Hearing Date and Time: May 2, 2007 at 11:00 a.m.
Objection Deadline: April 27, 2007 at 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
NORTHWEST AIRLINES CORPORATION, et al.,	:	**Case No. 05-17930 (ALG)**
Debtors.	:	**Jointly Administered**

JOINT MOTION FOR AN ORDER PURSUANT TO SECTIONS 105 AND 502 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3001 ALLOWING CLAIM NUMBER 4851 FILED BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS AND CLAIM NUMBER 8964 FILED BY THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

Northwest Airlines Corporation ("NWA Corp.") and certain of its direct and indirect subsidiaries, as debtors and debtors in possession in the above cases (the "Debtors" or

"Northwest"),[1] together with the International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM"), the International Brotherhood of Teamsters ("IBT", and together with the IAM, the "Unions") and the Association of Flight Attendants-CWA ("AFA") as the current representative of the Debtors' flight attendants, jointly move the Court (the "Motion"), pursuant to sections 105 and 502 of title 11, United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") and Rule 3001(f) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an order allowing the proofs of claim designated as (i) claim number 4851 ("Claim No. 4851") filed by the IBT attached hereto as Exhibit A,[2] and (ii) claim number 8964 ("Claim No. 8964" and together with Claim No. 4851, the "Series C Claims") filed by the IAM attached hereto as Exhibit B, respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

INTRODUCTION

2. In 1993, the IAM and the IBT agreed to concessions under their respective collective bargaining agreements with Northwest, in exchange for Northwest's agreement to repay the concessions in 2003. When the obligations to repay the concessions matured, the

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[1] In addition to NWA Corp., the other Debtors in these jointly administered cases are: Northwest Airlines, Inc. ("Northwest Airlines"), NWA Fuel Services Corporation ("NFS"), Northwest Airlines Holdings Corporation ("Holdings"), NWA Inc. ("NWA Inc."), Northwest Aerospace Training Corp. ("NATCO"), Compass Airlines, Inc. f/k/a Northwest Airlines Cargo, Inc. ("Compass"), NWA Retail Sales Inc. ("NWA Retail"), Montana Enterprises, Inc. ("Montana"), NW Red Baron LLC ("Red Baron"), Aircraft Foreign Sales, Inc. ("Foreign Sales"), NWA WorldClub, Inc. ("WorldClub"), MLT Inc. ("MLT"), and NWA Aircraft Finance, Inc. ("Aircraft Finance").

[2] The IBT also filed a duplicative proof of claim (Claim No. 11270), which will be administratively expunged.

Debtors did not make the repayment. The IAM and IBT, accordingly, sued in New York State Court, where they prevailed. The resulting money judgments are the basis of the Series C Claims. Allowance of the Series C Claims will resolve with finality a deeply divisive issue between Northwest and two important segments of its unionized workforce. The Debtors' relations with their unionized workforce will be an important element of their success after emergence from chapter 11. Allowance of the claims and settlement of the pending litigation with the IAM and the IBT is a significant step towards that goal. Further, the existing judgments, while appealable, suggest that the claims are allowable on the merits, and a recent decision by this Court demonstrates that the claims should not be subordinated under section 510(b) of the Bankruptcy Code. Accordingly, the Debtors, the IAM, IBT and AFA jointly move for allowance of the Series C Claims.

BACKGROUND

The Bankruptcy Cases

3. On September 14, 2005 (the "Petition Date"), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code.[3] Each Debtor is continuing to operate its business and manage its properties as a debtor in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

4. On March 30, 2007, this Court entered an Order approving the Debtors' Disclosure Statement With Respect to the Debtors' First Amended Joint and Consolidated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Docket No. 4902].

[3] Aircraft Finance filed its chapter 11 petition on September 30, 2005.

5. A hearing to consider confirmation of the Debtors' First Amended Joint and Consolidated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as may be further amended, the "Plan") is scheduled to be held on May 16, 2007.

The Agreements Giving Rise to the Series C Claims

6. At the times relevant to this Motion, the IAM was the authorized bargaining representative for the Debtors' airport agents, ground personnel, baggage handlers, plant protection employees, clerical workers, mechanics and certain other workers, and the IBT was the authorized bargaining representative for the Debtors' flight attendants.

7. On August 1, 1993, NWA Corp. (then known as Wings Holdings Inc.) and Northwest Airlines, Inc. (the operating entity) entered into agreements with each of the IAM and the IBT (the "Agreements"), pursuant to which NWA Corp. agreed to issue shares of Series C Preferred Stock (the "Series C Preferred Stock") to two separate trusts for the benefit of the employees represented by each Union. The Series C Preferred Stock was expressly in exchange for significant wage and benefit concessions agreed to by the Unions at that time. The Agreements are attached hereto as Exhibit C.

8. The Agreements gave the trustee of each trust the ability to monetize the Series C Preferred Stock at a fixed price by putting the stock to NWA Corp. during the sixty day period prior to August 1, 2003. The put price was fixed in the Agreements as (i) the quotient of the total savings realized by Northwest as a result of the wage and benefit concessions divided by total number of shares of Series C Preferred Stock transferred to the trusts on behalf of the shareholders plus (ii) accrued dividends, if any, per share of such stock.[4] See Section 1.15 of the

[4] Pursuant to section 3.7 of the Agreements, dividends were only to accrue if the Class A common stock was not publicly traded within one year of the date the parties entered in the Agreements. See Section 3.7 of the IBT Agreement; Section 3.7 of the IAM Agreement.

IBT Agreement; Section 1.15, of the IAM Agreement. The put price was payable, at the election of the Debtors, in cash, in the dollar equivalent of the NWA Corp. publicly traded common stock, or a combination of both. See Section 3.5 of the IBT Agreement; Section 3.5 of the IAM Agreement.

