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Hearing Date: March 8, 2017 at 11 a.m.
Reply Deadline: March 1, 2017

UNITED STATES BANKRUPTCY COURT
Southern DISTRICT OF NEW YORK

In re:	
IN RE REPUBLIC AIRWAYS HOLDINGS INC., *et al.*,	CHAPTER 11 CASE CASE NO. 16-10429 (SHL)
Debtors.	JOINTLY ADMINISTERED

OBJECTION TO CONFIRMATION OF DEBTORS' SECOND AMENDED JOINT PLAN OF REORGANIZATION BY WELLS FARGO BANK NORTHWEST, N.A., AS OWNER TRUSTEE, AND ALF VI, INC., AS OWNER PARTICIPANT, AS HOLDERS OF CLAIMS ARISING FROM REJECTIONS OF LEASE TRANSACTIONS FOR N286SK, N561RP, N562RP, N287SK, N288SK, N563RP AND N259JQ

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MISCELLANEOUS

Wells Fargo Bank Northwest, N.A., as owner trustee (the "*Owner trustee*"), and ALF VI, Inc., as owner participant (the "*Owner Participant*", and along with the Owner Trustee, the "*Residco Parties*"), by their undersigned counsel, hereby submit this objection to certain aspects of the Debtors' Second Amended Plan of Reorganization under Chapter 11 of the Bankruptcy Code, as filed with this Court on December 19, 2016 [Docket No. 1311) (as amended and supplemented, the "*Proposed Plan*"). In support of this Objection, the Residco Parties respectfully state as follows:

INTRODUCTION[1]

The Residco Parties have interposed this Objection to address the uncertainty and extreme prejudice created by the proposed substantive consolidation provisions contained in the Proposed Plan. The Residco Parties object to the attempted substantive consolidation here because such the proposed consolidation may cause Residco's less risky (and hence potentially more valuable) guaranty claims to be expunged, while the riskier and potentially smaller lease claims survive, which result would cause material harm to the Residco Parties. Specifically, under New York law the standards for allowance of guaranty claims based upon liquidated damage provisions are different than the standards for allowing such lease rejection damage claims, which differences could lead to a claims differential of over $50 million. Accordingly, the Residco Parties hereby request that this Court resolve the unclear application of the substantive consolidation provisions where a primary claim and a guaranty claim are allowed in different amounts by treating the allowed amount of such claims as the average of such two claims. If this Court accepts such proposal, then the Residco Parties' objections to the Proposed Plan would be fully resolved.

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Proposed Plan.

On the other hand, absent such resolution, the Residco Parties object to the substantive consolidation provisions of the Plan. As currently proposed, the substantive consolidation provisions of the Proposed Plan potentially effects an impermissible offensive litigation tool that is diminishing the Residco Parties' substantive state law claim rights. Further, because the Debtors have failed to satisfy, and cannot satisfy the Second Circuit's strict standards for substantive consolidation, the Debtors' Proposed Plan that is premised upon such consolidation cannot be confirmed (absent the consent of the Residco Parties). The Debtors' Proposed Plan also violates the mandate of Section 1123(a)(4) that requires the "same treatment" of all class members – as the Residco Parties are being forced to potentially release materially more claims and rights than any other general unsecured creditor in Class 3(a) – which disparate treatment provides a further impediment to confirmation.

Finally, the Residco Parties reserve their right to seek additional discovery or to seek an adjournment of the confirmation hearing if the Debtors seek to supplement the record regarding the proposed substantive consolidation with any additional evidence that was not described in the Debtors' Disclosure Statement.

BACKGROUND AND PROCEDURAL HISTORY

A. GENERAL BACKGROUND

Prior to the Petition Date (as defined herein), the Debtors operated their businesses through a holding company structure, in which the Parent-Guarantor Debtor, as a Delaware holding company organized in 1996, offered scheduled passenger services through two wholly-owned operating air carrier subsidiaries: Shuttle America Corporation ("*Shuttle*") and Republic Airline Inc. ("*Republic Airline*"). *See, e.g., Quarterly Report for Republic Airways Holdings Inc. for Quarterly Period Ending September 30, 2015[Form 10-Q]* (as filed with the Securities and

Exchange Commission on November 5, 2015).[2] The Parent-Guarantor Debtor is a public reporting company under Section 12(g) of the Securities Exchange Act of 1934, whose stock was traded on the NASDAQ under the symbol "RJET" prior to the Petition Date. *See* Disclosure Statement, at 9.

1. BANKRUPTCY FILING

On February 25, 2016 (the "*Petition Date*"), each of the Debtors filed chapter 11 petitions with this Court commencing the Chapter 11 Cases.

2. CASH MANAGEMENT PROCEDURES

The Bankruptcy Court authorized Republic to maintain its existing cash management system. *See* Docket 228 (the "*Cash Management Order*"). Under the Cash Management Order, the Debtors were required to, *inter alia,* "maintain accurate records of all transfers within the Cash Management System, in accordance with its prepetition practices, so that all postpetition transfers and transactions shall be adequately and promptly documented in, and readily ascertainable from, [the Debtors'] books and records, to the same extent maintained by [the Debtors] prior to the [Petition] Date." *See* Cash Management Order, at 4.

3. SCHEDULES OF ASSETS DELINEATE THAT PARENT-GUARANTOR DEBTOR POSSESSES SIGNIFICANT LIQUIDATED ASSETS

On May 26, 2016, the Parent-Guarantor Debtor and each of the other Debtors filed their schedules of assets and liabilities (the "*Schedules*") with this Court.[3] In the Schedules, the

[2] *See* https://www.sec.gov/Archives/edgar/data/1159154/000115915415000131/a3rdqtr10q2015.htm (copy of such quarterly 10-Q report) (the "*Third Quarter 2015 10-Q*").

[3] *See* Docket Nos. 595 (Schedules for Parent-Guarantor Debtor), 598 (Schedules for Republic Airways Services, Inc.), 600 (Schedules for Republic Airline), 602 (Schedules for Shuttle), 604 (Schedules for Midwest Air Group, Inc.), 606 (Schedules for Midwest Airlines, Inc.) and 608 (Schedules for Skyway Airlines, Inc.).

Debtors were able to delineate separate and comprehensive schedules of assets and liabilities for each of the Debtors.[4] For example, in the Parent-Guarantor Debtor's Schedules, the Parent-Guarantor Debtor is listed as holding, as of the Petition Date, $403.2 million of assets (including more than $105 million of cash and cash equivalents; Parent-Guarantor Debtor also possessed the Debtors' net operating loss tax attributes) and $483.6 of liabilities. *See* Docket No. 595. In the Debtors' Disclosure Statement, the Debtors reported that they possessed about $1.4 billion of net operating loss tax attributes and that they anticipate that they should "have substantial federal NOL carryovers following emergence" from these Chapter 11 Cases. *See* Disclosure Statement, at 97.

B. OVERVIEW OF RESIDCO PARTIES' LEASE TRANSACTIONS

The following sets forth a brief overview of the subject lease transactions:[5]

1. PARTIES RELIED UPON SEPARATE CREDIT OF SHUTTLE AND PARENT-GUARANTOR DEBTOR

In a series of seven lease transactions originally entered between June 2001 through November 2003, the Owner Trustee and Mitsui & Co. (U.S.A.) ("*Mitsui*"), as the original owner participant and predecessor-by-assignment to ALF VI, Inc., the Subsidiary-Lessee Debtor, as lessee, leased seven ERJ145 aircraft bearing FAA Registration Nos. N286SK, N561RP, N562RP, N287SK, N288SK, N563RP and N259JQ (such aircraft, the "*Residco Aircraft*" and the

[4] *Id.*

[5] Because (a) of the confidential nature of the lease documents and (b) the underlying transactions are tertiary to the main focus of this objection to the confirmation of the Proposed Plan, the Residco Parties are not attaching most of the transaction documents (other than the Parent Guaranty) to this Objection. The Residco Parties will seek to expeditiously address confidentiality issues with the Debtors and/or seek to agree upon stipulated facts regarding the underlying transactions relating to the Residco Leases. To the extent that such issues cannot be resolved, the Residco Parties may file certain documents under seal and/or in redacted form prior to the hearing.

associated lease agreements, as amended, restated and supplemented from time to time, the "*Residco Leases*"). In December 2013, each of the Residco Leases were amended and restated with the original Residco Leases being specifically incorporated into and attached into the amended and restated leases. Under the 2013 leases amendments, very few provisions of the Residco Leases were modified from the original forms of the Residco Leases, with the major change being a reduction of the monthly basic rent from over $115,000 to $55,000. The SLV liquidated damage provisions remained unchanged.

The Parent-Guarantor Debtor absolutely, unconditionally and irrevocably guaranteed each of the obligations owed by the Subsidiary-Lessee Debtor to the Owner Trustee and the Owner Trustee pursuant to that certain Guarantee by Republic Airways Holdings Inc. entered into pursuant to that certain Master Agreement, dated as of October 29, 2012 (such guaranty, the "*Parent Guarantee*"). *See* Exhibit A (the Parent Guarantee).

Each of the Residco Leases and the Parent Guarantee are governed by New York law.

