UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF DEBTORS' SECOND AMENDED JOINT CHAPTER 11 PLAN AND IN RESPONSE TO OBJECTIONS TO PLAN

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TO THE HONORABLE SEAN H. LANE,
UNITED STATES BANKRUPTCY JUDGE:

AMR Corporation ("**AMR**")[1] and its related debtors, as debtors and debtors in possession (collectively, the "**Debtors**" or "**American**"), respectfully represent:

PRELIMINARY STATEMENT

The Debtors' Second Amended Joint Chapter 11 Plan, dated June 5, 2013 (as the same has been or may be amended, modified, supplemented, or restated, the "**Plan**") (ECF No. 8590), epitomizes the intent and purpose of chapter 11 of the Bankruptcy Code. It is a fully-consensual plan that, based on current trading values, will provide a full recovery to the Debtors' creditors (including postpetition interest) and a substantial distribution to holders of existing AMR Equity Interests.

It is hardly surprising that, under these circumstances, the Debtors' creditors and shareholders entitled to vote on the Plan have accepted it by perhaps unprecedented majorities, in most instances by margins in excess of 99%. This represents an overwhelming referendum in support of all elements of the Plan and the Merger and the extraordinary value created thereby.

Indeed, even the objections to the Plan (the "**Objections**") that have been filed do not in any way undermine what has been achieved or impose any impediment to confirmation of the Plan. Not one creditor or shareholder has raised any meritorious objection to the Plan. As demonstrated on the Chart annexed hereto as **Exhibit "A"** (the "**Objection Summary**"), the Objections raise issues that are largely parochial to individual claimants rather than to the confirmability of the Plan and, in many instances, already have been resolved.

[1] Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in the Plan or the Disclosure Statement for Debtors' Second Amended Joint Chapter 11 Plan, dated June 5, 2013 (ECF No. 8591) (the "**Disclosure Statement**").

Further, the limited objection filed by the US Airline Pilots Association ("**USAPA**") must be dismissed for obvious reasons. As a threshold matter, USAPA lacks standing to object. It is neither a creditor nor shareholder of the Debtors, nor in any other respect a party in interest in these Chapter 11 Cases. Additionally, USAPA ironically seeks to become the beneficiary of the terms of a Plan it concurrently asserts is not confirmable. Even if USAPA had standing, its Objection must be overruled. The Plan is feasible, as plainly demonstrated by the projections contained in the Disclosure Statement and the Debtors' cash position, which currently exceeds $7 billion. Further, the Plan in no way could, nor does, adversely impact USAPA's rights under any contractual arrangements it has with US Airways. USAPA's objections to the Chairman Letter Agreement are fully addressed below and, likewise, lack merit.

The Objection filed by the Office of the United States Trustee (the "**U.S. Trustee**") also should be overruled. As demonstrated below, the Chairman Letter Agreement does not contravene section 503 or any other provision of the Bankruptcy Code. Consistent with the Memorandum of Decision with respect to the Debtors' motion to approve the Merger, dated April 11, 2013, reported at *In re AMR Corp.*, 490 B.R. 158, 167 (Bankr. S.D.N.Y. 2013) (the "**Memorandum of Decision**"), the Chairman Letter Agreement was made part of the Plan and, therefore, subject to the heightened disclosure, voting, and confirmation requirements of the chapter 11 process, and the Debtors' creditors and shareholders have spoken volumes through this process.

Under these circumstances, where the obligations under the Chairman Letter Agreement arise under the Plan and will be incurred by New AAG, the surviving entity of the Merger with a new asset base, those obligations are not "administrative expenses" under section 503 of the Bankruptcy Code. Accordingly, as Judge Gropper concluded in his squarely on–point

decision in *In re Journal Register Co.*, 407 B.R. 520 (Bankr. S.D.N.Y. 2009), section 503(c) is not applicable here and section 1129(a)(4) is the governing provision. In light of the unprecedented value created under Mr. Horton's leadership and his commitment to New AAG, which is vital to the integration process, there can be no doubt that the Chairman Letter Agreement is reasonable and should be approved.

As demonstrated in this Memorandum of Law, the Plan satisfies all applicable requirements of the Bankruptcy Code for confirmation. The Objections do not, and cannot, compel a different conclusion. The overwhelming mandate of the Debtors' creditors and equity security holders should be implemented, and the Plan should be confirmed.

FACTS

The pertinent facts are set forth in the Disclosure Statement, the Plan, and any testimony and declarations that may be adduced or submitted at the Confirmation Hearing. Such facts are incorporated herein as if fully set forth herein.

ARGUMENT

I.

THE UNRESOLVED OBJECTIONS TO CONFIRMATION OF THE PLAN SHOULD BE OVERRULED

As set forth in the attached Objection Summary, certain Objections have been resolved. The remaining Objections consist of the following:

1. Objection filed by the U.S. Trustee (ECF No. 9427) (the "**UST Objection**");
2. Objection filed by USAPA (ECF No. 9337) (the "**USAPA Objection**");
3. Objection filed by the Cook Collection Attorneys on behalf of the so-called "Clayton Plaintiffs" (ECF No. 9356) (the "**Clayton Objection**");

4. Objection filed by Allegheny County Airport Authority ("**Allegheny**") and joinder filed by Hargrove Electrical Company, Inc. ("**Hargrove**") (ECF Nos. 9339, 9371) (together, the "**Allegheny/Hargrove Objections**");
5. Various limited Objections and reservations of rights filed by U.S. Bank in various capacities (collectively, the "**U.S. Bank Objections**");
6. Objections filed on behalf of the Supplemental B Pilot Beneficiaries (ECF No. 9334) and the Former TWA Pilots (ECF No. 9351) (collectively, the "**Supp B & TWA Pilots Objections**");
7. Various Objections filed by certain taxing authorities (the "**Taxing Authority Objections**"); and
8. Ten Objections filed by individual pro se litigants (the "**Pro Se Objections**").

The U.S. Bank Objections, the Supp B & TWA Pilots Objections, the Taxing Authority Objections, and the Pro Se Objections are summarized and fully addressed in the Objection Summary. For the reasons set forth in the Objection Summary, those Objections should be overruled.

As demonstrated below, the UST Objection, the USAPA Objection, the Clayton Objection, and the Allegheny/Hargrove Objections also should be overruled and the Plan should be confirmed.

A. The UST Objection

The UST Objection is premised on three assertions: (i) the Chairman Letter Agreement violates section 503(c)(2) of the Bankruptcy Code; (ii) legal expenses of individual members of the Creditors' Committee and the Indenture Trustees cannot be reimbursed under the Plan absent compliance with the requirements of section 503(b) of the Bankruptcy Code; and (iii) the exculpation provisions of the Plan are overbroad. The UST Objection is supported by neither the applicable law nor the facts and, therefore, must be overruled.

1. The Chairman Letter Agreement Does Not Violate Section 503(c)(2) of the Bankruptcy Code

As stated, the U.S. Trustee has objected to the Chairman Letter Agreement on the basis that it violates section 503(c)(2) of the Bankruptcy Code and, therefore, cannot be included in the Plan as an obligation of New AAG. This objection is without merit.

Under the uniform case law of this District, including the decisions in *Journal Register*, *Dana Corp.*, and *Lehman Brothers*, the obligations under the Chairman Letter Agreement are not "administrative expenses" within the purview of section 503 of the Bankruptcy Code. In stark contrast to chapter 11 administrative expenses, which are obligations of the debtor in possession payable regardless of whether a chapter 11 plan is confirmed or whether any other transactions are consummated, the obligations under the Chairman Letter Agreement are obligations of New AAG, an entity comprised of the assets of two merged major air carriers, and no payments will be made under the Chairman Letter Agreement unless and until the Plan is confirmed, the Plan becomes effective, and the Merger is consummated.

Accordingly, section 503(c) by its terms is not applicable, nor is the policy it was enacted to promote. The Chairman Letter Agreement is not operative during the pendency of the Chapter 11 Cases and hardly can be characterized as arising in circumstances where other parties' interests are being sacrificed or prejudiced. Rather, the Chairman Letter Agreement is an element of a comprehensive, fully-negotiated, and consensual Plan and Merger epitomizing the intent and purpose of chapter 11, with unprecedented value creation for the benefit of all parties in interest – creditors, employees, and existing AMR shareholders. The overwhelming referendum by such parties in support of the Plan, with more than full and adequate disclosure of the Chairman Letter Agreement, puts to rest any claim that Mr. Horton's compensation – which was negotiated with the full input of the Creditors' Committee – improperly diverts value from creditors or other stakeholders.

Noting Judge Gropper's decision in *In re Journal Register Co.*, 407 B.R. 520 (Bankr. S.D.N.Y. 2009), and Judge Lifland's decision in *In re Dana Corp.*, 358 B.R. 567 (Bankr. S.D.N.Y. 2006), this Court, in its Memorandum of Decision, expressed concern with the *timing* of the Debtors' prior request to seek approval of the Chairman Letter Agreement outside the context of a plan of reorganization with the "heightened disclosure, notice, and hearing requirements" attendant thereto. *In re AMR Corp.*, 490 B.R. 158, 167 (Bankr. S.D.N.Y. 2013) (quoting *Journal Register*, 407 B.R. at 536–37). Indeed, in distinguishing the Debtors' request to seek approval of the Chairman Letter Agreement outside of a plan from the facts of *Journal Register*, the Court stated in its Memorandum of Decision that "[b]y presenting their request as part of a proposed plan of confirmation, the debtors in *Journal Register* took the proposed incentive payments outside the coverage of Section 503 and placed them within the confines of Section 1129(a)(4)." *Id.*

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The same circumstances now exist here as existed in *Journal Register*. By including the Chairman Letter Agreement in the Disclosure Statement and the Plan, the Debtors have directly addressed the Court's concern about the timing and context of their request and have subjected that agreement to all of the heightened requirements of the chapter 11 plan process. Under these circumstances, and where the Chairman Letter Agreement is an obligation of the surviving entity in a merger comprising a significantly different business enterprise, section 503 no longer has any application and section 1129(a)(4) governs. *See Journal Register*, 407 B.R. at 536–37. Moreover, based on, among other things, the extraordinary value created by the Merger and the Plan and Mr. Horton's essential role in procuring that value and in realizing the benefits of the Merger both prior to and after Closing, the Chairman Letter Agreement is an eminently reasonable compensation arrangement for the Debtors' CEO and the future Chairman of the merged company.

a. Section 503 of the Bankruptcy Code Is Not Applicable

Section 503 of the Bankruptcy Code by its express terms applies solely to the allowance of costs and expenses of administration.[2] Section 503(b) sets forth the circumstances in which "there shall be allowed administrative expenses," and section 503(c) provides specific exceptions to section 503(b). 11 U.S.C. § 503(b), (c). Because the obligations under the Chairman Letter Agreement are not being paid or allowed as expenses of administration of these Chapter 11 Cases, but instead will accrue only on consummation of the Plan and the Merger, section 503(c) is inapplicable.

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[2] Notably, despite its objection, the U.S. Trustee expressly recognizes this indisputable fact: "Section 503 of the Bankruptcy Code governs administrative expense payments from the bankruptcy estate." (UST Objection at 17.)

As Judge Lifland stated in *In re Dana Corp.*, "[s]ection 503(c) of the Bankruptcy Code . . . on its face only limits the allowance and payment of *administrative* claims . . . . [T]he language of section 503(c) is clear and unambiguous that *only administrative claims* are subject to section 503(c) restrictions." 358 B.R. at 578. This textual analysis is consistent with the guidance of the United States Supreme Court that:

> when "the statute's language is plain, 'the sole function of the courts,'" – at least where the disposition of the statute's text is not absurd – "'is to enforce the statute according to its terms.'"

Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 6 (2000) (quoting *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989)). Further, as Judge Gropper explained in *Journal Register*, the law is clear that payments to be made subsequent to confirmation of a plan are not administrative expenses:

> "A confirmed plan takes on the attributes of a contract," *see Charter Asset Corp. v. Victory Markets, Inc.* (*In re Victory Markets, Inc.*), 221 B.R. 298, 303 (2nd Cir. BAP 1998), by which the estate ceases to exist, "a reorganized debtor" comes into being, and its obligations arise. Therefore*, courts generally deny administrative claim status to expenses that become payable upon confirmation of a chapter 11 plan and not before*.

407 B.R. at 535–36 (emphasis added) (citations omitted); *see also In re WorldCom, Inc.*, 401 B.R. 637, 652 (Bankr. S.D.N.Y. 2009) (stating that "'[a]fter confirmation of a plan under Chapter 11, administration of the estate ends and the estate ceases to exist. . . . Thus, it is impossible to classify [claims] that accrue post-confirmation as administrative expenses for the simple reason that after confirmation there is no longer an estate to administer.'" (quoting *In re Frank Meador Buick, Inc.*, 65 B.R. 200, 203 (W.D. Va. 1986)).

In this case, there can be no dispute that the payments under the Chairman Letter Agreement will accrue and be made only after confirmation. The obligations under the Chairman Letter Agreement are incorporated into the Plan, are conditioned on the occurrence of

the Effective Date under the Plan and the closing of the Merger, and are obligations of New AAG, an entity that includes all of the assets of the non-debtor US Airways, whose shareholders have independently voted to approve the comprehensive transaction contemplated by the Merger. As a result, the obligations under the Chairman Letter Agreement are not "administrative expenses" subject to section 503(c).

The language, structure, and legislative history of section 503 all support the conclusion that the obligations under the Chairman Letter Agreement are not subject to section 503(c). Beginning with the statutory language, section 503 by its terms applies exclusively to the "Allowance of administrative expenses" against a debtor's estate, as indicated not only by the title of section 503, but also by the language of section 503(b), which sets forth the requirements for allowance of "administrative expenses."[3] Section 503(c) is structured as a carveout to section 503(b)'s allowance of "administrative expenses" — it comes immediately after subsection 503(b), and its first two words are – "*Notwithstanding subsection (b).*" Had Congress wanted section 503(c) to apply "notwithstanding" section 1129(a)(4) or other provisions of the

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[3] *See Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, where the Supreme Court stated:

> If the statutory context suggests anything, it is that § 1146(a) is inapplicable to preconfirmation transfers. We find it informative that Congress placed § 1146(a) in a subchapter entitled, "POSTCONFIRMATION MATTERS." To be sure, a subchapter heading cannot substitute for the operative text of the statute. Nonetheless, statutory titles and section headings "'are tools available for the resolution of a doubt about the meaning of a statute.'" The placement of § 1146(a) within a subchapter expressly limited to postconfirmation matters undermines Piccadilly's view that § 1146(a) covers preconfirmation transfers.

554 U.S. 33, 47 (2008) (quoting *Porter v. Nussle*, 534 U.S. 516, 528 (2002)) (internal citations omitted).

Bankruptcy Code outside of section 503, it could have said so; instead, section 503(c) was enacted solely as an exception to section 503(b) and is thus limited to "administrative expenses."

Thus, as Judge Lifland recognized in *Dana*, where the U.S. Trustee also contended that section 503(c) applies to any and all payments regardless of their status or timing, the "language of section 503(c) is clear and unambiguous that *only administrative claims* are subject to section 503(c) restrictions." 358 B.R. at 578. Moreover, as Judge Gropper recognized in *Journal Register*, payments provided for in a plan are not subject to section 503(c) because they are not "administrative expenses." 407 B.R. at 535.[4] As in *Journal Register*, the Debtors have incorporated Mr. Horton's compensation into the Plan, "making anomalous any argument that [the future payments to Mr. Horton] are 'actual' and 'necessary' costs and expenses of the estate." *Id.* To apply the limitations of section 503(c) to payments that are *not* administrative expenses but are instead included in a plan, as the U.S. Trustee asks this Court to do, would ignore the plain, unambiguous language of section 503, in direct contravention of well-settled canons of statutory construction and textual analysis advanced by the United States Supreme

[4] The U.S. Trustee's reliance on Judge Lifland's earlier decision, *In re Dana Corp.*, 351 B.R. 96 (Bankr. S.D.N.Y. 2006) ("*Dana I*"), is misplaced. In *Dana I*, the debtors proposed certain bonus and severance payments to insiders *during the case* under section 363 of the Bankruptcy Code, not the situation here, where the Debtors have proposed a payment as part of a consensual chapter 11 Plan under sections 1123(b)(6) and 1129(a)(4). Likewise, *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 172–73 (Bankr. D.N.J. 2010), cited by the U.S. Trustee, is unpersuasive because it is inconsistent with the reasoned decisions of Courts in this District, such as *Journal Register*, *Lehman Brothers*, and *Adelphia*, and as this Court has noted, elevates form over substance. *In re AMR Corp.*, Ch. 11 Case No. 11-15463, Hr'g Tr. 22:25–23:4 (Bankr. S.D.N.Y. Mar. 27, 2013) (The Court: "I mean there's a case in New Jersey, it says . . . it's in a plan context and it violates 503(c), do it, do it later. . . . I don't find that particularly persuasive, and I think it perhaps elevates form over substance a little bit.").

Court. *See Dana*, 358 B.R. at 578 (citing *Hartford Underwriters*, 530 U.S. at 6 and *Ron Pair*, 489 U.S. at 241).[5]

That section 503(c) applies to "administrative expenses," but not to the postconfirmation payments arising under a plan, is further confirmed by an examination of the legislative history, which reveals that Congress considered several legislative proposals designed to protect employees and retirees following Enron and WorldCom (whose bankruptcy cases stemmed from employee-related fraud), but ultimately decided only to revise the requirements for the allowance of *administrative expenses*.

Section 503(c), which was added to the Bankruptcy Code in 2005, was proposed by Senator Edward Kennedy as a means to address perceived abuses in chapter 11 cases such as Enron, WorldCom, and Polaroid. *AMR*, 490 B.R. at 165–66 (quoting *Dana*, 358 B.R. at 575 ("Senator Edward Kennedy proposed the amendment to section 503 of the Bankruptcy Code as a last-minute addition to the bill, expressing his concern over the 'glaring abuses of the bankruptcy system by the executives of giant companies like Enron Corp. and WorldCom Inc. and Polaroid Corporation, who lined their own pockets, but left thousands of employees and retirees out in the cold.'" (quoting Statement of Senator Edward Kennedy on the Bankruptcy Bill (Mar. 1, 2005)))). Significantly, the amendment proposed by Senator Kennedy in 2005, which resulted in section 503(c), was originally part of a more comprehensive piece of legislation that was never enacted. *See* Employee Abuse Prevention Act of 2002, S. 2798, 107th Cong. (2002) ("**EAPA**").

