Re: Docket Nos. 8590, 9332, 9334,
9337, 9339,9346, 9348, 9351, 9352,
9371, 9373, 9390, 9427, 9466, and 9473

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

STATEMENT OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS (A) IN SUPPORT OF CONFIRMATION
OF THE DEBTORS' SECOND AMENDED JOINT CHAPTER 11 PLAN (DOCKET NO. 8590)
AND (B) IN RESPONSE TO OBJECTIONS TO THE PLAN (DOCKET NOS. 9332, 9334,
9337, 9339, 9346, 9348, 9351, 9352, 9371, 9373, 9390, 9427, 9466, and 9473)

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The Official Committee of Unsecured Creditors (the "Committee") hereby submits this statement (the "Statement") (a) in support of Confirmation of the Debtors' Second Amended Joint Chapter 11 Plan (Docket No. 8590) (the "Plan") and (b) in response to objections to the Plan (Docket Nos. 9332, 9334, 9337, 9339, 9346, 9348, 9351, 9352, 9371, 9373, 9390, 9427) (collectively, the "Objections"). With respect to the Plan, the Committee respectfully represents as follows:

Preliminary Statement

I. The Committee's Support for the Plan

1. At the outset of these chapter 11 cases, the Committee observed that its principal focus would be "forward-looking towards the Debtors' transformation into a profitable and sustainable global airline that will justify the requisite level of balanced and shared sacrifice among its stakeholders." (Docket No. 403 ¶ 5.) The Plan now before the Court represents, in the Committee's view, the blueprint for just such a transformation. The Plan is the product of months of intensive efforts and negotiations between the Debtors, the Committee, the Debtors' labor organizations, financial and trade creditors, and other economic stakeholders. The result is a consensual Plan that embodies a carefully considered global settlement (as reflected in the 9019 Settlement) that resolves complex and substantial issues that might otherwise hinder the Debtors' successful reorganization, and, thus, is itself value-maximizing for all of the Debtors' stakeholders. Given the remarkable value this Plan offers, it is unsurprising that each Class has voted overwhelmingly—by both number and amount—in favor of its confirmation.

2. The Plan is predicated on the Merger of the Debtors and US Airways.[1] The merged entity, which will inherit the American Airlines name, will be the largest airline in the world. With an expansive domestic and international network and a modern, fuel-efficient fleet, it will have the resources to compete successfully and the potential to generate sustainable returns for its stakeholders. Indeed, the Plan contemplates full recoveries for unsecured creditors and potentially more than $1 billion of returns for holders of existing equity interests (depending on the performance of the merged entity under the market test mechanics established in the Plan)—a result that is uncommon in chapter 11 cases generally and unprecedented in large airline bankruptcies.

3. The broad-based support for the Plan is due in large part to the extensive efforts of the Debtors, the Committee (and its individual members, composed of financial creditors, labor organizations, trade creditors, and the PBGC), and other key stakeholders who have worked to resolve numerous complex disputed issues and identify a reorganization strategy that delivers superior value. In a testament to the strong support this Plan enjoys, of the 435,000 parties receiving notice of the Plan, only one objecting party is substantively opposed to the confirmation of the Plan and consummation of the Merger.[2] None of the other 22 Objections that have been filed assert categorical opposition to the Plan and Merger. In general, the Objections fall into three categories: (1) structural Objections to the Plan;[3] (2) Objections to the

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

[2] Specifically, the Alioto Plaintiffs (as defined below) have instituted a private Clayton Act lawsuit against US Airways and, by their Objection, oppose confirmation of the Plan and consummation of the Merger on the grounds that the Merger violates the Clayton Act. As explained below, the Alioto Plaintiffs Objection is wholly meritless and presents no obstacle to confirmation.

[3] Structural Objections were asserted in the Objections of the Michigan Department of Treasury (Docket No. 9146) ("Michigan Objection"); Brian McDaniel (Docket No. 9291); various Texas taxing authorities (Docket No. 9332) (the "Texas Ad Valorem Taxing Jurisdictions Objection"); the Supplement B Pilot Beneficiaries (Docket No. 9334) (the "Supp B Pilots Objection"); US Airline Pilots Association (Docket No. 9337) (the

(cont'd)

Plan Payment Provisions (as defined below);[4] and (3) miscellaneous Objections that address the particular concerns of the objecting party.[5] For the reasons explained herein and in the Debtors' reply, the Objections should be overruled and the Plan confirmed.

4. The Plan represents a truly extraordinary opportunity to create a new American Airlines that will be positioned to compete as the preeminent global airline, to the benefit of its stakeholders in these cases. This is not an opportunity to be missed, and the Committee respectfully requests that the Plan be confirmed.

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"USAPA Objection"); the Allegheny County Airport Authority (Docket No. 9339) (the "PIT Objection"); U.S. Bank Trust National Association, as trustee for the 2009-1 and 2011-2 EETC transactions (Docket Nos. 9346 and 9352) (the "U.S. Bank 2009-1 & 2011-2 EETC Objection"); U.S. Bank Trust National Association, as trustee for the 10.5% senior secured notes due 2012 (Docket No. 9348) (the "U.S. Bank 10.5% Notes Objection"); the American Independent Cockpit Alliance (Docket No. 9351) (the "AICA Objection"); Hargrove Electrical Company, Inc. (Docket No. 9371) (the "Hargrove Objection"); the plaintiffs in the action entitled Fjord v. US Airways Group, Inc. (Docket Nos. 9373 and 9466) (the "Alioto Plaintiffs Objection"); U.S. Bank Trust National Association, as trustee and security agent for the 2009-2 secured notes due 2016 (Docket No. 9390) (the "U.S. Bank 2009-2 Notes Objection"); the U.S. Trustee (Docket No. 9427) (the "U.S. Trustee Objection"); and the Air Line Pilots Association (Docket No. 9473) (the "ALPA Objection"). The Committee notes that the U.S. Bank 2009-1 & 2011-2 EETC Objection comprises two separate papers: a "Limited Objection and Reservation of Rights" filed as Docket No. 9346 and a separate "Addendum" filed as Docket No. 9352. This so-called Addendum was untimely filed without explanation and does not advance any arguments that could not reasonably have been included in the principal response. The Committee therefore submits that the Court should give little or no weight to the arguments asserted in the Addendum. Similarly, the Alioto Plaintiffs Objection consists of an initial objection filed July 30, 2013 (Docket No. 9373) and an untimely "Supplemental Objection to Confirmation of Proposed Plan of Reorganization" filed August 5, 2013 (Docket No. 9466). The former is without merit, and the latter is untimely as well as meritless. Both should be overruled.

[4] Objections to the Plan Payment Provisions were asserted in the USAPA Objection and the U.S. Trustee Objection.

[5] Other Objections were asserted by the Salt Lake County Treasurer (Docket No. 9115) (the "Salt Lake Objection"); the Los Angeles County Treasurer (Docket No. 9328) (the "L.A. Treasurer Objection"); U.S. Bank National Association, as indenture trustee for the 7.50% senior secured notes due 2016 (Docket No. 9330) (the "U.S. Bank 7.5% Notes Objection"); the Texas Ad Valorem Taxing Jurisdictions Objection; Aeritas, LLC (Docket No. 9333); Cantor Fitzgerald & Co. (Docket No. 9335) (the "Cantor Fitzgerald Objection"); the Miami-Dade County Tax Collector (Docket No. 9345) (the "Miami Dade Objection"); the USAPA Objection; the City of Fort Worth and the AllianceAirport Authority, Inc. (Docket No. 9353) (the "Alliance Objection"); the PIT Objection; the Hargrove Objection; the U.S. Bank 2009-1 & 2011-2 EETC Objection; the U.S. Bank 10.5% Notes Objection; the U.S. Bank 2009-2 Notes Objection; ACE American Insurance Company (Docket No. 9415) (the "ACE Objection"); the Agencia Especial de Financiamento Industrial – FINAME (Docket No. 9422) (the "FINAME Objection").

II. Nature of the Objections

5. Structural objections to the Plan. These Objections generally assert that confirmation should be denied (or, in some cases, delayed) because certain aspects of the Plan are allegedly inconsistent with the Bankruptcy Code. These Objections can be further categorized as follows:

(a) Absolute priority rule Objections. These Objections contend that the Plan violates the absolute priority rule, see 11 U.S.C. § 1129(b)(2)(B)(ii), because it provides for distributions to equity interest holders without guaranteeing the full satisfaction of the objecting party's claim. See, e.g., Texas Ad Valorem Taxing Jurisdictions Objection ¶ 3; PIT Objection ¶¶ 28-30; Hargrove Objection at 2, EETC Objection at 3; 2009-2 Secured Notes Objection ¶ 3. But the absolute priority rule is inapplicable because the Debtors do not seek confirmation by "cram-down"—the only instance in which the absolute priority rule applies. The Debtors and the Committee have consistently represented that the Plan is based on the 9019 Settlement, which invoked a distribution scheme that does not follow the absolute priority rule. The decisive approval of the Plan and the 9019 Settlement embodied in it by all Classes of Claims and Interests entitled to vote makes the absolute priority rule objections moot.

(b) Objections to injunction, release, and exculpation provisions. These Objections suggest that the injunction, release, and exculpation provisions of the Plan are too broad. See, e.g., Michigan Objection at 2; USAPA Objection ¶ 11; U.S. Trustee Objection at 23. The Plan does not contain third-party, non-Debtor releases. The Committee believes that the injunction, release, and exculpation provisions that it does contain are customary and consistent with precedent in this district. These provisions were carefully disclosed to and overwhelmingly approved by stakeholders voting on the Plan. The Committee's four-page letter to general unsecured creditors (the "Committee Solicitation Letter"),[6] which accompanied the Debtors' Notice Packages (as defined below) specifically called creditors' attention to these provisions and urged creditors to carefully consider them in determining whether to accept the Plan.

(c) Section 1123(a)(4) Objections. Several parties assert that the Plan discriminates between holders of claims in the same class, in violation of section 1123(a)(4) of the Bankruptcy Code, particularly with respect to holders of Disputed Claims. See, e.g., PIT Objection ¶ 7; Hargrove Objection at 1-2. This Court has already determined, based on a full evidentiary record, that the Disputed Claims Reserve Amount is reasonable and sufficient. The Disputed Claims Reserve Amount therefore comports with the applicable legal standard for the treatment of disputed

[6] A copy of the Committee Solicitation Letter is attached as Exhibit A.

claims by providing "reasonable assurances" that holders of Disputed Claims subject to the Disputed Claims Reserve will receive the same recoveries as holders of Allowed Single-Dip General Unsecured Claims. In re Weiss-Wolf, Inc., 59 B.R. 653, 655 (Bankr. S.D.N.Y. 1986). Attempts to relitigate this issue at the Confirmation Hearing—especially by parties who asserted no objection to the Disputed Claims Reserve Motion—are improper. The Plan satisfies the requirements of section 1123(a)(4).