2. AGREED STIPULATED DAMAGE PROVISIONS PROVIDE THAT DEBTORS BORE RESIDUAL VALUE RISK UPON EVENT OF DEFAULT

Under the express terms of the Residco Leases, the parties agreed to so-called stipulated loss damage ("*SLV*") liquidated damage provisions that provided a formula for calculating damages in the event that the Subsidiary-Lessee Debtor breached its obligations under the Residco Leases. Under the SLV liquidated damage formula agreed by the parties, the Subsidiary-Lessee Debtor agreed that in the event of a default that triggered the SLV liquidated damages under the Residco Leases, the Subsidiary-Lessee Debtor bore the risk that the residual value of the Residco Aircraft might decline. Based upon contemporaneous market valuations of the Residco Aircraft at the time that the various Residco Leases were entered into during 2001 to 2003, the expected residual value for each of the Residco Aircraft was expected to be between $7

and $8 million in the years 2016 (when the leases were rejected) and 2017 (the original end of term for the Residco Leases). *See* Exhibit B (Avitas appraisal sheet for Embraer ERJ-145s issued in early 2002). Residco believes that the SLV liquidated damage formulas contained in the Residco Leases reflected a reasonable assessment of the potential damages arising from a breach by the Subsidiary-Lessee Debtor as viewed at the time that the original Residco Leases were entered.

In December 2014, ALF VI, Inc. acquired the owner participation interests held by Mitsui with respect to each of the seven Residco Aircraft and become the Owner Participant under each of the Residco Lease transactions.

3. SUBSEQUENT SUBSTANTIAL VALUE DROP CAUSED MATERIAL DIFFERENCES BETWEEN THE ORIGINAL EXPECTED RESIDUAL VALUES AND ACTUAL CURRENT FAIR MARKET VALUE FOR THE RESIDCO AIRCRAFT

Although the parties at the inception of the Residco Leases had expected that the residual value for each the Residco Aircraft would be between $7.1 and $7.6 million in 2017 -- at the end of the lease terms for the Residco Leases, the values of the Residco Aircraft experienced substantial devaluations. *See* Exhibit B. In fact, the Residco Parties believe that the fair market value for any ERJ145, including each of the Residco Aircraft, is now worth not more than $800,000. Because (a) the Subsidiary-Lessee Debtor agreed to bear the risk of the devaluation of the residual value of the Residco Aircraft for any breaches, *see supra* at §B(2), and (b) the Residco Aircraft collectively dropped in value by over $50 million, the SLV liquidated damage provisions now leads to claims for rejection damages.

C. POSTPETITION EVENTS

1. SECTION 1110 STIPULATION

Pursuant to that certain *Stipulation and Order Approving Section 1110(b) Extension for N288SK, N561RP, N259JQ, N286SK, N287SK, N563RP AND N562RP*, filed with this Court on April 22, 2016 [Docket No. 415] and approved by this Court on May 10, 2016 [Docket No. 540] (the "Section 1110 Stipulation"), the Parent-Guarantor Debtor, Subsidiary-Lessee Debtor and the Residco Parties entered into a stipulation under Section 1110(b) of the Bankruptcy Code. Pursuant to the Section 1110 Stipulation, each of the Residco Leases were rejected in 2016 and the Residco Aircraft have been returned to the Residco Parties.

In addition to the unresolved dispute regarding the Residco Claims, the Debtors have failed to pay administrative rent for all of the Residco Aircraft (other than one) for their postpetition use of such aircraft. The Residco Parties intend to seek payment of such postpetition rent as administrative claims owed by the Debtors.

2. RESIDCO PARTIES FILE PROOFS OF CLAIM BASED UPON SLV LIQUIDATED DAMAGES PROVISIONS OF LEASES

Prior to the deadline for submitting claims, the Residco Parties timely filed claims against each of (a) the Parent-Guarantor Debtor based upon the Parent Guarantee (such claims, the "*Guarantee Claims*") and (b) the Subsidiary-Lessee Debtor based upon the Residco Leases and related operative documents (such claims, the "*Lease Claims*", and along with the Guarantee Claims, the "*Residco Claims*") asserting claims for the early termination and rejection of the seven Residco Leases. In each of the Residco Claims, the Residco Parties asserted claims based upon the SLV liquidated damages provisions of the Residco Leases.

3. MERGER OF AIR CARRIER OPERATING ENTITIES

The Residco Leases were originally with Chautauquua Airlines, Inc. ("*Chautauquua*"), as lessee. On January 1, 2015, Chautauquua merged into Shuttle. *See Annual Report for Republic Airways Holdings Inc. for Fiscal Year Ending December 31, 2014 [Form 10-K]* (as filed with the Securities and Exchange Commission on February 27, 2015), at 5.[6] Accordingly, as of the Petition Date, Shuttle was the Lessee under the Residco Leases.

During these bankruptcy cases (as of January 31, 2017), Shuttle merged into Republic Airline. *See* Docket No. 1236 (Order approving merger of Shuttle into Republic (the "Shuttle/Republic Airline Merger Order"). Pursuant to the terms of the Shuttle/Republic Airline Merger Order, "any claim against Shuttle or Republic Airline will be treated substantially similarly and shall be a claim only against Republic Airline, the surviving entity; such claim will be entitled to a single distribution from Republic Airline under a chapter 11 plan . . . . " *See* Shuttle/Republic Airline Merger Order, at ¶8. Because (i) Chautauquua merged into Shuttle about two years ago (prior to the Petition Date), (ii) the Shuttle and Republic Airline merger has already been effected (as of about a month ago), (iii) air operations are currently operating under one air carrier operating certificate, and (iv) the above operational consolidations do not impact the issues presented in this Objection, for purposes of this Objection, the lessee under the Residco Leases is referred to herein as the "*Subsidiary-Lessee Debtor*".

[6] *See* https://www.sec.gov/Archives/edgar/data/1159154/000115915415000021/rjet12311410k.htm (copy of such annual 10-K report) (the "*2014 Form 10-K*").

D. DEBTORS PROPOSE PLAN

1. GENERAL DESCRIPTION OF PLAN AND DISCLOSURE STATEMENT

In connection with the Proposed Plan, the Debtors filed and received this Court's approval of the disclosure statement relating to the Proposed Plan. *See* Docket No. 1360 (the "*Disclosure Statement*"); and Docket No. 1358 (Order approving such Disclosure Statement). As set forth in the opening sentence of the "Overview of the Plan" section of the Disclosure Statement, "[t]he [Proposed] Plan provides for the substantive consolidation of the Debtors other than Liquidating Debtors, the reorganization and continued operation of the Consolidated Debtors, and the liquidation of the Liquidating Debtors." In sum, the proposed substantive consolidation is a fundamental feature of the Proposed Plan.

2. SUBSTANTIVE CONSOLIDATION PROVISIONS OF PLAN

The primary substantive consolidation provisions of the Proposed Plan are contained in Section 2.2 of the Proposed Plan (such provisions, the "*Substantive Consolidation Provisions*"). In general, the Proposed Plan provides for a "deemed" substantive consolidation of the Parent-Guarantor Debtor, the Subsidiary Lessee Debtor (as defined herein) and Republic Airways Services, Inc. "solely for the purposes associated with the confirmation of the [Proposed] Plan and the occurrence of the Effective Date, including voting, Confirmation, and distribution." *See* Proposed Plan, at §1.1(105) (definition of "Plan Consolidation"). Specifically, as relevant to the issues subject to this Objection, Section 2.2 provides as follows (in relevant part):

> **Plan Consolidation**
> **(a)** Solely for the purposes specified in the Plan (including voting, Confirmation, and distributions) and subject to Section 2.2(b), (i) . . ., (ii) *all guarantees of any Consolidated Debtor of the obligations of any other Consolidated Debtor shall be eliminated so that any Claim against any Consolidated Debtor, any guarantee thereof executed by any other Consolidated Debtor and any joint or several liability of any of the Consolidated Debtors shall be one obligation of the Consolidated Debtors* and (iii) each and every Claim filed or to be filed in the Chapter 11 Cases

> against any of the Consolidated Debtors shall be deemed filed against the Consolidated Debtors collectively and shall be one Claim against and, if and to the extent allowed, shall become one obligation of the Consolidated Debtors.
>
> **(b)** *The Plan Consolidation effected pursuant to this Section 2.2 shall not affect:* (i) the legal or organizational structure of the Consolidated Debtors, (ii) . . ., (iii) . . ., (iv) *defenses to any Cause of Action,* or (v) . . . .
>
> **(c)** Except as set forth in this Article 2 with respect to the Plan Consolidation and Section 6.2 with respect to Merger, nothing in this Plan is intended to substantively consolidate the Estates of the Debtors, and each such entity shall maintain its separate and distinct assets.

See Proposed Plan, at §2.2 (only relevant parts shown; emphasis added).

3. SUBSTANTIVE CONSOLIDATION PROVISIONS OF PROPOSED PLAN DO NOT CLEARLY SET FORTH TREATMENT OF GUARANTEE CLAIMS AND LEASE CLAIMS ALLOWED IN DIFFERING AMOUNTS; THE RESIDCO PARTIES REQUEST CLARIFICATION FROM THE DEBTORS

Although the Proposed Plan provides for the substantive consolidation for plan purposes, the provisions of the Proposed Plan appear to be subject to varied interpretations when a creditor, such as Residco, may hold claims against the Parent-Guarantor Debtor and the Subsidiary-Lessee Debtor that potentially may be allowed in different amounts. *See infra* at §I(A). The Residco Parties' claims are primarily based upon the SLV liquidated damage provisions contained in the Residco Leases. *See supra* at §C(2). With respect to the claims asserted by the Residco Parties against the Subsidiary-Lessee Debtor under the Residco Leases, such claims may be subject to various defenses, including whether the SLV liquidated damage provisions contained in the Residco Leases constitute penalties under New York law. *See infra* at §I(A)(1). In contrast, with respect to such the claims asserted by the Residco Parties against the Parent-Guarantor Debtor under the Parent Guarantee, such claims are not subject to defenses or counterclaims (and, accordingly, they are not subject to being challenged as a penalty) under New York law. *See infra* at §I(A)(2). Based upon such differences, there is a material risk that

the Residco Parties' Guarantee Claims may be allowed in an amount materially different than the allowed amount of the Lease Claims.