[5] Contradicting all case law from this District, including *Dana* and *Journal Register*, USAPA asserts that section 503(c) is not limited to "administrative expenses" because that phrase appears in section 503(b) but not in section 503(c). This argument ignores the fact that section 503(c) is explicitly structured as an exception to section 503(b), as evidenced by the first two words of section 503(c): "Notwithstanding subsection (b)." It also ignores the legislative history cited below, which includes a House Report that expressly limits section 503(c) to administrative expenses, as well as the Bankruptcy Code's separate scheme in section 1129 for payments made in connection with a plan.

In 2002 Senator Kennedy co-sponsored a bill to establish EAPA, the stated purpose of which was to "protect employees and retirees from corporate practices that deprive them of their earnings and retirement savings when a business files for bankruptcy under title 11, United States Code." EAPA at 1. Section 104 of EAPA provided for an amendment to section 503 of the Bankruptcy Code with proposed language nearly identical to what is now section 503(c). *Compare* EAPA § 104 *with* 11 U.S.C. § 503(c). However, EAPA also provided for several additional proposed employee and retiree protections including, among others, an expansion of the definition of "claim" to include a right or interest in equity securities of the debtor (or an affiliate of the debtor) contributed by the debtor to its employee pension plan, and enhanced priority for such claim, EAPA § 201, an increase in the section 507 wage and benefit contribution priority caps, EAPA § 202, the allowance of an administrative expense for estate retiree claims arising from violations of the debtor's fiduciary obligations to an employee pension plan, EAPA § 203, and an expansion of the avoidance powers by, among other things, allowing for a look-back period of four years and the avoidance of "excess benefit transfers" (e.g., severance payments, and retention and incentive bonuses of a certain amount) to insiders, general partners, or other persons affiliated with the debtor, EAPA § 101. *See also* Steven L. Harris, *The Emerged and Emerging New Uniform Commercial Code, Employee Abuse Protection Act of 2002*, SH035 ALI-ABA, 549, 569–73 (describing each provision of EAPA).

EAPA was referred to the Senate Judiciary Committee, but faced substantial opposition and eventually died in Committee. *See* Steven L. Harris & Charles W. Mooney, *The Unfortunate Life and Merciful Death of the Avoidance Powers Under Section 103 of the Durbin-Delahunt Bill: What Were They Thinking?*, 25 CARDOZO L. REV. 1829, 1831 (2004).

The proposed addition of section 503(c) reemerged in 2003 when Representative Bill Delahunt, who had introduced EAPA in the House in 2002, offered an amendment to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003 (H.R. 975, 108th Cong. (2003)) that would have amended section 503 to include what is now subsection (c). H.R. REP. NO. 108-40(I), at 139 (2003). The proposed addition of section 503(c) was voted down by the House Committee on the Judiciary, which described the amendment as one *"disallowing as an administrative expense*: (1) certain transfers made to or obligations incurred for the benefit of an insider of the debtor; (2) certain severance payments to a debtor's insider; and (3) other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case." *Id.* (emphasis added).

Section 503(c) was finally added to the Bankruptcy Code when Senator Kennedy in 2005 proposed an amendment to The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109–8, 119 Stat. 23, enacted April 20, 2005, that was eventually adopted by Congress. Unlike the prior legislation proposed by Senator Kennedy, BAPCPA included only one amendment – a provision restricting the allowance of *administrative expense claims* for severance and retention payments. *See* 11 U.S.C. § 503(c). Congress did not adopt the other provisions of EAPA, nor did it enact an outright restriction on postconfirmation severance and retention payments under a chapter 11 plan.

Notably, if Congress wished to extend the application of section 503(c) beyond administrative expenses of a debtor's estate to encompass postconfirmation obligations, it knew how to do so. For example, Congress had no difficulty enacting section 1129(a)(13), which requires every plan of reorganization to continue "after its effective date" the payment of all retiree benefits within the purview of section 1114 of the Bankruptcy Code. *See* 2013 Collier

Pamphlet Edition, Bankruptcy Code, § 1114 Comments on 1988 Amendments at 879 ("The Retiree Benefits Bankruptcy Protection Act of 1988, Pub. L. No. 100-344, effective June 16, 1988, added section 1114 regarding payment of insurance benefits to retired employees, *as well as* paragraph (13) to section 1129(a), thereby establishing a new requirement for chapter 11 plan confirmation.") (emphasis added); *see also IUE-CWA v. Visteon Corp. (In re Visteon Corp.)*, 612 F.3d 210, 216–17 (3d Cir. 2010) ("In crafting § 1114, Congress provided certain procedural and substantive protections for retiree benefits during a Chapter 11 proceeding. Section 1129(a)(13) ensures that some measure of those protections extends beyond the [chapter 11] proceeding.").

Simply stated, Congress could have made the limitations on the insider retention and severance payments set forth in section 503(c) a plan requirement under section 1129(a). It elected not to. Instead, it enacted a provision that addresses the allowance of retention and severance payments as "administrative expenses." This decision was not arbitrary: In the specific cases cited by Senator Kennedy in proposing section 503(c) – Polaroid, Enron, and WorldCom – the relevant debtors sought to make significant "KERP" payments to executives *during the pendency of their chapter 11 cases*, not in the context of a plan. In *Polaroid*, the debtors sought to pay bonuses to executives, in addition to the executives' receipt of proceeds from a sale of Polaroid's assets. In *Enron* and *WorldCom*, the debtors successfully moved near the outset of their cases to pay significant retention bonuses and incentive bonuses.[6] Consistent with the Court's analysis in *Journal Register*, it is reasonable to conclude that Congress acted

[6] *See, e.g.*, *Polaroid Seeks to Reward Top Executives with Bonuses*, N.Y. TIMES, Dec. 7, 2001, at C3; *Polaroid Withdraws $5 Million Bonus Plan To Retain Executives*, WALL ST. J., Jan. 14, 2002, at B5; *Polaroid Bonuses OK'd,* BOSTON GLOBE, Apr. 6, 2002, at C1; Rebecca Blumenstein, *Worldcom Judge Approves Plan to Keep Employees*, WALL ST. J., Oct. 30, 2002, at B3; Jeff St. Onge, *Bankruptcy Judge OKs WorldCom Bonuses*, RECORD (Bergen County, N.J.), Oct. 30, 2002, at BO; Thomas S. Mulligan, *Judge Oks Enron Plan to Retain Senior Workers*, L.A. TIMES, Apr. 17, 2002, at Business Desk 3.

deliberately when it precluded such payments as "administrative expenses" under section 503(c) without precluding similar payments in the context of a plan, where creditors and other stakeholders are protected by the plan negotiation process, disclosure statement, and voting and confirmation requirements.

b. Section 1129(a)(4) of the Bankruptcy Code Applies, Not Section 503

By seeking approval of the Chairman Letter Agreement as part of the Plan, the Debtors have addressed the concerns raised by this Court in its Memorandum of Decision. The Debtors have subjected the Chairman Letter Agreement to the "'heightened disclosure, notice, and hearing requirements of the plan confirmation process.'" *AMR*, 490 B.R. at 167 (quoting *Journal Register*, 407 B.R. at 536–37). As a result, this case is indistinguishable from *Journal Register*, in which Judge Gropper held that obligations arising under a chapter 11 plan are covered by section 1129(a)(4) of the Bankruptcy Code rather than section 503(c).[7]

Journal Register dealt with an insider, postemergence incentive plan with targets premised on the achievement of certain preconfirmation objectives. The incentive plan originally was presented for approval during the pendency of the debtors' chapter 11 cases, but was withdrawn and incorporated into the debtors' reorganization plan. In overruling objections based on section 503(c) of the Bankruptcy Code, Judge Gropper appropriately found that because the relevant payments were to be made post-confirmation and not by the estates of the

[7] The U.S. Trustee's assertion that the Memorandum of Decision somehow constitutes "law of the case" that precludes approval of the Chairman Letter Agreement should be summarily rejected. As the UST Objection itself expressly recognizes at least twice (UST Objection at 4, 8), the Debtors' right to seek approval of the Chairman Letter Agreement as part of the Plan was reserved and not decided in the Memorandum of Decision.

debtors in possession, the obligations under the incentive plan did not constitute expenses of administration being allowed under section 503. 407 B.R. at 535–36.

The Court in *Journal Register* also quite logically harmonized the provisions of sections 503(c) and 1129(a)(4), and the policy considerations of the Bankruptcy Code based on this temporal factor and the protections inherent in section 1129(a)(4), which are "'designed to insure compliance with the Code that (1) the bankruptcy court should police the awarding of fees in title 11 cases and (2) holders of claims and interests should have the benefit of such information as might affect the claimants' decision to accept or reject the plan.'" *Id.* at 536 (quoting *In re Future Energy Corp.*, 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988)).

In holding that the debtors' incentive plan did not violate section 503(c) and instead was subject to section 1129(a)(4), Judge Gropper stated:

> By including the Incentive Payment in their Plan of Reorganization, the Debtors have subjected the Incentive Plan to the heightened disclosure, notice, and hearing requirements of the Plan confirmation process, and they have given affected parties the opportunity to vote on it. The vote has been overwhelmingly positive.
>
> . . . .
>
> The conclusion that the Incentive Plan is not being allowed or disallowed as an administrative expense subject to the requirements of § 503(c) of the Bankruptcy Code is bolstered by the fact that there is a subsection of § 1129 that is directly applicable and that one of the objecting parties principally relied on at the confirmation hearing. Section 1129(a)(4) of the Bankruptcy Code requires that "any payment made by the proponent by the . . . debtor . . . for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the Court as reasonable."

Id. at 536–37.

This Court, in analyzing the *Journal Register* decision in its Memorandum of Decision, likewise noted the interplay between sections 503(c) and 1129(a)(4) and where the applicability of section 503(c) ends and section 1129(a)(4) begins:

> By presenting their request as part of a proposed plan of confirmation, the debtors in *Journal Register* took the proposed incentive payments outside of the coverage of Section 503 and placed them within the confines of Section 1129(a)(4).

AMR, 490 B.R. at 167.

Consistent with the foregoing, sections 503(c) and 1129(a)(4) are readily harmonized. Section 503(c) addresses requests for the allowance of administrative expenses *during* the pendency of a chapter 11 case and outside the context of a plan of reorganization, i.e., the types of requests made in cases such as Enron, WorldCom, and Polaroid. When a payment, however, is part of a plan of reorganization and subject to the scrutiny of the voting process and confirmation requirements attendant thereto, section 1129(a)(4) becomes the governing section. This Court should not permit the U.S. Trustee's flawed reasoning and flawed statutory construction to substitute for the plain meaning of the statute, the simple and logical distinction drawn by *Journal Register*, and the overwhelming consensus of creditors and shareholders (including the shareholders of US Airways).

Against this backdrop, the U.S. Trustee's reliance on *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065 (2012), is thoroughly misplaced. *RadLAX* involved an apparent conflict between section 1129(b)(2)(A)(ii) of the Bankruptcy Code, which permits confirmation of a plan over the objection of a secured creditor when the debtor sells collateral and the creditor is permitted to credit bid, and section 1129(b)(2)(A)(iii) of the Bankruptcy Code, which permits confirmation of a plan over the objection of a secured creditor when the plan provides the creditor with the "indubitable equivalent" of its claim. The Supreme Court held that

the general "indubitable equivalent" language does not permit a debtor to confirm a plan over a secured creditor's objection without satisfying the more specific requirement that the creditor be allowed to credit bid in the case of a sale. *Id.* at 2071. Here, there is no such conflict between provisions of the Bankruptcy Code that address the same subject matter. Rather, section 503 by its terms is applicable to "administrative expenses," but *not* to payments under a plan; and section 1129(a)(4) by its terms is specifically applicable in the plan context. *Journal Register*, 407 B.R. at 536–37.[8]

The transition from section 503(c) to section 1129(a)(4) in the context of the plan process also is entirely consistent with public policy. As noted, section 503(c) was enacted to address the concern voiced by Senator Kennedy over the "'glaring abuses of the bankruptcy system by the executives of giant companies like Enron Corp. and WorldCom, Inc. and Polaroid Corporation, who lined their own pockets, but left thousands of employees and retirees out in the cold.'" *Dana*, 358 B.R. at 575 (quoting Statement of Senator Edward Kennedy on the Bankruptcy Bill (Mar. 1, 2005)). Section 503 has two overriding policies: "(i) to preserve the value of the estate for the benefit of its creditors and (ii) to prevent the unjust enrichment of the estate at the expense of its creditors." *Journal Register*, 407 B.R. at 535; *accord AMR*, 490 B.R. at 164–65.

In contrast to the "KERP" packages in cases such as Enron, WorldCom, and Polaroid – which were proposed outside of the plan process – the Chairman Letter Agreement was negotiated and is now being put forward as part of the plan process, with the Creditors'

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[8] The U.S. Trustee's reliance on *Cushman & Wakefield of Conn., Inc. v. Keren Ltd. P'ship (In re Keren Ltd. P'ship)*, 189 F.3d 86 (2d Cir. 1999), is equally misplaced. In that case, the Court held that a professional retained by the debtor was not entitled to an administrative expense claim for a brokerage fee without meeting section 503(b)(2)'s requirements for compensation of professionals. Here, as discussed above, Mr. Horton's compensation will not take the form of an administrative expense and is subject to section 1129(a)(4) rather than section 503.

Committee playing a major role in negotiating the terms of the Chairman Letter Agreement. Moreover, in light of the unprecedented value to be realized by creditors, existing AMR stockholders, and employees, the very parties section 503 is designed to protect, it is manifestly clear that creditors and other stakeholders are not being prejudiced and that Mr. Horton, who led the Debtors in achieving these extraordinary results, is not being rewarded "'simply for staying with the [c]ompany through the bankruptcy process.'" *AMR*, 490 B.R. at 165 (quoting *In re Velo Holdings, Inc.*, 472 B.R. 201, 209 (Bankr. S.D.N.Y. 2012)). It is likewise clear that Mr. Horton will not be "unjustly enriched" at the expense of creditors, shareholders, employees, or any other parties in interest – all of whom have benefited tremendously from Mr. Horton's work and, as shareholders of New AAG, will benefit from his future work in integrating AMR with US Airways.[9] In sum, the Plan, the Merger, and all of the matters related thereto are the product of the negotiation process and the achievement of a consensual plan that exemplifies the intent and purpose of chapter 11 of the Bankruptcy Code.

Judge Peck's decision in *In re Lehman Brothers Holdings Inc.*, 487 B.R. 181 (Bankr. S.D.N.Y. 2013), *appeal docketed*, No. 13-CV-0211 (RJS) (S.D.N.Y. Apr. 3, 2013), also is instructive. In *Lehman*, the U.S. Trustee challenged a provision in Lehman's chapter 11 plan which authorized the payment of reasonable compensation for legal services rendered to attorneys retained by individual members of the creditor's committee. Similar to the circumstances here, the U.S. Trustee asserted that section 503(b) is controlling and preclusive

[9] Under the Plan, employees (both union and nonunion) are to receive shares of New AAG representing more than 23% of such shares distributed to holders of Allowed unsecured claims. Under these circumstances, they hardly are being "left . . . out in the cold." (UST Objection at 16.) The U.S. Trustee's use of this language in connection with Mr. Horton is inappropriate and highlights the disconnect between the UST Objection and the particular facts of these Chapter 11 Cases.

and is the "exclusive pathway by which a member of an official committee can ever be entitled to receive compensation for legal fees incurred while serving on such a committee." *Id.* at 186.

In addressing the issue, Judge Peck noted the "enormous leeway granted to the architects of plans under Section 1123(b)(6) . . . and the authority and discretion of the bankruptcy court to approve payments in connection with a plan as being reasonable under Section 1129(a)(4)." *Id.* He recognized that "[e]very chapter 11 plan in a complex business case necessarily is a one of a kind formulation, the product of negotiations that are peculiar to the fact pattern, requirements, circumstances, business realities and political pressures of the case." *Id.* Judge Peck further stated:

> When it comes to plan provisions, the variations are virtually without limit, and properly so. To fulfill its reorganization purposes, a plan must be an endlessly adaptable tool that fits the particular needs and dynamics of each case. The free expression of plan proponents should not be restrained except to the extent of complying with the requirements of the Bankruptcy Code that govern plan content. Section 503(b) is not a straitjacket, and the provisions of that section that directly govern the allowance of administrative claims do not control the plan process and are not inconsistent with . . . the more liberal treatment prescribed in the Plan.

Id.

In overruling the U.S. Trustee's objection, the *Lehman* Court was extremely cognizant of the flexibility to be afforded to the plan negotiation process which is the hallmark of chapter 11, the opportunity for parties in interest to vote on the plan, and the other protections inherent in the plan confirmation process, including the provisions of section 1129(a)(4) of the Bankruptcy Code. Judge Peck determined that in order to trump this seminal feature of chapter 11, the provisions of the plan must be contrary to law, circumstances which he found did not exist:

> Plan provisions, especially in a unique setting such as this, are to be favored and respected unless those provisions can be shown to be contrary to law. In this instance, the provision authorizing payment of professional fees does not conflict with sections of the Bankruptcy Code that, read literally, would not allow for the payment of the same fees as administrative expenses.

Id. at 191. Notably, Judge Peck stated:

> *The fact that administrative claim status may not be allowed does not mean that an agreed payment under a fully consensual plan should not be permitted. The confirmation of the Plan substitutes all of the protections that are needed, and the proposed payments to reimburse professionals retained by the Applicants need only to be subjected to the Court's approval as "reasonable" under Section 1129(a)(4).*

Id. (emphasis added). He further observed:

> Plan provisions must be clearly in conflict with applicable provisions of the Bankruptcy Code to become unenforceable. The standards of Section 1123(b)(6) are liberal, and deliberately so. *To state this colloquially, a "tie" should go to the "runner" with respect to whether a plan provision is valid*. In this instance, that suggests that the benefit of any doubt properly should be given to the plan proponent unless a troubling inconsistency with other provisions of the Bankruptcy Code is manifest. That is not the case here.

Id. at 192 (emphasis added).

The very same reasoning is applicable here. The Plan and the Merger are a comprehensive integrated transaction that are the product of intense and protracted negotiations and have the overwhelming support of all parties in interest. As demonstrated above, the Chairman Letter Agreement is a proper element of the Plan under section 1123(b)(6) and does not violate any law or any other provision of the Bankruptcy Code, including section 503(c). And even if it were a close call, which it is not, as Judge Peck noted, a "tie" and the "benefit of any doubt" should go to the plan proponent.

