

## The Claim Settlements and Procedures for Final Approval

11. The Debtors request approval of the Section 1110(b) Settled Rejection Damage Claims. Because a portion of the claim amount cannot be determined until an aircraft related lease is rejected, the Debtors propose that each of the following procedures apply to establish the final amount of the Section 1110(b) Settled Rejection Damage Claims (without the necessity of obtaining any further order from the Court), which procedures authorize the settlement and allowance of such claims free from any objections other than as set forth below (the following procedures, collectively, the “Settlement Procedures”):

- a. Upon rejection, an Aircraft Counterparty’s prepetition general unsecured claim for rejection shall be the sum of the following (such methodology for calculating the rejection claims, the “Rejection Damage Claim Methodology”): (i) (A) the amount under the applicable aircraft related agreement as the “Stipulated Loss Value”<sup>6</sup> or the equivalent term as of the Petition Date, less

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<sup>6</sup> The Stipulated Loss Value is essentially a liquidated damage formula that is often calculated by multiplying the purchase price of the aircraft by percentage of the purchase price that decreases as the lease or security agreement approaches its term. Attached hereto as Exhibit B is a list of the Stipulated Loss Value as of the Petition Date for each of the aircraft. In the case of the transactions relating to the aircraft with registration numbers N650ML and N651ML, the “Agreed Value” (as defined in the underlying operative documents) is the Stipulated Value for purposes of the claim formula for calculating the rejection damages claim.

(B) any postpetition payments made by the Debtors under the terms of the applicable Section 1110(b) Stipulation, plus (ii) any unpaid prepetition rent or installment payments, plus (iii) any swap breakage or hedging fees that are attributable to the affected aircraft that the Debtors are liable under any applicable agreements or otherwise, plus (iv) any reasonable expenses of the applicable Aircraft Counterparty attributable to the affected aircraft that the Debtors are required to reimburse or indemnify the applicable Aircraft Counterparty under the applicable aircraft related agreement.

- b. In accordance with the Aircraft Rejection/Abandonment Procedures Order, all proofs of claims for Section 1110(b) Settled Rejection Damage Claims arising from the rejection of an aircraft related lease must be filed with this Court on or before the later of (i) May 21, 2010 [Docket No. 577], the deadline set by the Court by which prepetition general unsecured claims must be filed, (ii) sixty (60) days after the effective date of such rejection or abandonment, or (iii) sixty (60) days after the Court resolves any objection to such rejection or abandonment. In addition to filing such claims with this Court, the applicable Aircraft Counterparty shall send (via overnight courier, mail or electronic transmission) a courtesy copy of any such claim to (1) Debtors' counsel, Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, California 94111, Attention: Debra I. Grassgreen, Esq., Fax. No.: (415) 263-7000, E-Mail: [Dgrassgreen@pszjaw.com](mailto:Dgrassgreen@pszjaw.com), and (2) counsel to the Creditors' Committee, Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, New York 10104 Attn: Brett H. Miller, Esq., Fax. No.: (212) 468-8051, E-Mail: [Bmiller@MoFo.com](mailto:Bmiller@MoFo.com); *provided, however*, that the failure to provide such a courtesy copies shall not affect the validity of such claim, but only the timing of the Final Claims Procedures outlined below.
- c. Promptly after any Section 1110(b) Settled Rejection Damage Claim is filed, the Debtors shall review such Section 1110(b) Settled Rejection Damage Claim to ascertain if the Debtors agree or disagree as to whether the asserted claim comports with the Rejection Damage Claim Methodology. If the Debtors disagree with any asserted Section 1110(b) Settled Rejection Damage Claim, the Debtors shall contact the applicable Aircraft Counterparty and shall work in good faith to resolve any issues so as to be able to agree upon the amount of such Section 1110(b) Settled Rejection Damage Claims calculated in accordance with the Rejection Damage Claim Methodology. Although the amount of the claims under subparagraphs 11(a)(i), (ii) and (iii) hereof should be fixed by the time that the Section 1110(b) Settled Rejection Damage Claims are filed, the amounts of the claims under

subparagraph 11(a)(iv) hereof may remain contingent, unliquidated and/or otherwise not fixed at the time that such Section 1110(b) Settled Rejection Damage Claim is filed. The contingent and unliquidated nature of any claims asserted under subparagraph 11(a)(iv) hereof or other claims asserted by the applicable Aircraft Counterparty in such proof of claim shall not affect the timing or allowance of any claims asserted under subparagraphs 11(a)(i), (ii) and (iii) hereof and shall not prejudice a later amendment of such claim to liquidate any claim under subparagraph 11(a)(iv) hereof.

