Hearing Date: June 4, 2013 at 11:00 am
Objection Deadline: May 24, 2013 at 12:00 pm

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Attorneys for U.S. Bank National Association, as Trustee with respect to the Series 1991-A2 PTCs and 1991-C2 PTCs

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re:	:	Chapter 11
	:	
AMR CORPORATION, et al.,	:	Case No. 11-15463 (SHL)
	:	Jointly Administered
Debtors.	:	
	:	

RESERVATION OF RIGHTS OF U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, TO DEBTORS' MOTION FOR AN ORDER (I) APPROVING NOTICE OF DISCLOSURE STATEMENT HEARING; (II) APPROVING DISCLOSURE STATEMENT; (III) ESTABLISHING A RECORD DATE; (IV) ESTABLISHING NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF THE PLAN; (V) APPROVING SOLICITATION PACKAGES AND PROCEDURES FOR DISTRIBUTION THEREOF; (VI) APPROVING THE FORMS OF BALLOTS AND ESTABLISHING PROCEDURES FOR VOTING ON THE PLAN; AND (VII) APPROVING THE FORM OF NOTICE TO NON-VOTING CLASSES UNDER THE PLAN

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE

Cases

Statutes

NOW COMES U.S. Bank National Association, as Trustee (the *"Trustee"*) with respect to the Series 1991-A2 PTCs and 1991-C2 PTCs (collectively, the "*PTC Transactions*"), by and through its undersigned counsel, and for its Reservation of Rights (the "*Reservation of Rights*") to the Motion of Debtors for an Order (I) Approving Notice of Disclosure Statement Hearing; (II) Approving Disclosure Statement; (III) Establishing a Record Date; (IV) Establishing Notice and Objection Procedures for Confirmation of the Plan; (V) Approving Solicitation Packages and Procedures for Distribution thereof; (VI) Approving the Forms of Ballots and Establishing Procedures for Voting on the Plan; and (VII) Approving the Form of Notice to Non-Voting Classes Under the Plan (the *"Motion to Approve"*), respectfully states as follows:[1]

PRELIMINARY STATEMENT

An integral part of Debtors' proposed Plan is the 9019 Settlement, which attempts to resolve certain inter-creditor issues and provides a distribution on the Effective Date to holders of AMR Equity Interests. While the Trustee is not necessarily opposed to the 9019 Settlement, as currently drafted, the Disclosure Statement does not provide any financial analysis of the inter-creditor claims and the effect of those claims on potential distributions, nor does it provide sufficient detail on substantive consolidation. As a result, given the limited disclosures set forth in the Disclosure Statement, creditors cannot properly evaluate the terms of the proposed 9019 Settlement to determine if such settlement is fair and equitable and provides a sufficient distribution to holders of American's unsecured claims.

Such an inquiry is necessary as the Trustee holds certain unsecured claims against American with respect to termination values associated with rejected Aircraft Equipment

[1] Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion to Approve, the Disclosure Statement or the proposed Plan.

included in the PTC Transactions. Debtors have labeled such claims as "single-dip unsecured claims" because such claims were not guaranteed by AMR. Pursuant to Debtors' proposed Plan, such claims are to be paid at two set times in stock of the reorganized and merged entity. However, without understanding better the various inter-creditor issues, to the extent that Debtors' former shareholders receive a distribution before the Trustee's unsecured claims are compensated in full, the proposed Plan raises issues in connection with the absolute priority rule of section 1129(b)(2) of the Bankruptcy Code. As a result, Debtors should be required to provide further disclosure to permit creditors to properly evaluate the terms of the 9019 Settlement.

Further, pursuant to Section 6.14 of the proposed Plan, Debtors are attempting to cancel certain "Aircraft Securities" without disclosing which securities are to be canceled. Not only does the Disclosure Statement lack adequate information regarding which securities are to be canceled, but Debtors may also be seeking to cancel securities as to which there are obligations between non-related third parties. In addition, while all of the aircraft have been rejected and unsecured claims established in each of the PTC Transactions, it is important that the certificates remains outstanding to enable the Trustee to make distributions to the investors of the PTC Transactions from proceeds of the collateral and distributions on the Allowed unsecured claims. Further, in the 1991-C PTC, certain aircraft are the subject of new leases with American, and the Trustee will need to distribute future funds to the investors as required by the relevant pass through trust agreement.