2. The Chairman Letter Agreement Should Be Approved Under Section 1129(a)(4) of the Bankruptcy Code

Ignoring Mr. Horton's pivotal role in the success of the Chapter 11 Cases and the Merger, as well as the services Mr. Horton will render after the Effective Date as Chairman of New AAG, the U.S. Trustee asserts that the Chairman Letter Agreement is not reasonable. Although none of the representatives of AMR's creditor groups or Unions has objected to the Chairman Letter Agreement, and the Creditors' Committee played a major role in the negotiation thereof, the U.S. Trustee insinuates that this case is comparable to those in which executives "lined their own pockets" at the expense of creditors and employees. (UST Objection at 16.)

The UST Objection is misguided and divorced from the economic realities of these Chapter 11 Cases. As demonstrated by the incontrovertible facts, the Declaration of Armando Codina, the Lead Independent Director of AMR (the "**Codina Declaration**"), and the Declaration of Douglas J. Friske, the Global Line of Business Leader for Executive Compensation consulting for Towers Watson (the "**Friske Declaration**"), each filed contemporaneously herewith, the compensation provided in the Chairman Letter Agreement is reasonable and should be approved by the Court under section 1129(a)(4) of the Bankruptcy Code.

Section 1129(a)(4) of the Bankruptcy Code requires that

> [a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

11 U.S.C. § 1129(a)(4). It is "'designed to insure compliance with the policies of the Code that (1) the bankruptcy court should police the awarding of fees in title 11 cases and (2) holders of

claims and interests should have the benefit of such information as might affect the claimants' decision to accept or reject the plan.'" *In re Journal Register Co.*, 407 B.R. 520, 537 (Bankr. S.D.N.Y. 2009) (quoting *In re Future Energy Corp.*, 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988)). Accordingly, the "'requirements under § 1129(a)(4) are two-fold. First, there must be disclosure. Second, the court must approve of the reasonableness of payments.'" *Id.* (quoting 7 Collier on Bankruptcy ¶ 1129.03[4] (15th ed. Rev. 1998)).

In evaluating the proposed incentive payments in *Journal Register* under section 1129(a)(4), Judge Gropper stated:

[T]he issue of reasonableness

> will clearly vary from case to case and, among other things, will hinge to some degree upon who makes the payments at issue, who receives those payments, and whether the payments are made from assets of the estate. *In the typical case, payments that are not payable from, or reimbursable by, the bankruptcy estate should not engender anything like the judicial scrutiny devoted to those that are payable out of the bankruptcy estate. . . .* Bankruptcy courts . . . should be chary about succumbing to the exhortations of litigants to turn 1129(a)(4) into a mandate for an expensive and unnecessary inquiry.

Id. at 537–38 (quoting *Mabey v. S.W. Elec. Power Co. (In re Cajun Elec. Power Coop., Inc.)*, 150 F.3d 503, 517 (5th Cir.1998) (emphasis added)).

Under the facts and circumstances of the Debtors' Chapter 11 Cases, the Chairman Letter Agreement is reasonable and should be approved. As an initial matter, the payments under the Chairman Letter Agreement are subject to the closing of the Merger and will be made by the merged entity, New AAG, which will be comprised of the combined assets of the Reorganized Debtors and US Airways. Moreover, disclosure of the Chairman Letter Agreement is not just more than adequate; it is notorious. The Chairman Letter Agreement is in the Plan,

has been fully disclosed in the Disclosure Statement, and has received widespread publicity in the press. The Plan was overwhelmingly accepted by all Classes entitled to vote. The Chairman Letter Agreement also is fully supported by the Creditors' Committee, which was heavily involved in the negotiation of its terms, the Ad Hoc Committee, and US Airways. In addition, the Chairman Letter Agreement was disclosed in the proxy statement/prospectus US Airways provided to its shareholders in connection with their vote to approve the Merger.

Additionally, as stated in the Codina Declaration, there are compelling business justifications that support approval of the Chairman Letter Agreement under section 1129(a)(4). Mr. Horton spearheaded and was the primary architect of the Debtors' strategy to focus initially on restoring the Debtors to industry leadership, profitability, and growth in order to put the Debtors in a strong position to consider strategic alternatives for their emergence from chapter 11. (Codina Decl. ¶¶ 5–6.) As demonstrated by the extraordinary value to be realized by the Debtors' stakeholders from the Merger and the Plan, Mr. Horton's leadership has been highly successful and his judgment and decisions have proven correct. Indeed, in the opinion of Mr. Codina, Mr. Horton's leadership, including his critical role in negotiating the economic terms of the Merger Agreement, which resulted in the economic split being significantly increased for the benefit of the Debtors' estates, is in many respects responsible for the success of these Chapter 11 Cases and the substantial value to be realized by the Debtors' economic stakeholders. (*Id.* ¶¶ 13–14.)

As further noted in the Codina Declaration, Mr. Horton also insisted on the labor mitigation process that successfully resulted in agreements that should greatly minimize potential labor risks and facilitate the employee integration process, thereby substantially enhancing the

ability to realize the synergies that are the *sine qua non* of the Merger. (*Id.* ¶ 15.) As recognized by Mr. Codina:

> Mr. Horton's leadership, both prior to and in connection with the Merger, have greatly enhanced the value available to the Debtors' economic stakeholders and employees. In my judgment, this enhancement in value significantly facilitated the Debtors' ability to achieve a consensual Plan, expedited the successful administration of these cases and culminated in a transaction and Plan that will provide unprecedented recoveries for creditors and existing shareholders.

(*Id.* ¶ 16.)

Further, the Chairman Letter Agreement also is intended to compensate Mr. Horton for his commitment to act as Chairman of New AAG. (*Id.* ¶ 18.) As noted in the Codina Declaration, a significant part of AMR's Board's analysis of the Merger and its value focused on potential synergies and dissynergies, the integration costs involved, and the challenge of combining the businesses and operations of the two major air carriers. From the perspective of the AMR Board, the ability of the merged entity to realize the projected synergies was critical to achieving value for the benefit of the Debtors' stakeholders. Accordingly, the AMR Board concluded that Mr. Horton's continued involvement with the new merged entity post–Closing was essential in light of his extensive and unique experience in operating an international airline of the substantial size and scope of American, his relationships in the industry and experience with the Debtors' business partners, his role as Chairman of **one**world®, and his deep and broad knowledge of AMR spanning almost thirty years. (*Id.* ¶ 19.) The Chairman Letter Agreement thus fairly compensates Mr. Horton not only for his work in achieving the extraordinary and unprecedented result of these Chapter 11 Cases, but also for his ongoing services as Chairman of New AAG.

Additionally, as more fully set forth in the Friske Declaration, the compensation to be paid to Mr. Horton is in line and economically consistent with typical market practice in similar transactions and circumstances, and is customary and not excessive. Moreover, the Chairman Letter Agreement is reasonably and appropriately designed to align Mr. Horton's interests with the shareholders of New AAG and to ensure Mr. Horton's continued involvement in the transition to New AAG so as to maximize the benefit of the Merger for the Debtors' stakeholders. (Friske Decl. ¶¶ 22–23.) Specifically, Mr. Friske identified a sample of 37 recent, large U.S. mergers involving at least $4 billion in transaction value and observed:

- The total compensation to be paid to Mr. Horton is below the median of the overall sample of former chief executive officers (the "**Former CEOs**") who did not assume the CEO role at the successor company but maintained some ongoing role (as is the case with Mr. Horton) and aligns with the median for Former CEOs with no ongoing role at the successor company;

- Mr. Horton's cash/equity split of 50% / 50% is consistent with observed market practice;

- Mr. Horton's compensation expressed as a percentage is 0.18% of the estimated $11 billion equity value of the parent of the merged airlines (based upon the implied equity value of US Airways's stock as of February 13, 2013), which falls below the 50th percentile of the market data. Notably, based on the US Airways stock price at close on August 2, 2013, that percentage is less;

- Almost half (47%) of the sample companies made special equity awards to the Former CEOs as part of the merger transaction, which ranged from $2.5 million to $16.3 million. Mr. Horton's equity award value ($9.9375 million) is in the middle of the observed market range, and this award range does not include value associated with unvested equity accelerations or payments connected to incentive plans, which Mr. Horton will not receive; and

- Mr. Horton's aggregate compensation is within the range of compensation paid to the Former CEOs of Northwest Airlines ($14 million) and United Airlines ($23 million) who did not assume the chief executive officer role with the successor company after the 2008 merger of Delta and Northwest

Airlines and the 2010 merger of United Airlines and Continental Airlines, respectively.

(*Id.* ¶¶ 16, 18 a–d, 19.)

Mr. Friske also reviewed equity grants provided to the Former CEOs upon emergence from chapter 11 from both a general industry and airline industry perspective and concluded:

- Mr. Horton's proposed equity award in New AAG will equal 50% of his compensation, which is below the range of the airline industry data; and
- With respect to the general industry market, Mr. Horton's proposed equity grant approximates the 50th percentile of market practice.

In sum, the proposed compensation in the Chairman Letter Agreement is reasonable and well within industry metrics. It appropriately recognizes Mr. Horton's role, not only in leading the restructuring and positioning the Debtors to realize extraordinary value for their stakeholders and employees, but also for his future services, which are critical to assuring that the integration process is as seamless and economically efficient as possible.

Accordingly, the Chairman Letter Agreement should be approved under section 1129(a)(4).

3. Reimbursement of the Professional Fees of the Individual Members Of the Creditors' Committee and the Indenture Trustees Is Appropriate and Should Be Approved

The U.S. Trustee has objected to (i) Section 2.4 and Section 6.23 of the Plan, which provide for the consensual reimbursement by the Debtors of the reasonable professional fees and out-of-pocket expenses of the individual members of the Creditors' Committee and Indenture Trustees without further Court approval. Notably, the U.S. Trustee's position is completely at odds with Judge Peck's decision in *Lehman Brothers* and Judge Gerber's decision

in *Adelphia*, which addressed precisely the same issue. In both cases, the Court considered and approved virtually identical plan provisions, overruling the very same objections asserted by the U.S. Trustee here. Accordingly, for the reasons set forth in *Lehman Brothers* and *Adelphia*, as discussed below, the UST Objection must be overruled as well.

The U.S. Trustee argues that the consensual payment by the Debtors of fees and expenses of the individual members of the Creditors' Committee and the Indenture Trustees is not permitted because such payments are not expressly authorized by section 503(b) of the Bankruptcy Code. According to the U.S. Trustee, section 503(b) is the exclusive mechanism by which a member of an official committee and indenture trustees can ever be entitled to payment of their legal fees and expenses incurred. Rejecting this same argument in *Lehman Brothers*, Judge Peck stated:

> [The U.S. Trustee's] reading goes too far and confuses the capacity to assert a substantial contribution claim with the ability to be granted the functional equivalent of such a right to payment under a plan that has been ratified overwhelmingly by creditors. The flaw in the UST's argument is the embedded assumption that the administrative claim formulation of Section 503(b) functions as a trump card that extends across the Bankruptcy Code to block the formulation of a plan that proposes independent grounds for granting comparable payment rights. *There is no basis for such a contention*.

Lehman, 487 B.R. at 186 (emphasis added); *see also In re Adelphia Commc'ns Corp.*, 441 B.R. 6, 14–15 (Bankr. S.D.N.Y. 2010) (rejecting similar arguments of U.S. Trustee and approving plan payment provision authorizing reimbursement of legal fees and expenses of 14 ad hoc committees and individual creditors: "[S]ection 503(b) does not provide that it is the *only* way by which individual creditors' fees may be absorbed by an estate.").

Rather, Judge Peck found that the payment of the fees and expenses of the individual members of the creditors' committee pursuant to a plan provision was permissible

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under sections 1123(b)(6) and 1129(a)(4) of the Bankruptcy Code. In harmonizing the allowance of administrative expenses against the estate under section 503(b) with the approval of a consensual payment provision contained in a chapter 11 plan under sections 1123(b)(6) and 1129(a)(4), the Court stated:

> Section 6.7 [of the plan] provides for a consensual reimbursement of professional fees to members of the Committee, not the granting of an administrative expense priority. The difference is a subtle one, but quite real. While the provision under the Plan may be another structure to achieve the same basic objective (payment of fees), the path chosen is not improper simply because it provides an alternative method to secure payment of the fees. The fact that administrative claim status may not be allowed does not mean that an agreed payment under a fully consensual plan should not be permitted. The confirmation of the Plan substitutes all of the protections that are needed, and the proposed payments to reimburse professionals retained by the Applicants need only to be subjected to the Court's approval as "reasonable" under Section 1129(a)(4).

Lehman, 487 B.R. at 191.

In addition, as Judge Peck further noted, the U.S. Trustee's argument, if sustained, would circumvent the "enormous leeway granted to the architects of plans under Section 1123(b)(6) of the Bankruptcy Code" and "the authority and discretion of the bankruptcy court to approve payments in connection with a plan as being reasonable under Section 1129(a)(4)." *Id.* at 186.

The same circumstances and rationale exist here. Sections 2.4 and 6.23 of the Plan are negotiated provisions of a fully consensual plan that are properly included in the Plan pursuant to section 1123(b)(6) and should be approved pursuant to section 1129(a)(4) of the Bankruptcy Code. The Chapter 11 Cases are extremely complex and presented the potential for extensive litigation over numerous intercreditor and related issues. The individual members of the Creditors' Committee and the Indenture Trustees materially contributed to the compromise

and settlement of these issues as embodied in the Plan, which has promoted an expedited resolution, avoided protracted and costly litigation and delay, and, perhaps most importantly, enhanced recoveries for the Debtors' stakeholders. Moreover, such parties were actively involved in the consideration and evaluation of strategic alternatives, including the Merger, and meaningfully contributed to the negotiation of the terms of the Merger Agreement for the benefit of the Debtors' estates, as well as to the formulation of the Plan. Under these circumstances, the Debtors agreed to the reimbursement of reasonable fees and expenses of the individual members of the Creditors' Committee and the Indenture Trustees. It is also important to note that the provisions of Sections 2.4 and 6.23 were fully disclosed in the Plan and the Disclosure Statement and creditors and holders of AMR Equity Interests had the opportunity to consider them in the voting process. As stated, the Plan has been overwhelmingly accepted by the Debtors' stakeholders.

Under the foregoing circumstances and established precedent in this District, Sections 2.4 and 6.23 of the Plan are reasonable and appropriate. The UST Objection should be overruled.

4. The Exculpation and Release Provisions Are Appropriate and Should Be Approved

The U.S. Trustee's Objection to the exculpation and release provisions of the Plan (Sections 10.7 and 10.8, respectively) similarly should be overruled. As an initial matter, Section 10.8 of the Plan is expressly limited to a release of claims solely by the Debtors. It is a routine plan provision and does not in any way involve third party releases or implicate any issues related thereto. *See In re Motors Liquidation Co.*, 447 B.R. 198, 220 (Bankr. S.D.N.Y. 2011). Further, Section 10.7 of the Plan provides for a limited exculpation and release of (i) estate fiduciaries, such as the Debtors, the Creditors' Committee, and the Retiree Committee, and

their respective advisors, and (ii) third parties that have made meaningful and material contributions to the successful administration of these Chapter 11 Cases, such as US Airways, the Unions, and the Ad Hoc Committee, and in each case, their respective professionals and advisors. Significantly, the exculpation of such parties is limited to acts or omissions relating to the Chapter 11 Cases, negotiations regarding the Plan, the Merger Agreement, and the Merger, and pursuit of confirmation and consummation of the Plan. The exculpation provision also (as was the case in *Motors Liquidation*) provides the Court with a gatekeeper function to determine whether any future asserted claims belong to the Debtors' estates or third parties.[10]

Under these circumstances, the narrowly tailored exculpation and releases are appropriate and customary, and do not run afoul of the underlying principles articulated by the Second Circuit in *Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136 (2d Cir. 2005).

Even after *Metromedia*, appropriately limited exculpation provisions and releases for case fiduciaries in chapter 11 plans remain standard practice and have been approved in large chapter 11 cases in this District. *See, e.g., In re Oneida Ltd.*, 351 B.R. 79, 94 n.22 (Bankr. S.D.N.Y. 2006) (approving exculpation provision releasing claims relating to any "pre-petition or post-petition act or omission in connection with, or arising out of, the Disclosure Statement,

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[10] As the Court stated in *Motors Liquidation*:

> But as I well understand the abuses that such exculpation provisions are intended to address, and since most of the claims that creditors and stockholders might assert would actually belong to the Estate, I'll approve gatekeeping provisions to protect the exculpated parties from claims asserted by creditors and stockholders that actually belong to the Estate, and provide (to the extent I have subject matter jurisdiction and elect to exercise it) that I'll *personally* hear any such claims, to separate meritorious claims from those that are merely harassment.

447 B.R. at 219.

the Plan or any Plan Document . . . the solicitation of votes for and the pursuit of Confirmation of [the] Plan, the Effective Date of [the] Plan, or the administration of [the] Plan or the property to be distributed under [the] Plan," where, as here, no release was provided for "gross negligence, willful misconduct, fraud, or criminal conduct, and the release covered only conduct taken in connection with Chapter 11 cases"); *Upstream Energy Servs. v. Enron Corp. (In re Enron Corp.)*, 326 B.R. 497, 501 (S.D.N.Y. 2005) ("*Enron II*") (citing Bankruptcy Court's finding that plan's exculpation provision was "appropriately limited to a qualified immunity for acts of negligence and [did] not relieve any party of liability for gross negligence or willful misconduct" and that such clause was "reasonable and customary").

Indeed, the Court in *Oneida* found that the "language of the [exculpation] clause, which generally follows the text that has become standard in this [D]istrict, is sufficiently narrow to be unexceptionable." *Oneida*, 351 B.R. at 94 n.22; *see also In re Granite Broad. Corp.*, 369 B.R. 120, 139 (Bankr. S.D.N.Y. 2007) (citing *Oneida* and *Enron II* and approving provision "'follow[ing] the text that has become standard in this [D]istrict,'" which exculpated the debtors and their pre- and postpetition lender and their respective representatives for actions in connection, related to, or arising out of the Reorganization Cases) (quoting *Oneida*, 351 B.R. at 94 n.22).