- d. Within thirty-five (35) days after the filing a Section 1110(b) Settled Rejection Damage Claim, the Debtors shall both:
- (i) Prepare in good faith a notice (each such notice, a “Notice of Settlement”) setting forth (x) whether it agrees or disagrees that such Section 1110(b) Settled Rejection Damage Claims conforms to the Rejection Damage Claim Methodology, (y) the aggregate amount of the Section 1110(b) Settled Rejection Damage Claim determined as of that date and an itemization of the components of such claim that comprise the Rejection Damage Claim Methodology (either as delineated by the applicable Aircraft Counterparty or, if the Debtors believe in good faith that such proof of claim does not conform to the Rejection Damage Claim Methodology, as calculated by the Debtors), and (z) the notice address for counsel for the applicable Aircraft Counterparty (which, unless otherwise stated in such applicable Aircraft Counterparty’s proof of claim or subsequent filing with the Court, is Vedder Price P.C., 1633 Broadway, 47th Floor, New York, New York 10019, Attention: Michael J. Edelman, Esq.). In addition, if the amount of the claims asserted under subparagraph 11(a)(iv) hereof remain contingent, unliquidated or are otherwise not fixed, the Notice of Settlement may state that the claims asserted under subparagraph 11(a)(iv) hereof remain subject to being liquidated and subject to future objections as to the amount of such claims under subparagraph 11(a)(iv) hereof.
  - (ii) File with the Court the applicable Notice of Settlement and serve such Notice of Settlement upon, as applicable, (v) counsel to the affected Aircraft Counterparty; (w) counsel to the Creditors’ Committee; (x) the Office of the United States Trustee; (y) all parties entitled to receive notice in these cases; and (z) counsel for the Debtors.

If the Debtors do not file a Notice of Settlement within thirty-five (35) days after the Section 1110(b) Settled Rejection Damage Claim is filed with the Court, then counsel to the applicable Aircraft Counterparty may file such Notice of Settlement and it will be subject to the same notice and objection procedures set forth herein.

- e. Notwithstanding any other provision herein, the sole basis to object to any Section 1110(b) Settled Rejection Damage Claim shall be that the amount of such claim is not calculated in accordance with the Rejection Damage Claim Methodology or the reasonableness of the expenses covered by paragraph 11(a)(iv). Subject to such limitation, any party-in-interest that does not agree with the amount of any Section 1110(b) Settled Rejection Damage Claim as set forth in the Notice of Settlement will be required to (i) file with this Court an objection (an “Objection”) on or before fourteen (14) days (the “Objection Deadline”) after the filing the Notice of Settlement setting forth the basis of such Objection and (ii) serve prior to the Objection Deadline such Objection on (a) Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15th Floor, San Francisco, California 94111, Attention: Debra Grassgreen (service by electronic mail shall be accepted: [dgrassgreen@pszjlaw.com](mailto:dgrassgreen@pszjlaw.com)) and Joshua M. Fried, and Pachulski Stang Ziehl & Jones LLP, 780 Third Avenue, 36th Floor, New York, New York 10017, Attention: Maria A. Bove, (b) counsel to the Creditors’ Committee, Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, New York 10104 Attn: Brett H. Miller, Esq., Fax. No.: (212) 468-8051, E-Mail: [Bmiller@MoFo.com](mailto:Bmiller@MoFo.com), and (c) counsel to the applicable Aircraft Counterparty.
- f. In the absence of any such Objection, the Section 1110(b) Settled Rejection Damage Claim will be allowed in the amount set forth in the Notice of Settlement and will be binding on all parties in interest in these chapter 11 cases.
- g. Upon the filing of an Objection, the Debtors, the applicable Aircraft Counterparties and the objector(s) will make a good-faith effort to resolve the Objection(s) consensually. If, however, the Debtors, the applicable Aircraft Counterparty and the objector(s) are not able to resolve the Objection(s) on a consensual basis, the Notice of Settlement and the Objection(s) thereto will be heard by the Court at the next scheduled omnibus hearing with the sole issue to be determined by this Court being the appropriate amount of such Section 1110(b) Settled Rejection Damage Claim as determined in accordance with the Rejection Damage Claim Methodology.

- h. The settlement of any other claims not authorized pursuant to the these Settlement Procedures will be authorized only upon separate order of this Court upon a motion of the Debtors served upon those parties entitled to receive notice in these chapter 11 cases.
- i. In the event that a portion of any Section 1110(b) Settled Rejection Damage Claim under subparagraph 11(a)(iv) hereof is not liquidated and/or remains contingent (the “Unliquidated Claim Portion”) when the Notice of Settlement is filed for the other portions of such Section 1110(b) Settled Rejection Damage Claim, then the Debtors will file and serve a subsequent Notice of Settlement with respect to the Unliquidated Claim Portion upon the parties specified in subparagraph 11(d)(ii) hereof within thirty-five (35) days after such Unliquidated Claim Portion becomes liquidated (as set forth in a claim amendment filed with this Court); *provided, however*, that if the Debtors fail to file such a subsequent Notice of Settlement with respect to any Unliquidated Claim Portion within such time, then counsel to the applicable Aircraft Counterparty may file and serve upon such parties a subsequent Notice of Settlement for such Unliquidated Claim Portion. Upon the filing of a Notice of Settlement with respect to any Unliquidated Claim Portion, such Unliquidated Claim Portion shall be subject to the allowance procedures set forth in subparagraphs 11(e) – (h) and (j) of these Settlement Procedures; *provided* that any such subsequent Notice of Settlement filed with respect to any Unliquidated Claim Portion shall not affect in any way the timing, amount and/or allowance of any other portion of the related Section 1110(b) Settled Rejection Damage Claim that has been liquidated and allowed in accordance with these Settlement Procedures.
- j. Notwithstanding anything else provided herein, these Settlement Procedures only apply to the prepetition, general unsecured claims related to the rejection of aircraft related leases. Nothing herein shall affect in any way , the allowance and/or defenses for any other types of claims, including, without limitation, administrative priority claims and of other types of general unsecured claims not arising from the rejection of an aircraft related lease, or the timing to assert such claims, defenses or objections thereof of which matters remain subject to the terms of the applicable Section 1110(b) Stipulations and the Aircraft Rejection/Abandonment Procedures Order.