Lastly, the proposed Plan should be fair and equitable with respect to the exculpation of all Trustees. The Disclosure Statement does not disclose any reason for releasing certain trustees while not releasing others, including the Trustee. To the extent that a trustee's claims are

discharged, it is entitled to know that its entire claim against Debtors' estates, particularly indemnity and related claims for any claim brought by investors or third parties, have been defeased in full.

As a result, prior to any approval of the Disclosure Statement, Debtors should be required to amend the Disclosure Statement to provide further information and disclosure with respect to the issues identified herein.

BACKGROUND

A. THE PTC TRANSACTIONS

Prior to the Commencement Date, Debtors and the Trustee entered into a leveraged lease transaction with respect to certain aircraft (the "*1991-A2 PTC Transaction*"). Pursuant to the Order Granting Debtors' Third Omnibus Motion for Authorization Pursuant to Section 365 of the Bankruptcy Code and Bankruptcy Rule 6006 to Reject Certain Aircraft and Engine Leases, entered on December 31, 2011 [ECF No. 952], Debtors rejected one aircraft lease and returned and surrendered such aircraft effective as of February 24, 2012. Subsequently, Debtors and the Trustee engaged in negotiations, and pursuant to a settlement agreement, Debtors and the Trustee agreed to resolve all of the Trustee's claims against Debtors with respect to such aircraft in return for an Allowed Claim. This Court approved such settlement agreement on April 3, 2013 [ECF No. 7382]. In addition, the remaining aircraft were likewise the subject of a rejection motion and were subsequently sold to American. The Trustee and Debtors agreed to an Allowed Claim with respect to these aircraft as well.

Debtors and the Trustee were also parties to an additional leverage lease transaction (the "*1991-C2 PTC Transaction*"). Debtors have rejected all of the Aircraft Equipment associated with the 1991-C2 PTC Transaction and, as a result, the Trustee has asserted and received

Allowed Claims for termination value associated with the related Aircraft Equipment. Certain of the Aircraft were thereafter leased to American under the terms of new leases. Neither the 1991-A2 PTC Transaction nor the 1991-C2 PTC Transaction were guaranteed by AMR.

It is the Trustee's understanding, based on its interpretation of the Disclosure Statement, that Debtors intend to treat the Trustee's claims as "unimpaired" and as American Class 5 — American Other General Unsecured Claims under the proposed Plan. All of the Claims of the Trustee with respect to the 1991-A and 1991-C PTC transactions have been Allowed.

B. THE DISCLOSURE STATEMENT

Debtors filed the Disclosure Statement on April 15, 2013. [ECF No. 7632.] With respect to the Trustee's unsecured claims, Debtors propose to treat these single-dip unsecured claims in the following manner:

> (a) Each holder of an Allowed American Other General Unsecured Claim as of the Effective Date shall receive (i) on or as soon as reasonably practicable after the Initial Distribution Date, its Initial Pro Rata Share of a number of shares of New Mandatorily Convertible Preferred Stock … (ii) as soon as reasonably practicable after the Final Mandatory Conversion Date its Initial Pro Rata Share of a number of shares of New Common Stock …. In connection with each Interim True-Up Distribution, each holder of an Allowed American Other General Unsecured Claim shall receive its Interim Pro Rata Share of the distribution allocated to Allowed Single-Dip General Unsecured Claims pursuant to Section 7.4(a) hereof. In connection with the Final True-Up Distribution, each holder of an Allowed American Other General Unsecured Claim shall receive its Final Pro Rata Share of the distribution allocated to Allowed Single-Dip General Unsecured Claims ....

