].

We further note that the Appeals Board has issued additional decisions to you, including the following:

- On September 11, 2008, the Appeals Board issued a decision (“Disability Decision”) that addressed the disability issue for 32 of your clients.<sup>5</sup>
- In a June 5, 2009 decision, the Board denied the appeal of your client [REDACTED]. In that decision, the Appeals Board addressed an additional issue that you had raised.
- On June 19, 2009, the Appeals Board issued a decision (“Consolidated Decision 2”) that responded to your appeals for seven of your clients.

### **Issues Raised in Your Appeals**

All thirteen of the appeal letters you filed between May 14, 2009 and November 20, 2009 essentially contain the same information and make identical claims. Your appeal letter dated May 14, 2009 on behalf of 40 appellants states on page 2:

This appeal raises only issues that were resolved by the Appeals Board in its February 29, 2008, and September 11, 2008 decisions in Consolidated Appeal Case No. 199334, and/or on which the PBGC has taken an institutional position in *Davis v. Pension Benefit Guaranty Corp.*, 1:08-cv-01064-JR (D.D.C.), and is entirely *protective* in nature. . . . Nonetheless, to ensure that no issues remain regarding whether their claims have been exhausted, the Retired Pilots file this appeal and raise these issues for resolution by the Appeals Board, and request that it resolve these issues in their favor despite its prior decision.

There are only minor modifications to this language in the other twelve appeal letters.

Five of your appeal letters – two of which are dated May 20, 2009; one dated June 29, 2009; one dated July 31, 2009; and one dated November 20, 2009 – are submitted on behalf of 21 appellants who received benefit increases from PBGC in their revised benefit determination letters. For these individuals, you state: “Although accepting the current benefit increase, the Retired Pilots challenge the PBGC’s denial of their request for other modifications to their benefit determinations.”<sup>6</sup>

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<sup>5</sup> Eight of the appellants in this Consolidated Decision 3 had their disability claim denied in the Disability Decision. They are: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and the [REDACTED].

<sup>6</sup> The November 20, 2009 letter contained slightly different language, stating: “While the PBGC did not modify [REDACTED] monthly benefit and [REDACTED] and [REDACTED] were nominally increased . . . the Retired Pilots challenge the PBGC’s denial of their request for modification to their benefit determination and hereby incorporate all applicable grounds for appeal raised in the March 23, 2007

Additionally, all thirteen appeal letters contain essentially the same request for relief. For example, page 3 of the letter dated May 14, 2009 on behalf of 40 appellants contains the following request:

The Retired Pilots request that the Appeals Board overturn the calculations underlying the formal determination of their benefits and instead calculate the benefits according to the formulas and analysis described in the March 23, 2007 submission and amended complaint. The Retired Pilots further request that the PBGC Appeals Board take action to comply with its fiduciary responsibilities as trustee of the terminated plan.

Beginning with the three appeals letters dated June 29, 2009 and continuing in the five appeals letters submitted thereafter, you also incorporate by reference the second amended complaint in the *Davis* litigation, which was filed on June 23, 2009.

Finally, the first eight appeals letters conclude with the request that “PBGC immediately stop all recoupment and recovery actions related to alleged overpayments, in compliance with the March 16, 2009, order of the United States Court of Appeals for the District of Columbia Circuit, Case No. 08-5524.” The first twelve appeals letters “independently request” that PBGC “suspend any recoupment and/or recovery actions related to alleged overpayments until the issue regarding benefit calculations has been resolved.”

## Discussion

### *PBGC’s Revised Benefit Determinations*

In the Consolidated Appeal, legal counsel questioned the benefits PBGC determined for 65 appellants who retired under US Airways’ Early Retirement Incentive Program (ERIP). Although the Appeals Board did not change benefits based on the specific ground asserted in the Consolidated Appeal, the Board, in the course of its review, discovered that PBGC unintentionally changed US Airways’ benefit calculation methodology for some ERIP retirees who elected the 50% or the 75% Lump Sum option. The Appeals Board further stated in Consolidated Decision 1:

PBGC’s Benefits Administration and Payment Department (“BAPD”) will review the benefits of 64 of the 65 appellants in your Exhibit C and correct any benefits as they find necessary. BAPD further will issue new Benefit Determinations, with new 45-day appeal rights, to these 64 appellants as well as to 21 similarly-situated appellants. . . . PBGC’s Benefit

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submission to the PBGC Appeals Board by a group of retired pilots involved with the same US Airways Plan.”

Your other eight appeal letters are for appellants who did not receive benefit increases in their revised determination letters. Your appeal disagrees with PBGC’s benefit determinations for these individuals for the reasons stated in the Consolidated Appeal and in the amended complaints in the *Davis* litigation.

Determination is correct for the one appellant on your Exhibit C who chose to receive his benefit in the form of a life annuity.

For the 83 appellants in this Consolidated Decision 3, PBGC implemented the above-quoted ruling by issuing revised benefit determinations. As stated above, the revised determinations were issued between March 31, 2009 and October 9, 2009.