(d) Requests to delay Plan confirmation. Several parties prosecuting appeals arising from these chapter 11 cases, or actions pending in other courts that implicate the Plan or the Merger, request that the Court delay confirmation until those proceedings are resolved. See, e.g., Supp B Pilots Objection at 2; AICA Objection at 2; Alioto Plaintiffs Objection at 8; EETC Objection at 8 (seeking advisory opinion on impact of confirmation on mootness of make-whole appeal). The Committee notes that none of the parties asserting this objection have obtained a stay of the decision they are appealing (or, in the case of the Alioto Plaintiffs, obtained (or even properly requested) relief from the automatic stay, or other injunctive relief). Accordingly, the Court should proceed with confirmation notwithstanding the pendency of appeals or litigation in other forums. Parties seeking to delay the Effective Date of the Plan are entitled to seek a stay pending appeal of the confirmation order by, among other things, posting a bond sufficient to compensate other stakeholders for the losses caused by the delay in consummation of the Plan and Merger.

(e) Limited concerns regarding feasibility. Two parties express concern that the Debtors have not disclosed adequate information concerning their business plan for regional flying and assert that the Debtors may be unable to demonstrate feasibility, see 11 U.S.C. § 1129(a)(11), without furnishing additional information. See USAPA Objection ¶¶ 8-10; ALPA Response ¶¶ 3-4.[7] The Debtors have addressed their regional operations during the course of these chapter 11 cases by, among other things, implementing significant cost savings at American Eagle Airlines, Inc. ("Eagle"), entering into capacity purchase agreements with other regional carriers, and restructuring their regional fleet. Accordingly, the Debtors will be able to demonstrate feasibility at the Confirmation Hearing. What the Debtors are not required to do is to disclose their collective bargaining strategy regarding large regional jets or the market competitiveness of existing collective bargaining agreements at Eagle.

6. Objections to Plan Payment Provisions. Two parties, the U.S. Trustee and the US Airline Pilots Association ("USAPA") (a labor organization that does not represent any of the

[7] While the ALPA Objection—untimely filed on August 6, 2013—is expressly not an objection, nor a joinder to any other Objection, see ALPA Response ¶ 1, but asserts that the Court has an independent obligation to assess the feasibility of the Plan pursuant to section 1129(a)(11) as it relates to regional lift and regional aircraft, see id. ¶¶ 2-4, the Committee urges the Court to construe the ALPA Objection as an objection and overrule it for the reasons set forth herein.

Debtors' stakeholders), object to certain Plan provisions on the grounds that these provisions violate section 503 of the Bankruptcy Code. The Plan contains three substantive provisions that the U.S. Trustee finds objectionable: (i) the reimbursement of professional fees and expenses incurred by Indenture Trustees pursuant to section 2.4 of the Plan (the "Indenture Trustee Payment Provision"), (ii) the reimbursement of professional fees incurred by individual Members of the Committee pursuant to section 6.23 of the Plan (the "Committee Payment Provision"), and (iii) the approval of the Chairman Letter Agreement pursuant to section 6.24 of the Plan (together with the Indenture Trustee Payment Provision and the Committee Payment Provisions, the "Plan Payment Provisions"). USAPA objects to the Chairman Letter Agreement, but not the Indenture Trustee Payment Provision or the Committee Payment Provision. While these objections do not implicate the basic structure of the Plan, the Committee nonetheless has an interest in approval of the Plan Payment Provisions because these provisions are integral elements of the Merger Agreement and related 9019 Settlement, and efforts to consider these provisions in isolation should be rejected by the Court. Moreover, as set forth in detail below, the Committee believes that section 503 does not furnish the applicable standard for the Plan Payment Provisions. Instead, these provisions may be approved as a reasonable and bargained-for aspect of this consensual Plan—which is predicated on estates that are reorganization solvent because of the anticipated value to be created for the Debtors' economic stakeholders pursuant to the Merger. While the Committee respects the U.S. Trustee's role as a statutory watchdog, the program policy positions of the U.S. Trustee relating to the Plan Payment Provisions do not rise to the level of the force of law and should not be permitted to trump the case law established in this district on these issues.

7. Other Objections. Several other parties have filed objections, limited objections, and reservations of rights that address circumstances unique to them. The Committee

understands that many such Objections have been resolved and anticipates that others will be resolved before the Confirmation Hearing. To the extent any remain, the Committee believes they are adequately addressed in the Debtors' reply brief, and the Committee hereby joins the Debtors' reply to such Objections.[8]

Background

I. The Chapter 11 Filings

8. On November 29, 2011 (the "Petition Date"), each of the Debtors filed with this Court voluntary petitions for relief under the Bankruptcy Code. The Debtors, together with their non-Debtor affiliates, form one of the largest global airlines based in the United States. The Debtors continue to operate their respective businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

9. On December 5, 2011, the U.S. Trustee appointed the Committee, which consists of nine members (each a "Member").[9]

II. The Collaborative Evaluation of Strategic Alternatives and the Execution of the Merger Agreement

10. Throughout these cases, the Committee and the Debtors have worked in close collaboration to evaluate the Debtors' restructuring alternatives and formulate a consensual plan of reorganization that delivers superior value to economic stakeholders. These efforts included, among other things: (i) the evaluation of restructuring alternatives, ultimately culminating in the

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[8] Specifically, the Committee joins the Debtors' reply to the Salt Lake Objection, the Michigan Objection, the U.S. Bank 7.5% Notes Objection, the Aeritas Objection, and the Miami-Dade Objection.

[9] The Committee is comprised of the Allied Pilots Association (the "APA"), the Association of Professional Flight Attendants (the "APFA"), Bank of New York Mellon ("BNYM"), Boeing Capital Corporation, Hewlett Packard Enterprise Services, LLC ("Hewlett-Packard"), Manufacturers and Traders Trust Company ("M&T Bank"), the Pension Benefit Guaranty Corporation ("PBGC"), the Transportation Workers Union of America (the "TWU"), and the Wilmington Trust Company ("Wilmington Trust").

execution of a definitive merger agreement between the Debtors and US Airways; and (ii) the negotiation of the Plan, the 9019 Settlement, the memoranda of understanding between the Debtors, US Airways, and their respective labor organizations, and the employee arrangements, all of which are predicated on the Merger.

11. On February 14, 2013, the Debtors and US Airways announced the execution of a definitive Merger Agreement. On April 11, 2013, this Court entered a Memorandum of Decision approving the Merger Agreement, noting that the Merger "has the overwhelming support of the UCC, the Consenting Creditors, the Ad Hoc Committee and the Debtors' labor unions." See Mem. of Decision at 6, In re AMR Corp., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Apr. 11, 2013) (Docket No. 7587); see also Order, In re AMR Corp., Case No. 11-15463 (Bankr. S.D.N.Y. May 10, 2013) (Docket No. 8096). Pursuant to the Merger Agreement, 72% of the equity of the merged entity, New AAG, will be distributed to the Debtors' economic stakeholders.

III. The Support Agreement

12. To ensure timely support for the Merger, the Debtors, the Committee, and the Ad Hoc Committee negotiated the terms and conditions of the Support and Settlement Agreement (Docket No. 8154) (the "Support Agreement"). Among other things, the Support Agreement reflected the Debtors' agreement to propose a plan of reorganization substantively consistent with a term sheet, attached as Exhibit A to the Support Agreement, which outlined a distribution mechanism for all claims and interests under a plan of reorganization, including an initial distribution of 3.5% of the common stock of the new combined company to holders of existing equity interests in AMR.

13. The Support Agreement provides that, in connection with their support for a plan of reorganization implementing the Merger, certain members of the Ad Hoc Committee and

other creditors holding approximately $1.6 billion in prepetition general unsecured claims against the Debtors (collectively, the "Consenting Creditors") would support such a plan of reorganization. On June 4, 2013, this Court entered an order approving the Support Agreement (Docket No. 8577).

IV. The Plan and 9019 Settlement

14. On June 5, 2013, the Debtors filed the Plan and the accompanying Disclosure Statement for Debtors' Second Amended Joint Chapter 11 Plan (Docket No. 8591) (the "Disclosure Statement"). The Plan incorporates extensive input from the Committee, the Ad Hoc Committee, and US Airways, and is consistent with the Merger Agreement and the Support Agreement. The Plan incorporates the global 9019 Settlement of numerous and complex issues relating to the distribution of proceeds to creditors and interest holders. Among other matters, the 9019 Settlement resolves the treatment of Double-Dip, Single-Dip, and Intercompany Claims through a distribution mechanism that distributes the consolidated proceeds of the Debtors' estates to creditors and interest holders based on the trading price of New AAG common stock at specific measurement points during the 120 days following the Effective Date of the Plan.

15. On June 7, 2013, this Court entered an order approving the Disclosure Statement (Docket No. 8614) (the "Disclosure Statement Order"), permitting the Debtors to begin the Plan solicitation process. The Disclosure Statement Order established the hearing to determine whether to confirm the Plan for August 15, 2013 (the "Confirmation Hearing"). By June 20, 2013, the Debtors mailed or caused to be mailed the Notice Packages in connection with soliciting votes in favor of the Plan, notice of the Confirmation Hearing, and the filing of objections to confirmation of the Plan. The Debtors' Notice Packages contained a letter of

support from the Committee dated as of June 10, 2013, urging creditors to vote in favor of the Plan.

16. The last day to submit votes in favor of the Plan was July 29, 2013 at 5:00 p.m. (Eastern Time). Disclosure Statement Order ¶ 13. The Debtors have reported that all Classes of voting claims have accepted the Plan, including approval of the Merger Agreement, which was previously approved by US Airways shareholders.[11]

17. The Court established July 30, 2013 at 4:00 p.m. (Eastern Time) as the deadline for filing objections to the confirmation of the Plan. Twenty-two Objections to the Plan were filed, including several objections to the structure of the Plan as well as the Objections of the U.S. Trustee and USAPA.