When the Residco Parties originally reviewed Section 2.2 of the Proposed Plan, they believed that the express terms of the provision made Section 2.2(a) subject to the protections provided to the Residco Parties under Section 2.2(b) – and since Section 2.2(b) provides that the "Plan Consolidation effected in this Section 2,2 shall not affect . . . any defenses to any Cause of Action," the Residco Parties originally believed that their claims and defenses (or lack of defenses, as the case may be) would not be effected by Section 2.2 of the Proposed Plan. Further, given the terms of Section 2.2(a)(ii), which appeared to merge claims (as opposed to eliminate claims), the Residco Parties believed that their potentially larger Guarantee Claims would not be negatively affected by Section 2.2(b). This belief was strengthened by the terms of Subsection 2.2(a)(iii), which provided that every claim would be treated as if filed against the Consolidated Debtors.

Nevertheless, because (a) the Debtors had previously informed the Residco Parties that they were considering objecting to the Residco Claims on the basis that the SLV liquidated damage provisions were a penalty and (b) the countervailing provisions of Section 2.2(b) were not perfectly clear, the Residco Parties asked the Debtors to confirm how Section 2.2 of the Proposed Plan would treat the amount of the Residco Claims if the Guarantee Claims and Lease Claims were allowed in different amounts.

4 DEBTORS REFUSE TO PROVIDE ANY CLARIFICATION OF TREATMENT OF RESIDCO'S CLAIMS IF STATE LAW PROVIDES THAT LEASE CLAIMS AND GUARANTEE CLAIMS SHOULD BE ALLOWED IN DIFFERENT AMOUNTS

Although the Residco Parties asked for clarification as to how the Substantive Consolidation Provisions would treat the Residco Claims in the event that the Guarantee Claims

and the Lease Claims were allowable under New York law in differing amounts, the Debtors have refused to provide any clarification.

Due to the Debtors refusal to clarify the impact of the substantive consolidation provisions upon the Residco Claims, the Residco Parties are interposing this Objection to the confirmation of the Proposed Plan.

RESPONSE AND OBJECTIONS

I. RESIDCO PARTIES REQUESTS CLARIFICATION THAT SUBSTANTIVE CONSOLIDATION PROVISIONS OF PLAN ARE NOT BEING USED AS OFFENSIVE LITIGATION TACTIC AGAINST RESIDCO PARTIES' CLAIMS

At the outset, the following sets forth a brief overview of the legal standards governing the allowance of each of the Residco Parties' Lease Claims and the Residco Parties' Guarantee Claims. Although the issues regarding the allowance of such claims are currently not before this Court, the allowance of claims arising under a primary obligation (such as claims under the Residco Leases here) and guaranty obligations (such as the claims under the Parent Guarantee here) are subject to very different legal standards. Specifically, under the controlling law of the State of New York, which governs both the Residco Leases and the Parent Guarantee, while the Lease Claims are subject to affirmative defenses (such as the defense that the SLV liquidated damage provisions are penalties), the Guarantee Claims are not subject to such defenses. These differences in the standards governing claim allowance raises the material risk that the Lease Claims and the Guarantee Claims may be allowed in materially different amounts. Accordingly, the treatment of the Residco Parties' two sets of claims (the Lease Claims and the Guarantee Claims) under the terms of the Debtors' Plan is critical to determining whether the Debtors' proposed substantive consolidation and treatment are proper.

A. UNDERLYING ISSUE: DIFFERENT STANDARDS GOVERN ALLOWANCE OF THE RESIDCO PARTIES' LEASE CLAIMS AND GUARANTEE CLAIMS, THEREBY CREATING RISK THAT SUCH CLAIMS MAY BE ALLOWED IN MATERIALLY DIFFERENT AMOUNTS

The Residco Parties hold two types of claims against the Debtors with respect to their seven rejected aircraft leases: (a) the Lease Claims against Subsidiary-Lessee Debtor, as lessee, arising under the Residco Leases and related operative documents and (b) the Guarantee Claims against Parent-Guarantor Debtor arising under the Parent Guarantee, in each case, most of the asserted claims are based upon the SLV liquidated damage formula set forth in the Residco Leases.

The Supreme Court has repeatedly held that validity of creditors' claims in bankruptcy is ordinarily a question of state law, and "we generally presume that claims enforceable under applicable state law will be allowed in bankruptcy unless they are expressly disallowed" under Section 502. *Travelers Cas. & Sur. Co. of Am. v. Pacific Gas & Elec. Co.,* 549 U.S. 443, 452 (2007); *Raleigh v. Illinois Department of Revenue,* 523 U.S. 15, 20 (2000) ("creditors' entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor's obligation, subject to any qualifying or contrary provisions of the Bankruptcy Code."). In *Travelers*, the Supreme Court also determined that a proof of claim should be allowed to the extent provided under applicable state law under Section 502 unless the claim falls within one of the nine exceptions enumerated in Section 502(b) of the Bankruptcy Code. *See Travelers,* 549 U.S. at 450-51. "The settled principle that '[c]reditors' entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor's obligation, subject to any qualifying or contrary provisions of the Bankruptcy Code.' " *Id.* (quoting *Raleigh v. Ill. Dep't of Revenue,* 530 U.S. 15, 20 (2000)). Because none of the nine disallowance provisions set forth in Section 502(b) apply with respect to the Residco Parties'

Lease Claims and Guarantee Claims, state law governs whether those claims should be allowed based upon the SLV liquidated damages provision or upon another damage formulation.

1. Enforceability of the Residco Parties' Lease Claims Dependent upon Whether SLV Damage Provisions Are Considered Enforceable Liquidated Damages or a Penalty

The SLV claim provision of an aircraft lease "is a liquidated damages provision common in aircraft leases . . . and is . . . used to calculate damages after a default." *In re Northwest Airlines Corp.*, 393 B.R. 352, 354-55 (Bankr. S.D.N.Y. 2008) (court invalidated SLV liquidated damages provision that provided constant, non-declining SLV over life of lease). In the airline bankruptcy context, "SLV claims against an airline-debtor usually arise due to the default triggered by the chapter 11 filing and the subsequent rejection of the aircraft lease by the airline-debtor, both of which occur or are deemed to occur on the petition date."[7] In general, a liquidated damages provision in a contract is enforced unless it is found to operate as a penalty or forfeiture clause. *In re Ionosphere Clubs, Inc.*, 262 B.R. 604, 614 (Bankr. S.D.N.Y. 2001).

"Whether a contract clause which nominally prescribes liquidated damages is in fact an unenforceable penalty provision is a question of state law." *United Merchants & Manufacturers, Inc. v. Equitable Life Assurance Society of the United States*, 674 F.2d 134, 141 (2d Cir. 1982); *In re Ionosphere Clubs, Inc.*, 262 B.R. at 613. In New York, the enforceability of a liquidated damages provision is dependent upon whether such damage clause was a reasonable basis for estimating damages as measured at the time that the parties reached such agreement. *See Truck Rent-A-Ctr., Inc. v Puritan Farms 2nd, Inc.*, 361 N.E.2d 1015, 1019 (N.Y. 1977); *see also* N.Y. U.C.C.

[7] *Michael J. Edelman and Douglas J. Lipke, Chapter 11 Cases Involving Airlines, in* Collier Guide to Chapter 11: Key Topics and Selected Industries ¶ 24.04 (2015) (the "Collier Guide to Chapter 11 Cases Involving Airlines").

§2A-504(1) (recognizing propriety of liquidated damage formula provision that "is reasonable in light of the then anticipated harm"). As New York's Court of Appeals succinctly stated:

> The rule is now well established. A contractual provision fixing damages in the event of breach will be sustained if the amount liquidated bears a reasonable proportion to the probable loss and the amount of actual loss is incapable or difficult of precise estimation. If, however, the amount fixed is plainly or grossly disproportionate to the probable loss, the provision calls for a penalty and will not be enforced. . . . [T]he agreement should be interpreted as of the date of its making and not as of the date of its breach.

Truck Rent-A-Center, 361 N.E.2d at 1019. In this regard, "[t]he burden is on the party seeking to avoid liquidated damages . . . to show that the stated liquidated damages are, in fact, a penalty. *JMD Holding Corp. v. Cong. Fin. Corp.*, 4 N.Y.3d 373, 380, 828 N.E.2d 604, 608-09 (2005) (2005). Finally, in determining whether a party objecting to a liquidated damages provision has met its burden, the New York Court of Appeals cautioned generally against interfering with parties' agreements and cited to authorities showing that "[t]oday the trend favors freedom of contract through the enforcement of stipulated damage provisions as long as they do not clearly disregard the principle of compensation." *JMD Holding Corp. v. Congress Fin. Corp.*, 4 N.Y.3d at 381, 828 N.E.2d at 609 (2005) (citing to, *inter alia*, 3 Farnsworth, Contracts § 12.18, at 303-304 (3d ed. 2004)). In the airline bankruptcy context, SLV liquidated damage provisions that decline over time and bear a reasonable relationship to the probable loss are routinely enforced and/or serve the basis for claims settlements in almost every airline bankruptcy case. *See, e.g.*, Collier Guide to Chapter 11 Cases Involving Airlines, at ¶ 24.04[3].