(Proposed Plan, § 4.11.) Thus, under the proposed Plan, the holder of an Allowed Single-Dip General Unsecured Claim will receive two distributions from Debtors' estates — one on the Initial Distribution Date (which is the same as the Effective Date) and one on the Mandatory Conversion Date. (*See* Disclosure Statement at 84-85.)

In addition, under the proposed Plan, equity will also receive a distribution:

> Each holder of an Allowed AMR Equity Interest shall receive its pro rata share (i) on the Effective Date, or as soon as thereafter as reasonably practicable, of the Initial Old Equity Allocation and (ii) on each Mandatory Conversion Date, or as soon thereafter as reasonably practicable, of the Market-Based Old Equity Allocation. In connection with each Interim True-Up Distribution, each holder of an Allowed AMR Equity Interest shall receive its pro rata share of the Market-Based Old Equity Allocation pursuant to Section 7.4(a) of the Plan. In connection with the Final True-Up Distribution, each holder of an Allowed AMR Equity Interest shall receive its pro rata share of the Market-Based Old Equity Allocation pursuant to Section 7.4(b) of the Plan. The right of a holder of an Allowed AMR Equity Interest to receive any distribution on a Mandatory Conversion Date, an Interim Distribution Date, or a Final Distribution Date shall not be Transferable.

(Disclosure Statement at 13, 71-72.)

C. THE 9019 AGREEMENT

Pursuant to the 9019 Settlement, Debtors, the Creditors' Committee, and other creditors are attempting to resolve, among other things, certain inter-creditor issues. The Disclosure Statement, however, fails to provide meaningful information and/or financial or other analysis with respect to such inter-creditor claims of AMR and its subsidiaries or other clarification as to why the 9019 Settlement is fair and equitable. Based on the information provided, the size of such inter-creditor claims and how Debtors' various estates will be divided is uncertain, making it difficult to determine whether such agreements involving payments on the AMR equity (prior to payment in full on single-dip claims) are fair and equitable. The Disclosure Statement also fails to provide sufficient analysis or clarification regarding issues relating to substantive consolidation.

RESERVATION OF RIGHTS

A. THE PROPOSED PLAN MAY VIOLATE THE ABSOLUTE PRIORITY RULE

As discussed *supra*, the Trustee holds certain unsecured claims against Debtors' estates regarding termination values with respect to the PTC Transactions. Such claims are classified in the proposed Plan as American Other General Unsecured Claims. Because no Debtors guaranteed these claims in addition to the primary debt, the Trustee's claims are so-called single-dip claims. As set forth in the proposed Plan, these single-dip unsecured claims are deemed "unimpaired" and will receive two distributions from Debtors — one on the Initial Distribution Date and a second on the Final Mandatory Conversion Date. (*See* Disclosure Statement at 15, 75-77; proposed Plan at 4.11.)

Pursuant to the proposed 9019 Settlement with respect to Debtors' merger with US Airways, the proposed Plan also provides holders of AMR Equity Interests with distributions on the Effective Date (which is the same date as the Initial Distribution Date) and on each Mandatory Conversion Date. (Disclosure Statement at 13, 48, 54-56; Proposed Plan, § 4.5.) Payment to equityholders is typically not allowed under the Bankruptcy Code, unless and until a debtor's unsecured creditors are paid in full. *See In re DBSD N. Am., Inc.*, 634 F.3d 79, 94 (2d Cir. 2011). Indeed, the U.S. Supreme Court has "developed a 'fixed principle' for reorganizations: that all 'creditors [are] entitled to be paid before the stockholders [can] retain [shares] for any purpose whatever.'" *Id.* (quoting *N. Pac. Ry. Co. v. Boyd*, 228 U.S. 482, 507-08 (1913)). The Bankruptcy Code incorporates this provision by requiring "[f]or a district court to confirm a plan over the vote of a dissenting class of claims, the [Bankruptcy] Code demands that the plan be 'fair and equitable, with respect to each class of claims ... that is impaired under, and has not accepted, the plan.'" *Id.* (citing 11 U.S.C. § 1129(b)(1)).