Argument

I. The Plan Satisfies the Requirements of Section 1129(a) of the Bankruptcy Code[12]

A. Absolute Priority Objections by Creditors of Accepting Classes are Moot

18. A handful of Objections assert that the Plan cannot be confirmed because the Plan allegedly does not comply with the absolute priority rule. See, e.g., Texas Ad Valorem Taxing Jurisdictions Objection ¶ 3; PIT Objection ¶¶ 28-30; Hargrove Objection at 2; U.S. Bank 10.5% Notes Objection at 5; U.S. Bank 2009-2 Notes Objection ¶¶ 42-43. These parties misunderstand the applicability of the absolute priority rule to this Plan. As described in the Disclosure Statement, see Disclosure Statement § IV.F.3, and the Committee's Solicitation Letter, distributions pursuant to the Plan will be made in accordance with the terms of the 9019

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[11] On July 12, 2013, US Airways held its 2013 Annual Meeting of Stockholders. At the meeting, the stockholders of US Airways adopted the Merger Agreement by a wide margin, with more than 99 percent of voted shares voting in favor of the Merger. See US Airways Group, Inc., Current Report (Form 8-K), at 4 (July 12, 2013).

[12] As the Debtors have demonstrated in their Reply, and will further demonstrate at the Confirmation Hearing, the Plan satisfies all requirements for confirmation. This Statement addresses the Committee's position as to those section 1129(a) confirmation requirements argued in the Objections.

Settlement, which may not strictly comply with the absolute priority rule in certain circumstances. Creditors and equity interest holders have overwhelmingly approved the Plan and the 9019 Settlement. The absolute priority rule Objections should be overruled because, where each Class has voted to accept the Plan—that is, where "cram-down" is not sought—the absolute priority rule set forth in section 1129(b) of the Bankruptcy Code is inapplicable.

19. Section 1129 of the Bankruptcy Code delineates the requirements for confirmation of a plan of reorganization. It consists of two subsections. Subsection (a) specifies the general requirements for confirmation (including the requirement that all impaired classes have accepted the plan. See 11 U.S.C. § 1129(a)(8)). Subsection (b) authorizes the confirmation of a plan over the objection of an impaired, non-accepting class, if certain further requirements are met. Id. § 1129(b).

20. Consistent with the plain meaning and structure of section 1129, courts do not require debtors to demonstrate satisfaction of the absolute priority rule with respect to accepting classes.[13] As the Second Circuit has explained, section 1129(b)(2)(B)(ii) (which codifies the absolute priority rule) "describes the conditions under which a plan of reorganization may be approved notwithstanding the objections of an impaired class of creditors, a situation known as a 'cramdown.'" Motorola, Inc., v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 462 (2d Cir. 2007) (emphasis added). Accordingly, courts routinely and uniformly reject absolute-priority objections raised by dissenting holders of claims or interests

[13] The phrase "fair and equitable" in section 1129(b) is always conjoined with the phrase "with respect to a class" or "with respect to each class," making clear that the requirement does not apply to individual dissenting creditors within an accepting class. See In re Winters, 99 B.R. 658, 662 (Bankr. W.D. Penn. 1989) (explaining that section 1129(b), enacted as part of the Bankruptcy Code of 1978, departed from the "fair and equitable" rule contained in Chapter X and section 77 of the Bankruptcy Act, which had previously applied to minority dissenting creditors within an accepting class). In other words, "Congress changed the absolute priority rule so that it now applies only to each class as a whole, and not to minority dissenters within [an accepting] class." Id. at 663.

whose class has accepted the plan.[14] Here, because all Classes of Claims and Interests have accepted the Plan, the Plan need not comply with the absolute priority rule.

B. The Exculpation and Release Provisions are Reasonable and Appropriate

21. The Committee believes that the Plan's exculpation and release provisions are appropriately crafted and reasonable in form and scope. Contrary to the assertions of certain objectors, see USAPA Objection ¶ 11; U.S. Trustee Objection at 23, the Plan simply does not contain any non-Debtor, third-party releases—even though such releases are permissible in the Second Circuit. See Deutsche Bank AG v. Metromedia Fiber Network, Inc., (In re Metromedia Fiber Network, Inc.), 416 F.3d 136, 142-43 (2d Cir. 2005). Rather, the Plan's release provision releases only Causes of Actions belonging to the Debtors, or derivative of the Debtors, see Plan Plan § 10.8, and the Plan's exculpation provision is limited to "act[s] or omission[s] in connection with, related to, or arising out of" these cases, id. § 10.7. The Plan does not purport to release Causes of Action held by third-parties against non-Debtor entities unrelated to the chapter 11 cases.

22. The U.S. Trustee argues that the Debtors have failed to demonstrate "why the exculpation" of "third-parties who are not estate fiduciaries who served during the chapter 11 cases" is appropriate. U.S. Trustee Objection at 25-26. The Committee believes that the exculpation provision is reasonable and consistent with practice in this District. Each of the

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[14] See, e.g., W.R. Grace & Co., 475 B.R. 34, 174-75 (D. Del. 2012) (citing In re Dow Corning Corp., 244 B.R. 678, 693 (Bankr. E.D. Mich. 1999) (rejecting creditors' absolute priority argument because "all impaired classes entitled to vote . . . all voted overwhelmingly to accept the [plan]"); In re Worldcom, Inc., No. 02-13553 (AJG), 2003 WL 23861928, at *43 (Bankr. S.D.N.Y. Oct. 31, 2003) ("absolute priority rule does not apply" where class votes to accept plan). In re United Marine, Inc., 197 B.R. 942, 948 (Bankr. S.D. Fla. 1996) (holding that a "lone dissenter . . . cannot invoke the absolute priority rule"); Winters, 99 B.R. at 663 ("The Code does not give the minority dissenting creditor a right to raise an objection based on the absolute priority rule which is contained in § 1129(b)(2)."); cf. In re Bd. of Dirs. of Telecom Argentina S.A., No. 05-17811 (BRL), 2006 WL 686867, at *28 (Bankr. S.D.N.Y. Feb. 24, 2006) (despite permitting equity holders to retain their interests, Argentinian reorganization plan was consistent with U.S. public policy and would be enforced under principles of comity because, "[g]iven the extremely high vote in favor of the [plan], U.S. law would favor approval whether or not the absolute priority rule were met").

exculpated parties, including the professionals of each of the Committee Members and US Airways, contributed significantly to the resolution of these chapter 11 cases and has been integral to the success of the Plan. In particular, each of the Committee Members' professionals advised the Committee Members in their capacity as such with respect to (i) participating in the discussions with the Debtors and US Airways that resulted in the Merger Agreement, which formed the basis for the structure of this Plan, and (ii) negotiating the Plan, which provides for substantial recovery to the Debtors' general unsecured creditors and has garnered acceptances from the overwhelming majority of parties entitled to vote. US Airways' contributions to the Plan can hardly be overstated. This Plan could not exist without US Airways' participation.

23. Moreover, the exculpation provisions are (a) narrow in scope, (b) relate only to acts or omissions in connection with, related to, or arising out of the Chapter 11 Cases, and (c) carve out liability resulting from willful misconduct or gross negligence. See In re Enron Corp., 326 B.R. 497, 504 (S.D.N.Y. 2005) (noting that the exculpation provision was appropriate because it excluded acts of gross negligence and willful misconduct); In re Oneida Ltd., 351 B.R. 79, 94 n.22 (Bankr. S.D.N.Y. 2006) (stating that an exculpation provision that carves out gross negligence and willful misconduct, and covers only acts done in connection with the chapter 11 cases is appropriate).

24. Courts in this District and elsewhere in the Second Circuit have approved similar exculpatory provisions, including provisions exculpating, among others, professionals, attorneys and advisors of members of official committees. See, e.g., In re Pinnacle Airlines Corp. Case No. 12-11343 (REG) (Bankr. S.D.N.Y. Apr. 17, 2013); In re Hawker Beechcraft, Inc., Case No. 12-11873 (SMB) (Bankr. S.D.N.Y. Feb. 1, 2013); In re Arcapita B.S.C. (c), Case No. 12-11076 (SHL) (Bankr. S.D.N.Y. June 17, 2013); In re Dynegy Holdings, LLC, Case No. 11-38111 (CGM) (Bankr. S.D.N.Y. Sept. 10, 2012); In re Gen. Maritime Corp., Case No. 11-15285 (MG)

(Bankr. S.D.N.Y. May 3, 2012); In re The Great Atl. & Pac. Tea Co., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 27, 2012); In re TerreStar Networks Inc., Case No. 10-15446 (SHL) (Bankr. S.D.N.Y. Feb. 15, 2012); In re Lehman Bros. Holdings., Inc., Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Dec. 6, 2011).

25. USAPA, while quoting the language of section 10.7 of the Plan, see USAPA Objection ¶ 13— and engaging in a lengthy discussion over the scope of the phrase "related to"—overlooks that the exculpation provision, by its terms, applies to "any holder of a Claim or Equity Interest." Plan § 10.7. USAPA has not, to the Committee's knowledge, ever asserted that it is a holder of a Claim against, or Equity Interest in, the Debtors. Its concerns regarding the Plan's exculpation provision are therefore misplaced for two reasons: (1) the Plan does not contain any non-Debtor, third-party releases and (2) the exculpation provision only applies to holders of Claims or Equity Interests.

26. In addition to its complaints about the breadth of the exculpation, USAPA objects to the Bankruptcy Court's retention of exclusive jurisdiction over Claims against the Exculpated Parties "involving or relating to the administration of the Chapter 11 Cases." Plan § 10.7. USAPA fears that this provision may give the Bankruptcy Court "'exclusive jurisdiction' over post-confirmation labor-management disputes between US Airways and its successor . . . and USAPA." USAPA Objection ¶ 26. However, USAPA overlooks the fact that the exclusive jurisdiction provisions set forth in section 10.7 are expressly "subject to any applicable subject matter jurisdiction limitations." Plan § 10.7. Thus, the Plan preserves all applicable limits on the Court's subject-matter jurisdiction.

27. For this reason, it is fanciful to suggest that the exculpation provisions invest the Bankruptcy Court with jurisdiction over bilateral collective bargaining agreement obligations between US Airways and USAPA, including "currently outstanding grievances under USAPA's

collective bargaining agreements." USAPA Objection ¶ 19. On the other hand, while bilateral obligations between US Airways and USAPA under their existing CBA are clearly beyond the scope of the chapter 11 cases, the four-party MOU, in contrast, is closely intertwined with the Plan and Merger. USAPA knew and accepted that the MOU required Bankruptcy Court approval and has no grounds to complain if the Bankruptcy Court exercises exclusive jurisdiction over disputes involving the parties' entry into the MOU or the Bankruptcy Court's order approving the same.[15]

C. The Plan Satisfies the Requirements of Section 1123(a)(4)

28. Several parties contend that the Plan discriminates against holders of claims within the same class in violation of section 1123(a)(4) of the Bankruptcy Code. Two parties, PIT and Hargrove, complain that holders of Disputed Single-Dip General Unsecured Claims—whose recoveries are limited to the aggregate number of shares in the Disputed Claims Reserve—are treated less favorably than holders of Allowed General Unsecured Claims. See PIT Objection ¶ 7; Hargrove Objection at 1. In addition, two U.S. Bank responses assert that the Plan discriminates among holders of American Secured Aircraft Claims by allowing the Debtors to make a post-confirmation election regarding the treatment of such claims and by failing to provide for the possibility that the make-whole appeal will be decided in U.S. Bank's favor. See U.S. Bank 2009-1 & 2011-2 EETC Addendum at 2-3; U.S. Bank 2009-2 Objection ¶ 1.

