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US Airways Plan Pushes Envelope In Bad Pension Times

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NEW YORK -- US Airways Group Inc. (UAWGQ) is pushing the envelope with a plan to revamp its pilots' pension plan.

Whether or not the envelope rips bears watching at a time of extreme stress on both public and private pension plans.

Termed a sham by the pilots' union and a fair deal by the company, the plan faces obstacles, but highlights the lengths to which companies are now going to put their pension problems behind them. Among questions it raises are whether it would constitute an abuse of the federal pension insurance system or give benefits earned by one group of employees to another.

On Thursday, as part of a bid to emerge from bankruptcy protection, US Airways asked a federal insurer to take over its underfunded pilots' plan. It said it wants to supplement payments the insurer would make to the pilots with a new pension plan it will create.

"The government has to be very careful because anything it does with any one company, it will probably have to extend to another," said Chris Struve, an analyst at Fitch Ratings who works on pension issues. "With the pension environment the way it is, that would open up Pandora's Box, and they can't afford to do that."

Fitch said in a recent report that some airline companies are in the vanguard of those trying to stretch pension rules because underfunding has hit airlines especially hard.

A bankruptcy court is now considering whether US Airways' proposal is viable. The company has said it must restructure the pilots' benefits to get rid of an underfunding liability that prevents it from getting a federal loan guarantee that will help it emerge from Chapter 11.

Specifically, US Airways has asked the Pension Benefit Guaranty Corp. to terminate the plan and take over paying benefits. It said it will create a new plan to supplement those payments, and contribute \$850 million to it over seven years.

"We haven't seen a plan that's been agreed to by the companies and the unions," said Randy Clerihue, a PBGC spokesman. "What we're concerned about is the way the company has tried to thrust us into the middle of negotiations."

Created in 1974, the PBGC takes over underfunded defined-benefit pension plans, almost exclusively from companies in bankruptcy. It steps in to pay benefits to workers.

A US Airways spokesman, David Castelveter, said the airline is "hopeful" of working out an agreement with the pilots that it could give to the PBGC, but added that there's no time line for doing so.

"It's something between a sham and a scam," said Roy Freundlich, a spokesman for the US Airways unit of the Air Line Pilots Association. "The union is opposed to terminating the plan. The company is basically coming up with a plan that literally takes away already earned benefits of pilots to pay other employees. We don't have a time line to have our pilots benefits wrecked, and we'll take whatever time is necessary to protect the already earned pension benefits of our pilots."

US Airways plan in some part resembles one proposed unsuccessfully by LTV Steel in the 1980s. The U.S. Supreme Court in the early 1990s backed the PBGC in ruling against the rescue bid.

Incidentally, the PBGC ended up taking over LTV's pension plan last year, with no supplemental plan attached.

In the case that involved the Supreme Court, the steel company wanted PBGC to take over a defined-benefit plan, while creating a supplemental one to make up the difference in lost benefits to workers covered by the terminated plan.

The court ruled that a company can't supplement a terminated plan with a new one if the two together would pay substantially the same benefits to an employee that he would have gotten under the old plan.

What may give US Airways a chance at success where LTV failed is that it the new pension plan it's proposing is a defined-contribution plan, not another defined-benefit plan. Defined-benefit plans pay out a fixed sum on a regular basis to retirees. Under defined-contribution plans, employers put money into employee retirement vehicles like 401(k) plans, but don't guarantee an investment result.

The PBGC doesn't insure defined-contribution plans, and therefore doesn't view the one proposed by US Airways as a second potential claim on its resources, said Clerihue.

"However, we don't want to say that therefore you can create any defined-contribution plan you want even it exceeds the benefits you would have received under the old pension plan," Clerihue said. Doing so would constitute an abuse of the insurance system, he said.

PBGC is under huge stress these days, related to widespread pension underfunding. This week, it reported a \$3.64 billion deficit in fiscal 2002, after a \$7.7 billion surplus the year before. The net loss of \$11.4 billion was the widest in the its 28-year history.

The weak economy has meant increased bankruptcies, creating a bad environment made exponentially worse for the PBGC by the growing number of underfunded plans. A plan must be underfunded for the PBGC to step in: purchasers of a bankrupt company's assets are likely to retain its pension plan if no big cash infusion is required.

Bad markets and low interest rates caused underfunding by eroding pension fund investments at the same time they increased the amount needed to cover future obligations.

"The PBGC is one of the handful of major players in every bankruptcy these days," said Marty S. Zohn, a partner in the law firm Proskauer Rose LLP, an a bankruptcy expert. "The unfunded pension benefits are so mammoth, that they're a major creditor in every major bankruptcy."

In the end, the PBGC's situation may "make the savings and loan crisis look small because of the number of workers and pension plans involved," Zohn said.

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