Accordingly, such narrowly tailored releases and exculpation of estate fiduciaries and their employees, professionals, and other representatives are routine and appropriate and should be approved.

Similarly, under the unique facts and circumstances of these Chapter 11 Cases, the Court should approve the limited exculpation of third parties who meaningfully contributed to the success of the Chapter 11 Cases. Importantly, *Metromedia* did not overrule the principle

underlying the Second Circuit's prior decisions affirming releases of nondebtor parties, i.e., "[i]n bankruptcy cases, a court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization plan." *SEC v. Drexel Burnham Lambert Grp., Inc. (In re Drexel Burnham Lambert Grp., Inc.)*, 960 F.2d 285, 293 (2d Cir. 1992); *see also MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89 (2d Cir. 1988).

Metromedia held that nondebtor releases are appropriate only where there is a "finding of circumstances that may be characterized as unique." 416 F.3d at 142. The Court also identified circumstances where nondebtor releases have been approved: (i) the estate received substantial consideration; (ii) the enjoined claims were channeled to a settlement fund rather than extinguished; (iii) the enjoined claims would indirectly affect the debtor's reorganization by way of indemnity or contribution; (iv) the plan otherwise provided for the full payment of the enjoined claims; or (v) the affected creditors consented. *Id.*

US Airways satisfies the standard for approval of its limited exculpation. The Merger with US Airways is the foundation of the Plan. US Airways has provided substantial consideration to the Debtors' estates. Thus, the release and exculpation of US Airways is appropriate and within the *Metromedia* guidelines.

Similarly, the exculpation and release of the Unions, the Ad Hoc Committee, and other Plan support parties is appropriate and should be authorized. As noted, the release and exculpation of such parties is limited in scope and narrowly tailored, consistent with other cases in this District. Further, each of those parties was instrumental in achieving the compromises that greatly facilitated the administration of these Chapter 11 Cases and the extraordinary value the Plan will generate.

B. <u>The USAPA Objection</u>

As stated above, the USAPA Objection asserts (i) the Plan is not feasible, (ii) the Plan improperly shields US Airways from liability if it were to breach the Memorandum of Understanding Regarding Contingent Collective Bargaining Agreement (the "**MOU**"), (iii) the Chairman Letter Agreement should not be approved, and (iv) USAPA should be added within the defined term "Union" under the Plan. The USAPA Objection should be overruled for several reasons.

As a threshold matter, USAPA lacks standing. It is not a creditor, shareholder, or otherwise a party in interest in the Chapter 11 Cases. *See Krys v. Official Comm. of Unsecured Creditors of Refco, Inc. (In re Refco Inc.)*, 505 F.3d 109, 118–19 (2d Cir. 2007) (overruling objection to settlement agreement by creditors of preference defendant because such parties, who were creditors of a party in interest but were not themselves creditors or parties in interest of the debtor, lacked standing to be heard in bankruptcy proceeding); *In re Ionosphere Clubs, Inc.*, 101 B.R. 844, 851 (Bankr. S.D.N.Y. 1989) ("Granting peripheral parties status as parties in interest thwarts the traditional purpose of bankruptcy laws which is to provide 'reasonably expeditious rehabilitation of financially distressed debtors with a consequent distribution to creditors who have acted diligently.'") (quoting *In re Barrick Group, Inc.*, 98 B.R. 133 (Bankr. D. Conn. 1989)). Even if it did have standing, however, the USAPA Objection can be disposed of quite easily.

The Plan clearly is feasible, and USAPA has raised no fact or circumstances that suggest otherwise. The Projections contained in the Disclosure Statement are those of a consolidated enterprise – mainline and regional – and unequivocally demonstrate that

confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization. It also is important to note that the Debtors' cash position currently exceeds $7 billion, perhaps in and of itself demonstrating that the Plan is feasible.

The Plan also does not release US Airways or any other party from its obligations under the MOU. The rights and remedies of all parties are preserved with respect to the MOU. Moreover, the exculpation provision of the Plan applies only to the Debtors' creditors and equity interest holders. (*See* Plan § 10.7 (Exculpated Parties shall not "have or incur any liability *to any holder of a Claim or Equity Interest* for any act or omission in connection with . . . ." (emphasis added).) USAPA is neither.

Additionally, USAPA's objection to the Chairman Letter Agreement has been fully addressed above and should be overruled for the same reasons.

Finally, USAPA is not a collective bargaining representative for any of the Debtors' employees and, under no circumstances, should it be within the purview of the defined term "Union" under the Plan. USAPA has its own contractual rights with US Airways and under the MOU, and those contractual rights are preserved. USAPA is not a Union under, or for purposes of, the Plan, its pilots do not receive any distributions under the Plan, as do the Debtors' employees, and USAPA's attempts to improperly bootstrap its rights should not be condoned.

C. The Clayton Objection

The Clayton Objection was filed by plaintiffs (the "**Clayton Plaintiffs**"), who are neither creditors nor shareholders of the Debtors and who, on July 2, 2013, commenced an action in the United States District Court, Northern District of California (the "**California Action**"), seeking to enjoin the Merger in direct violation of the automatic stay. Indeed, the same Alioto Law Firm (the "**Alioto Firm**") representing the Clayton Plaintiffs here and in the California

Action engaged in a similar ploy in the *Adelphia* case, which Judge Gerber found to be a "classic, and egregious, violation of section 362(a)(3) of the Bankruptcy Code." *Adelphia Commc'ns Corp. v. The Am. Channel, LLC (In re Adelphia Commc'ns Corp.)*, 345 B.R. 69, 72 (Bankr. S.D.N.Y. 2006); *see also Adelphia Commc'ns Corp. v. The Am. Channel, LLC (In re Adelphia Commc'ns Corp.)*, Ch. 11 Case No. 02-41729, 2006 WL 1529357, at *5 (Bankr. S.D.N.Y. June 5, 2006) (Court observing that it had "never seen such a blatant violation of section 362(a)(3)"). In fact, despite being advised by the Debtors of the stay violation and recognizing that fact themselves (Clayton Objection at 11), the Clayton Plaintiffs have refused to dismiss the California Action.[11]

The Clayton Objection seeks to indefinitely delay the Confirmation Hearing so that the Clayton Plaintiffs can seek relief from the automatic stay and prosecute the California Action. Remarkably, the Clayton Objection asserts that no prejudice will be suffered by any other party in interest if the relief is granted. (*Id.* at 10.)

The Clayton Objection must be overruled for obvious reasons. The Clayton Plaintiffs have sat on their rights. The extraordinary injunctive relief they seek is procedurally improper and not warranted, and the detriment to and prejudice it would inflict on the rights of all parties in interest in these Chapter 11 Cases is manifest. The late-filed Supplemental Objection filed by the Clayton Plaintiffs, where they simply piggyback on Objections filed by others, does not compel a different result, nor does their Adversary Proceeding (defined and addressed below).

[11] The e-mail address of David Cook, the attorney from "Cook Collection Attorneys" – the firm that filed the Clayton Objection – is quite illuminating: cook@squeezebloodfromturnip.com.

The Merger Agreement was signed and publicly announced on February 13, 2013. The Plan and the Disclosure Statement were filed on June 5, 2013, and the Disclosure Statement was approved and the Plan voting process commenced in mid-June. If the Clayton Plaintiffs truly believed they had valid claims, they had months to take action. Instead, they waited until July 2, 2013, and then knowingly violated the automatic stay.

Now, at the eleventh hour, the Clayton Plaintiffs have come to the Court seeking to indefinitely delay confirmation so they can commence exercising their purported rights. Simply put, the Clayton Plaintiffs have sat on any such rights since February and, additionally, when advised of their blatant violation of the automatic stay more than one month ago, continued to do nothing. The Clayton Plaintiffs' transparent attempt to block confirmation to extract some sort of settlement should not be countenanced.

Apparently recognizing that relief from the automatic stay to pursue the California Action was neither timely nor substantively achievable, the Clayton Plaintiffs, late on August 6, 2013, commenced an adversary proceeding in this Court, Adv. Pro. No. 13-01392 (the "**Adversary Proceeding**"), filing a complaint that is virtually identical to the complaint in the California Action, but for adding the Debtors as defendants.

The commencement of the Adversary Proceeding similarly provides no basis whatsoever to delay the Confirmation Hearing or grant the Clayton Plaintiffs any other relief. It merely is another element of the Clayton Plaintiffs' litigation gambit, which further confirms their unmistakable motives. Indeed, the palpable detriment and prejudice that all parties in interest in the Chapter 11 Cases would suffer in the event of a delay outweighs by orders of magnitude any potential harm to the Clayton Plaintiffs, who voluntarily chose to sit on their rights.

If the Clayton Plaintiffs believe they are entitled to preliminary injunctive relief in the Adversary Proceeding, they should follow the appropriate procedures and sustain their heavy burden, including posting an appropriate bond. The last-minute naked complaint filed in the Adversary Proceeding is much too slim a reed on which to grant the extraordinary relief the Clayton Plaintiffs are seeking and to jeopardize the consummation of the Plan and the Merger, which will deliver unprecedented value to literally tens of thousands of creditors, shareholders, and employees.

D. The Allegheny County/Hargrove Objections

Allegheny and Hargrove have objected to confirmation of the Plan, asserting that the establishment of the Disputed Claims Reserve violates section 1123 of the Bankruptcy Code and that the Plan violates the absolute priority rule provided for in section 1129(b) of the Bankruptcy Code. The Allegheny/Hargrove Objections similarly should be overruled.

As this Court is well aware, the Disputed Claims Reserve was established in connection with an evidentiary hearing held pursuant to the Debtors' Motion for Entry of Order Establishing Maximum Amount of Disputed Claims to Be Utilized for Determining Disputed Claims Reserve Under Debtors' Second Amended Joint Chapter 11 Plan and Approving Certain Procedures in Connection with Disputed Claims Reserve, dated July 1, 2013 (ECF No. 8985) (the "**Disputed Claims Reserve Motion**"). Notably, both Allegheny and Hargrove were timely served with the Disputed Claims Reserve Motion and with notice of the hearing to be held before the Court with respect thereto (the "**Disputed Claims Reserve Hearing**"). Neither filed an objection or appeared at the Disputed Claims Reserve Hearing.

Perhaps more importantly, the Court determined at the Disputed Claims Reserve Hearing, based on the record, that the amount of Disputed Single-Dip General Unsecured Claims

utilized for determining the Disputed Claims Reserve is $700 million. As reflected on the record of the Disputed Claims Reserve Hearing, that number is substantially in excess of the Debtors' estimate of a reasonable *high-end* ultimate aggregate Allowed amount of Disputed Single-Dip General Unsecured Claims.

Accordingly, not only is there a lack of factual basis for the Allegheny/Hargrove Objections, but having elected not to object to the Reserve Motion or even appear at the Disputed Claims Reserve Hearing, Allegheny and Hargrove hardly have the right to complain now.

Allegheny/Hargrove's absolute priority objection fares no better. Allegheny correctly recognizes where, as here, all Impaired Classes have accepted the Plan, the absolute priority rule codified in section 1129(b) is not applicable. Allegheny's ill-conceived attempt to avoid this fatal flaw in its Objection by asserting that the Disclosure Statement is inadequate is belied by the facts. This Court found the Disclosure Statement to meet the requirements of section 1125, and as Allegheny itself recognizes (Allegheny Objection ¶ 41), the Disclosure Statement included the following statement:

> For purposes of facilitating distributions under the Plan, the Debtors may, prior to the Effective Date, seek an order of the Bankruptcy Court estimating the aggregate amount of Disputed Single-Dip General Unsecured Claims, which shall serve as a maximum limitation on the Allowed amount of all such Claims.

(Disclosure Statement at 127.)

Under these circumstances, and again where Allegheny and Hargrove chose not to object to the Disputed Claims Reserve Motion, the Allegheny/Hargrove Objections should be overruled.

II.

THE PLAN SATISFIES SECTION 1129 OF THE BANKRUPTCY CODE

To achieve confirmation of the Plan, the Debtors must demonstrate that the Plan satisfies section 1129 of the Bankruptcy Code by a preponderance of the evidence. As the United States Court of Appeals for the Fifth Circuit stated in *Heartland Federal Savings & Loan Association v. Briscoe Enterprises, Ltd., II (In re Briscoe Enterprises, Ltd., II)*: "The combination of legislative silence, Supreme Court holdings, and the structure of the [Bankruptcy] Code leads this Court to conclude that preponderance of the evidence is the debtor's appropriate standard of proof under both under § 1129(a) and in a cramdown." 994 F.2d 1160, 1165 (5th Cir. 1993); *see In re Chemtura Corp.*, 439 B.R. 561, 608 (Bankr. S.D.N.Y. 2010); *In re Young Broad. Inc.*, 430 B.R. 99, 128 (Bankr. S.D.N.Y. 2010); *JPMorgan Chase Bank, N.A. v. Charter Commc'ns Operating, LLC (In re Charter Commc'ns)*, 419 B.R. 221 (Bankr. S.D.N.Y. 2009); *see also In re Kent Terminal Corp.*, 166 B.R. 555, 561 (Bankr. S.D.N.Y. 1994) (holding that "the final burden of proof at . . . confirmation hearings remains a preponderance of the evidence").

Through the Declarations submitted in connection with the Confirmation Hearing and the evidence to be presented at the Confirmation Hearing, the Debtors will demonstrate, by a preponderance of the evidence, that all the applicable subsections of section 1129[12] of the Bankruptcy Code have been satisfied with respect to the Plan.

[12] The confirmation requirements set forth in subsections (a)(6), (14), (15), and (16) of section 1129 are not applicable to the Plan. 11 U.S.C. § 1129(a)(6) concerns the need for government approval of rate changes subject to government regulatory jurisdiction; § 1129(a)(14) concerns debtors required by order or statute to pay domestic support obligations; § 1129(a)(15) applies to individual debtors; and § 1129(a)(16) is only relevant to the mechanism by which certain property is transferred under circumstances not applicable here.

A. The Plan Satisfies the Requirements Under Section 1129(a) of the Bankruptcy Code

1. The Plan Complies with All Applicable Provisions of the Bankruptcy Code

Under section 1129(a)(1) of the Bankruptcy Code, a plan must comply with the applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1129(a)(l). The legislative history of section 1129(a)(1) explains that this provision encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code governing classification of claims and contents of the plan, respectively. *See* H.R. REP. NO. 95-595, at 412 (1977); S. REP. NO. 95-989, at 126 (1978); *see also Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 648–49 (2d Cir. 1988); *In re Drexel Burnham Lambert Grp. Inc.*, 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992). As demonstrated below, the Plan complies fully with the requirements of both of these sections as well as with all other provisions of the Bankruptcy Code. *Aetna Cas. & Sur. Co. v. Clerk, U.S. Bankr. Court, NY, NY (In re Chateaugay Corp.)*, 89 F.3d 942, 949 (2d Cir. 1996); *see also In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 246–47 (Bankr. S.D.N.Y. 2007) (explaining law on classification of claims as interpreted within the Second Circuit). The UST Objection asserting that the Plan fails to comply with section 1129(a)(1) has been fully addressed above and, as stated, should be overruled.

a. Classification of Claims and Interests

Section 1122 of the Bankruptcy Code provides:

> (a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

11 U.S.C. § 1122(a). Under this section, a plan may provide for multiple classes of claims or interests as long as each claim or interest within a class is substantially similar to other claims or interests in that class.

The Plan provides for separate classification of Claims and Equity Interests in nineteen Classes based upon differences in the legal nature and/or priority of such Claims and Equity Interests.[13]

- **AMR Class 1** provides for the separate classification of AMR Secured Claims, and each AMR Secured Claim shall be deemed to be separately classified in a subclass of AMR Class 1;
- **AMR Class 2** provides for the separate classification of all AMR Priority Non-Tax Claims identified in section 507(a) of the Bankruptcy Code that are entitled to priority in payment (other than Administrative Expenses and Priority Tax Claims);
- **AMR Class 3** provides for the separate classification of AMR General Unsecured Guarantee Claims;
- **AMR Class 4** provides for the separate classification of AMR Other General Unsecured Claims;
- **AMR Class 5** provides for the separate classification of AMR Equity Interests;
- **AMR Class 6** provides for the separate classification of AMR Other Equity Interests;
- **American Class 1** provides for the separate classification of American Secured Aircraft Claims, and each American Secured Aircraft Claim shall be deemed to be separately classified in a subclass of American Class 1;
- **American Class 2** provides for the separate classification of American Other Secured Claims, and each American Other Secured Claim shall be deemed to be separately classified in a subclass of American Class 2;
- **American Class 3** provides for the separate classification of American Priority Non-Tax Claims identified in section 507(a) of the Bankruptcy Code that are entitled to priority in payment (other than Administrative Expenses and Priority Tax Claims);

[13] Administrative Expenses and Priority Tax Claims are not classified and are separately treated.

- **American Class 4** provides for the separate classification of American General Unsecured Guaranteed Claims;

- **American Class 5** provides for the separate classification of American Other General Unsecured Claims;

- **American Class 6** provides for the separate classification of American Union Claims;

- **American Class 7** provides for the separate classification of American Convenience Class Claims;

- **American Class 8** provides for the separate classification of American Equity Interests;

- **Eagle Class 1** provides for the separate classification of Eagle Secured Claims, and each Eagle Secured Claim shall be deemed to be separately classified in a subclass of Eagle Class 1;

- **Eagle Class 2** provides for the separate classification of provides for the separate classification of Eagle Priority Non-Tax Claims identified in section 507(a) of the Bankruptcy Code that are entitled to priority in payment (other than Administrative Expenses and Priority Tax Claims);

- **Eagle Class 3** provides for the separate classification of Eagle General Unsecured Claims;

- **Eagle Class 4** provides for the separate classification of Eagle Convenience Class Claims; and

- **Eagle Class 5** provides for the separate classification of Eagle Equity Interests.

Each of the Claims or Equity Interests in each particular Class is substantially similar to the other Claims or Equity Interests in such Class. Accordingly, the classification of Claims and Equity Interests in the Plan complies with section 1122 of the Bankruptcy Code. *See In re Charter Commc'ns*, 419 B.R. at 264 n.35 (explaining that debtors "enjoy considerable discretion when classifying similar claims in different classes").

b. Contents of the Plan

Section 1123(a) of the Bankruptcy Code sets forth seven requirements with which the proponent of every chapter 11 plan, other than individual debtors, must comply.[14] 11 U.S.C. § 1123(a). As demonstrated herein, the Plan fully complies with each such requirement.