29. First, PIT and Hargrove's objections to the adequacy of the Disputed Claims Reserve Amount are untimely. Neither party objected to the Disputed Claims Reserve Motion

[15] At the same time, section 10.7 clearly does not contemplate that the Bankruptcy Court will retain exclusive jurisdiction over any labor dispute connected to the MOU, no matter how remotely. Indeed, several provisions of the MOU expressly provide for the arbitration of certain categories of disputes. See, e.g., MOU ¶¶ 10, 19.

(Docket No. 8985), and they should not be able to resurrect waived objections to that Motion in the guise of a confirmation objection.

30. Second, even if the Court reaches the merits, the PIT and Hargrove Objections should still be overruled. As the case cited by PIT itself establishes, a debtor need only provide "reasonable assurance that [holders of disputed claims] will receive" the same treatment as holders of claims that are allowed on the effective date. See PIT Objection ¶ 23 (quoting In re Weiss-Wolf, Inc., 59 B.R. 653, 655 (Bankr. S.D.N.Y. 1986)). The Debtors have satisfied this burden. Neither PIT nor Hargrove has presented any evidence showing a demonstrable risk that the Disputed Claims Reserve will be inadequate to satisfy their claims in full. As explained in the Committee's statement in support of the Disputed Claims Reserve Motion (Docket No. 9243) (the "Committee's Disputed Claims Reserve Statement"), "the Disputed Claims Reserve Amount is predicated on conservative assumptions that, based on the Committee professionals' due diligence, do not present a material risk that Disputed Claims will be allowed in the aggregate in amounts that exceed the Disputed Claims Reserve." Committee's Disputed Claims Reserve Statement ¶ 10. Contrary to PIT's assertion that the Disputed Claims Reserve Amount has no evidentiary basis, the Debtors introduced into evidence a non-rebutted, detailed claim-by-claim "build up" of the Disputed Claims Reserve Amount for the Court's review and consideration as an integral part of the record supporting the Court's approval of the Disputed Claims Reserve Motion. PIT also ignores the fact that the Bankruptcy Court established a Disputed Claims Reserve Amount significantly higher than even the Debtors' high-end estimate of the potential allowed amounts of Disputed Single-Dip General Unsecured Claims. Based on the evidence in the record, the Debtors have more than satisfied their burden of providing "reasonable assurance" that holders of Disputed Single-Dip General Unsecured Claims will receive the same distributions as holders of Allowed Single-Dip General Unsecured Claims.

31. U.S. Bank's section 1123(a)(4) objection as to American Secured Aircraft Claims also misses the mark. U.S. Bank's objection rests on the mistaken premise that the Plan must provide for the possibility that U.S. Bank's make-whole appeal will succeed. See U.S. Bank 2009-1 & 2011-2 EETC Addendum at 3-4; U.S. Bank 2009-2 Objection ¶¶ 20-27. But because the stay of the Bankruptcy Court's judgment regarding the make-whole dispute has expired, see Order Granting in Part and Denying in Part Motion for a Stay Pending Appeal ¶¶ 1, 3 (Docket No. 6905), the Debtors are entitled to treat the Court's judgment as final and need not make any provision for the possibility that the Bankruptcy Court may be reversed on appeal. See Pappas v. Int'l Mineral and Res., S.A. (In re Pappas), 215 B.R. 646, 650 & n.5 (2d Cir. B.A.P. 1998) ("Absent a stay pending appeal, the prevailing party is entitled to treat the order of the bankruptcy court as final."); see also Frito-Lay, Inc. v. LTV Steel Co. (In re Chateaugay Corp.), 10 F.3d 944, 960-61 (2d Cir. 1993) (neither the Constitution nor the Bankruptcy Code requires a debtor to reserve for a creditors' claim pending appeal).

D. Plan Confirmation Should Not be Delayed

32. U.S. Bank is not the only party mistaken as to its rights as an appellant. Two pilot groups, the Supp B Pilots and AICA, seek to delay confirmation until the district court adjudicates their appeals of the Bankruptcy Court's orders abrogating the old APA CBA and approving a new CBA. See Supp B Pilots Objection at 2; AICA Objection at 1-2. Both pilot groups argue that confirmation of the Plan prior to resolution of the appeals would prejudice their "rights to effective relief" with respect to the appeals. Supp B Pilots Objection at 2; AICA Objection at 1-2. But unless a litigant has obtained a stay pending appeal (and these groups have not), there is no such right. See Pappas, 215 B.R. at 650 & n.5. Accordingly, this Court need not wait on the district court to confirm the Plan.

33. The Alioto Plaintiffs similarly request that the Court deny confirmation in light of litigation pending in another forum. The Alioto Plaintiffs are a group of individuals represented by the Alioto Law Firm asserting antitrust claims against the Merger. The Alioto Law Firm has unsuccessfully pursued similar litigation against other high-profile corporate transactions, including the United/Continental and Southwest/AirTran mergers. The Alioto Plaintffs are currently suing US Airways in the United States District Court for the Northern District of California, alleging that the Merger is anti-competitive and violates section 7 of the Clayton Act, 15 U.S.C. § 18. In addition, on August 6, 2013, the Alioto Plaintiffs commenced an adversary proceeding in this Court seeking a declaratory judgment that the Merger violates section 7 of the Clayton Act and preliminary and injunctive relief. See Complaint at 25, Fjord v. AMR Corp., Adv. No. 13-01392 (SHL) (Bankr. S.D.N.Y. Aug. 6, 2013).

34. Both the California action and the adversary proceeding are grossly improper and neither presents any obstacle to confirmation. While the Alioto Plaintiffs are entitled to due process, they are not entitled to abuse due process by filing improper and untimely pleadings and then insist that the Court delay confirmation of the Plan until those pleadings are resolved. The Alioto Plaintiffs have clearly understood their obligation to file an objection to confirmation by the July 30, 2013 objection deadline, as evidenced by their initial Objection. Yet, they delayed until August 5, 2013 to file their supplemental objection and until August 6, 2013 to file their adversary complaint. This Court should not countenance these dilatory tactics and should overruled the Alioto Plaintiffs Objection.

35. Although the Alioto Plaintiffs have strategically avoided naming the Debtors as defendants in the California action, by invoking the jurisdiction of this Court and objecting to confirmation of the Plan, the Alioto Plaintiffs implicitly concede that the entry of a confirmation

order constitutes conclusive judicial approval of the Plan, at least as to private parties.[16] See Alioto Plaintiffs Objection at 12 (citing Levy v. Cohen, 561 P.2d 252, 255-57 (Cal. 1977) ("A plan of reorganization is both res judicata and collateral estoppel in ensuing litigation.")). It is well established that this Court has exclusive jurisdiction over confirmation of the Plan. See In re Spiegel, Inc., Case No. 03-11540 (BRL), 2005 WL 1278094, at *4 (Bankr. S.D.N.Y. May 25, 2005). Accordingly, any objections to the Plan—and, by extension, the Merger—must be presented to this Court prior to confirmation or else they are waived. Because this Court has exclusive jurisdiction over confirmation of the Plan, should any party, including the Alioto Plaintiffs, wish to delay consummation of the Plan following entry of the confirmation order, the sole remedy is to request a stay pending appeal, accompanied by a bond sufficient to compensate all other stakeholders for the damage that would result from the failure to timely consummate the Plan and Merger.

36. This Court's exclusive jurisdiction over Plan confirmation extends to objections grounded in antitrust law. "The bankruptcy court is legally competent to resolve antitrust issues raised by proceedings before it . . . ." In re Fin. News Network, Inc., 126 B.R. 157, 161 (S.D.N.Y. 1991) (bankruptcy court had jurisdiction to adjudicate antitrust objection to sale and to order that all requests to enjoin the sale on antitrust grounds be made in the bankruptcy court). The Adelphia case presents a remarkably similar set of facts. There, a private party sued in the United States District Court for the District of Minnesota to enjoin a non-bankrupt buyer's purchase of bankrupt Adelphia's assets. In re Adelphia Commc'ns Corp., 345 B.R. 69, 73 (Bankr.

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[16] While confirmation of the Plan is conclusive as to private parties, it does not preclude the federal government's exercise of its police and regulatory powers, including review of the Merger for compliance with antitrust law. The United States Department of Justice has been reviewing the Merger under the Hart-Scott-Rodino Act for an extended period of time and continues to evaluate whether the transaction raises competitive issues under section 7 of the Clayton Act.