As set forth above, the Debtors rejected and/or terminated early each of the Residco Leases, causing significant damages to the Residco Parties. The Residco Parties filed proofs of claim and, among other claims, asserted claims against the Subsidiary-Lessee Debtor, as lessee, based upon the SLV liquidated damages provisions under the Residco Leases. Recently, the

Debtors have informed the Residco Parties that they may object to the Residco Parties' Lease Claims upon the grounds that the SLV liquidated damages are a penalty or are subject to some other affirmative defense. Although the Residco Parties do not believe such potential objections would ultimately prevail, the Residco Parties acknowledge that their Lease Claims are subject to some potential alleged defenses and, accordingly, there is some risk as to whether the SLV liquidated damage claims would be enforced against the Subsidiary-Lessee Debtor.

2. Penalty and Other Defenses May Not Be Interposed to Reduce the Residco Parties' Guarantee Claims

In contrast to the Lease Claims, the Residco Parties' Guarantee claims do not face the risk of being challenged as a penalty. Guarantee claims allowable under state law are allowable unless there is a specific bankruptcy disallowance provision under the Bankruptcy Code. *See supra* at §I(A) (discussion that claim allowance governed by state law absent express disallowance provision in bankruptcy code); *see, e.g., In re SNTL Corp.*, 571 F.3d 826, 838-39 & 843 (9th Cir. 2009) (claims under guaranty provided under state law were allowed where none of the provisions of Section 502(b) disallowed such claim).

As recently decided in the Second Circuit, where a New York law governed guaranty provided an "absolute and unconditional" obligation of the guarantor, such guarantor is barred from challenging the amount of its obligations on the basis that an underlying liquidated damage provision constitutes a penalty. *See 136 Field Point Circle Holding Co. LLC v. Invar Int'l Holding Inc.*, No. 15-1248 (cv), Summary Order, at 5-6 (2d Cir. March 21, 2016) ("*136 Field Point Circle*"). In reaching this holding, the Second Circuit ruled that the existence of absolute and unconditional provisions of a guaranty "**forecloses** [a guarantor from being able to assert] **affirmative defenses and counterclaims**." *Id.*, at 5 (citations omitted) (emphasis added). The Second Circuit stated:

> [W]here a guaranty provides that it is 'absolute and unconditional irrespective of . . . any lack of validity or enforceability of the agreement . . . or . . . any other circumstance which might otherwise constitute a defense, the guarantor is precluded from asserting a defense as to the existence of a valid underlying debt.

Id., at 5 (quoting *Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v. Navarro*, 25 N.Y.3d 485, 494-95 (2015)).

Likewise here, given the absolute, unconditional and irrevocable nature of the Parent Guarantee and the broad waivers of defenses and agreements regarding any (if any) lack of enforceability under the Residco Lease, the Guarantee Claims are not susceptible to any defense that the SLV liquidated damage provision in the underlying the Residco Leases are penalties or otherwise unenforceable. Given the additional protections provided to guaranty claims under New York law, as recently expressly recognized by the Second Circuit (*viz.* the freedom from facing challenges based upon the assertion of penalty and other enforcement defenses), the Residco Parties' Guarantee Claims simply just do not face the same potential risks regarding their allowance as the Lease Claims may face.

B. REQUEST FOR CLARIFICATION OF IMPACT OF PLAN UPON HOLDERS OF ALLOWED CLAIMS AGAINST PRIMARY OBLIGORS AND GUARANTORS IN DIFFERENT AMOUNTS

Given the material differences regarding the potential defenses that may be asserted with respect to the Lease Claims (as opposed to the Guarantee Claims), there is a material risk that the Residco Parties' Lease Claims and the Guarantee Claims may be allowed in different amounts. Indeed, this risk is not immaterial – but such difference in potential allowed claims amounts to over $50 million. When combined with the uncertainty regarding the treatment of the Residco Claims due to the operation of the Substantive Consolidation Provisions of the Proposed Plan (and the Debtors unwillingness to agree to delineate the construction of how such provisions should be enforced), the Substantive Consolidation Provisions lead to the Proposed Plan being

unconfirmable because (a) the Debtors cannot meet their burden to justify substantive consolidation based upon the controlling law and (b) the proposed treatment of general unsecured creditors violates the "same treatment" requirements of Section 1123(a)(4) of the Bankruptcy Code. .

As a preliminary matter, the Residco Parties request that this Court clarify the effect of the proposed substantive consolidation upon the Residco Parties in light of the possibility that the Residco Parties may hold claims against the Parent-Guarantor Debtor and the Subsidiary-Lessee Debtor that may be allowed in vastly different amounts. Specifically, the Residco Parties request that this Court determine that in the event that the Residco Parties hold claims arising from each of their Residco Lease transactions against the Parent-Guarantor Debtor and the Subsidiary-Lessee Debtor that are allowed in different amounts, then for all purposes under the Proposed Plan (including for voting, confirmation, distributions and the substantive consolidation provisions of the Proposed Plan), the Residco Parties propose that they should hold the average of their allowed Lease Claim and allowed Guarantee Claim for each such transaction (such construction of the Substantive Consolidation Provisions of the Proposed Plan, the "*Average Claims Treatment*").[8] The following chart demonstrate how proposed Average Claims

[8] The Residco Parties would also consent to the Court constructing the Substantive Consolidation Procedures to allow the Residco Parties the higher of the Lease Claim or the Guarantee Claim for each Residco Lease transaction. Given that the Guarantee Claims are absolute and unconditional obligations of the Debtors, the Debtors would not be permitted to assert defenses against the Guarantee Claims, this interpretation effectively would cause the amount of the Guarantee Claim to control the allowed amount of the Residco Parties Claims. Such construction of the Substantive Consolidation Provisions of the Proposed Plan, the "*Higher Claim Treatment*". The Residco Parties, of course, recognize that this Court and the Debtors would probably prefer the Average Claims Treatment over the Higher Claim Treatment.

Treatment would work in three scenarios (the depicted numbers are just inserted for illustrative purposes):

	DEBTORS INVALIDATE SLV CLAIMS AS PENALTY ON BOTH LEASE CLAIMS AND GUARANTEE CLAIMS	**DEBTOR INVALIDATES SLV CLAIMS AS PENALTY ON LEASE CLAIMS, BUT RESIDCO PARTIES PREVAIL ON SLV CLAIMS UNDER PARENT GUARANTEE**	**RESIDCO PARTIES PREVAIL ON SLV CLAIMS UNDER LEASE CLAIMS AND ON GUARANTEE CLAIMS**
AMOUNT OF LEASE CLAIMS	**$9 MILLION**	**$9 MILLION**	**$67 MILLION**
AMOUNT OF GUARANTEE CLAIMS	**$9 MILLION**	**$67 MILLION**	**$67 MILLION**
PROPOSAL: AVERAGE CLAIMS TREATMENT (PLAN TREATMENT BASED UPON AVERAGE OF CLAIMS)	**$9 MILLION**	**$38 MILLION**	**$67 MILLION**

Although the Residco Parties believe that applicable law would entitle the Residco Parties to retain the Higher Claim Treatment, the Residco Parties would consent to the substantive consolidation provisions of the Proposed Plan if the substantive Consolidation Provisions are determined to provide for the Average Claims Treatment. Accordingly, if this Court determines that the Proposed Plan, and, specifically, the Substantive Consolidation Provisions, provides for the Average Claims Treatment, then such a determination would resolve this Objection in full.

As set forth below, such clarification to implement the Average Claims Treatment (as delineated in the confirmation order for the Proposed Plan) is not just permissible, but is the only means to ensure that the proposed Substantive Consolidation Procedures meet the strict requirements under controlling Second Circuit precedent. Such a resolution would also ensure that the treatment provided to the Residco Parties does not run afoul of the requirements of Section 1124(a)(3)'s same treatment requirements. Such construction also preserves the substantive rights of the parties in any litigation. Further, the Residco Parties believe that this

Court construing the Substantive Consolidation Provisions as providing for the Average Claims Treatment will avoid potential lengthy plan confirmation delays and the associated litigation. Finally, we believe that such a construction is the proper interpretation of the Proposed Plan and allows for the substantive consolidation to be effected (with the consent of the Residco Parties) in accordance with the applicable controlling case law.

Absent this clarification, the Residco Parties do not consent to the proposed Substantive Consolidation Provisions and attendant distribution provisions of the Proposed Plan and hereby interpose and pursue this Objection.

II. ABSENT REQUESTED CLARIFICATION, DEBTORS PROPOSED PLAN CANNOT BE CONFIRMED

In the absence of the clarification requested by the Residco Parties that implements the Average Claims Treatment, the Debtors' Proposed Plan suffers from three fatal defects that bar confirmation. First, the Substantive Consolidation Provisions of the Proposed Plan would impermissibly effect an offensive weapon against the Residco Parties Claims, potentially causing the Residco Parties to forfeit their stronger Guarantee Claims against Parent-Guarantor Debtor. *See infra*, at §II(A)(1). Second, the Debtors proposed substantive consolidation cannot meet the strict, restrictive requirements for substantive consolidation required in the Second Circuit. *See infra*, at §II(A)(2). Third, the proposed distributions offered to the Residco Parties violate the mandate for the same treatment of claims within the same class under Bankruptcy Code Section 1123(a)(4). *See infra*, at §II(B).