In this instance, however, it may be possible that because the equityholders are holders of claims against AMR, and not American, that there was sufficient value at the parent level to distribute amounts to such holders without violating the absolute priority rule or that any "gift" to the holders of equity is sufficiently small. Without better disclosure regarding the inter-creditor claims, and the finances of Debtors' various subsidiaries, including American, however, there is no way to evaluate whether the 9019 Settlement is fair, reasonable and/or acceptable to creditors. Similarly, other Allowed unsecured creditors of American, whose claims were guaranteed by AMR (American Class 4 — American General Unsecured Guaranteed Claims and AMR Class 3 — AMR General Unsecured Guaranteed Claims (both double dip unsecured claims)), are to receive their full distributions on the Effective Date. Without better understanding the inter-creditor issues, it is also uncertain why certain unsecured creditors are being paid in full immediately while others are not being paid in full on the Effective Date.

The Trustee currently is not taking a position as to whether the 9019 Settlement reflected in the proposed Plan is or is not reasonable or whether or not it violates the absolute priority rule. Rather, it simply believes Debtors should be required to provide additional financial information and analysis with regard to the various inter-creditor issues and Debtors' estates so that all creditors can determine whether the proposed 9019 Settlement is fair and equitable. The Trustee has been in contact with Debtors and Debtors believe that the 9019 Settlement is fair and reasonable to all parties. While the proposed payments to the equity may be legitimate and appropriate, the Disclosure Statement does not provide sufficient information to holders of American Other General Unsecured Claims to allow them to be able to determine the justification for such treatment. In order to properly evaluate such a settlement, the Disclosure Statement should require additional information and analysis on the nature and extent of the

inter-creditor claims and an assessment as to what that might mean from a distribution perspective, i.e. would it be possible for holders of equity to receive a distribution while certain of the creditors of other Debtors are not paid in full if the settlements reached as part of the 9019 Settlement were not made. In addition, disclosure with respect to the effects of substantive consolidation ought to be made to enable creditors to determine the merits of the 9019 Settlement and whether or not the absolute priority rule is being violated. Thus, the Court should require additional substantive analysis with respect to the merits of the 9019 Settlement. At present the Trustee does not have adequate information to determine whether or not there are legitimate objections to the payment to the AMR Equity Interests.

B. Debtors May Be Inadvertently Seeking to Cancel All "Aircraft Securities" that are Required to Remain Outstanding for Purposes of Making Payments

Debtors also may be inadvertently seeking to cancel all "Aircraft Securities," including possibly those between non-related third parties or that are required for distribution purposes. This is, however, impermissible as securities as to which there are obligations between non-related third parties simply may not be canceled by Debtors. As part of their prior aircraft financing, Debtors entered into various pass through trust agreements, leases, contracts and other related agreements. Pursuant to certain of these financings, various trusts and other parties issued securities to the public. Certain of these securities need to remain in place to enable the relevant trustee to make distributions to investors. Despite this fact, pursuant to Section 6.14 of the proposed Plan, Debtors now attempt to cancel all securities related to such aircraft financing:

> On the Effective Date, all notes, instruments, certificates, and other documents evidencing . . . the Aircraft Securities shall be cancelled, and the obligations of the Debtors thereunder and in any way related thereto shall be deemed fully satisfied, released and discharged . . . .

(Proposed Plan, § 6.14.)

While the term "Aircraft Securities" is defined to include those securities listed on Schedule 4 (which, in the current draft of the proposed Plan, is blank and to be supplied at a later time), it is possible that such schedule will include all, or some, of the securities covered by the PTC Transactions with the Trustee. Section 1123(a)(5)(F) permits Debtors to "provide adequate means for the plan's implementation, such as . . . cancellation or modification of any indenture or similar instrument." *See* 11 U.S.C. § 1123(a)(5)(F). Moreover, Section 365 of the Bankruptcy Code makes it clear that Debtors can reject certain contracts to which they are a party.