S.D.N.Y. 2006). There, as here, the plaintiffs "strategically omitted the Debtors" from the Minnesota action and sued only the purchaser. Id. at 77. The court rejected this subterfuge, holding that an antitrust action against a non-bankrupt buyer interferes with the in rem jurisdiction of the bankruptcy court as much as an action against the bankrupt seller. Id. at 76. Noting that the plaintiffs "could assert the full spectrum of the claims [they] might wish to raise" in the bankruptcy court, id. at 86, the court concluded that the prosecution of the Minnesota action was "a classic, and egregious, violation" of the automatic stay. Id. at 72. The Alioto Plaintiffs cite Adelphia for the narrow proposition that they may request relief from the stay to prosecute their action in the California district court, see Alioto Plaintiffs Objection at 10. But they fail to acknowledge the Adelphia court's observation that such relief likely would not have been granted had it been requested. Id. at 83. They also fail to acknowledge that the Alioto Law Firm, as counsel to the plaintiffs in Adelphia, was held in contempt of court for initiating the Minnesota action without first obtaining relief from the stay—essentially the same conduct the Alioto Plaintiffs have engaged in here. Id. at 74-75.[17]

37. As the case law establishes, the Alioto Plaintiffs are not entitled to two bites at the apple—one in this Court, another in the California district court—to oppose consummation of the Plan and Merger. Rather, their sole recourse with respect to the Plan and Merger is to oppose

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[17] In addition to opposing confirmation of the Plan in this Court, the Alioto Plaintiffs also request relief from the automatic stay to pursue injunctive relief in the California district court. But the Alioto plaintiffs are already seeking an injunction in the California district court. See Complaint at 24, Fjord v. US Airways Group, Inc., Case No. 13 CV 3041 (SBA) (N.D. Cal. July 2, 2013). And as Adelphia establishes, see 345 B.R. at 83, a litigant is not entitled to prosecute an action "pending potential relief from the automatic stay," Alioto Plaintiffs Supplemental Objection at 3. The request for relief from the stay should be denied for this reason alone. Moreover, the request is procedurally improper, as requests for affirmative relief must be made by motion, and not buried in an objection. Should the Alioto Plaintiffs move for stay relief in the future, the Committee reserves its right to respond. Nonetheless, it is clear that no such request could satisfy the factors annunciated in Sonnax Industries. See Sonnax Indus., Inc. v. Tri Components Prods Corp. (In re Sonnax Indus., Inc.), 907 F.2d 1280, 1286 (2d Cir. 1990). Indeed, the Alioto Plaintiffs have not even attempted to meet this burden in their Objection. See id. at 1285 ("If the movant fails to make an initial showing of cause . . . the court should deny relief [from the automatic stay] without requiring any showing from the debtor that it is entitled to continued protection.").

confirmation of the Plan before this Court—as they have done in filing their Objection. The Court should construe the Alioto Plaintiffs Objection as a substantive objection to the Plan and adjudicate it accordingly. Because the Alioto Plaintiffs Objection utterly fails to identify any prerequisite to confirmation the Plan does not meet, it should be summarily overruled, and this adjudication should be conclusive as to the Alioto Plaintiffs' efforts to forestall the Plan and Merger in any other forum.[18]

38. The Alioto Plaintiffs' eleventh-hour adversary proceeding changes nothing. Although the complaint requests a preliminary injunction, the Alioto Plaintiffs have not filed a motion for a preliminary injunction as required by Rule 65 of the Federal Rules of Civil Procedure (made applicable to adversary proceedings by Rule 7065 of the Federal Rules of Bankruptcy Procedure). Thus, no actionable request for preliminary relief is before the Court. Even if the Alioto Plaintiffs sought a preliminary injunction by motion, it is clear they would lose. See Adelphia, 345 B.R. at 84 (permanently enjoining antitrust lawsuit against buyer of debtors' assets because balance of harms strongly favors the debtors). In short, the adversary proceeding in no way changes the Court's ability to dispose of the Alioto Plaintiffs Objection and proceed with the Confirmation Hearing.

E. The Limited Feasibility Objections Raised by Certain Parties Should be Overruled

39. Two parties raise limited objections regarding the feasibility of the Plan relating to the Debtors' business plan for regional flying. See USAPA Objection ¶¶ 8-10; ALPA

[18] The Alioto Plaintiffs raise a variety of other objections to confirmation for the first time in their untimely Supplemental Objection, including objections to the Committee Payment Provision, the Chairman Letter Agreement, and other matters which have no apparent connection to their Clayton Act claims. See Alioto Plaintiffs Supplemental Objection at 3-4. The Committee responds to these objections elsewhere in this Statement. The Alioto Plaintiffs Supplemental Objection also complains that the release and exculpation provisions may bar their Clayton Act claims. Alioto Plaintiffs Supplemental Objection at 1. As set forth above, however, the Alioto Plaintiffs should be barred from litigating their claims after the Confirmation Hearing, except in a direct appeal of a confirmation order.

Response ¶¶ 3-4. Specifically, USAPA and ALPA request that the Debtors provide more detailed information concerning their business plan for regional flying, including the future role of Eagle. The Disclosure Statement sets forth detailed information on the significant cost-savings Eagle has achieved during these cases. See Disclosure Statement § III.C.2. The Disclosure Statement also notes the Debtors' entry into capacity purchase agreements with SkyWest Airlines, Inc. and Republic Airline Inc. to provide 50-seat and 76-seat regional jet flying, respectively, see id. § III.B., and efforts to "right-size" its regional fleet in order better match aircraft capacity with demand, see id. at III.C.6. Through these efforts, the Debtors have established a solid foundation for their regional operations. While certain decisions remain to be made, the Confirmation Hearing should not be used as an arbitrary deadline for decisions that may prudently be made later. The Committee expects that the Debtors will present additional evidence at the Confirmation Hearing to demonstrate the feasibility of Plan, both as a general matter and with respect to Eagle in particular.

II. The Plan Payment Provisions Are Permissible Under Sections 1123(b)(6) and 1129(a) and Can be Harmonized with Section 503

40. The U.S. Trustee's Objection boils down to this: an attempt to transform the lack of explicit authorization for the Plan Payment Provisions in section 503 of the Bankruptcy Code into an express prohibition against providing for the payment of such fees as part of a consensual plan of reorganization. Such an approach places artificial restrictions on the plan process not required by the Bankruptcy Code and "[m]ixes up the test for being able to assert an administrative expense claim with the right to receive a payment that the Debtors voluntarily have proposed to make under the Plan and that may be authorized in accordance with [s]ection 1129(a)(4)." In re Lehman Bros. Holdings Inc., 487 B.R. 181, 193 (Bankr. S.D.N.Y. 2013).

41. The U.S. Trustee argues that the requirement in section 1129(a)(1) that a plan "compl[y] with the applicable provisions" of title 11 means all provisions of all chapters applicable in a chapter 11 case. U.S. Trustee Objection at 9. Specifically, the U.S. Trustee asserts that because section 103(a) of the Bankruptcy Code provides that "chapters 1, 3, and 5 apply in a case under chapter [11]," 11 U.S.C. § 103(a), by enacting section 1129(a)(1), Congress has prohibited plans from including provisions that could not otherwise be independently approved pursuant to generally applicable provisions of the Bankruptcy Code, such as section 503. U.S. Trustee Objection at 9-10. As set forth below, this argument is unpersuasive with respect to the Plan Payment Provisions for two reasons. First, this interpretation is inconsistent with a fair reading of section 1129(a)(1) and its legislative history and the structure of section 1129 as a whole. Second, such an interpretation is unsupported by the case law in this district in which courts have considered and rejected the U.S. Trustee's program policy positions on these issues.

A. The Committee Payment Provision and Indenture Trustee Payment Provision Are Permissible

42. Section 1129(a)(1) does not require independent approval of the Committee Payment Provision and Indenture Trustee Payment Provision pursuant to section 503 of the Bankruptcy Code. Section 1129(a)(1) requires that a plan comply with those provisions of chapter 11 that govern the classification of claims and interests and the contents of a plan. Here, the legislative history is instructive. The 1978 Senate Report to the Judiciary Committee explains that "[s]ubsection (a) enumerates the requirement governing confirmation of a plan. The court is required to confirm a plan if and only if all of the requirements are met. Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of [a] plan." See S. Rep. No. 95-989, at

132 (1978) (emphasis added), as reprinted in 1978 U.S.C.C.A.N. 5787, 5912; H.R. Rep. No. 95-595, at 412 (1977), as reprinted in 1978 U.S.C.C.A.N. 5963, 6368.[19] The legislative history clarifies which provisions of title 11 are "applicable" for purposes of section 1129(a)(1), and focuses the inquiry on those provisions of chapter 11 governing the classification and contents of a plan.

(i) Section 1123(b)(6) Allows Inclusion of the Committee Payment Provision

43. Section 1123(b) of the Bankruptcy Code, in turn, identifies various discretionary provisions that may be included in a plan of reorganization. Section 1123(b)(6) provides that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6).[20] Courts in this district interpret section 1123(b)(6) very broadly and generally permit the inclusion of any provision in a reorganization plan so long as such provision is not contrary to an explicit provision of the Bankruptcy Code.[21] See In re Lehman Bros. Holdings Inc., 487 B.R. 181, 186 (Bankr. S.D.N.Y. 2013); see also United States

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[19] See also In re Johns-Manville Corp., 68 B.R. 618, 629 (Bankr. S.D.N.Y. 1986) (noting that confirmation objections under section 1129(a)(1) usually involve failure of plan to conform to either section 1122(a) or section 1123 of Bankruptcy Code), aff'd, 78 B.R. 407 (S.D.N.Y. 1987), aff'd, 843 F.2d 636 (2d Cir. 1988); In re Dana Corp., No. 06-10354 (BRL), 2007 WL 4589331, at *2 (Bankr. S.D.N.Y. Dec. 26, 2007) (analyzing compliance of chapter 11 plan under sections 1122 and 1123 for purpose of determining compliance with section 1129(a)(1)); In re Calpine Corp., No. 05-60200 (BRL), 2007 WL 4565223, at *7 (Bankr. S.D.N.Y. Dec. 19, 2007) (same), appeal denied as moot, 390 B.R. 508 (S.D.N.Y. 2008), aff'd, 354 F. App'x 479 (2d Cir. 2009); In re Toy & Sports Warehouse, Inc., 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984) (same).

[20] Collier notes that "[s]ection 1123(b)(6) is derived from [s]ection 216(14) of the former Bankruptcy Act, which in turn was derived from former Section 77(b)(10) of the Act. This section is an omnibus paragraph permitting the inclusion in the plan of 'any other appropriate provision not inconsistent with the provisions of the Code.'" 7 Collier on Bankruptcy ¶ 1123.LH[10] (Alan N. Resnick & Henry Sommer, eds., 16th ed. 2013)..

[21] As discussed below, the U.S. Trustee's position with respect to the Committee Payment Provision hinges on her tendentious attempt to infer a prohibition on the payment of committee members' and indenture trustees' fees under a plan from section 503's silence on the matter. The Chairman Letter Agreement raises a different issue. Section 503 does contain an express provision on certain severance payments. See 11 U.S.C. § 503(c)(2). But that prohibition is inapplicable in this context because the Chairman Letter Agreement would not result in an administrative expense against the estate. Thus, the Committee Payment Provision and Chairman Letter Agreement implicate related, but distinct, questions and are accordingly addressed in separate sections of this Statement.

v. Energy Res. Co,, 495 U.S. 545, 549 (1990) (although Bankruptcy Code did not explicitly authorize approval of plans designating tax payments as either trust or non-trust funds, bankruptcy courts retain authority to approve such plan provisions under section 1123(b)(6)).[22]

(ii) Section 1129(a)(4) Contemplates the Committee Payment Provision

44. At the June 4 Disclosure Statement hearing, this Court requested that the parties harmonize the relevant sections of the Bankruptcy Code as they relate to section 1129(a)(4). In re AMR Corp., Case No. 11-15463 (SHL), Hr'g Tr. 37:1-5 (June 4, 2013).