A. PLAN CANNOT SATISFY REQUIREMENTS FOR SUBSTANTIVE CONSOLIDATION

1. Overview of Substantive Consolidation: Narrowly Construed and Barred from Being Used Offensively to Buttress Rights against Particular Creditors

The equitable doctrine of substantive consolidation occasionally results in the treatment of a debtor and one or more of its affiliates as a single entity. As noted by the seminal Second Circuit case governing substantive consolidation under the Bankruptcy Code, substantive consolidation results in pooling the assets of and claims against the debtor and such affiliates, satisfying liabilities from the resulting fund, eliminating intercompany claims of the debtor and such affiliates, and combining the creditors of the debtor and such affiliates for purposes of voting on reorganization plans. *In re Augie/Restivo Baking Co.*, 860 F.2d 515, 518 (2d Cir. 1988) ("*Augie/Restivo*"). The Second Circuit cautions that substantive consolidation may only be used "sparingly":

> Because of the dangers in forcing creditors of one debtor to share on a parity with creditors of a less solvent debtor, we have stressed that substantive consolidation 'is no mere instrument of procedural convenience but a measure vitally affecting substantive rights, to be used ***sparingly***.

860 F.2d at 518 (citations omitted); *see also FDIC v. Colonial Realty Co.*, 966 F.2d 57, 61 (2d Cir. 1992) ("Certainly, [the Second Circuit] has insisted that substantive consolidation be invoked ***sparingly*** because of the possibility of unfair treatment of creditors.") (citations omitted) (emphasis added); *See also In re Adelphia Communications Corp.*, 544 F.3d 420, 427 n.4 (2d Cir. 2008) ("The doctrine [of substantive consolidation] is used "sparingly" because it vitally affects substantive rights of creditors) (citations omitted). In light of the extremity of this equitable remedy, courts allow substantive consolidation "[o]nly through a searching review of the record, on a case-by-case basis, [to] ensure that substantive consolidation effects its sole aim: fairness to all creditors." *Colonial Realty*, 966 F.2d at 61.

A Court's authority to order substantive consolidation derives from its general equitable powers under Bankruptcy Code § 105(a). *See, e.g., FDIC v. Colonial Realty Co.*, 966 F.2d 57, 59 (2d Cir. 1992); *Augie/Restivo*, 860 F.2d at 518 n.1. Such an equitable remedy, however, may not be utilized by the Debtors to change the mandates of Section 502 of the Bankruptcy Code regarding the allowance of each of the Residco Parties' Claims[9] or the requirements of "same treatment" mandated under Bankruptcy Code Section 1123(a)(4). *See* infra at §II(B). Specifically, the Debtors cannot use the equitable remedy of substantive consolidation to buttress their rights against the Residco Parties by undercutting the Guarantee Claims in favor of the riskier Lease Claims that are potentially allowable in a substantially reduced amount – such use of substantive consolidation is prohibited. As confirmed by the Debtors' refusal to confirm the impact of substantive consolidation upon the Residco Parties' Guarantee Claims and Lease, the Debtors are (either expressly or tacitly) utilizing substantive consolidation as an offensive litigation tool against the rights of the Residco Parties. .

Both the Supreme Court and the Second Circuit have expressly barred the use of equitable remedies to change the substantive rights of parties under the Bankruptcy Code. In *Norwest Bank Worthington v. Ahlers*, the Supreme Court rejected a court's effort to create an equitable result in contravention of the dictates of the Bankruptcy Code:

> "The short answer to [arguments favoring allowing broader equity powers] is that whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code."

485 U.S. 197, 206-07 (1988) (citations omitted). In reviewing whether substantive consolidation could be invoked, the Second Circuit noted that:

[9] *See supra* at §§I(A)(1) & (2) (discussing standards regarding allowance for each of the Residco Parties Guarantee Claims and Lease Claims).

> Courts have consistently found the authority for substantive consolidation in the bankruptcy court's general equitable powers as set forth in 11 U.S.C. § 105. In relevant part, Section 105(a) provides that the bankruptcy court 'may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.' By its very terms, Section 105(a) limits the bankruptcy court's equitable powers, which must and can only be exercised within the confines of the Bankruptcy Code, and cannot be used in a manner inconsistent with the commands of the Bankruptcy Code.

FDIC v. Colonial Realty Co., 966 F.2d at 59. Yet, such expansion of the Debtors' substantive rights against the Residco Parties in contravention of the allowance provisions of the Bankruptcy Code is exactly what the Debtors are seeking here – as confirmed by the Debtors' refusal to provide clarification to the Residco Parties.

Similarly, one of the guiding principles of substantive consolidation is that substantive consolidation cannot be used offensively against a creditors interests. For example, in *Augie/Restivo,* the Second Circuit expressly limited use of substantive consolidation to situations where creditors treated the debtors as a single economic unit or the Debtors affairs are so entangled that *all* creditors will benefit. *See Augie/Restivo*, 860 F.2d at 518. In fact, the Third Circuit, after adopting the *Augie/Restivo* test, noted the following underlying principle:

> While ***substantive consolidation*** may be used defensively to remedy the identifiable harms caused by entangled affairs, it ***may not be used offensively, for example,*** to disadvantage tactically a group of creditors or ***to alter the rights of parties they would otherwise enjoy absent consolidation***.

In re Owens Corning, 419 F.3d 195, 211 (3d Cir. 2005) (barring debtor from eliminating benefit of guaranties expressly relied upon by creditors); *see also In re Geneva ANHX IV LLC*, 496 B.R. 888, 899 (Bankr. C.D. Ill. 2013) (effort by debtors to use substantive consolidation to deprive creditors of tenancy in common rights "improper and impermissible").

In light of the Debtors refusal to confirm that substantive consolidation would not be used offensively against the Residco Parties, a material risk exists that the Debtors may use the

substantive consolidation of the Debtors offensively in any claims litigation against the Residco Parties. Such offensive use of the equity based remedy of substantive consolidation is expressly barred as an impermissible effort to undermine the Residco Parties' rights under the Bankruptcy Code and their state law protected rights arising from the terms of their the Parent Guarantee.

2. Debtors Cannot Satisfy the Restrictive Requirements for Substantive Consolidation in Second Circuit

Even ignoring the general prohibitions against using equity powers to undermine creditor protections provided by the Bankruptcy Code, the Debtors cannot satisfy the stringent requirements for substantive consolidation. In *Augie/Restivo, the* Second Circuit held that substantive consolidation is appropriate only when either:

> (a) ***No Reliance upon Separateness of Entities*** (the "First Prong"): "creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit;" or
>
> (b) ***Due to Extreme Entanglement, Consolidation Benefits Each and Every Creditor*** (the "Second Prong"): ***:*** "the affairs of the debtors are so entangled that consolidation will benefit ***all*** creditors."

In re Augie/Restivo Baking Co., 860 F.2d at 518 (emphasis added). "The proponents of substantive consolidation have the burden of showing one or the other rationale for consolidation." *Owens Corning*, 419 F.3d at 210; *see also In re Jennifer Convertibles, Inc.*, 447 B.R. 713, 723 (Bankr. S.D.N.Y. 2011). Given the express reliance by the Residco Parties of the separateness of Parent-Guarantor Debtor and Subsidiary-Lessee Debtor and the material risk of harm to the Residco Parties' interests, the Debtors cannot satisfy the mandatory requirements for either type of substantive consolidation.

(a) The Residco Parties' Reliance upon Separateness of Parent-Guarantor Debtor and Subsidiary-Lessee Debtor Bars Substantive Consolidation under First Prong of Augie/Restivo

As the Second Circuit noted in *Augie/Restivo*, the presence or absence of creditor reliance upon the separateness of the entities is determinative of the first prong of the Augie/Restivo test. 860 F.2d at 518. Here, as demonstrated by the existence of the Parent Guarantee, the Residco Parties relied upon the separateness of Parent-Guarantor Debtor and Subsidiary-Lessee Debtor in entering into the Residco Lease transactions. Where a creditor enters into a primary obligation with a debtor and obtains a separate guaranty from another entity, courts have expressly recognized that the creditor has relied upon the separateness of those entities, which reliance bars consolidation under the First Prong of Augie/Restivo. *See Augie/Restivo*, at 518-19 (creditor reliance upon separateness, as evidenced by existence of guaranty, shows that First Prong of Augie/Restivo not satisfied); *Owens Corning*, 419 F.3d at 210 ("If objecting creditor relied upon the separateness of the entities, consolidation cannot be justified vis-à-vis the claims of that creditor"); *In re Bauman*, 535 B.R. 289, 297 (Bankr. C.D. Ill. 2015) (existence of guaranty evidences prepetition expectation of separateness of entities for purposes of substantive consolidation analysis).

Not only does the existence of Residco's reliance upon the separate credit of Parent-Guarantor Debtor and Subsidiary-Lessee Debtor bar substantive consolidation under the First Prong of Augie/Restivo, but there is a total lack of any support in the Debtors' Disclosure Statement showing that the parties viewed the Debtors as a single economic unit. And the reason for this failure is obvious: there is no evidence to support this prong. In this regard, all available facts demonstrate the separateness of the Debtors:

- The Debtors had no difficulty separating the assets and liabilities of each individual Debtor in their schedules of assets and liabilities;

- Upon information and belief, a large portion of the Debtors' aircraft leasing and financing and codeshare agreements were the primary obligations of the Subsidiary-Lessee Debtor that were guaranteed by the Parent-Guarantor Debtor;

- As publicly reported entities, the existence and separateness of the separate operations and financing activities of each of the Debtors was a matter of public record. *See, e.g.,* 2014 10-K; Third Quarter 2015 10-Q.