Article III of the Plan designates Classes of Claims and Equity Interests as required by section 1123(a)(1). In addition to Administrative Expenses and Priority Tax Claims, which need not be designated, Article IV of the Plan designates nineteen Classes of Claims and Equity Interests. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests provided for under the Plan, and such Classes do not unfairly discriminate between holders of Claims and Equity Interests. Article III of the Plan specifies that AMR Class 1 (AMR Secured Claims), AMR Class 2 (AMR Priority Non-Tax Claims), AMR Class 6 (AMR Other Equity Interests), American Class 1 (American Secured Aircraft Claims), American Class 2 (American Other Secured Claims), American Class 3 (American Priority Non-Tax Claims), American Class 8 (American Equity Interests), Eagle Class 1 (Eagle Secured Claims), Eagle Class 2 (Eagle Priority Non-Tax Claims), and Eagle Class 5 (Eagle Equity Interests) are unimpaired under the Plan, as required by section 1123(a)(2) of the Bankruptcy Code. Article III of the Plan also designates AMR Class 3 (AMR General Unsecured Guaranteed Claims), AMR Class 4 (AMR Other General Unsecured Claims), AMR Class 5 (AMR Equity Interests), American Class 4 (American General Unsecured Guaranteed Claims), American Class 5 (American Other General Unsecured Claims), American Class 6 (American Union Claims), American Class 7 (American Convenience Class Claims), Eagle Class 3 (Eagle General Unsecured Claims), and Eagle Class 4 (Eagle Convenience Class Claims)

[14] An eighth requirement, set forth in 11 U.S.C. § 1123(a)(8), only applies in a case in which the debtor is an individual.

as impaired, and Article IV of the Plan specifies the treatment of Claims and Equity Interests in such Classes, as required by section 1123(a)(3) of the Bankruptcy Code. The Plan provides for the same treatment by the Debtors for each Claim or Equity Interest in each respective Class unless the holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest, as required by section 1123(a)(4) of the Bankruptcy Code.

Articles V, VI, VII, VIII, and X and various other provisions of the Plan, as well as the various documents and agreements set forth in the Plan Supplement and the Exhibits and Schedules to the Plan, set forth the means for implementation of the Plan as required by section 1123(a)(5), including (i) the Merger in accordance with the Merger Agreement, (ii) the 9019 Settlement, and (iii) the deemed consolidation of the AMR Debtors, the deemed consolidation of the American Debtors, and the deemed consolidation of the Eagle Debtors, as described more fully below.

The New AAG Certificate of Incorporation shall prohibit the issuance of nonvoting equity securities prohibited by section 1123(a)(6), subject to further amendment of such New AAG Certificate of Incorporation as permitted by applicable law, thereby satisfying section 1123(a)(6) of the Bankruptcy Code. The Amended Certificates of Incorporation for each of the Reorganized Debtors (other than New AAG) that are corporations shall prohibit the issuance of nonvoting equity securities prohibited by section 1123(a)(6), subject to further amendment of such Amended Certificates of Incorporation as permitted by applicable law. With respect to any Debtor that is a limited liability company or partnership, the respective limited liability company agreement or partnership agreement by which such Debtor is governed shall be similarly amended to prohibit the issuance of nonvoting equity securities prohibited by section 1123(a)(6).

The initial Board of Directors of New AAG shall consist of twelve (12) members and shall be composed of (i) five (5) directors designated by the Search Committee, (A) each of whom shall be an independent director and (B) one of whom shall serve as the initial Lead Independent Director of New AAG in accordance with the New AAG Bylaws and whom shall be designated to serve in such role by the Search Committee, (ii) two (2) directors designated by AMR, each of whom shall be independent directors reasonably acceptable to the Search Committee, (iii) three (3) directors designated by US Airways, each of whom shall be independent directors, (iv) one (1) director who shall be Mr. Thomas W. Horton, the current Chairman of the Board, President, and Chief Executive Officer of AMR, who shall serve as the initial Chairman of the Board of Directors of New AAG in accordance with the New AAG Bylaws, and (v) one (1) director who shall be Mr. W. Douglas Parker, the current Chairman of the Board and Chief Executive Officer of US Airways, thereby satisfying section 1123(a)(7) of the Bankruptcy Code. The identity of the persons proposed to serve as members of the initial Board of Directors of New AAG and of the members of the initial Boards of Directors of the other Reorganized Debtors are set forth in the Plan Supplement filed on July 19, 2013 (ECF No. 9231). After selection of the initial Board of Directors of New AAG, the holders of the New Mandatorily Convertible Preferred Stock and the New Common Stock shall elect members of the Board of Directors of New AAG in accordance with the New AAG Certificate of Incorporation, the New AAG Bylaws, the Certificate Designations, and applicable nonbankruptcy law, thereby satisfying section 1123(a)(7) of the Bankruptcy Code.

Section 1123(b) of the Bankruptcy Code sets forth the permissive provisions that may be incorporated into a chapter 11 plan. Each provision of the Plan is consistent with section 1123(b). Specifically, Article IV of the Plan describes the treatment (i) for the following

unimpaired Classes of Claims: AMR Class 1 (AMR Secured Claims), AMR Class 2 (AMR Priority Non-Tax Claims), AMR Class 6 (AMR Other Equity Interests), American Class 1 (American Secured Aircraft Claims), American Class 2 (American Other Secured Claims), American Class 3 (American Priority Non-Tax Claims), American Class 8 (American Equity Interests), Eagle Class 1 (Eagle Secured Claims), Eagle Class 2 (Eagle Priority Non-Tax Claims), and Eagle Class 5 (Eagle Equity Interests); and (ii) for the following impaired Classes of Claims: AMR Class 3 (AMR General Unsecured Guaranteed Claims), AMR Class 4 (AMR Other General Unsecured Claims), AMR Class 5 (AMR Equity Interests), American Class 4 (American General Unsecured Guaranteed Claims), American Class 5 (American Other General Unsecured Claims), American Class 6 (American Union Claims), American Class 7 (American Convenience Class Claims), Eagle Class 3 (Eagle General Unsecured Claims), and Eagle Class 4 (Eagle Convenience Class Claims), as contemplated by section 1123(b)(1).

Article VIII of the Plan provides for the deemed rejection of the executory contracts and unexpired leases of the Debtors under section 365 of the Bankruptcy Code, except for executory contracts or unexpired leases (i) that have been assumed or rejected pursuant to an order of the Court entered prior to the Effective Date, (ii) that are the subject of a separate motion to assume or reject pending on the Confirmation Date, (iii) that are assumed, rejected, or otherwise treated pursuant to Sections 8.3, 8.4, or 8.5 of the Plan, (iv) that are listed on Schedule 8.1 of the Plan Supplement, or (v) as to which a Treatment Objection has been filed and served by the Treatment Objection Deadline, as contemplated by section 1123(b)(2).

Section 8.5 of the Plan provides that, on the Effective Date, the Reorganized Debtors shall assume and continue the Pension Plans and shall pay in Cash any aggregate unpaid (i) minimum required funding contributions under 26 U.S.C. §§ 412 and 430 and 29 U.S.C. §§

1082 and 1083 and (ii) all delinquent PBGC premiums under 29 U.S.C. §§ 1306 and 1307, in each case with interest, for the Pension Plans under ERISA or the Internal Revenue Code. Upon such payment, the lien notices perfecting all liens and security interests held by, or in favor of, the PBGC on any assets of the Debtors or their affiliates shall be, and shall be deemed to be, withdrawn. After the Effective Date, the Reorganized Debtors shall (i) satisfy the minimum funding requirements under 26 U.S.C. §§ 412 and 430 and 29 U.S.C. §§ 1306 and 1307, and (ii) administer the Pension Plans in accordance with the applicable provisions of ERISA and the Internal Revenue Code. No provision of the Plan, the Confirmation Order, or section 1141 of the Bankruptcy Code shall be construed to discharge, release, or relieve the Debtors, or their successors, including the Reorganized Debtors, or any other party, in any capacity, from liabilities or requirements imposed under any law or regulatory provision with respect to the Pension Plans or the PBGC. The PBGC and the Pension Plans shall not be enjoined or precluded from enforcing such liability as a result of any provision of the Plan, the Confirmation Order, or section 1141 of the Bankruptcy Code.

As permitted by section 1123(b)(3) of the Bankruptcy Code, the Plan provides for the settlement of several claims, as described herein.

Based upon the foregoing, the Plan complies fully with the requirements of sections 1122 and 1123, as well as with all other provisions of the Bankruptcy Code, and thus satisfies the requirement of section 1129(a)(1) of the Bankruptcy Code.

a. **The Merger**

On February 22, 2013, the Debtors filed their motion (the "**Merger Support Motion**") seeking approval of the Merger Agreement, the Debtors' execution and performance under the Merger Agreement, and related relief. (ECF No. 6800) By Order dated May 10, 2013, the Court granted the Merger Support Motion (with the exception of the Chairman Letter

Agreement without prejudice to the ability to consider the same in the context of confirmation of the Plan). (ECF No. 8096)

Section 6.1 of the Plan provides that, subject to the Merger and the terms of the Merger Agreement, each Debtor shall, as a Reorganized Debtor, continue to exist after the Effective Time as a separate corporate Entity under applicable law and without prejudice to any right to alter or terminate such existence under applicable law. Immediately following the Merger Effective Time, the New AAG Certificate of Incorporation shall be amended to change the name of AMR to American Airlines Group Inc.

Section 6.2(a) of the Plan provides that, subject to and in connection with the occurrence of the Effective Date, AMR and US Airways shall take all such actions as may be necessary or appropriate to effect the Merger on the terms and subject to the conditions set forth in the Merger Agreement. Section 6.2(b) of the Plan provides that New AAG shall issue the shares of New Common Stock in accordance with the Merger Agreement to be distributed under the Plan and the other transactions contemplated by the Merger Agreement shall occur.

b. **Settlements**

The Plan is the result of protracted negotiations with the Debtors' various creditors and parties in interest that has resulted in several consensual agreements. The Debtors have entered into various settlements from the inception of these Chapter 11 Cases outside of the Plan, and in many instances, outside of this Courts' oversight as permitted by various procedural orders. These settlements have preserved the resources of the Debtors, minimized the use of the judicial process to resolve disputes, and cleared the path for the efficient administration of the Debtors' estates. *See Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 455 (2d Cir. 2007); *In re Chemtura Corp.*, 439 B.R. at 595 ("As a general matter, settlements or compromises are favored in bankruptcy and, in fact,

encouraged.”). Now, the Debtors seek approval of an additional settlement that is the cornerstone of the Plan.

The Plan incorporates and reflects a compromise and settlement of issues relating to (i) certain intercreditor issues relating to the rights and benefits of holders of Double-Dip General Unsecured Claims, Single-Dip General Unsecured Claims, Triple-Dip General Unsecured Claims, and the DFW 1.5x Special Facility Revenue Bond Claim, (ii) the validity, enforceability, and priority of certain prepetition intercompany claims held by and among AMR, American, and Eagle Holding, (iii) the validity and enforceability of guarantee Claims held by certain creditors, (iv) Claims that creditors may have with respect to the marshaling of assets and liabilities of AMR, American, or Eagle Holding in determining relative entitlements to distributions under a plan, (v) potential Avoidance Actions based on prepetition transfers made, and obligations incurred, between certain Debtors, and (vi) the rights of holders of AMR Equity Interests to a distribution under a plan.

(i) **Disputed Issues**

(a) **Intercompany Claims**

Prepetition intercompany payables and receivables that arose in connection with the operation of the Debtors’ businesses and the centralized cash management (the “**Cash Management System**”) utilized by the Debtors purportedly constitute Claims between the Debtors (collectively, the “**Intercompany Claims**”). Under the Cash Management System, which was used by American for many years prior to the formation of AMR in 1982, Cash collected by American and its affiliates was deposited into a variety of deposit accounts and lockboxes and, on each business day, available Cash was swept from the various deposit accounts into one main concentration account owned by American. Deposits in the main concentration account were recorded in the affiliates’ books and records as amounts loaned to

American. Cash was transferred from the main concentration account as needed to satisfy the obligations of the various affiliated entities and to fund investment opportunities. Any excess funds in the main concentration account were invested by American's investment advisor, American Beacon Advisors, Inc.

As of the Commencement Date, American's books and records reflected a payable to its affiliated Debtors in an amount exceeding $3 billion in the aggregate. In particular, American's books and records reflected a net payable to AMR in excess of $2.4 billion on account of such intercompany transactions (the "**AMR Intercompany Loans**"). Thousands of transactions between AMR and American occurred. In 2006, the intercompany payable from American to AMR was approximately $85 million. The material intercompany transactions between AMR and American from 2006 through the Commencement Date are set forth on page 7 of the Disclosure Statement.

Pursuant to the Bankruptcy Code, claims among co-debtors generally are treated similarly to other claims; however, courts often examine such claims to determine whether they are properly characterized as debt obligations or equity (capital contributions). Such examination is very fact-intensive. Although the Debtors believe that several of the relevant factors would support the conclusion that the Intercompany Claims (including the AMR Intercompany Loans) are debt obligations, certain other factors are indicative of capital contributions.

The Plan and the distribution scheme provided therein, including the initial distribution to holders of Allowed AMR Equity Interests, incorporate a compromise of these complex issues and avoid the delay, expense, and uncertainty attendant to litigation of such

issues pursuant to a settlement that is in the best interests of the Debtors' economic stakeholders and fully supported by the Creditors' Committee and the Consenting Creditors.

(b) **Guarantee Claims**

Under the Bankruptcy Code, claims based upon guarantees issued by a debtor generally are allowed. Section 502(b)(1) of the Bankruptcy Code, however, provides that a court may allow a claim, except to the extent that, among other things, such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law. Bankruptcy Rule 3007(d)(1) provides that a debtor may object to a claim on the basis that the claim is duplicative of another.

The Debtors have assessed the enforceability of certain guarantees issued by AMR in connection with certain direct obligations of American, and vice versa. The assessment revealed that certain guarantees may be unenforceable because they (i) guarantee a Debtor's own direct obligations, (ii) may have been issued without valid consideration, and/or (iii) are duplicative of other Claims. To avoid the delay, expense, and uncertainty with respect to litigation in connection with these issues, the Plan incorporates a compromise and settlement in the distribution scheme with respect to the various classes of Claims and Equity Interests.

(c) **Eagle Aircraft Transactions**

In August 2011 American entered into the Eagle Aircraft Transaction with Eagle and Executive, whereby Eagle and Executive transferred 263 aircraft (collectively, the "**Eagle Aircraft**") and other related assets to American in exchange for, among other things, American's assumption of the outstanding debt obligations related to the Eagle Aircraft. Certain parties have asserted that such transfers potentially are subject to Avoidance Actions.

In connection with the Eagle Aircraft Transaction, American agreed to assume $2.26 billion of Eagle's outstanding debt obligations in exchange for the Eagle Aircraft – valued

at $1.8 billion at the time of the transaction – and the cancellation of approximately $450 million in intercompany obligations American owed Eagle. Accordingly, the Debtors concluded that the likelihood of successfully prosecuting an Avoidance Action related to the Eagle Aircraft Transaction is remote because, among other things, (i) neither American nor Eagle appear to have been insolvent on the date, or rendered insolvent as a result, of the Eagle Aircraft Transaction and (ii) the underlying transfers appear to have been supported by reasonably equivalent value. If such an Avoidance Action were ultimately pursued, however, the Court could determine that the value of the Eagle Aircraft was materially higher or lower than $1.8 billion, and therefore, Eagle or American did not receive reasonably equivalent value in exchange for the transfers made or obligations incurred in connection with the Eagle Aircraft Transaction. Moreover, pursuant to an order of the Court, dated November 9, 2012 (ECF No. 5294), American and Eagle expressly reserved their respective rights to assert Claims against each other based on an Avoidance Action related to the Eagle Aircraft Transaction, which, if Allowed, could be offset against otherwise valid prepetition Claims held between American and Eagle (including certain Intercompany Claims). The Claims reserved by American and Eagle also are compromised by reason of the distribution scheme provided in the Plan and will not be pursued if the Plan is consummated.

(ii) **9019 Settlement**

Contemporaneous with the execution of the Merger Agreement, the Debtors entered into the 9019 Settlement to timely resolve the disputed issues discussed above and garner significant and timely support from holders of General Unsecured Claims to implement the Merger Agreement pursuant to the Plan. The Plan and the distributions to be made to holders of Allowed General Unsecured Claims and holders of Allowed AMR Equity Interests incorporate and reflect the 9019 Settlement.

Among other things, the 9019 Settlement resolves (i) all Claims or controversies relating to the contractual, legal, and subordination rights that a holder of a Claim may have with respect to any other Claim or any distribution on account thereof, including with respect to rights of parties holding guarantees against any Debtor and any Claims with respect to the marshaling of assets of any Debtor and (ii) any Claims held by one Debtor against another Debtor, including with respect to the validity, enforceability, or priority of the Intercompany Claims, and including whether any transfer is subject to avoidance for any reason. Thus, as part of the 9019 Settlement, and as reflected in the Plan, no distributions shall be made on any Intercompany Claims owing by American to AMR or owing by American to Eagle Holding and vice versa, and any potential Avoidance Action against such entities shall be extinguished on the Effective Date.

(iii) **Distribution Mechanics**

In order to implement the 9019 Settlement, the Plan provides a mechanism for certain holders of Allowed General Unsecured Claims and holders of Allowed AMR Equity Interests to receive a distribution based on the market value of the New Common Stock. Pursuant to the Plan, holders of Allowed AMR General Unsecured Guaranteed Claims and Allowed American General Unsecured Guaranteed Claims will initially receive New Mandatorily Convertible Preferred Stock with a face amount equal to the Allowed amount of their Claims (including postpetition interest at the nondefault rate and interest on overdue interest). Holders of Allowed AMR Other General Unsecured Claims, Allowed American Other General Unsecured Claims, and Allowed Eagle General Unsecured Claims will receive (i) the remaining New Mandatorily Convertible Preferred Stock and (ii) a right to receive additional shares of New Common Stock on the 120th day following the Effective Date. One quarter of such New Mandatorily Convertible Preferred Stock shall be mandatorily convertible into shares of New Common Stock on each of the 30th, 60th, 90th, and 120th days following the Effective

Date. In addition, holders of New Mandatorily Convertible Preferred Stock have the right to optionally convert, in the aggregate for all holders, up to 10,000,000 shares of New Mandatorily Convertible Preferred Stock into shares of New Common Stock during each 30-day period after the Effective Date for which such New Mandatorily Convertible Preferred Stock remains outstanding. The conversion price with respect to each mandatory conversion and each optional conversion will equal 96.5% of the VWAP (as defined in Section 1.250 of the Plan) of the New Common Stock, subject to a cap and a floor price.