45. Section 1129(a)(4) provides that a court shall confirm a plan only if:

> Any 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) (emphasis added). Courts in this district have noted that section 1129(a)(4) "expressly contemplates that payments may be made in connection with a reorganization plan—presumably, consensually—by a debtor, plan proponent, issuer of securities, or acquiror of property." Adelphia, 441 B.R. at 13.

46. Although both sections 1129(a)(4) and 503 address the general subject of payments, the critical distinction is that section 1129(a)(4) addresses payments that are voluntarily provided for in a plan as part of a larger transaction, whereas section 503—which makes no mention one way or the other regarding plan authorization—provides a mechanism whereby a party may seek to compel post-petition payments as an administrative expense. See

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[22] Compare United States v. Energy Res. Co,, 495 U.S. 545, 549 (1990) with United States Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 268 (2010) (chapter 13 plan improperly provided for discharge of student loan debt contrary to explicit plan limitation found in the plan subchapter of chapter 13— section 1328(a)—prohibiting discharge of debt "of a kind specified in section 523(a) of this title.").

Adelphia, 441 B.R. at 9 (finding that section 1129(a)(4) permits payment of "reasonable fees" where, as here, "the provision for fees is an element of a chapter 11 reorganization plan").[23]

(iii) The U.S. Trustee's Interpretation of Section 1129(a)(1) is Flawed

47. The statutory construction that the U.S. Trustee advocates fails to harmonize the limitations imposed by section 503(c) on allowance and payment of certain claims as administrative claims with the prerequisites for confirmation of a plan set forth in section 1129(a)(1). A careful reading of the statute demonstrates that Congress explicitly describes provisions in other sections of the Code that are mandatory prerequisites of confirmation. For example, if the requirement of section 1129(a)(1) that a plan comply with "applicable provisions" of title 11 encompasses any and all generally applicable provisions of title 11, then the separate addition of section 1129(a)(13) would be superfluous. Section 1129(a)(13) requires that a plan provide for the continuation of retiree benefits at the level established "pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits." But if section 1129(a)(1) already requires that a chapter 11 plan of reorganization must comply with all provisions of title 11—including section 1114 of chapter 11—there would be no need to separately require that a plan provide for compliance with subsection (e)(1)(B) or (g) of section 1114. Similarly, section 1325(a)(1) permits confirmation of a chapter 13 plan only if the "plan complies with the provisions of [chapter 13] and with the other applicable provisions of this title." 11 U.S.C. § 1325(a)(1). Section 1328(a)(2) provides that a chapter 13 plan does not

[23] As Judge Gerber noted in Adelphia, "like the other requirements for confirmation that appear in section 1129(a), section 1129(a)(4) is still no more than a requirement or condition. It does not provide for an affirmative grant of authority." 441 B.R. at 13. See also In re Motors Liquidation Co., 462 B.R. 494, 502 n.40 (Bankr. S.D.N.Y. 2012) ("[I]n In re Adelphia Communications Corp., 441 B.R. 6, 13 (Bankr. S.D.N.Y. 2010), this Court held that while section 1129(a)(4) didn't provide authorization for the payment of fees sought by parties in that case, it contemplated such a possibility.")

discharge "debts of the kind specified in" section 523(a)(8)—that is, student loan debt. Id. § 1328(a)(2). Section 523(a)(8), in turn provides that student loan debt is not-dischargeable unless it imposes and "undue hardship" on the debtor. Id. § 523(a)(8).[24] But if the phrase "applicable provisions of this title" in section 1325(a)(1) encompassed all provisions of chapter 5, section 1328(a)(2) would be superfluous. Section 523(a)(8) would apply to chapter 13 plans without Congress needing to say so in section 1325(a)(1). As these examples illustrate, the U.S. Trustee's assumption that the phrase "applicable provisions" really means "all provisions" cannot be right.

(iv) Case Law Confirms that the Committee Payment Provision is Permissible

48. While the U.S. Trustee correctly notes that section 503(b)(4) does not provide for the payment of creditors' committee members' professional fees, see 11 U.S.C. §§ 503(b)(3)-(4), the U.S. Trustee draws the wrong inference from this silence—that payment of such fees is prohibited—at all times and in all circumstances. In fact, case law in this District confirms that a plan may authorize the reimbursement of creditors' reasonable fees and expenses as part of a comprehensive settlement, even if the requirements of section 503(b) are not satisfied. See In re Adelphia Commc'ns Corp., 441 B.R. 6, 19 (Bankr. S.D.N.Y. 2010) ("[T]he Code permits [certain creditors'] reasonable fees to be recovered under [the plan] without showing compliance with sections 503(b)(3) or (4).").

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[24] The Supreme Court construed sections 523(a)(8), 1325(a)(1), and 1328(a)(2) in United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260 (2010). The Espinosa court observed in dicta that the bankruptcy court is not authorized to confirm a plan that does not comply with the "'applicable provisions'" of the Code, even if no creditors object. Id. at 277 (quoting 11 U.S.C. § 1325(a)). The U.S. Trustee places great weight on this dicta. However, as explained above, the structure of the code provisions at issue in Espinosa actually undermines the U.S. Trustee's position by demonstrating that, when Congress wishes to make a provision of chapter 5 a prerequisite to plan confirmation, it says so explicitly in chapter 11 or chapter 13 (as the case may be).

49. Such an approach recognizes that Plan provisions "must be clearly in conflict with applicable provisions of the Bankruptcy Code to become unenforceable." Id. at 192. As Judge Peck noted in Lehman Bros., "provisions of [section 503] that directly govern the allowance of administrative claims do not control the plan process and are not inconsistent with [. . .] more liberal treatment prescribed in [a plan of reorganization]." Id. at 186.[25]

50. "Where one statute deals with a subject in general terms; and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible." Norman J. Singer and J.D. Shambie Singer, Sutherland Statutes and Statutory Construction § 51:5 (7th ed. 2012) (emphasis added). Judge Peck's opinion in Lehman Brothers and Judge Gerber's opinion in Adelphia persuasively demonstrate that section 503 and 1129 can be harmonized. See Lehman Bros., 487 B.R. at 185-87; Adelphia, 441 B.R. at 19. As Judge Peck observed, "Section 503(b)(4) is silent on the subject and simply fails to mention payment of such fees." Lehman Bros., 487 B.R. at 192. Because section 503(b)(4) is merely silent on, and does not prohibit, the payment of individual members' fees, such fees are permissible if they are justified by another provision of the Code.

51. As the court noted in Lehman Bros., outside of the plan process and as a general matter, a creditor, "even one serving on an official creditors' committee, can seek to have his, her or its attorney/accountant fees reimbursed for having made a 'substantial contribution' to the case under [s]ection 503(b)(3)(D)." Lehman Bros., 487 B.R. at 190 n.8. But, while a creditor would otherwise be required to demonstrate a "substantial contribution" to receive reimbursement for its professional fee claims on a non-consensual basis under section 503(b), nothing in sections

[25] To fulfill its purposes as a means by which companies reorganize in chapter 11, "a plan must be an endlessly adaptable tool that fits the particular needs and dynamics of each case." In re Lehman Bros. Holdings Inc., 487 B.R. at 186.

1129(a)(1) or 1123(b)(6) prohibits the allowance of these fees on a consensual basis. Section 503(b) therefore cannot reasonably be read as explicitly prohibiting the inclusion of the Committee Payment Provision in the Plan. The Plan provisions that contemplate allowance of these fees—subject, of course, to review by this Court pursuant to section 1129(a)(4)—therefore track a significant policy distinction between consensual and non-consensual fee requests. As explained above, Adelphia and Lehman persuasively harmonize sections 503(b) and 1129(a)(4) by identifying the circumstances in which each is applicable.[26]

(v) The Indenture Trustee Payment Provision is Also Permissible

52. The U.S. Trustee's objections to the Indenture Trustee Payment Provision is substantially identical to her objection to the Committee Payment Provision.[27] As with the Committee Payment Provision, the U.S. Trustee contends that the Indenture Trustee Payment Provision is impermissible because it authorizes the payment of fees without Court approval pursuant to section 503(b). See U.S. Trustee Objection at 16.[28] In addition to the reasons that the U.S. Trustee's objection is misconceived as to the Committee Payment Provision, the

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[26] The U.S. Trustee's assertion that RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 132 S. Ct. 2065 (2012) implicitly overrules the holding of Lehman and Adelphia is without merit. This argument can only be credited if one accepts that the basis of the Court's decision in Radlax—the invocation of the specific-controls-the-general canon of statutory construction—was unknown to Judge Peck and Judge Gerber when they decided Lehman and Adelphia, respectively. But this canon is hardly a recent invention. See United States v. Chase, 135 U.S. 255, 260 (1890) (describing the canon as "an old and familiar rule"). Because the canon long predates RadLAX itself, the U.S. Trustee's suggestion that RadLAX implicitly overrules Adelphia (which predates RadLAX) and Lehman (which does not discuss it) is unfounded. As explained above, Adelphia and Lehman persuasively harmonize sections 503(b) and 1129(a)(4) by identifying the circumstances in which each is applicable. Accordingly, RadLAX does not overrule the precedent in this district and suggests no reason why this Court should depart from prior precedent.

[27] Accordingly, the arguments set forth above with respect to the Committee Payment Provision apply with equal force to the Indenture Trustee Payment provision.

[28] The U.S. Trustee's argument fares even worse with respect to the Indenture Trustee Payment Provision than with respect to the Committee Payment Provision, because here the U.S. Trustee cannot rely on the legislative history of the BAPCPA amendments to support her argument, as she does (unsuccessfully) with respect to the Committee Payment Provision. See U.S. Trustee Objection at 19.

Indenture Trustees' reasonable fees and expenses are, in any event, chargeable to creditor recoveries under the terms of the various Indentures. Section 2.4 of the Plan permits the reimbursement of Indenture Trustees' reasonable fees and expenses only "to the extent payable . . . pursuant to the terms of the applicable Bond Documents." Plan § 2.4. Thus, the practical effect of section 2.4 of the Plan is merely to ensure that the Indenture Trustees' rights under the Indentures will not be deducted from creditors' recoveries.