While your appeal letters incorporate by reference the appeal issues raised in the Consolidated Appeal and in the first and second amended complaints in the *Davis* litigation, you do not present any new, specific information or reasons in support of your assertion that PBGC's ERIP benefit calculations are incorrect. For the ERIP calculation issue, the Appeals Board concluded that: (1) the Board fully responded in Consolidated Decision 1 to the specific claims asserted in the Consolidated Appeal;<sup>7</sup> and (2) there is nothing in the first and second amended complaints in the *Davis* litigation that the Appeals Board did not fully address in Consolidated Decision 1. The Appeals Board accordingly decided that you have not provided a basis for the Appeals Board to change the benefit amounts in PBGC's revised benefit determinations for any of the 83 appellants.

#### ***Other Issues in Your Appeal***

As stated above, Consolidated Decision 1 addressed ten of the eleven issues that legal counsel had raised on behalf of the 769 individuals. Also, in the Disability Decision, the Appeals Board decided the disability issue for 32 appellants, including eight appellants in this Consolidated Decision 3 (see footnote 5 above). Additionally, in a June 5, 2009 decision for [REDACTED], the Appeals Board decided an additional issue you had raised.<sup>8</sup>

In the first amended complaint in the *Davis* litigation, counsel for Plaintiffs stated ten specific claims for relief. Nine of the ten claims involve issues that were raised in the Consolidated Appeal and that were addressed by the Appeals Board in Consolidated Decision 1. The tenth claim, titled "Failure to Provide Insurance Benefits to Make Up Shortfalls That Exist After Distribution of Remaining Plan Assets," raises the same issue that was first decided by the Appeals Board in the [REDACTED] decision. The second amended complaint added an eleventh claim, which involves disability benefits issues,<sup>9</sup>

<sup>7</sup> See discussion of "Issue 5: PBGC's calculation of ERIP Benefits" on pages 22-26 of Consolidated Decision 1, as well as Appendix B of that decision.

<sup>8</sup> The additional issue involves your claim that PBGC should use its insurance funds to pay all non-forfeitable benefits (up to a statutory maximum) once Plan assets are exhausted. That issue had not been raised by legal counsel in the Consolidated Appeal, and, hence, it was not decided by the Board in Consolidated Decision 1.

<sup>9</sup> The Appeals Board concluded that the Disability Decision fully addressed the disability claims you have raised for appellants through your reference to the eleventh claim in the *Davis* litigation. We further note that, while you raised the disability issue for the eight appellants listed in footnote 5 (whose disability claims previously were denied), you have not identified any of the remaining 75 appellants in Consolidated Decision 3 as being disabled.

and a twelfth claim, which asserts that PBGC's benefit determinations for appellants were in violation of the Administrative Procedure Act (APA).<sup>10</sup>

Your thirteen appeals letters for the 83 appellants in Consolidated Decision 3 incorporate by reference the appeal issues raised in the Consolidated Appeal and in the amended complaints in the *Davis* litigation, but do not present any new, specific information or reasons in support of the requests for relief. The Appeals Board decided, for the reasons stated in Consolidated Decision 1, Consolidated Decision 2, the Disability Decision, and the [REDACTED] decision, that you have not provided a basis for the Appeals Board to change its prior rulings on these issues.

***Your Request that PBGC Suspend Recoupment and Recovery Actions***

You request that PBGC "suspend any recovery actions related to alleged overpayments" until the issues regarding benefit calculations have been resolved.

Under PBGC regulations and policies, PBGC is authorized to initiate actions for the recoupment or recovery of overpayments after a final Appeals Board decision is issued. The Appeals Board does not have authority to waive or suspend PBGC's recoupment or recovery actions. Accordingly, we must deny your request that PBGC suspend any actions related to the recoupment or recovery of overpayments.

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<sup>10</sup> The twelfth claim in the *Davis* complaint essentially repeats certain allegations made in prior sections of the complaint, followed by the assertion that PBGC's benefit determinations must be changed or set aside based on the APA. We concluded that this twelfth claim does not raise any new issues that require an Appeals Board decision.

## DECISION

Having applied the provisions of the Plan, the provisions of ERISA, other applicable law, and PBGC regulations and policies to the facts in this case, the Appeals Board denies your appeal on all issues you raised on behalf of the 83 appellants in this Consolidated Decision 3.

This decision is PBGC's final Agency action for all 83 appellants. These appellants may, if they wish, seek review of this decision in an appropriate federal district court. If you or any of your clients need any other information concerning PBGC benefits, please contact PBGC's Authorized Plan Representative at 1-800-400-7242.

Sincerely,



Charles Vernon  
Appeals Board Chair

- Enclosures:
- (1) Alphabetical Listing of the 83 Appellants in Consolidated Decision 3, with additional information concerning the appeals
  - (2) List of Appellants in the 13 Appeal Letters you filed between May 14, 2009 and November 20, 2009
  - (3) Copies of the 13 Appeals Letters you submitted for the 83 Appellants