However, while Debtors may cancel indentures (pursuant to section 1123(a)(5)(F)) and reject contracts (pursuant to section 365) to which they are the obligated party, Debtors may not cancel indentures or reject contracts as to which there are obligations between non-related parties. It is important that the certificates in the PTC Transactions remain outstanding so that the Trustee may make distributions to investors of (a) proceeds of the collateral, (b) payments on the Allowed Claims, and (c) payments to investors with respect to certain lease payments American makes in one of the transactions with respect to aircraft under new leases with Debtors. These securities must remain outstanding until all of the trust property has been distributed. Further, Debtors may not cancel these types of securities which were made by third parties independent of the Debtors. As a result, the Disclosure Statement should be revised to make such facts clear, or when issued, Schedule 4 should make such facts clear.

C. Debtors' Exculpation Clause to be Fair and Just Should Apply to All Trustees

As a further matter, if not applicable to all trustees, the exculpation clause contained in Debtors' proposed Plan may not be fair and just because it only applies to some, but not all, of the indenture trustees that are serving in relation to Debtors' underlying debt. Section 10.7 of the proposed Plan states that:

> Notwithstanding anything herein to the contrary, and to the maximum extent permitted by applicable law, neither the Debtors, US Airways, the Creditors' Committee, the Retiree Committee, the Indenture Trustees, . . . nor any of their respective members (current and former), including counsel and other professionals employed by such members in connection with the Chapter 11 Cases, officers, directors, employees, counsel, advisors, professionals, or agents (collectively, the "**Exculpated Parties**"), shall have or incur any liability to any holder of a Claim or Equity Interest for any act or omission in connection with, related to, or arising out of the Chapter 11 Cases . . . .

(Proposed Plan, § 10.7.)

Upon further examination, the term "Indenture Trustees" within the exculpation provision is defined to apply only to the indenture trustees of "Indentures." (Proposed Plan, § 1.128.) The definition of "Indentures" in the proposed Plan is limited and includes a select set of indentures but inexplicitly does not include all of the various indentures to which Debtors are a party, including, among others, any of the Indentures or other relevant agreements with the Trustee. (Proposed Plan, § 1.127.) The Disclosure Statement includes no explanation as to why the Trustee and other trustees are excluded from this provision and/or why only certain trustees are being exculpated under the proposed Plan. Under the circumstances of this case, each time the Trustee reached a resolution with Debtors, the Trustee received various exculpations, releases and protections (including bars against litigation) from any further action by Debtors, investors or third parties. The Trustee should continue to receive this benefit through the proposed Plan. At a minimum, to provide adequate information, Debtors should explain why they have singled out only certain trustees for exculpation and not provided such a right to all parties.

CONCLUSION

WHEREFORE, for all the reasons sets forth herein, the Trustee respectfully requests that the Court (i) direct Debtors to amend the Disclosure Statement and proposed Plan to cure the

inadequacies and address the issues identified in this Reservation of Rights and (ii) grant such other relief as is just.

Dated: May 24, 2013
New York, New York

Respectfully submitted,

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE

By Its Attorneys,

s/ Craig M. Price

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re:	:	Chapter 11
	:	
AMR CORPORATION, et al.,	:	Case No. 11-15463 (SHL)
	:	Jointly Administered
Debtors.	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of May 2013, a true and correct copy of the foregoing **Reservation of Rights of U.S. Bank National Association, as Trustee, to Debtors' Motion for an Order (i) Approving Notice of Disclosure Statement Hearing; (ii) Approving Disclosure Statement; (iii) Establishing a Record Date; (iv) Establishing Notice and Objection Procedures for Confirmation of the Plan; (v) Approving Solicitation Packages and Procedures for Distribution Thereof; (vi) Approving the Forms of Ballots and Establishing Procedures for Voting on the Plan; and (vii) Approving the Form of Notice to Non-Voting Classes Under the Plan**, was served electronically through the Court's ECF System on parties requesting electronic service and on the 24th day of May 2013 by U.S. Mail, First Class, Postage Prepaid, on the parties shown below.

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