Shares of New Common Stock will also be distributed to holders of the American Union Claims and certain other non-union employees of the Debtors, with such number of shares equal to 23.6% of the total shares issued to holders of Allowed General Unsecured Claims under the Plan. The Non-Union Employees shall receive shares of New Common Stock constituting 2.3% of the Creditor New Common Stock Allocation, which shall be distributed by New AAG.

Furthermore, the Plan provides holders of Allowed AMR Equity Interests with (i) a guaranteed initial distribution of 3.5% of the New Common Stock and (ii) a right to receive additional shares of New Common Stock on each of the Mandatory Conversion Dates, all subject to dilution for equity-based awards to be issued to employees of AMR and its subsidiaries (other than US Airways and its subsidiaries) contemplated in the Plan and the Merger Agreement.

As set forth in the Plan, the amount of additional shares of New Common Stock that will be issued on the Mandatory Conversion Dates to holders of Allowed AMR Other General Unsecured Claims, Allowed American Other General Unsecured Claims, Allowed Eagle General Unsecured Claims, and Allowed AMR Equity Interests is determined by the VWAP of the New Common Stock on the Mandatory Conversion Dates. Specifically, the amount of additional shares of New Common Stock distributable to the holders of Allowed Equity Interests

depends on whether the price of the New Common Stock as of the relevant Mandatory Conversion Date exceeds the value, which would imply that the New Common Stock distributable to holders of Allowed General Unsecured Claims is sufficient to effectively pay such Claims in full (i.e., par plus accrued interest thereon, at the nondefault contract rate or federal judgment rate (as appropriate) from the Commencement Date through the Effective Date, including interest on overdue interest), and including certain additional value to address the market volatility and liquidity concerns during the 120-day period following the Effective Date.

As demonstrated in Part II of this Memorandum of Law, the 9019 Settlement should be approved pursuant to section 1123(b) and Bankruptcy Rule 9019.

c. **Substantive Consolidation**

The Plan is premised on the limited and separate substantive consolidation, solely for voting, confirmation, and distribution purposes under the Plan, of (i) the AMR Debtors with one another, (ii) the American Debtors with one another, and (iii) the Eagle Debtors with one another. The AMR Debtors will not be consolidated with either the American Debtors or the Eagle Debtors, and the American Debtors will not be consolidated with the Eagle Debtors.

Section 6.5(b) of the Plan provides solely for voting, confirmation, and distribution purposes under the Plan, (i) all assets and all liabilities of the AMR Debtors shall be treated as though they were merged, (ii) all guarantees of any AMR Debtor of the payment, performance, or collection of obligations of another AMR Debtor shall be eliminated and canceled, (iii) any obligation of any AMR Debtor and all guarantees thereof executed by one or more of the other AMR Debtors shall be treated as a single obligation, and such guarantees shall be deemed a single Claim against the consolidated AMR Debtors, (iv) all joint obligations of two or more AMR Debtors and all multiple Claims against such entities on account of such joint obligations shall be treated and allowed only as a single Claim against the consolidated AMR

Debtors, (v) all Claims between the AMR Debtors shall be canceled, and (vi) each Claim filed in the Chapter 11 Case of any AMR Debtor shall be deemed filed against the consolidated AMR Debtors and a single obligation of the consolidated AMR Debtors on and after the Effective Date. The substantive consolidation and deemed merger effected pursuant to the Plan shall not affect (other than for purposes relating to funding distributions under the Plan) (i) the legal and organizational structure of the AMR Debtors, except as provided in the Merger Agreement, (ii) defenses to any Causes of Action or requirements for any third party to establish mutuality to assert a right of setoff, and (iii) distributions out of any insurance policies or proceeds of such policies. Notwithstanding the foregoing, prepetition intercompany Claims between and among the AMR Debtors, the American Debtors, and the Eagle Debtors shall be dealt with in accordance with Section 6.15 of the Plan as part of the 9019 Settlement.

Sections 6.5(c) and (d) of the Plan provide that the American Debtors and the Eagle Debtors, respectively, shall likewise be substantively consolidated and their assets and liabilities treated accordingly.

Substantive consolidation of two or more debtors' estates generally results in the consolidation of the assets and liabilities of the debtors, the elimination of intercompany claims, subsidiary equity ownership interests, multiple and duplicative creditor claims, joint and several liability claims and guarantees, and the payment of allowed claims from a common fund. *See In re Owens Corning,* 419 F.3d 195, 205 (3d Cir. 2005); *FDIC v. Colonial Realty Co.*, 966 F.2d 57, 58–59 (2d Cir. 1992); *Union Sav. Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.)*, 860 F.2d 515, 518 (2d Cir. 1988).

The plain text of the Bankruptcy Code contemplates that a consolidation may appropriately be used to effectuate a chapter 11 plan. *See* 11 U.S.C. § 1123(a)(5)(C). However,

numerous courts have also held that section 105(a) of the Bankruptcy Code, which provides, in pertinent part, that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," 11 U.S.C. § 105(a), empowers a bankruptcy court to authorize substantive consolidation. *See Owens Corning*, 419 F.3d at 210; *Augie/Restivo*, 860 F.2d at 518 n.1; *In re The Leslie Fay Cos., Inc.*, 207 B.R. 764, 779 (Bankr. S.D.N.Y. 1997); *Moran v. HSBC (In re Deltacorp, Inc.)*, 179 B.R. 773, 777 (Bankr. S.D.N.Y. 1995).

The substantive consolidation of the AMR Debtors, of the American Debtors, and of the Eagle Debtors, as proposed in the Plan has three major effects. First, it eliminates intercompany Claims between the AMR Debtors, between the American Debtors, and between the Eagle Debtors from the treatment scheme. Second, it eliminates guaranties of the obligations of (i) one AMR Debtor by another AMR Debtor, (ii) one American Debtor by another American Debtor, and (iii) one Eagle Debtor by another Eagle Debtor. Thus, any joint and several liability of any of the AMR Debtors, of any of the American Debtors, and of any of the Eagle Debtors shall be deemed to be one obligation of the consolidated AMR Debtors, the consolidated American Debtors, and the consolidated Eagle Debtors, respectively. Finally, each Claim filed against any of the AMR Debtors, against any of the American Debtors, or against any of the Eagle Debtors would be considered to be a single Claim against the consolidated AMR Debtors, the consolidated American Debtors, or the consolidated Eagle Debtors, respectively. The substantive consolidation of the AMR Debtors, of the American Debtors, and of the Eagle Debtors will eliminate multiple and duplicative Claims as well as joint and several liability Claims, and will afford payment of Allowed Claims against each of the AMR Debtors, of the American Debtors, and of the Eagle Debtors, respectively, from a common fund.

The limited substantive consolidations effectuated pursuant to the Plan results in no economic impact to holders of Claims or Equity Interests because no material intercompany obligations exist between the Debtors comprising each of the AMR Debtors, the American Debtors, and the Eagle Debtors. While there are intercompany obligations between AMR, American, and Eagle, which result from intercompany payables, guarantees, and potential Claims arising from Avoidance Actions, such intercompany obligations are resolved pursuant to the 9019 Settlement.

Under the circumstances of these Chapter 11 Cases, it would be inefficient to propose, vote on, and make distributions in respect of entity-specific Claims. The substantive consolidation of the AMR Debtors, of the American Debtors, and of the Eagle Debtors will not have a material impact on the holder of any Allowed Claim. Furthermore, no creditor will receive a recovery inferior, in any meaningful way, to that which it would receive if the Debtors proposed a plan that was completely separate as to each Debtor.

In view of the foregoing, the Debtors believe that creditors would not be prejudiced by the substantive consolidations proposed in the Plan. Moreover, no creditor has objected to the substantive consolidations as provided in the Plan.

2. The Debtors Have Complied With the Provisions of the Bankruptcy Code

Section 1129(a)(2) of the Bankruptcy Code requires that the plan proponent comply with the applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1129(a)(2). The legislative history to section 1129(a)(2) reflects that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code. H.R. REP. NO. 95-595, at 412 (1977); S. REP. NO. 95-989, at 126 (1978) ("Paragraph (2) [of § 1129(a)] requires that the proponent of the plan comply with the applicable provisions of

chapter 11, such as section 1125 regarding disclosure."); *see also In re PWS Holding Corp.*, 228 F.3d 224, 248 (3d Cir. 2000); *In re Drexel Burnham Lambert Grp. Inc.*, 138 B.R. at 759.

The Debtors have complied with the applicable provisions of title 11, including the provisions of sections 1125 and 1126 regarding disclosure and plan solicitation. By Order, dated June 7, 2013 (ECF No. 8614) (the "**Solicitation Order**"), after notice and a hearing, the Court approved the Disclosure Statement pursuant to section 1125(b) of the Bankruptcy Code as containing "adequate information" of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of the Debtors' creditors and equity interest holders to make an informed judgment regarding whether to accept or reject the Plan. As set forth in (i) the Affidavit of Craig Johnson, sworn to on July 2, 2013 (ECF No. 9013) (the "**GCG Affidavit**"), each holder of a Claim or Equity Interest was sent the solicitation materials required by the Solicitation Order, including, for holders of Claims and Equity Interests entitled to vote, the Disclosure Statement (with the Plan annexed thereto), the Solicitation Order (without exhibits), the letter recommending acceptance of the Plan from the Creditors' Committee, and an appropriate form of ballot and return envelope (such ballot and return envelope being referred to as a "**Ballot**"). The solicitation package was transmitted in connection with the solicitation of votes to accept the Plan in compliance with section 1125 and the Solicitation Order. 11 U.S.C. §§ 1125(b), (c). The Debtors did not solicit acceptances of the Plan from any creditor or equity interest holder prior to the transmission of the Disclosure Statement.

Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of the Plan. Under section 1126, only holders of Allowed Claims and Allowed AMR Equity Interests in impaired Classes of Claims and Equity Interests that will receive or retain property under the Plan on account of such Claims or Equity Interests may vote to accept or reject the

Plan. In accordance with section 1126 of the Bankruptcy Code, the Debtors solicited acceptances of the Plan from the holders of all Allowed Claims and Allowed AMR Equity Interests in each Class of impaired Claims and Equity Interests that are entitled to vote to accept or to reject the Plan.[15] In accordance with Articles III and IV of the Plan and the Solicitation Order, the Debtors did not solicit acceptances from the holders of Claims or Equity Interests, as applicable, in each Class of Claims and Equity Interests that are not impaired and thus not entitled to vote to accept or reject the Plan.[16] Based upon the foregoing, the requirements of section 1129(a)(2) have been satisfied.

3. The Plan Has Been Proposed in Good Faith And Not by Any Means Forbidden by Law

Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). "Good faith is 'generally interpreted to mean that there exists a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'" *In re Chemtura Corp.*, 439 B.R. at 608 (quoting *In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir. 1984)). "Whether a reorganization plan has been proposed in good faith must be viewed in the totality of

[15] The impaired Classes entitled to vote under the Plan are AMR Class 3 (AMR General Unsecured Guaranteed Claims), AMR Class 4 (AMR Other General Unsecured Claims), AMR Class 5 (AMR Equity Interests), American Class 4 (American General Unsecured Guaranteed Claims), American Class 5 (American Other General Unsecured Claims), American Class 6 (American Union Claims), American Class 7 (American Convenience Class Claims), Eagle Class 3 (Eagle General Unsecured Claims), and Eagle Class 4 (Eagle Convenience Class Claims).

[16] The unimpaired Classes not entitled to vote under the Plan are AMR Class 1 (AMR Secured Claims), AMR Class 2 (AMR Priority Non-Tax Claims), AMR Class 6 (AMR Other Equity Interests), American Class 1 (American Secured Aircraft Claims), American Class 2 (American Other Secured Claims), American Class 3 (American Priority Non-Tax Claims), American Class 8 (American Equity Interests), Eagle Class 1 (Eagle Secured Claims), Eagle Class 2 (Eagle Priority Non-Tax Claims), and Eagle Class 5 (Eagle Equity Interests.

the circumstances, and the requirement of Section 1129(a)(3) 'speaks more to the process of plan development than to the content of the plan.'" *Id.* (quoting *In re Bush Indus., Inc.*, 315 B.R. 292, 304 (Bankr. W.D.N.Y. 2004)).

In addition to achieving a result consistent with the objectives of the Bankruptcy Code, the Plan also allows the Debtors' stakeholders to realize the highest possible recoveries under the circumstances. The Plan is the result of consensual resolutions and agreements between the Debtors, the Creditors' Committee, the Ad Hoc Committee, and various other stakeholders and constituencies. The support of the Plan by the Creditors' Committee reflects its acknowledgment that the Plan provides fundamental fairness to general unsecured creditors. *Cf. In re The Leslie Fay Cos., Inc.*, 207 B.R. at 781 ("The fact that the plan is proposed by the committee as well as the debtors is strong evidence that the plan is proposed in good faith."). Moreover, the 9019 Settlement is indicative of the Debtors' genuine efforts to reach consensual resolutions with parties in interest. *See In re Chemtura Corp.*, 439 B.R. at 608–09 (finding good faith requirement met because, among other things, the debtor negotiated and reached agreements with several parties in interest to put forward a chapter 11 plan which "in the aggregate . . . demonstrate a good faith effort on the part of the debtor to consider the needs and concerns of all major constituencies in this case") (quotations and citation omitted). Accordingly, the Plan has been filed in good faith and the requirements of section 1129(a)(3) are satisfied.

4. The Plan Provides that Payments Made by the Debtors for Services or Costs and Expenses Are Subject to Court Approval

Section 1129(a)(4) of the Bankruptcy Code provides that any payment made or to be made by the plan proponent, the debtor, or a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case or the

plan, be subject to approval by the Court as reasonable. 11 U.S.C. § 1129(a)(4). Section 1129(a)(4) has been construed to require that all payments of professional fees which are made from estate assets be subject to review and approval as to their reasonableness by the Court. *See In re River Village Assocs.*, 161 B.R. 127, 141 (Bankr. E.D. Pa. 1993), *aff'd*, 181 B.R. 795 (E.D. Pa. 1995); *In re Resorts Int'l, Inc.*, 145 B.R. 412, 475 (Bankr. D.N.J. 1990); *In re Texaco Inc.*, 84 B.R. 893, 908 (Bankr. S.D.N.Y.), *appeal dismissed*, 92 B.R. 38 (S.D.N.Y. 1988).

Pursuant to the interim application procedures established under section 331 of the Bankruptcy Code, the Court authorized and approved the payment of certain fees and expenses of professionals retained in the Chapter 11 Cases. All such fees and expenses, as well as all other accrued fees and expenses of professionals through the Confirmation Date, remain subject to final review for reasonableness by the Court under sections 327, 328, 330, 331, and 503(b) of the Bankruptcy Code.

In addition, as discussed above, the Chairman Letter Agreement is subject to this Court's approval pursuant to section 1129(a)(4) of the Bankruptcy Code.

Based upon the foregoing, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

5. The Debtors Have Satisfied the Requirement To Disclose All Necessary Information Regarding Directors, Officers, and Insiders

Section 1129(a)(5) of the Bankruptcy Code requires that the plan proponent disclose the identity and affiliations of the proposed officers and directors of the reorganized debtors; that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy; and that there be

disclosure of the identity and compensation of any insiders to be retained or employed by the reorganized debtors. 11 U.S.C. § 1129(a)(5).

The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The identity and affiliations of the persons proposed to serve as members of the initial Board of Directors of New AAG and as members of the initial Boards of Directors of the other Reorganized Debtors were disclosed in the Plan Supplement, and the appointment to, or continuance in, such positions of such persons is consistent with the interests of holders of Claims against, and Equity Interests in, the Debtors and with public policy. The identity of any insider that will be employed or retained by the Reorganized Debtors and the nature of such insider's compensation have also been disclosed or will be disclosed at the Confirmation Hearing. The compensation payable to Thomas W. Horton, who shall serve as the initial Chairman of the Board of Directors of New AAG, is disclosed in the Plan and the Disclosure Statement.

6. <u>The Plan Is in the Best Interests of All Creditors</u>

Section 1129(a)(7) of the Bankruptcy Code requires that a plan be in the best interests of creditors and stockholders. The best interests test focuses on individual dissenting creditors rather than classes of claims. *See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434 (1999). It requires that each holder of a claim or equity interest either accepts the plan or will receive or retain under the plan property having a present value, as of the effective date of the plan, not less than the amount such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

Under the best interests test, "the court must measure what is to be received by rejecting creditors in the impaired classes under the plan against what would be received by them

in the event of liquidation under chapter 7. In doing so, the court must take into consideration the applicable rules of distribution of the estate under chapter 7, as well as the probable costs incident to such liquidation." *In re Adelphia Commc'ns Corp.*, 368 B.R. at 252. As section 1129(a)(7) makes clear, the liquidation analysis applies only to nonaccepting holders of impaired claims or equity interests.

In the instant case the best interests test is satisfied as to each holder of an impaired Claim or Equity Interest, as demonstrated by the Liquidation Analysis annexed as Exhibit "C" to the Disclosure Statement and the Declaration of Kevin Carmody being filed contemporaneously herewith.

Each member of an impaired Class will receive under the Plan a larger recovery than that member would otherwise receive in a chapter 7 liquidation because of the value to be realized from the Merger and the continuation of the Debtors' operations as part of a merged enterprise and the 9019 Settlement that is incorporated in the Plan.

The Merger, which is expected to generate more than $1 billion in annual net synergies by 2015, is contingent upon, among other things, confirmation of the Plan. The increased value expected to be created by the Merger provides for the potential for a full recovery by creditors of the Debtors and an initial distribution to holders of AMR Equity Interests of 3.5% of the aggregate ownership stake in New AAG, with the potential for such AMR Equity Interest holders to receive additional shares of New AAG.

Moreover, in the context of a chapter 7 liquidation, the PBGC would hold significant Claims against all of the Debtors for liability related to the underfunded pension obligations. Finally, the Debtors' costs of liquidation under chapter 7 would include the fees

payable to a trustee in bankruptcy, as well as those fees payable to attorneys and other professionals that such a trustee might engage.