The fact that the Debtors were publicly reporting entities itself should bar any ability to effect substantive consolidation under the First Prong of Augie/Restivo. *See, e.g., In re World Access Inc.,* 391 B.R. 217 (Bankr. N.D. Ill. 2003). In sum, substantive consolidation is and cannot be justified under the First Prong of Augie/Restivo.

(b) The Residco Parties Will Be Substantially Harmed

Likewise, there is no basis for substantive consolidation under the Second Prong of Augie/Restivo. Such prong of the Augie/Restivo test requires two showings: that (1) the debtors affairs are so entangled and (2) consolidation will benefit ***ALL*** creditors. *See Augie/Restivo*, 860 F.2d at 518. The Second Circuit has opined that this prong is very restrictive:

> The second factor, entanglement of the debtors' affairs, involves cases in which there has been a commingling of two firms' assets and business functions. Resort to consolidation in such circumstances, however, should not be Pavlovian. Rather, substantive consolidation should be used only after it has been determined that ***all creditors will benefit because untangling is either impossible or so costly as to consume the assets. . . .*** Commingling, therefore, can justify substantive consolidation only where the time and expense necessary even to attempt to unscramble them [is] so substantial as to threaten the realization of any net assets for all the creditors or where no accurate identification and allocation of assets is possible. In such circumstances, all creditors are better off with substantive consolidation.

Id., at 520 (emphasis added); *see also In re Source Enters., Inc.*, 392 B.R. 541, 554-55 (S.D.N.Y. 2008) (same).

As set forth above, the Residco Parties will suffer the risk of material harm if substantive consolidation is permitted here. *See supra*, at §I(A) Given that the Residco Parties are being

threatened with holding a claim against the Subsidiary-Lessee Debtor that is potentially (if the Debtors' threatened objection is successful) more than $50 million less than the Residco Parties' claim against the Parent-Guarantor Debtor, the only circumstance where the Residco Parties would not be harmed would be if the Parent possesses no assets. In any other circumstance, the Residco Parties would be harmed. Of course, as admitted by the Debtors both in the Parent-Guarantor Debtor's Schedules of assets and liabilities and in the Debtors' Disclosure Statement, the Parent-Guarantor Debtor possesses material assets. *See supra* at §A(3). These facts, by themselves, bar substantive consolidation under the Second Prong.

Even if the lack of any benefit to the Residco Parties wasn't itself a bar to substantive consolidation under the Second Prong, the Debtors have not shown, and there is absolutely no basis for any contention that, the Debtors cannot untangle the affairs of the individual Debtors. Indeed, these were public companies where there is no indication that the Debtors intercompany accounting records were fundamentally flawed. As set forth above, the Debtors had no difficulties filing their schedules of assets and liabilities for each Debtor. There is no hopeless entanglement of affairs.

Indeed, the lack of basis for substantive consolidation is further demonstrated by the Debtors' Disclosure Statement and Plan. The sole basis alleged by the Debtors in their Disclosure Statement is that:

> The result of the Debtors' operational interdependence is that the specific allocable liability of each of the Consolidated Debtors for the approximately $615.1 million of allowed general unsecured claims of the Codeshare Partners, which constitute the overwhelming majority – approximately 62% – of the aggregate unsecured claims against the Consolidated Debtors, as well as the specific allocable liability of each of the Consolidated Debtors with respect to general unsecured claims of other creditors whose goods or services were utilized in connection with those operations, cannot be ascertained with certainty.

The rationale that the three codeshare partners could reallocate their claims to equalize their payouts may have justified a consolidation of Shuttle and Republic Airline, but such rationale provides no support for the substantive consolidation for the Parent-Guarantor Debtor or the other Consolidated Debtor. The claim reallocation rights of the codeshare partners only allowed claims to flow between Shuttle and Republic Airline and provided no reallocation rights affecting the claims against the Parent-Guarantor Debtor. Indeed, the codeshare parties claims against Parent-Guarantor Debtor were in a fixed amounts. *See* Docket No. 1196 (claims settlement with American Airlines, Inc., which also specified the allocation rights for Delta Air Lines, Inc. and United Airlines, Inc.), at ¶¶2-3. Further, Republic Airline and Shuttle have already merged – so the codeshare partners' former ability to shuffle claims between Shuttle and Republic Airline no longer exists and provides no current support for substantive consolidation.

As is also evident from the express text of the Proposed Plan, the Debtors are only seeking a "deemed" consolidation – solely for their convenience for distribution and voting purposes under their Proposed Plan. The Debtors, however, are not seeking to actually consolidate any other Debtors (other than Shuttle and Republic Airline, whose merger has already been effected). As set forth in the Debtors' Plan and Disclosure Statement:

- "**Plan Consolidation**" is expressly defined in the Proposed Plan as the "deemed consolidation of the Estates of the Consolidated Debtors, solely for the purposes associated with the confirmation of the Plan and the occurrence of the Effective Date, including voting, Confirmation, and distribution." *See* Proposed Plan, at §1.1(105).

- **Deemed Consolidation**. "The Plan Consolidation will not affect . . . the legal or organizational structure of the Consolidated Debtors . . . ." *See* Disclosure Statement, at 28; Proposed Plan, at §2(b)(i).

- "**Substantive Consolidation for Plan Purposes Only.** Except as provided in the Plan with respect to the Plan Consolidation and with respect to Merger, nothing in this Plan is intended to substantively consolidate the Estates of the Debtors, and each such entity shall maintain its separate and distinct assets." *See* Disclosure Statement, at 38; Proposed Plan, at §2(c).

- "**Continued Corporate Existence**. Except as otherwise provided in the Plan and subject to the Merger the restructuring transactions described in Sections 6.2 and 6.4 of the Plan, each Debtor shall continue to exist after the Effective Date as a separate legal entity . . ." *See* Disclosure Statement, at 39.

In sum, the Debtors admit that the proposed consolidation is just a "deemed" consolidation.

Deemed substantive consolidations, however, are viewed with great skepticism, especially where, as here, the Debtors are not seeking to rectify real problems. *See Owens Corning*, 419 F.3d at 199, 212. In rejecting a so-called "deemed" substantive consolidation, the Third Circuit in *Owned Corning* ruled that deemed consolidations should be viewed with much skepticism as "cut[ting] against the grain of all the principles" of substantive consolidation:

> If Debtors' corporate and financial structure was such a sham before the filing of the motion to consolidate, then how is it that post the Plan's effective date this structure stays largely undisturbed, with the Debtors reaping all the liability-limiting, tax and regulatory benefits achieved by forming subsidiaries in the first place? In effect, the Plan Proponents seek to remake substantive consolidation not as a remedy, but rather a stratagem to "deem" separate resources reallocated to OCD to strip the Banks of rights under the Bankruptcy Code, favor other creditors, and yet trump possible Plan objections by the Banks.

Id., at 216. Similar to the stratagem in *Owens Corning*, the Debtors are not seeking to correct some faulty structural issues, but are seeking to strip, in an offensive strike, valuable rights belonging to the Residco Parties. Even viewed in its most docile form, the request to substantively consolidate amounts to no more than an administrative convenience – and such administrative conveniences cannot support the extreme remedy of substantive consolidation. *See Augie/Restivo*, 860 F.2d at 518 (substantive consolidation cannot be used for "procedural convenience"). This type of convenience administration is expressly not a justification for consolidating cases where, as here, there is a creditor who will be harmed.

Finally, other than their faulty supposition in the Debtors' Disclosure Statement that the codeshare partners' claim reallocation rights somehow supports a general substantive

consolidation,[10] the Debtors have failed to provide any support for substantive consolidation. *See In re Jennifer Convertibles, Inc.*, 447 B.R. at 725-26 (court required debtors to prepare separate liquidation analysis for entity for which substantive consolidation requested); *In re Verestar, Inc.*, 343 B.R. 444, 463-64 (Bankr. S.D.N.Y. 2006) (failure to provide basis for substantive consolidation warranted denial of request). Here:

- there is no evidence of extreme entanglement;
- there is no evidence that the expense needed to untangle would threaten any recoveries;
- the Debtors have not even presented a separate liquidation analysis for any of the Debtors subject to the proposed consolidation; and
- there is no evidence that the identification of assets and liabilities among entities is not possible.

Based upon the complete lack of support for any legitimate basis for substantive consolidation, the Debtors' Proposed Plan, which is premised upon the deemed substantive consolidation of the Debtors, should not be confirmed.

B. PROPOSED PLAN VIOLATES SECTION 1123(a)(4)'S REQUIREMENT OF EQUALITY OF TREATMENT OF CREDITORS WITHIN SAME CLASS

Absent the clarifications requested by the Residco Parties, the Substantive Consolidation Provisions of the Proposed Plan also causes the Proposed Plan to violate the requirements of Bankruptcy Code Section 1123(a)(4). Under the Plan, the Residco Parties are classified as holders of Class 3(a) General Unsecured Claims (Consolidated Debtors) (the "*General Unsecured Creditor Class*"), which is a consolidated claims class that includes, among other claims, (a) all general unsecured claims against the Subsidiary-Lessee Debtor and (b) all general

[10] As set forth above, the codeshare partners' reallocation rights solely supports the consolidation of Shuttle and Republic Airline – and such entities are not in need of consolidation as they have already merged. *See* supra, at 27.

unsecured claims against the Parent-Guarantor Debtor.. The Residco Parties, however, are not receiving the same or similar distributions as other creditors holding similar claims in light of the material risk that the Debtors' Proposed Plan places upon the Residco Parties":

> (y) the Residco's Parties' Lease Claims against the Subsidiary-Lessee Debtor remain subject to defenses, thereby causing a risk that the Residco Parties' claims for the SLV liquidated damages may be determined to be a penalty and be reduced by more than $50 million, and
>
> (z) the Residco Parties' Guarantee Claims face the risk that the Substantive Consolidation Provisions of the Plan are interpreted offensively to disallow such Guarantee Claims in their entirety.