53. Payment of the reasonable fees and expenses of indenture trustees, such as those contemplated by section 2.4 of the Plan, is a common feature of plans in this district. See, e.g., Modified Third Amended Joint Chapter 11 Plan of Reorganization of Lehman Brothers Holdings Inc. and its Affiliated Debtors § 6.7, In re Lehman Bros. Holdings Inc., Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Dec. 5, 2011) (Docket No. 22973); Debtors' Second Amended Joint Chapter 11 Plan § 2.5, In re Motors Liquidation Co., Case No. 09-50026 (REG) (Bankr. S.D.N.Y. Mar. 18, 2011) (Docket No. 9836); Debtors' Modified Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code § 6.18, In re WorldCom, Inc., Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. Oct. 21. 2003) (Docket No. 9525).

B. The Chairman Letter Agreement Is Properly Included In the Plan

54. For many of the same reasons that section 503(b) does not prohibit the consensual reimbursement of professional fees and expenses incurred by Indenture Trustees or the reimbursement of professional fees incurred by individual Members of the Committee under the Plan, section 503(c) does not prohibit the payments contemplated by the Chairman Letter Agreement pursuant to the Plan.

55. The restrictions contained in section 503(c) only limit the allowance of administrative expenses against the debtor that would otherwise be allowed under the provisions of section 503(b)—on a nonconsensual basis, on notice and a hearing and without the vote of

creditors and approval under a plan.[29] Accordingly, the Chairman Letter Agreement is properly included in the Plan and should be reviewed for reasonableness under section 1129(a)(4).

56. Section 503 "generally has two overriding policy objectives: (i) to preserve the value of the estate for the benefit of its creditors and (ii) to prevent unjust enrichment of the estates at the expense of creditors." In re Journal Register Co., 407 B.R. 520, 535 (Bankr. S.D.N.Y. 2009) (citing Trustees of Amalgamated Ins. Fund v. McFarlin's, Inc., 789 F.2d 95, 101 (2d Cir. 1986)). The payments contemplated by the Chairman Letter Agreement are being allowed under the Plan, subject to review by this Court under section 1129(a)(4), and not as administrative expenses under section 503. Therefore the limitations on the allowance of administrative expenses found in section 503(c) do not prohibit the payments contemplated by the Chairman Letter Agreement and set forth in the Plan, particularly where consummation of the Plan contemplates estates that are reorganization solvent.[30]

57. Courts in this district hold that section 503(c) is a limitation on the allowance of administrative expenses against the estate during the case that does not prohibit post-effective date plan payments, such as those contemplated by the Chairman Letter Agreement. See, e.g., In re Journal Register Co., 407 B.R. 520, 535 n.8, 536 (Bankr. S.D.N.Y. 2009) ("[S]ubsection 503(c) applies only when the proposed bonuses are to be paid as administrative expenses of [the] bankruptcy estate [and] . . . courts generally deny administrative claim status to expenses that become payable upon confirmation of a chapter 11 plan and not before."); In re Dana Corp., 358 B.R. 567, 578 (Bankr. S.D.N.Y. 2006) ("[T]he language of section 503(c) is clear and

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[29] Consistent with this contextual understanding of how section 503 fits into the structure of title 11, section 503(c) begins by noting that "[n]otwithstanding subsection (b), there shall neither be allowed, nor paid" certain categories of (non-consensual) administrative expenses.

[30] Approval of the Chairman Letter Agreement is a condition precedent to the effectiveness of the Plan.

unambiguous that only administrative claims are subject to section 503(c) restrictions."). But see In re TCI 2 Holdings, LLC, 428 B.R. 117, 172 (Bankr. D.N.J. 2010) (accepting the U.S. Trustee's argument that post-confirmation severance payments implicate section 503(c)(2)).

58. The U.S. Trustee has not identified any sound reasons why this Court should depart from Journal Register and Dana. Those decisions are firmly rooted in the plain language of section 503. Section 503(c) refers back to section 503(b), which regulates the allowance of administrative expense claims, making it clear "allowed" in section 503(c) means allowed as an administrative expense. Section 6.24 seeks approval of the Chairman Letter Agreement "in connection with confirmation of the Plan" so as "to be effective on the Effective Date." Plan § 6.24. Section 6.24 does not, however, create an Allowed Administrative Expense Claim in favor of Mr. Horton. Because the Chairman Letter Agreement does not implicate section 503(c) at all, the U.S. Trustee's reliance on RadLAX to argue that section 503(c) takes precedence over section 1129(a)(4) is both incorrect—for the same reasons section 503(b) does not take precedence over section 1129(a)(4)—and beside the point.

C. The Plan Payment Provisions Should be Approved Under Section 1129(a)(4)

59. "'The requirements under [section] 1129(a)(4) are two-fold. First, there must be disclosure. Second, the court must approve of the reasonableness of payments.'" Journal Register, 407 B.R. 520, 537 (Bankr. S.D.N.Y. 2009) (quoting 7 Collier on Bankruptcy ¶ 1129.03[4]). Although most cases under section 1129(a)(4) "relate to fees of professionals, the subsection also governs other payments 'for services . . . in connection with the case.'" 407 B.R. at 537 (holding that incentive plan paid after the effective date of the plan from assets owned by the secured lenders complied with 1129(a)(4)).

60. Here, as in both Lehman and Adelphia, the Plan Payment Provisions have been adequately disclosed and are subject to review by this Court pursuant to section 1129(a)(4),

which permits payments under a plan so long as the court finds them reasonable. 11 U.S.C. § 1129(a)(4).

61. The Plan Payment Provisions meet this standard. The reimbursement of individual Committee Members' fees and expenses pursuant to section 6.23 of the Plan is reasonable in light to the complexity of these cases and the efforts and resources Committee Members have expended to make the Debtors' restructuring a success. Moreover, of the eight Committee Members seeking reimbursement of their reasonable fees and expenses,[31] three are Indenture Trustees seeking reimbursement under section 2.4 of the Plan, and three are labor organization Members entitled to reimbursement pursuant to settlement agreements this Court approved in connection with the section 1113 process. These Members will be reimbursed under section 6.23 only to the extent their reasonable fees and expenses are not fully compensated under section 2.4 of the Plan or the applicable section 1113 settlement. Finally, the reimbursement of fees and expenses under section 6.23 is subject to limits negotiated at arms'-length between the Committee and the Debtors. In sum, the amount the Debtors will pay under section 6.23 of the Plan is quite modest.[32]

62. The Chairman Letter Agreement is also reasonable in the context of this Plan.[33] In her Objection, the U.S. Trustee contends that the Chairman Letter Agreement is unreasonable "under the facts and circumstances" of these cases. U.S. Trustee Response at 13. However, the

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[31] The PBGC has waived its right to reimbursement of reasonable fees and expenses under section 6.23 of the Plan.

[32] Contemporaneous herewith, those Members of the Committee seeking payment of fees and expenses pursuant to section 6.23 of the Plan have submitted declarations describing their service and contributions to the Committee, their need to retain professional advisors to assist them in discharging their duties as Committee Members, and the reasonableness of the fees and expenses to be paid to them pursuant to section 6.23 of the Plan.

[33] The Committee's support for the Chairman Letter Agreement is predicated on the Plan before the Court, which contemplates full recoveries for general unsecured creditors. In the unlikely event that this Plan is not confirmed and substantially consummated, the Committee would reevaluate all of the Debtors' employee arrangements, including all compensation arrangements with the Debtors' management employees.

U.S. Trustee's Objection completely disregards the "facts and circumstances" in which the Debtors, the Committee, and Mr. Horton negotiated the Chairman Letter Agreement. The U.S. Trustee's position is based on a simplistic comparison between the consideration due to Mr. Horton under the Chairman Letter Agreement and the compensation he would have received under the AMR Existing Severance Agreements (as such term is defined in the Debtors' amended Form S-4 dated June 10, 2013). The U.S. Trustee concedes that, under the AMR Existing Severance Agreements, Mr. Horton would be entitled to approximately $6.4 million for termination other than for cause and $15.3 million in the event of a change in control, see U.S. Trustee Objection at 13-16, and contends that it is unreasonable to pay him any more.

63. But this comparison entirely ignores the virtually unprecedented context in which the Chairman Letter Agreement was negotiated—a public-company merger in chapter 11 that delivers tremendous value for economic stakeholders. The Committee has repeatedly stressed that the Chairman Letter Agreement is not simply a severance agreement. Rather, it is intended to comprehend "everything that Mr. Horton has contributed," Hr'g Tr. at 58:20, In re AMR Corp., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Mar. 27, 2013), including his stewardship of the most successful major airline restructuring in history, his agreement to serve as chairman of the board of New AAG during the critical transition period following the Merger, and other items. The Committee is intimately familiar with the facts and circumstances of this transaction. Indeed, the comprehensive payment to Mr. Horton was proposed by the Committee's Professionals – not by Mr. Horton or the Debtors. Because none of these circumstances were anticipated when the AMR Existing Severance Agreements were executed, those agreements are not a fair basis of comparison.

64. A better basis of comparison—the one the Committee actually used in negotiating the Chairman Letter Agreement—is the compensation other executives received when their

companies emerged from chapter 11 and/or merged with a competitor. Using this metric, the Committee (with the assistance of its compensation professionals, HayGroup) determined that Mr. Horton's proposed payments are reasonable and demonstrably less than what most other similarly situated executives received in connection with transactions of this type. For example, the former CEO of United Airlines received approximately $48.8 million in aggregate payments from the two transactions involving United's emergence from chapter 11 and subsequent consummation of a merger with Continental Airlines. Likewise, the former CEO of Northwest Airlines received payments totaling $34.4 million in the two transactions involving Northwest's emergence from chapter 11 and subsequent merger with Delta Air Lines. Notably, both the United and Northwest bankruptcies resulted in far lower recoveries than this Plan provides. Looking beyond the airline industry, a comparator group of comparable 2011 and 2012 merger transactions constructed by HayGroup had mean and median payments of $68.1 million and $54.7 million, respectively, for CEO-related compensation. Here, the estimated value of the Merger on February 14, 2013, the day the Merger was announced, was approximately $11 billion based on the trading price of US Airways securities on the close of business February 13, 2013. The estimated value of the merger appears to have increased since February 13, 2013. Based on the trading price of US Airways' securities on July 29, 2103, the Plan voting deadline, the value of the Merger appears to have increased from $11 billion to approximately $14.3 billion.

65. As Lehman and Adelphia explain, the liberal standard embodied in section 1129(a)(4) reflects the fact that plan payments are subject to the safeguards inherent in the plan voting and confirmation process, whereas the more exacting standard imposed under section 503(b) reflects the fact that the allowance of administrative expenses outside the plan is "nonconsensual in nature." Lehman Bros., 487 B.R. at 192 (quoting Adelphia, 441 B.R. at 12). Here, creditors and equity interest holders have voted overwhelmingly to accept the Plan, despite

the policy issues raised by the U.S. Trustee twice before in these cases, in connection with approval of the Merger Agreement and Disclosure Statement.