After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors and AMR shareholders in the Chapter 11 Cases, including (i) the absence of the benefits of the Merger, (ii) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy and its professional advisors that would be unfamiliar with all of the work done to date; (iii) the substantial increases in claims that would be satisfied on a priority basis, and (iv) the substantial delay in distributions occasioned by a conversion of the Chapter 11 Cases to cases under chapter 7, it is clear that confirmation of the Plan will provide each holder of an Allowed Claim or Allowed AMR Equity Interest with a recovery that is not less than such holder would receive or retain if the Debtors were liquidated under chapter 7.

Based upon the foregoing, the Plan satisfies the requirements of section 1129(a)(7).

7. The Plan Has Been Accepted by Each Impaired Class, and the Requirements Of Section 1129(a)(8) Have Been Satisfied

Section 1129(a)(8) of the Bankruptcy Code requires that each class of impaired claims or interests accept the plan, as follows: "With respect to each class of claims or interests - (A) such class has accepted the plan; or (B) such class is not impaired under the plan." 11 U.S.C. § 1129(a)(8).

As evidenced by the voting certification filed with the Court, the Plan has been accepted by (i) creditors holding well in excess of two-thirds in amount and one-half in number in each of the Classes of Claims entitled to vote that have accepted or rejected the Plan; and (ii)

holders of AMR Equity Interests that hold well in excess of two-thirds in amount of the interests in AMR Class 5 (AMR Equity Interests) held by holders of such Equity Interests that have accepted or rejected the Plan. Specifically, AMR Class 3 (AMR General Unsecured Guaranteed Claims), AMR Class 4 (AMR Other General Unsecured Claims), AMR Class 5 (AMR Equity Interests), American Class 4 (American General Unsecured Guaranteed Claims), American Class 5 (American Other General Unsecured Claims), American Class 6 (American Union Claims), American Class 7 (American Convenience Class Claims), Eagle Class 3 (Eagle General Unsecured Claims), and Eagle Class 4 (Eagle Convenience Class Claims) are impaired and have voted to accept the Plan in accordance with sections 1126(c) and (d) of the Bankruptcy Code, as applicable. Thus, as to such impaired and accepting Classes, the requirements of section 1129(a)(8) have been satisfied.

8. The Plan Provides for Payment <u>In Full of All Allowed Priority Claims</u>

Section 1129(a)(9) of the Bankruptcy Code requires that persons holding allowed claims entitled to priority under section 507(a) receive specified cash payments under the plan. Unless the holder of a particular claim agrees to a different treatment with respect to such claim, section 1129(a)(9) of the Bankruptcy Code sets forth the treatment the plan must provide. 11 U.S.C. § 1129(a)(9).

Pursuant to Articles II and IV of the Plan, and in accordance with sections 1129(a)(9)(A) and (B), the Plan provides that all Allowed Administrative Expenses under section 503(b) of the Bankruptcy Code and all Allowed Priority Non-Tax Claims under section 507(a) (excluding Priority Tax Claims under section 507(a)(8) described below) will be paid in full, in Cash, on the Effective Date or as soon thereafter as is reasonably practicable.

The Plan satisfies the requirements of section 1129(a)(9)(C) of the Bankruptcy Code in respect of the treatment of Priority Tax Claims under section 507(a)(8). Pursuant to Section 2.3 of the Plan and except as otherwise may be agreed, holders of Allowed Priority Tax Claims will be paid in full, in Cash, on the Effective Date or as soon thereafter as is reasonably practicable, or Cash in installment payments in compliance with the requirements of section 1129(a)(9)(C).

Based upon the foregoing, the Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

9. At Least One Class of Impaired Claims Has Accepted the Plan

Section 1129(a)(10) of the Bankruptcy Code requires the affirmative acceptance of the Plan by at least one Class of impaired Claims, "determined without including any acceptance of the plan by any insider." 11 U.S.C. § 1129(a)(10). The Plan clearly satisfies this requirement because all eight Classes of Impaired Claims – AMR Class 3 (AMR General Unsecured Guaranteed Claims), AMR Class 4 (AMR Other General Unsecured Claims), American Class 4 (American General Unsecured Guaranteed Claims), American Class 5 (American Other General Unsecured Claims), American Class 6 (American Union Claims), American Class 7 (American Convenience Class Claims), Eagle Class 3 (Eagle General Unsecured Claims), and Eagle Class 4 (Eagle Convenience Class Claims) – have accepted the Plan, without including the acceptance of the Plan by insiders in such Classes.

10. The Plan Is Feasible

Section 1129(a)(11) of the Bankruptcy Code requires that the Court determine that the Plan is feasible as a condition precedent to confirmation. Specifically, it requires that confirmation is not likely to be followed by liquidation or the need for further financial

reorganization of the debtor or any successor to the debtor, unless such liquidation or reorganization is proposed in the plan. 11 U.S.C. § 1129(a)(11). As described below, and as will be demonstrated at the Confirmation Hearing, the Plan is feasible within the meaning of this provision. The feasibility test set forth in section 1129(a)(11) requires the Court to determine whether the Plan is workable and has a reasonable likelihood of success. *See United States v. Energy Res. Co., Inc.*, 495 U.S. 545, 549 (1990); *In re Johns-Manville Corp.*, 843 F.2d at 649.

The key element of feasibility is whether there is a reasonable probability that the provisions of the plan can be performed. The purpose of the feasibility test is to protect against visionary or speculative plans. As noted by the United States Court of Appeals for the Ninth Circuit: "'The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation.'" *Pizza of Haw., Inc. v. Shakey's, Inc. (In re Pizza of Haw., Inc.)*, 761 F.2d 1374, 1382 (9th Cir. 1985) (quoting 5 Collier on Bankruptcy ¶ 1129.02[11] at 1129–34 (15th ed. 1984)). However, just as speculative prospects of success cannot sustain feasibility, speculative prospects of failure cannot defeat feasibility. The mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds. *See In re U.S. Truck Co.*, 47 B.R. 932, 944 (E.D. Mich. 1985), *aff'd*, 800 F.2d 581 (6th Cir. 1986).

For purposes of determining whether the Plan satisfies the above-described feasibility standards, the Debtors have analyzed their ability to fulfill their obligations under the Plan. As part of this analysis, the Debtors, with the assistance of their financial advisors, prepared financial projections for the post-Effective Date period of fiscal year 2013 and each of the fiscal years 2014 through 2017 (the "**Projection Period**") for New AAG. These projections, and the assumptions on which they are based, are included in the Debtors' Projected Financial

Information, annexed as Exhibit "D" to the Disclosure Statement. Based upon such projections, the Debtors submit that all payments required to be made pursuant to the Plan will be made and, therefore, that confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization. Accordingly, the Debtors believe that the Plan satisfies the feasibility requirement imposed by the Bankruptcy Code.

The late-filed "Response" by the Air Line Pilots Association ("**ALPA**"), dated August 6, 2013 (ECF No. 9473) asserts that the Debtors present independent "current and updated evidence as to the status and business plan for Eagle operations and fleet – current and multi-year projections." (ALPA Response § 4.)

This is not required. The Projections encompass and reflect the combined operations of the mainline and regional fleets. Eagle operations will constitute a very small percentage of New AAG. The Eagle Debtors are projected to generate adequate revenues to meet their ongoing costs, and in the event there is any shortfall, New AAG will have more than sufficient resources to address it. In addition, the Eagle Debtors do not have any material payments under the Plan. (*See* Declaration of Beverly K. Goulet in Support of Confirmation of Debtors' Second Amended Joint Chapter 11 Plan, filed contemporaneously herewith, ¶ 46.)

11. <u>All Statutory Fees Have Been or Will Be Paid</u>

Section 1129(a)(12) requires the payment of "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan." 11 U.S.C. § 1129(a)(12). Section 507 of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930] of title 28" are afforded priority as administrative expenses. *Id*. § 507(a)(2). In accordance with sections 507 and 1129(a)(12) of the Bankruptcy Code, Section 12.7 of the Plan provides that on the Effective Date, and thereafter as may be

required, such fees, together with interest, if any, pursuant to section 3717 of title 31 of the United States Code, shall be paid by each of the Debtors.

12. <u>The Plan Complies with Section 1129(a)(13)</u>

Section 1129(a)(13) of the Bankruptcy Code requires a plan to provide for retiree benefits at levels established pursuant to section 1114 of the Bankruptcy Code.

On July 6, 2012, the Debtors commenced an adversary proceeding styled *AMR Corporation and American Airlines, Inc. v. Committee of Retired Employees*, Adv. Pro. No. 12-01744 (the "**Retiree Adversary Proceeding**") against the Retiree Committee seeking a declaratory judgment that, among other things, the retiree health and welfare benefits are unvested benefits, which may be modified unilaterally by the Debtors. On August 15, 2012, the Debtors filed a motion in the Retiree Adversary Proceeding seeking partial summary judgment as a matter of law that retiree health and welfare benefits are unvested benefits because (i) governing plan documents reserved the Debtors' rights to modify the benefits and/or (ii) such documentation did not contain a promise of lifetime benefits. The Retiree Committee objected to the Debtors' motion for partial summary judgment, arguing that (i) governing documents did not reserve the Debtors' right to modify benefits and (ii) governing documents contained a promise of lifetime benefits. On January 23, 2013, the Court heard argument on the Debtors' motion for partial summary judgment. To date, the motion remains *sub judice*.

Section 8.4 of the Plan provides that the Debtors intend to continue to prosecute the Retiree Adversary Proceeding, and to the extent it has not been finally resolved by the Effective Date, New AAG shall continue to prosecute the Retiree Adversary Proceeding subsequent to the Effective Date and the Retiree Committee intends to continue defending the interests of American's retirees. To the extent the Debtors or New AAG, as applicable, are

unsuccessful in whole or in part in obtaining the relief requested in the Retiree Adversary Proceeding, any remaining vested retiree health and welfare benefits will be treated in accordance with the provisions of section 1129(a)(13) of the Bankruptcy Code.

Based on the foregoing, the Debtors submit that the Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code.

III.

THE 9019 SETTLEMENT AS WELL AS THE RELEASES, EXCULPATIONS, AND INJUNCTIONS IN THE PLAN ARE PROPER

A. The 9019 Settlement, the Releases, the Exculpation, and the Injunction

1. The 9019 Settlement

As stated, the Plan is premised, in part, on the approval of the 9019 Settlement. Bankruptcy Rule 9019 provides "after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019. The legal standard for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interest of the estate. *See In re Chemtura Corp.*, 439 B.R. 561, 593 (Bankr. S.D.N.Y. 2010). Relying on the guiding language of *Protective Comm. for Ind. Stockholders of TMT Trailer Ferry, Inc. v. Anderson,* 390 U.S. 414, 424 (1968), courts in this Circuit have set forth the following factors regarding the reasonableness of such settlements:

1. the probability of success in the litigation;
2. the difficulties associated with collection;
3. the complexity of the litigation, and the attendant expense, inconvenience, and delay; and
4. the paramount interests of the creditors.

In re Drexel Burnham Lambert Grp., Inc., 960 F.2d at 292; *In re Iridium Operating LLC*, 478 F.3d at 462; *Air Line Pilots Ass'n, Int'l v. Am Nat'l Bank & Trust Co. of Chi. (In re Ionosphere*

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Clubs, Inc.), 156 B.R. 414, 428 (S.D.N.Y. 1993), *aff'd sub nom. Sobchack v. Am. Nat'l Bank & Trust Co. (In re Ionosphere Clubs, Inc.)*, 17 F.3d 600 (2d Cir. 1994); *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993). The decision to approve a particular settlement lies within the sound discretion of the Bankruptcy Court. *Mach. Terminals, Inc. v. Woodward (In re Albert-Harris, Inc.)*, 313 F.2d 447, 449 (6th Cir. 1963). It is the responsibility of the Court to examine a settlement and determine whether it "'falls below the lowest point in the range of reasonableness.'" *In re Dow Corning Corp.*, 198 B.R. 214, 222 (Bankr. E.D. Mich. 1996) (quoting *In re Drexel Burnham Lambert Grp., Inc.*, 134 B.R. 493, 497 (Bankr. S.D.N.Y. 1991)).

The 9019 Settlement should be approved as it is fair, reasonable, and in the best interest of the Debtors' estates. As discussed more fully above, the Debtors entered into the 9019 Settlement to timely resolve (i) certain intercreditor issues relating to the rights and benefits of holders of Double-Dip General Unsecured Claims, Single-Dip General Unsecured Claims, Triple-Dip General Unsecured Claims, and the DFW 1.5x Special Facility Revenue Bond Claim, (ii) issues concerning the validity, enforceability, and priority of certain prepetition Intercompany Claims, (iii) issues as to the validity and enforceability of guarantee Claims held by certain creditors, (iv) Claims that creditors may have with respect to the marshaling of assets and liabilities of AMR, American or Eagle Holding in determining relative entitlements to distributions under a plan, (v) potential Avoidance Actions based on prepetition transfers made, and (vi) the rights of holders of AMR Equity Interests to distributions under a plan.

The 9019 Settlement resolves these extremely complex factual and legal issues, greatly facilitates the resolution of the Chapter 11 Cases, avoids significant litigation costs, and expedites confirmation and consummation of the Plan, which provides a substantial distribution to the Debtors' stakeholders. The 9019 Settlement and the distributions provided for in the Plan

are intended to provide holders of Allowed Single-Dip General Unsecured Claims and Allowed Double-Dip General Unsecured Claims with the potential for a full recovery in addition to providing a significant distribution to holders of Allowed AMR Equity Interests.

Accordingly, the 9019 Settlement, which is incorporated into the Plan and the distribution scheme provided therein, including the initial distribution to holders of AMR Equity Interests, satisfies *TMT* and should be approved as it avoids the delay, expense, and uncertainty attendant to litigation of extremely complex legal and factual issues, is in the best interests of the Debtors' economic stakeholders, and is fully supported by the Creditors' Committee and the Consenting Creditors. Further, the 9019 Settlement was fully described in the Disclosure Statement and, as noted, all Impaired Classes of Claims and Equity Interests voted in favor of the Plan.

2. <u>Releases</u>

Pursuant to Section 10.8 of the Plan (the "**Releases**"), effective as of the Effective Date and subject to the occurrence of the Merger Effective Time, the Debtors will release (i) all present and former directors and officers of the Debtors and any other Persons who serve or served as members of management of the Debtors, (ii) all post-Commencement Date advisors, consultants, agents, counsel, or other professionals of or to the Debtors, US Airways, the Creditors' Committee, the Retiree Committee, the Indenture Trustees, the Unions, the Search Committee, and the Ad Hoc Committee, and (iii) US Airways, the Indenture Trustees, the Unions, all current and former members (in their capacity as members of such committees) of the Creditors' Committee, the Retiree Committee, the Ad Hoc Committee, the Search Committee, Nuveen Asset Management, LLC (and each of its managed funds and accounts on behalf of which it executed the Support and Settlement Agreement) (in its capacity in negotiating the

Support and Settlement Agreement and the Plan), and OppenheimerFunds, Inc. (and each of its managed funds and accounts that executed the Support and Settlement Agreement) (in its capacity in negotiating the Support and Settlement Agreement and the Plan), and their respective officers, directors, agents, and employees (including attorneys and other professionals retained by individual members of such committees) (collectively, the "**Released Parties**"), from any and all Causes of Action held by, assertable on behalf of, or derivative from the Debtors, in any way relating to the Debtors, the Chapter 11 Cases, the Plan, negotiations regarding or concerning the Plan, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, and the ownership, management, and operation of the Debtors, except for actions found by Final Order to be willful misconduct (including, but not limited to, conduct that results in a personal profit at the expense of the Debtors' estates), gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, breach of fiduciary duty (to the extent applicable), and *ultra vires* acts, which Causes of Action are based on any act, event, or omission taking place before the Effective Date; *provided, however,* that the foregoing (a) shall not operate as a waiver of or release from any Causes of Action arising out of any express contractual obligation owing by any former director, officer, or employee of the Debtors or any reimbursement obligation of any former director, officer, or employee with respect to a loan or advance made by the Debtors to such former director, officer, or employee, and (b) shall not limit the liability of any counsel to their respective clients contrary to Rule 1.8(h)(1) of the New York Rules of Professional Conduct. The Reorganized Debtors and any newly-formed Entities that will be continuing the Debtors' business after the Effective Date shall be bound by all the releases set forth above to the same extent that the Debtors are bound.

Claims held by the debtor against third parties are property of the estate and may be released in exchange for settlement. *In re Johns-Manville Corp.*, 837 F.2d at 91–92; *see also* 11 U.S.C. 541(a)(1) ("estate is comprised of . . . all legal or equitable interests of the debtor in property as of the commencement of the case"). When reviewing releases in a debtor's plan, courts consider whether such releases are in the best interest of the estate. *In re Charter Commc'ns*, 419 B.R. at 257 (explaining that "[w]hen reviewing releases in a debtor's plan, courts consider whether such releases are in the best interest of the estate"); *see also In re DBSD N. Am., Inc.*, 419 B.R. 179, 217 (Bankr. S.D.N.Y. 2009) (explaining that releases and discharges of claims and causes of action pursuant to section 1123(b)(3)(A) of the Bankruptcy Code are only subject to debtors' business judgment), *aff'd sub nom.*, 2010 WL 1223109 (S.D.N.Y. Mar. 24, 2010), *aff'd in part, rev'd in part on other grounds sub nom. DISH Network Corp. v. DBSD N. Am., Inc. (In re DBSD N. Am.)*, 634 F.3d 79 (2d Cir. 2011).

The Releases provided for in the Plan are releases by the Debtors of claims or causes of actions owned by the Debtors. They do not encompass any so-called third party releases. The Debtors submit that such releases are reasonable, reflect the sound exercise of the Debtors' business judgment, and are consistent with section 1123(b)(3)(A) of the Bankruptcy Code and applicable authority. Accordingly, the Releases should be approved.

3. <u>Exculpation</u>

The exculpation provision of the Plan is addressed above in the section of this Memorandum that responds to the Objections. As noted, the exculpation provision is consistent with similar provisions in plans routinely approved by this Court and do not contain any inappropriate third party releases. Accordingly, the exculpation provision should be approved.