These risks cause the Residco Parties to face discriminatory and improper treatment under Section 1123(a)(4) of the Bankruptcy Code.

Section 1123(a)(4) "mandates" that a confirmable plan must provide the same treatment for all creditors within the same class. *See In re Brotby*, 303 B.R. 177, 185 (9th Cir. 2003); *see also* 11 U.S.C. §1123(a) (listing mandatory requirements that every plan "shall" contain, which include Section 1123(a)(4)). Section 1123(a)(4)'s mandate "advances the policy of equality of distribution of estate property in bankruptcy law." *In re Journal Register Co.,* 407 B.R. 520, 532 (Bankr. S.D.N.Y. 2009). Specifically, Section 1123(a)(4) requires that a plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). "Section 1123(a)(4) does not require precise equality, only approximate equality." *In re Quigley Co., Inc.,* 377 B.R. 110, 117 (Bankr. S.D.N.Y. 2007).

"Equality of treatment involves two facets: (1) all class members must receive equal value, and (2) each class member must pay the same consideration in exchange for its distribution. *In re Quigley Co. Inc.*, 437 B.R. 102, 146 (Bankr.S.D.N.Y.2010). In sum, it is both the amount that a creditor receives, as well as the amount that the creditor must give up to

receive such distribution rights, that must be examined to evaluate whether a creditor is being treated similarly. In *AOV Industries*, the District of Columbia Circuit Court succinctly explained the rationale for this test:

> Even though neither the Code nor the legislative history precisely defines the standards of equal treatment, the most conspicuous inequality that § 1123(a)(4) prohibits is payment of different percentage settlements to co-class members. The other side of the coin of unequal payment, however, has to be unequal consideration tendered for equal payment. It is disparate treatment when members of a common class are required to tender more valuable consideration -- be it their claim against specific property of the debtor or some other cognizable chose in action--in exchange for the same percentage of recovery. . . . However, to the extent that the creditor was called upon to release a unique, direct claim in order to participate in the $3 million Fund, we conclude that Hawley was being subjected to unequal treatment in violation of 11 U.S.C. § 1123(a)(4).

In re AOV Indus., 792 F.2d 1140, 1152 (D.C. Cir. 1986). The *AOV* Court held that it was "unfair to require a creditor to pay a higher price for the same benefit." *Id.*, at 1152.

Here, the Residco Parties face the same disparate treatment risk that the *AOV Industries* court addressed – the Residco Parties would be forced to release significantly more rights to recover the same distributions being provided to other creditors. As set forth above, the Residco Parties have requested that this Court interpret the Substantive Consolidation Provisions of the Proposed Plan to provide for either the Average Claim Treatment or the Higher Claim Treatment. Frankly, if one of the above interpretations is not accepted, then that means that the Substantive Consolidation Provisions of the Plan would be construed as requiring that the Residco Parties would receive the lesser of the Lease Claim and the Guarantee Claim (such treatment, the "*Lesser Claim Treatment*"). When viewed in the context of other holders of both primary and guaranty claims (other than holders who consensually agreed to different treatments), all other holders of such dual claims are receiving a treatment equal to the average of their two claims. In

contrast, if the Lesser Claim Treatment applies, then the Residco Parties would be forced to potentially relinquish claims worth $50 million more (the Guarantee Claims) for the right to receive the distributions provided under the Proposed Plan. No other creditor is being forced to relinquish its more valuable claim (*i.e.*, the Guarantee Claims that are subject to fewer types of challenges) to receive distributions on a claim potentially allowed in a materially lower amount.

Likewise, the Residco Parties are receiving less favorable treatment when compared to other holders of claims against the Parent-Guarantor Debtor. Unless creditors consensually agreed to a different treatment, other holders of claims against the Parent-Guarantor Debtor are receiving claims distributions based upon an allowed amount equal to their claims against such Parent-Guarantor Debtor. In contrast, if the Lesser Claim Treatment applies, the Residco Parties would receive distributions potentially based upon less than $10 million of allowed claims and would effectively be releasing its in excess of the $60+ million of stronger claims asserted against the Parent-Guarantor Debtor.

In either scenario, the Residco Parties are being forced to release substantially more rights than other creditors – and such materially disparate treatment violates the mandatory requirements of Section 1123(a)(4) of the Bankruptcy Code. The unfair treatment being forced upon the Residco Parties under the Proposed Plan is highlighted by the fact that if the Residco Parties had filed claims only against the Parent-Guarantor Debtor and did not file claims against the Subsidiary-Lessee Debtor, then the Residco Parties would be entitled to receive potentially substantially higher distributions under the Proposed Plan. How can filing an additional claim against another Debtor cause the Residco Parties' distribution rights to lose value? Such result is inherently unfair and does not make any commercial or legal sense.

III. RESERVATION OF RIGHTS REGARDING DISCOVERY, FURTHER OBJECTIONS AND POTENTIAL ADJOURNMENT OF CONFIRMATION HEARING

The Residco Parties have interposed this Objection based upon the inherent uncertainty created by the inconsistent provisions of the Proposed Plan, the Debtors unwillingness to provide the requested clarification of such provisions and the stated (but wholly deficient) alleged basis for the Substantive Consolidation Provisions of the Proposed Plan. Rather than seeking to propound legally and factually sufficient bases for substantive consolidation, the Proposed Plan appears to propose substantive consolidation due to alleged administrative conveniences for the Debtors. Due to the potential material harm that may be interposed upon the Residco Parties, the Residco Parties do not consent to such substantive consolidation and may seek limited discovery to support this Objection.

In this regard, if the Debtors submit additional evidence supporting the Substantive Consolidation Provisions under the Proposed Plan, the Residco Parties fully reserve their right to amend and expand these objections and to seek discovery in support of any such objections. Further, dependent upon the additional evidence, if any, submitted by the Debtors, the Residco Parties reserve their right to seek an adjournment of the Confirmation Hearing to permit the discovery and litigation of the proposed substantive consolidation to proceed in a rational and efficient manner. Finally, given the paucity of evidentiary and legal support for the Substantive Consolidation Provisions contained in the Proposed Plan, the Residco Parties further reserve their rights to supplement these Objections.

CONCLUSION

For the foregoing reasons, the Residco Parties respectfully submit the foregoing objections to confirmation of the Proposed Plan and requests that (i) either (a) this Court implements the Average Claims Treatment construction for the Substantive Consolidation Provisions in the Proposed Plan and set forth such clarification in the Confirmation Order *(i.e.*, that any party holding a primary claim and a guaranty claim arising from the same transaction that are allowed in different amounts shall have a single claim under the Debtors' Substantive Consolidation Procedures based upon the average of such differing allowed claims), or (b) this Court deny confirmation of the Proposed Plan based upon the foregoing defects, and (ii) this Court grant such other and further relief as this Court deems just and proper.

Dated: New York, New York
February 21, 2017

VEDDER PRICE P.C.

/s/ Michael J. Edelman

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Attorneys for *Counsel for Wells Fargo Bank Northwest, N.A., as owner trustee, and ALF VI, Inc.*

Exhibit A

GUARANTEE
BY
REPUBLIC AIRWAYS HOLDINGS INC.

FOR VALUE RECEIVED, REPUBLIC AIRWAYS HOLDINGS INC., a Delaware corporation ("Guarantor"), pursuant to that certain Master Agreement, dated as of October 29, 2012 (the "Master Agreement"), between Chautauqua Airlines, Inc., an Indiana corporation ("Chautauqua"), and Mitsui & Co. (U.S.A.), Inc., a New York corporation ("Mitsui"), which relates to the seven Aircraft Lease Agreements listed on Schedule 1 hereto (collectively, as each may have been amended, supplemented or otherwise modified from time to time, the "Leases") between Chautauqua, as lessee, and Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as owner trustee under seven separate trust agreements for the benefit of Mitsui (each, an "Owner Trustee"), does hereby unconditionally and irrevocably guarantee to Mitsui and each Owner Trustee (collectively, the "Guaranteed Parties") the due and punctual performance and observance by Chautauqua of its obligations owed to such Guaranteed Party (the "Obligations") under each "Operative Document" (as defined in each Lease) to which Chautauqua is a party (collectively, the "Operative Agreements"). The obligations of Guarantor to make any payments hereunder shall be subject to the terms and conditions of the Operative Agreements applicable to the Obligations.

Guarantor hereby waives notice of acceptance of this Guarantee, and agrees that, in its capacity as a guarantor, it shall not be required to consent to, or to receive any notice of, any supplement to or amendment of, or waiver or modification of the terms of, any Lease or any of the other Operative Agreements that may be made or given as provided therein.

Guarantor represents and warrants that (a) Guarantor was duly incorporated and is validly existing and in good standing under the laws of Delaware; (b) the execution, delivery and performance of this Guarantee are within Guarantor's power and authority and do not violate the certificate of incorporation or the by-laws of Guarantor or any indenture, mortgage, credit agreement, note, lease or other agreement to which Guarantor is a party or by which Guarantor is bound, or any law, governmental rule, regulation, judgment or order binding on Guarantor; and (c) this Guarantee has been duly authorized, executed and delivered on behalf of Guarantor and constitutes a legal, valid, binding and enforceable obligation of Guarantor, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium and other similar laws affecting the rights of creditors generally and by general principles of equity, whether considered in a proceeding at law or in equity.