66. Notwithstanding the reading advanced by the U.S. Trustee, neither the text of section 503, the text of section 1129, nor the legislative history indicate that Congress has chosen to pursue a policy of limiting compensation—whether for professionals representing individual members of an official committee or for insiders of a reorganization solvent debtor—at all costs and in all circumstances, including in the context of a plan. Limitations on the non-consensual allowance of administrative expenses under section 503 of the Bankruptcy Code do not prohibit the consensual approval of payments under a plan. "No legislation pursues its purposes at all costs . . . . [I]t frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute's primary objective must be the law.'" See Pension Benefit Guar. Corp. v. LTV, 496 U.S. 633, 646-47 (1990) (quoting Rodriguez v. United States, 480 U.S. 522, 525-26 (1987)). Had Congress intended to limit the ability of bankruptcy courts to approve payments like those contemplated by the Plan Payment Provisions, it would have done so explicitly as it has with other mandatory confirmation requirements. Accordingly, the U.S. Trustee's Objection should be overruled.

III. Other Objections and Reservations of Rights

67. The Committee joins in the Debtors' reply with respect to the balance of the Objections. The Committee reserves its right to supplement this Statement based upon any additional information that may become available between the date of the filing of this Statement and the Confirmation Hearing.

Conclusion

68. As will be demonstrated at the Confirmation Hearing, the Plan satisfies all applicable requirements of the Bankruptcy Code and has been overwhelmingly accepted by all voting Classes. For the foregoing reasons, the Committee respectfully requests that the Court confirm the Plan and overrule all remaining Objections at the Confirmation Hearing.

Dated: New York, New York
August 8, 2013

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Exhibit A
Committee Solicitation Letter

June 10, 2013

LETTER FROM THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF AMR CORPORATION, ET AL., CASE NO. 11-15463 (SHL), JOINTLY ADMINISTERED

To the General Unsecured Creditors of AMR Corporation and Its Debtor Subsidiaries:

The Official Committee of Unsecured Creditors (the "Creditors' Committee") of AMR Corporation and its affiliated debtors and debtors in possession (the "Debtors"), as a statutory fiduciary representing the interests of general unsecured creditors in the Debtors' chapter 11 cases, writes this letter to general unsecured creditors in connection with the solicitation of your vote as the holder of a General Unsecured Claim entitled to vote on the Debtors' Joint Chapter 11 Plan (the "Plan").[1]

FOR THE REASONS SET FORTH BELOW, THE CREDITORS' COMMITTEE RECOMMENDS THAT YOU ACCEPT THE PLAN AND RETURN YOUR BALLOT INDICATING YOUR ACCEPTANCE IN ACCORDANCE WITH THE VOTING INSTRUCTIONS SET FORTH ON THE BALLOT.

The Creditors' Committee has worked closely and collaboratively with the Debtors throughout these chapter 11 cases to systematically evaluate the Debtors' restructuring alternatives, identify a path for emergence that maximizes the value of the Debtors' enterprise, and craft a confirmable plan of reorganization that enjoys the strong support of general unsecured creditors and other economic stakeholders. The Committee believes that the Debtors' Plan is consistent with these goals.

The Plan will be implemented and become effective in conjunction with the consummation of a Merger with US Airways Group, Inc. ("US Airways")—which will combine American's and US Airways's complementary networks, increasing convenience and efficiency and providing more options for customers, as well as facilitating the Debtors' transformation into a profitable and sustainable global airline. Indeed, the recoveries for the Debtors' economic stakeholders under the Plan are unprecedented in cases of this nature. The Plan will implement the only available transaction that the Creditors' Committee believes will provide the level of recoveries projected for general unsecured creditors and a guaranteed recovery for AMR shareholders. The Plan provides a mechanism for each general unsecured creditor (subject to certain exceptions) to receive a distribution based on the trading prices of the common stock of American Airlines Group Inc. ("New AAG") on and after the Effective Date of the Plan.

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

On June 10, 2013, American and US Airways announced the members of the board of directors and leadership team who the companies believe have the experience, breadth and perspective to guide the new American Airlines to create value for all of the company's stakeholders. The selection process for the Board of Directors of the new American Airlines was established pursuant to the Merger Agreement. In addition to the continuing directors selected by each of the two companies, an eight-member search committee designated by representatives of the Creditors' Committee and the Ad Hoc Committee of AMR Creditors selected five new directors (including the new lead independent director) and consented to the appointment of certain continuing directors. The firm Heidrick & Struggles was retained to assist with the process. The decisions of the search committee were approved on a consensual basis by all eight search committee members.

As described throughout the disclosure statement for the Plan (the "Disclosure Statement"), the Plan incorporates, among other things, the terms of a global settlement (the "9019 Settlement") reached contemporaneous with the execution of the Merger Agreement among the Debtors and certain unsecured bondholders. The 9019 Settlement timely resolves highly complex and disputed factual and legal issues, including: the validity, enforceability, and priority of the Intercompany Claims; the rights of parties holding guarantees against any Debtor; and the potential marshaling of claims in determining creditors' relative entitlements to distributions under a plan of any Debtor. The Plan is intended to account for the risks, costs, and delays associated with litigating the issues resolved by the 9019 Settlement. Because the Plan provides for distributions based on the 9019 Settlement, depending on the price of the New AAG common stock at each determination date, distributions to holders of Allowed Claims and AMR Equity Interests may not strictly comply with the absolute priority rule in certain scenarios. As set forth in the Disclosure Statement, in certain potential scenarios certain general unsecured creditors may be allocated additional shares in excess of the number of shares required for such creditors to achieve par-plus-accrued recoveries. The Creditors' Committee encourages creditors to carefully review the information set forth on Exhibit B to the Disclosure Statement, which sets forth additional information regarding the distributions contemplated by the Plan. The 9019 Settlement provides for the timely resolution of issues which might otherwise result in contentious and prolonged litigation; the Creditors' Committee believes that the Plan is materially superior to all other practical alternatives and provides the best outcome for general unsecured creditors.

Pursuant to the Plan, holders of AMR Other General Unsecured Claims, American Other General Unsecured Claims, and Eagle General Unsecured Claims (so-called "single-dip claims")—which Claims are not guaranteed by any other Debtor—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 (the "Single-Dip Plan Consideration"). Holders of DFW 1.5x Unsecured Special Facility Revenue Bond Claims (so-called "DFW 1.5x-dip claims") will be entitled to receive Single-Dip Plan Consideration and shall be treated under the Plan as having (i) an Allowed American Other General Unsecured Claim in an amount equal to the par amount of such Claim plus all nondefault rate interest accrued through the

Effective Date and (ii) an Allowed American Other General Unsecured Claim on account of the guarantee by American of such Claim in an amount equal 50% of the par amount of such Claim plus all nondefault rate interest accrued through the Effective Date, provided that such distributions shall not result in more than a single satisfaction of the DFW 1.5x-dip claims.

Holders of AMR General Unsecured Guaranteed Claims and American General Unsecured Guaranteed Claims (so-called "double-dip 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). Please be advised that Article 4.3(b) of the Plan contemplates that, at any time prior to the fifth Business Day before the Effective Date, holders of double-dip claims have the right to make a binding election to have their double-dip claims treated as single-dip claims, in which case such holders of Allowed double-dip claims would receive Single-Dip Plan Consideration.

Holders of Convenience Class Claims, which are General Unsecured Claims (other than Note Claims, Special Facility Revenue Bond Claims, American Union Claims, and Eagle Union Claims) Allowed in an amount less than or equal to $10,000, will be entitled to receive Cash in the amount of 100% of the amount of such holders Allowed Convenience Class Claim as of the Commencement Date.

Shares of New Common Stock also will 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 General Unsecured Claims under the Plan. Furthermore, the Plan provides holders of AMR Equity Interests with (i) a guaranteed initial distribution of New Common Stock equal to 3.5% of the common stock of the combined airline and (ii) a right to receive additional shares of New Common Stock on each of the Mandatory Conversion Dates if the price of the New Common Stock exceeds the value at which there would be sufficient New Common Stock distributable to holders of General Unsecured Claims to effectively pay such Claims in full (including postpetition interest).

Please note that the Plan contemplates that the Debtors will file a Plan Supplement with the Bankruptcy Court no later than 10 days prior to the Voting Deadline, and the Creditors' Committee fully reserves all of its rights relating to those yet-to-be-filed documents. In addition, the Plan provides for the continuation of the Creditors' Committee following the Effective Date to, among other things, consult with the Reorganized Debtors regarding the reconciliation and resolution of General Unsecured Claims.

Please be advised that Article X of the Plan contemplates releases and discharges for the Debtors, but does not contain non-Debtor, third-party releases. However, the Plan does exculpate the Debtors, US Airways, the Creditors' Committee (and its professionals), and certain other parties instrumental to the

administration of these cases and negotiation of the Plan for liability associated with the chapter 11 cases and the prosecution of the Plan. The Creditors' Committee recommends that, prior to voting on the Plan, each unsecured creditor carefully review the provisions contained in Article X.

Please be further advised that detailed voting instructions are included in the Disclosure Statement and the exhibits attached thereto, and that the Disclosure Statement provides that the Debtors expressly reserve the right to modify the Plan prior to the entry of the Confirmation Order and do not intend to re-solicit acceptances or rejections so long as the holders of Claims in any affected Class receive a recovery having a value equal to the Allowed amount of their Claims. To ensure that all votes are counted, each unsecured creditor entitled to vote on the Plan should carefully review and comply with the voting instructions before voting on the Plan.

The Creditors' Committee considered various restructuring alternatives and weighed the risks and costs associated with the various alternatives. **The Creditors' Committee believes that the Plan provides the best outcome for general unsecured creditors and, therefore, recommends that the Debtors' general unsecured creditors entitled to vote on the Plan vote in favor of the Plan**. Notwithstanding our recommendation, each creditor (including individual members of the Creditors' Committee) must make their own independent determination as to whether the Plan is acceptable to that creditor and should consult their own legal and/or financial advisor(s).

Very Truly Yours,

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF AMR CORPORATION, ET AL.

Allied Pilots Association

Association Of Professional Flight Attendants

The Bank Of New York Mellon

Boeing Capital Corporation

Hewlett-Packard Enterprise Services, LLC

Manufacturers And Traders Trust Company

Pension Benefit Guaranty Corporation

Transport Workers Union Of America – AFL-CIO

Wilmington Trust Company