4. **Injunctions**

Section 10.5 of the Plan (the "**Injunction Against Interference with Plan**") provides that, upon the entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Section 10.6 of the Plan (the "**Injunction**," and together with the Injunction Against Interference with Plan, the "**Injunction Provisions**") provides that, except as otherwise expressly provided in the Plan, all Persons or Entities who have held, hold, or may hold Claims or Equity Interests and all other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, shall be permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim or Equity Interest against the Debtors or the Reorganized Debtors other than actions to enforce the Plan or with respect to the allowance of Claims and Equity Interests, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtors or the Reorganized Debtors or property of any of the Debtors or the Reorganized Debtors, (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtors or the Reorganized Debtors or against property or interests in property of the Debtors or the Reorganized Debtors, or (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from the Debtors or the Reorganized Debtors or against property or interests in property of the Debtors or the Reorganized Debtors, with respect to any such Claim or Equity Interest. Such Injunction shall extend to any successors of the Debtors and the Reorganized Debtors and their respective property and interests in property.

The Injunction Provisions are customary in this District and merely seek to assure that parties do not interfere with the consummation and implementation of the Plan and all the transactions contemplated thereby. Accordingly, the Injunction Provisions should be approved.

CONCLUSION

The Plan, which has the overwhelming support of all constituencies, complies with and satisfies all the requirements of section 1129 of the Bankruptcy Code. All outstanding Objections should be overruled, and the Plan should be confirmed.

Dated: New York, New York
August 8, 2013

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Exhibit A

DEBTORS' RESPONSES TO OBJECTIONS TO THE DEBTORS' SECOND AMENDED JOINT CHAPTER 11 PLAN (the "Plan") (ECF No. 8590)[1]

Obj. No.	Objecting Party	Objection	Debtors' Response
A. Objections Addressed in the Debtors' Memorandum of Law in Support of Confirmation of the Plan and in Response to Objections to Plan (the "Debtors' Brief")			
1.	**United States Trustee** ECF No. 9427	See section I(A) of the Debtors' Brief.	
2.	**US Airline Pilots Association** ECF No. 9337	See section I(B) of the Debtors' Brief.	
3.	**Air Line Pilots Association** ECF No. 9473*	See section II(A)(10) of the Debtors' Brief.	
4.	**Clayton Plaintiffs** ECF Nos. 9356, 9373, and 9466*	See section I(C) of the Debtors' Brief.	

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

* This response is untimely.

Obj. No.	Objecting Party	Objection	Debtors' Response
5.	**Allegheny County Airport Authority** ECF No. 9339	See section I(D) of the Debtors' Brief.	
6.	**Hargrove Electrical Company, Inc.** ECF No. 9371	See section I(D) of the Debtors' Brief.	
B. Objections and Reservations of Rights Not Addressed in Debtors' Brief, But Addressed Below			
7.	**Supplement B Pilot Beneficiaries** ECF No. 9334	Confirmation of the Plan should be delayed until resolution of objector's pending appeals.	There is no basis to defer confirmation of the Plan until the resolution of the objector's pending appeals. The appeals have been pending since September and December 2012, and objector has taken no action to seek a stay to preserve its rights. Deferring confirmation of the Plan would unfairly prejudice all other parties in interest in these Chapter 11 Cases.
8.	**American Independent Cockpit Alliance, Inc. (Former TWA Pilots)** ECF No. 9351	Confirmation of the Plan should be delayed until resolution of objector's pending appeal.	There is no basis to defer confirmation of the Plan until the resolution of the objector's pending appeal. The appeal has been pending since January 2, 2013, and objector has taken no action to seek a stay to preserve its rights. Deferring confirmation of the Plan would unfairly prejudice all other parties in interest in these Chapter 11 Cases.
9.	**U.S. Bank National Association, as Indenture Trustee with Respect to the 7.5% Senior Secured Notes Due 2016** ECF No. 9330	Default interest and fees and expenses of the indenture and collateral trustees should be paid.	The Debtors will pay all past due principal plus default interest and any fees and expenses payable in accordance with the terms of the applicable agreements. Any disputed amounts will be determined by the Bankruptcy Court.

Obj. No.	Objecting Party	Objection	Debtors' Response
10.	**U.S. Bank Trust National Association, as Trustee with Respect to the 2009-1 EETC and 2011-2 EETC Transactions** ECF Nos. 9346, 9352	a. Default interest and other "Secured Obligations" due under the indentures should be paid.	a. If the Debtors refinance the obligations, the Plan requires that the Debtors pay all Allowed Claims in full. Consequently, the Debtors will be obligated to pay all amounts payable in accordance with the terms of the applicable agreements and applicable law (whatever those amounts may be). Similarly, if the Debtors reinstate the obligations, all amounts payable in accordance with the terms of the applicable agreements and applicable law, including the reinstatement provisions of the Bankruptcy Code, will be paid. To the extent there is any dispute with respect to the foregoing amounts to be paid, it will be resolved by the Bankruptcy Court and is not an issue to be decided in connection with Plan confirmation. *See, e.g.*, *In re Oneida Ltd.*, 351 B.R. 79, 95–96 (Bankr. S.D.N.Y. 2006) (declining to rule on creditor's claim for interest and rejecting objection that reorganization plan "unfairly discriminates against [creditor] because the Plan does not provide for post-petition interest on its disputed claim" where "if any unsecured creditor has an entitlement to interest under applicable non-bankruptcy law, such interest will have to be paid, and the Plan will have to be construed to provide for such payment").
		b. The Debtors should agree to pay the "make-whole" amount.	b. If the Debtors refinance the obligations and it is determined by an appellate court that the make-whole amounts are payable, the Debtors or New AAG shall pay such amount in Cash. No reserve is appropriate or required, particularly where the Court has determined that the make-whole amounts are not payable. *See Frito-Lay, Inc. v. LTV Steel Co. (In re Chateaugay Corp.)*, 10 F.3d 944, 960–61 (2d Cir. 1993) (reorganized debtor had no obligation to effectively bond an appeal by a creditor by setting up a reserve for payment of an alleged priority claim; the creditor could protect its position by seeking stay pending appeal and had no due process right to a reserve); *In re Tribune Co.*, 476 B.R. 843, 865 (Bankr. D. Del. 2012) ("when it comes to establishing reserves, there is a reasonable basis to discriminate between the Holders of Disputed Claims, whose claims have not yet been litigated," and claims that already "have been the subject of litigation before this Court"). This is particularly true in view of the Debtors' liquidity.

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		c. The Debtors should be required to disclose treatment of creditor prior to the Effective Date.	c. The Debtors will advise the objector of the relevant treatment on or before the Effective Date.
		d. The Debtors should be precluded from arguing that the EETC appeal is equitably moot upon confirmation of the Plan.	d. Equitable mootness is an argument properly addressed to the court in which the appeal is pending. In addition, the objector elected not to obtain a stay pending appeal; whatever consequences flow from that decision are not matters that are appropriately raised as objections to confirmation.
11.	**U.S. Bank Trust National Bank, as Trustee for the 10.5% Senior Secured Notes of American Airlines, Inc. due 2012** ECF No. 9348	Default interest and fees and expenses of the indenture and collateral trustees should be paid.	The Debtors will pay all past due principal plus default interest and any fees and expenses payable in accordance with the terms of the applicable agreements. Any disputed amounts will be determined by the Bankruptcy Court.

Obj. No.	Objecting Party	Objection	Debtors' Response
12.	**U.S. Bank Trust National Association, as Trustee and Security Agent for the American Airlines, Inc. 2009-2 Secured Notes Due 2016** ECF No. 9390	a. The Plan must either provide a mechanism for continuing security interest for the Trustee's claim or assurance of full payment of the "make-whole" amount.	a. If the Debtors refinance the obligations and it is determined by an appellate court that the make-whole amounts are payable, the Debtors or New AAG shall pay such amount in Cash. No reserve is appropriate or required, particularly where the Court has determined that the make-whole amounts are not payable. *See Frito-Lay, Inc. v. LTV Steel Co. (In re Chateaugay Corp.)*, 10 F.3d 944, 960–61 (2d Cir. 1993) (reorganized debtor had no obligation to effectively bond an appeal by a creditor by setting up a reserve for payment of an alleged priority claim; the creditor could protect its position by seeking stay pending appeal and had no due process right to a reserve); *In re Tribune Co.*, 476 B.R. 843, 865 (Bankr. D. Del. 2012) ("when it comes to establishing reserves, there is a reasonable basis to discriminate between the Holders of Disputed Claims, whose claims have not yet been litigated," and claims that already "have been the subject of litigation before this Court"). This is particularly true in view of the Debtors' liquidity.

Obj. No.	**Objecting Party**	**Objection**	**Debtors' Response**
		b. Default interest and other "Secured Obligations" due under the indentures should be paid or reserved for.	b. If the Debtors refinance the obligations, the Plan requires that the Debtors pay all Allowed Claims in full. Consequently, the Debtors will be obligated to pay all amounts payable in accordance with the terms of the applicable agreements and applicable law (whatever those amounts may be). Similarly, if the Debtors reinstate the obligations, all amounts payable in accordance with the terms of the applicable agreements and applicable law, including the reinstatement provisions of the Bankruptcy Code, will be paid. To the extent there is any dispute with respect to the foregoing amounts to be paid, it will be resolved by the Bankruptcy Court and is not an issue to be decided in connection with Plan confirmation. *See, e.g.*, *In re Oneida Ltd.*, 351 B.R. 79, 95–96 (Bankr. S.D.N.Y. 2006) (declining to rule on creditor's claim for interest and rejecting objection that reorganization plan "unfairly discriminates against [creditor] because the Plan does not provide for post-petition interest on its disputed claim" where "if any unsecured creditor has an entitlement to interest under applicable non-bankruptcy law, such interest will have to be paid, and the Plan will have to be construed to provide for such payment").
		c. The Debtors should be required to disclose treatment of creditor prior to the Effective Date.	c. The Debtors will advise the objecting party of the relevant treatment on or before the Effective Date.

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C. Taxing Authority Objections			
13.	**Salt Lake County Treasurer ("Salt Lake County")** ECF No. 9115	a. Objects to the Plan to the extent it seeks to classify the objector's claim as a "Priority Tax Claim" and not a "Secured Claim."	a. Salt Lake County's proof of Claim (No. 3113) is disputed by the Debtors. To the extent such Claim is allowed, whether as a Priority Claim or a Secured Claim, the Debtors will pay the Allowed amount of the Claim in full in Cash, together with any interest calculated pursuant to section 511 of the Bankruptcy Code. Thus, the classification of Salt Lake County's Claim as a Priority Tax Claim or a Secured Claim is irrelevant.
		b. Objects to Section 7.7 of the Plan to the extent Salt Lake County is not entitled to receive interest after the Effective Date.	b. Section 7.7 of the Plan is not intended to apply to tax Claims. To the extent the Salt Lake County's disputed Claim and interest becomes Allowed and payable after the Effective Date, the Debtors will pay such Claim together with any interest payable thereon calculated pursuant to section 511 of the Bankruptcy Code.
14.	**State of Michigan, Department of Treasury** ECF No. 9146	Objects to the Plan to the extent it seeks to limit collection of tax debts due from non-Debtors.	The Plan does not affect the obligations of any non-Debtors to pay tax debts to any taxing authority.
15.	**Los Angeles County Treasurer and Tax Collector** ECF No. 9328	Objects to the Plan to the extent it does not provide for payment of the full amount of future property taxes plus interest on any unpaid or delayed payments.	As noted in the Objection, the Debtors have timely paid all taxes to the objector as they have come due. The Claims identified in the Objection relate to future tax obligations that have not yet become payable. The Debtors will continue to satisfy their undisputed tax obligations as and when such obligations arise in the ordinary course. Section 7.7 is not intended to apply to tax Claims. To the extent any interest becomes Allowed and payable, the Debtors will pay such interest calculated pursuant to section 511 of the Bankruptcy Code.

Obj. No.	Objecting Party	Objection	Debtors' Response
16.	**Texas Ad Valorem Taxing Jurisdictions (the "Texas Taxing Authorities")** ECF No. 9332	Taxes for 2013 are entitled to be timely paid.	The Debtors have timely paid all undisputed taxes as they have come due and will continue to satisfy their undisputed tax obligations as and when such obligations arise in the ordinary course.
17.	**Miami-Dade County Tax Collector** ECF No. 9345	The Plan should clarify that claims for ad valorem taxes will be paid with interest if the Debtors are delinquent.	The Debtors have timely paid all undisputed taxes as they have come due and will continue to satisfy their undisputed tax obligations as and when such obligations arise in the ordinary course. To the extent any interest becomes Allowed and payable, the Debtors will pay such interest calculated pursuant to section 511 of the Bankruptcy Code.
D. *Pro Se* Objections			
18.	**Charles H. Ingram** ECF No. 8659	a. Objects to modification of retiree benefits.	a. The Plan does not seek to modify retiree benefits pursuant to section 1114 of the Bankruptcy Code or otherwise. Accordingly, the Objection is not relevant to Plan confirmation and should be overruled. In connection with retiree health benefits, the Debtors commenced an adversary proceeding on July 6, 2012 styled *AMR Corp. and American Airlines, Inc. v. Committee of Retired Employees*, Adv. Pro. No. 12-01744 (the "**Retiree Adversary Proceeding**"), seeking a declaratory judgment that, among other things, the retiree health and welfare benefits are unvested benefits, which may be modified unilaterally by the Debtors. As provided in the Plan (section 8.4(a)), to the extent the Debtors or New AAG, as applicable, are unsuccessful in whole or in part in obtaining the relief requested in the Retiree Adversary Proceeding, any remaining vested retiree health and welfare benefits will be treated in accordance with the provisions of section 1129(a)(13) of the Bankruptcy Code.

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		b. Objects to payment to Mr. Horton.	b. See section I(A)(1)-(2) of the Debtors' Brief.
19.	**Wan Andrea Jones** ECF No. 8791	Objects to modification of retiree benefits.	See Debtors' Response to Objection number 18(a) (Charles Ingram).
20.	**Kenneth T. VanBell** ECF No. 8794	a. Objects to modification of retiree benefits.	a. See Debtors' Response to Objection number 18(a) (Charles Ingram).
		b. Objects to the payment to Mr. Horton.	b. See section I(A)(1)-(2) of the Debtors' Brief.
21.	**Don Urban** ECF No. 8887	a. Objects to modification of retiree benefits.	a. See Debtors' Response to Objection number 18(a) (Charles Ingram).
		b. Objects to the payment to Mr. Horton.	b. See section I(A)(1)-(2) of the Debtors' Brief.
22.	**George W. Miller** ECF No. 9056	Objects to modification of retiree benefits.	See Debtors' Response to Objection number 18(a) (Charles Ingram).
23.	**Rose Watkins** ECF No. 9140	Objects to venue of bankruptcy proceeding in New York.	The Objection is not relevant to Plan confirmation. In any event, venue is properly before this Court pursuant to 28 U.S.C. § 1408.
24.	**Pamela Lane** ECF No. 9141	Objects to modification of retiree benefits.	See Debtors' Response to Objection No. 18(a) (Charles Ingram).
25.	**Charles H. Norman III** ECF No. 9226	Objects to modification of retiree benefits.	See Debtors' Response to Objection No. 18(a) (Charles Ingram).

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26.	**Patricia L. Young** ECF No. 9246	Objects to modification of retiree benefits.	See Debtors' Response to Objection No. 18(a) (Charles Ingram).
27.	**Brian McDaniel** ECF No. 9291	Requests delay of confirmation until the AMR Board can resolve the former Sabre Dual Retiree issues.	The Objection is not relevant to Plan confirmation because the Plan does not provide for the modification of, or otherwise address, the Sabre Dual Retiree program. In any event, Mr. McDaniel has made numerous requests of this Court in connection with his unfounded claim to retiree travel privileges based on the Sabre Dual Retiree program. As the Debtors explained in greater detail in the Debtors' Response and Objection to the Letter Request, dated November 19, 2012, of Brian McDaniel, dated January 18, 2013 (ECF No. 6275), Mr. McDaniel does not meet the eligibility requirements to be entitled to retiree flight privileges. Thus, there is no open issue as to the entitlement of Sabre retirees for the AMR Board to resolve.
E.	**Resolved Objections**		
28.	**Cantor Fitzgerald & Co.** ECF No. 9335	This Objection has been resolved. The following language will be included in the proposed Confirmation Order: Notwithstanding anything to the contrary in the Plan or this Confirmation Order, (a) the Stipulation and Agreed Order Resolving Motion of Cantor Fitzgerald & Co., et al., For Order Granting Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)(1), entered on January 30, 2012 (ECF No. 920) (the "**Cantor Fitzgerald Stipulation and Order**"), shall remain in full force and effect notwithstanding confirmation of the Plan and/or the occurrence of the Effective Date, and the rights and remedies of all parties to the stipulation and Order are hereby preserved and retained, and shall be unaffected by confirmation of the Plan and/or occurrence of the Effective Date.	

Obj. No.	Objecting Party	Objection	Debtors' Response
29.	**Aeritas, LLC** ECF No. 9333	This Objection has been resolved. The following language will be included in the proposed Confirmation Order: Notwithstanding anything to the contrary in the Plan or this Confirmation Order . . . (b) the Stipulation Resolving Motion of Aeritas, LLC for Entry of Order Pursuant to 11 U.S.C. § 362(d) to Modify the Automatic Stay, entered on July 22, 2013 (ECF No. 9252) (the "**Aeritas Stipulation**") shall remain in full force and effect notwithstanding confirmation of the Plan and/or the occurrence of the Effective Date, and the rights and remedies of all parties to the Aeritas Stipulation are preserved and retained and shall be unaffected by confirmation of the Plan and/or occurrence of the Effective Date.	
30.	**Agencia Especial de Financiamento Industrial** ECF Nos. 9422, 9424	This reservation of rights has been resolved. The following language will be included in the proposed Confirmation Order: Each agreement listed on Schedule 8.1(c)(1) of the Plan Supplement shall be deemed, as appropriate, reinstated or assumed as of the Effective Date.	
31.	**ACE Companies** ECF No. 9415	This reservation of rights has been resolved pursuant to an agreed stipulation and order that has been submitted to the Court for approval.	
32.	**City of Fort Worth/Alliance Airport Authority, Inc.** ECF No. 9353	This Objection has been resolved. The Debtors (i) are not seeking to discharge any obligations under that certain Consent Order dated February 7, 2013 by the Plan, and (ii) agree that the objector retains any rights and defenses in the case of an assumption, assumption and assignment, or rejection of the 1990 Facility Lease (as defined in the Objection) or the 1991 Equipment Lease (as defined in the Objection).	