No failure or delay or lack of demand, notice or diligence in exercising any right under this Guarantee shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right under this Guarantee.

This Guarantee is an absolute, unconditional and continuing guarantee of payment and not of collection. Guarantor waives any right to require that any right to take action against Chautauqua be exhausted or that resort be made to any security prior to action being taken against Guarantor.

In the event that this Guarantee or any Operative Agreement shall be terminated, rejected or disaffirmed as a result of bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceedings with respect to Chautauqua, Guarantor's obligations hereunder to the Guaranteed Parties shall continue to the same extent as if the same had not been so terminated, rejected or disaffirmed. Guarantor hereby waives all rights and benefits that might, in whole or in part, relieve it from the performance of its duties and obligations by reason of any proceeding as specified in the preceding sentence, and Guarantor agrees that it shall be liable for all sums guaranteed, in respect of and without regard to, any modification, limitation or discharge of the liability of Chautauqua that may result from any such proceedings and notwithstanding any stay, injunction or other prohibition issued in any such proceedings. Furthermore, the obligation of Guarantor hereunder will not be discharged by: (a) any extension or renewal with respect to any obligation of Chautauqua under the Operative Agreements; (b) any modification of, or amendment or supplement to, any such agreement; (c) any furnishing or acceptance of additional security or any release of any security; (d) any waiver, consent or other action or inaction or any exercise or non-exercise of any right, remedy or power with respect to Chautauqua, or any change in the structure of Chautauqua; (e) any change in ownership of the shares of capital stock of Chautauqua or any merger or consolidation of Chautauqua into or with any other person; (f) any assignment, transfer, lease or other arrangement by which Chautauqua transfers or loses control of the use of the aircraft leased under any Lease or any part thereof; or (g) any other occurrence whatsoever, except payment and performance in full of the Obligations in accordance with the terms and conditions of the Operative Agreements.

Guarantor understands and agrees that its obligations hereunder shall be continuing, absolute and unconditional without regard to, and Guarantor hereby waives any defense to, or right to seek a discharge of, its obligations hereunder with respect to the validity, legality, regularity or enforceability of any Operative Agreement, any of the Obligations or any collateral security therefor or guarantee with respect thereto at any time or from time to time held by any Guaranteed Party or any other circumstances whatsoever (with or without notice to or knowledge of Chautauqua or Guarantor) that constitutes, or might be construed to constitute, an equitable or legal discharge of Chautauqua or the Obligations or of Guarantor under this Guarantee (other than payment and performance of the Obligations in full).

Notwithstanding any payment or payments made by Guarantor hereunder or any setoff or application of funds of Guarantor by any Guaranteed Party hereof, Guarantor shall not be entitled to be subrogated to any of the rights of any Guaranteed Party against Chautauqua or any collateral, security or guarantee or right of setoff held by any Guaranteed Party for the payment of the Obligations, nor shall Guarantor seek or be entitled to seek any reimbursement from Chautauqua in respect of payments made by Guarantor hereunder, until all amounts and performance owing to each Guaranteed Party by Chautauqua on account of the Obligations are paid and performed in full. The obligations of Guarantor hereunder shall be automatically reinstated if and to the extent that any payment by or on behalf of Chautauqua in respect of any of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations as a result of any proceedings in bankruptcy or reorganization or similar proceedings.

Guarantor will not consolidate with or merge into any other person or convey, transfer or lease all or substantially all of its assets as an entirety to any person unless:

(i) the person formed by such consolidation or into which the Guarantor is merged or the person which acquires by conveyance, transfer or lease all or substantially all of the assets of the Guarantor as an entirety (the "Successor Company") shall execute and deliver to the Guaranteed Parties a duly authorized, valid, binding and enforceable agreement containing an assumption by the Successor Company of the due and punctual performance and observance of each covenant and condition of this Guarantee to be performed or observed by the Guarantor; and

(ii) promptly after the consummation of such transaction, the Guarantor shall deliver to the Guaranteed Parties an officer's certificate of the Guarantor certifying as to Guarantor's compliance with the conditions of this section and an opinion of counsel (which may be in-house counsel) that the agreement mentioned in clause (i) above is, subject to reasonable assumptions, qualifications and exceptions, the duly authorized, executed, delivered, valid and binding agreement of the Successor Company and enforceable against the Successor Company in accordance with the terms thereof.

Upon any consolidation or merger, or any conveyance, transfer or lease of all or substantially all of the assets of the Guarantor as an entirety in accordance with the preceding paragraph, the Successor Company formed by such consolidation or into which the Guarantor is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Guarantor under this Guarantee with the same effect as if such Successor Company had been named as the Guarantor herein.

To the extent permitted by applicable law, any provision of this Guarantee that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Guarantee shall be binding upon the successors of Guarantor. Subject to the eighth paragraph of this Guarantee, this Guarantee shall terminate and be of no further force and effect upon the performance and observance in full of the Obligations.

All notices to or upon Guarantor or any Guaranteed Party shall be made in accordance with the terms of Section 7(c) of the Master Agreement and, if delivered (i) to Guarantor, shall be addressed to Republic Airways Holdings Inc., 8909 Purdue Road, Suite 300, Indianapolis, IN 46268, Fax: 317-484-6040, Attention: President, or (ii) to Owner Trustee, shall be addressed to Wells Fargo Bank Northwest, National Association, MAC: U1240-026, 260 North Charles Lindbergh Drive, Salt Lake City, Utah 84116, U.S.A., Attention: Corporate Trust Department, with a copy to Mitsui & Co. (U.S.A.), Inc., 200 Park Avenue, New York, NY 10166, Attn: General Manager, Aerospace Systems Department.

Guarantor hereby agrees to be bound, to the same extent Chautauqua is bound, by the provisions of Section 20.08 of each of the Leases, which are incorporated herein by reference as if fully set forth herein.

THIS GUARANTEE SHALL IN ALL RESPECTS BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

Dated: _____ ___, 2012.

REPUBLIC AIRWAYS HOLDINGS INC.

By: Bryan Bedford
Name: Bryan Bedford
Title: President and Chief Executive Officer

SCHEDULE 1 TO GUARANTEE

NO.	MSN	N-REG	AGREEMENT
1.	145763	N259JQ	Aircraft Lease Agreement [N259JQ], dated as of November 13, 2003, between Chautauqua Airlines, Inc., as Lessee and Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Trustee, as Lessor.
2.	145443	N286SK	Aircraft Lease Agreement [N286SK], dated as of June 5, 2001, between Chautauqua Airlines, Inc., as Lessee and Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Trustee, as Lessor.
3.	145460	N287SK	Aircraft Lease Agreement [N287SK], dated as of June 5, 2001, between Chautauqua Airlines, Inc., as Lessee and Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Trustee, as Lessor.
4.	145447	N561RP	Aircraft Lease Agreement [N561RP], dated as of October 15, 2002, between Chautauqua Airlines, Inc., as Lessee and Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Trustee, as Lessor.
5.	145451	N562RP	Aircraft Lease Agreement [N562RP], dated as of October 15, 2002, between Chautauqua Airlines, Inc., as Lessee and Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Trustee, as Lessor.
6.	145509	N563RP	Aircraft Lease Agreement [N563RP], dated as of November 15, 2002, between Chautauqua Airlines, Inc., as Lessee and Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Trustee, as Lessor.
7.	145461	N288SK	Aircraft Lease Agreement [N288SK], dated as of June 5, 2001, between Chautauqua Airlines, Inc., as Lessee and Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Trustee, as Lessor.

Exhibit B

Type/Model: **Embraer ERJ-145ER**
Engine Type: AE 3007A

AVITAS

Year	Current Market Value	2002 Base Value	Future Base Values at 2.5% Inflation																		
			2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
1996	10.5	10.5	10.0	9.5	9.0	8.6	8.2	7.8	7.4	7.0	6.7	6.3	5.9	5.5	5.2	4.8	4.5	4.1	3.8	3.5	3.2	2.9
1997	11.3	11.3	10.8	10.2	9.7	9.2	8.8	8.4	8.0	7.6	7.2	6.8	6.5	6.1	5.7	5.3	4.9	4.6	4.2	3.9	3.6	3.3
1998	12.3	12.3	11.6	11.0	10.5	9.9	9.5	9.0	8.6	8.2	7.8	7.4	7.0	6.6	6.2	5.8	5.4	5.1	4.7	4.3	4.0	3.7
1999	13.2	13.2	12.6	11.9	11.3	10.7	10.2	9.7	9.3	8.8	8.4	8.0	7.6	7.2	6.8	6.4	6.0	5.5	5.2	4.8	4.4	4.1
2000	14.3	14.3	13.5	12.9	12.2	11.6	11.0	10.4	10.0	9.5	9.0	8.6	8.2	7.7	7.3	7.0	6.5	6.1	5.7	5.3	4.9	4.5
2001	15.4	15.4	14.6	13.9	13.2	12.5	11.9	11.3	10.7	10.2	9.7	9.2	8.8	8.4	7.9	7.5	7.1	6.7	6.3	5.8	5.4	5.1
2002		16.3	15.4	14.7	13.9	13.3	12.6	11.9	11.3	10.8	10.3	9.8	9.3	8.8	8.4	8.0	7.6	7.2	6.7	6.3	5.8	5.5

All values are expressed in millions of U.S. dollars. See the BlueBook Introduction for a full explanation of AVITAS's valuation assumptions and definitions.

14520 Avion Parkway • Chantilly, VA 20151 • (703) 476-2300