9. On June 3, 2003, NWA Corp. issued a press release stating that it had elected to repurchase any of the Series C Preferred Stock with cash, as allowed under the Agreements and that a decision as to whether to proceed with a repurchase of the Series C Preferred Stock would be made soon afterwards.

10. In July 2003, the Board of Directors of NWA Corp. determined that the requirements of Delaware General Corporation Law, Section 160, prohibiting the repurchase of a corporation's shares if such a transaction would impair the corporation's capital, barred NWA Corp. from honoring the put.

11. In light of Northwest's refusal to honor the put, the IAM and the IBT commenced actions in the Supreme Court of the State of New York, County of New York (the "Supreme Court") captioned: (i) The International Association of Machinists and Aerospace Workers and Air Transport District 143 of the International Association of Machinists and Aerospace Workers v. Northwest Airlines Corporation f/k/a Wings Holdings, Inc. and Newbridge Parent Corporation, Index No. 602476/03, and (ii) The International Brotherhood of Teamsters, Local 2000, Northwest Airlines Flight Attendants Union, Affiliated with the International Brotherhood of Teamsters, and William H. Black, as Trustee for the Trust for the International Brotherhood of Teamsters Employees Constituted by Certain Flight Attendants for Northwest Airlines Corporation v. Northwest Airlines Corporation f/k/a Wings Holdings, Inc., Index No. 601742/03.

12. On March 22, 2005, the Supreme Court granted motions for summary judgment by the IAM and IBT, finding that NWA Corp. breached the Agreements. The Supreme Court held that the provisions of the Delaware Code did not excuse NWA Corp.'s performance under the put. A copy of the decision is annexed hereto as Exhibit D.

13. On August 29, 2005, judgments were entered against NWA Corp. in favor of the IBT and the IBT Trustee, in the amount of $64,777,000 (the "IBT Series C Judgment"), and in favor of the IAM in the amount of $211,685,000 (the "IAM Series C Judgment" and together with the IBT Series C Judgment, the "Series C Judgments"). Copies of the Series C Judgments are annexed hereto as Exhibit E.

14. On September 13, 2005, NWA Corp. appealed the Series C Judgments to the Supreme Court of the State of New York, Appellate Division, First Judicial Department (the "Appellate Division"). The appeal has remained dormant since the commencement of these cases.

15. On July 24, 2006, the IBT and the IBT Trustee jointly filed Claim No. 4851 on behalf of the IBT and the IBT Trustee based on the IBT Series C Judgment, in the amount of $64,770,000 plus interest. On August 14, 2006, the IAM filed Claim No. 8964 on behalf of itself and/or its members in the amount of $212,520,140.80, based on the IAM Series C Judgment. The Series C Claims are based upon the Series C Judgments entered by the Supreme Court prior to the Petition Date and were timely filed.

RELIEF REQUESTED

16. By this Motion, the Debtors seek an order allowing the Series C Claims pursuant to sections 105(a) and 502 of the Bankruptcy Code and Bankruptcy Rule 3001(f), as general unsecured claims.

BASIS FOR RELIEF REQUESTED

A. The Series C Claims Are Prima Facie Valid, Enforceable and Subject to Allowance

17. Under section 502(a) of the Bankruptcy Code, proofs of claim are deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). Further, Bankruptcy Rule 3001(f) provides that a properly executed and filed proof of claim "shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). No party has objected to the Series C Claims and the claims are deemed allowed and are prima facie valid.

18. Moreover, a proof of claim based upon a prepetition judgment is res judicata with respect to the merits of the claim, and parties may not re-litigate those issues in an objection to a proof of claim. See In re Brazelton Cedar Rapids Group LC, 264 B.R. 195, 200 (Bankr. N.D. Iowa 2001) ("[C]laim preclusion may be used to establish the validity of a creditor's claim in bankruptcy"); see also Anuco, Inc. v. Bus. Cards Tomorrow, Inc. (In re Nugent), 254 B.R. 14, 28 (Bankr. D.N.J. 1998) (judgment previously entered in state court lawsuit against debtors had res judicata effect on claims litigation in debtor's subsequent bankruptcy). "Congress has specifically required all federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so . . . ." Kelleran v. Andrijevic, 825 F.2d 692, 694 (2d Cir. 1987) (citing Allen v. McCurry, 449 U.S. 90, 96, 101 S. Ct. 411 (1980)). Bankruptcy courts fall within Congress' mandate. Kelleran, 825 F.2d at 694. Under New York law, a state court judgment represents a valid and conclusive adjudication of the parties' substantive rights unless and until it is overturned on appeal. DaSilva v. Musso, 76 N.Y.2d 436, 440 (N.Y. 1990). Thus, all parties in interest are precluded from objecting to the Series C Claims on the basis of the merits already determined by the Supreme Court in connection with the Series C Judgments. See Lanuto v. Constantine, 627 N.Y.S.2d 144, 145 (N.Y. App. Div. 3d Dep't 1995); see also McDonald v. Lengel, 770 N.Y.S.2d

194, 195 (N.Y. App. Div. 3d Dep't 2003); Beck v. E. Mut. Ins. Co., 744 N.Y.S.2d 57, 58-59 (N.Y. App. Div. 3d Dep't 2002).

19. The Debtors' appeal of the Series C Judgments to Appellate Division does not alter the res judicata effect of the Supreme Court Judgments. "[T]he pendency of an appeal does not suspend the claim–preclusive effect of a final judgment from a lower court." Peia v. United States Bankr. Courts, 152 F. Supp.2d 226, 234 (D. Conn. 2001) (holding that the doctrine of res judicata applied to bar RICO claims that arose for the same common nucleus of operative facts with the a previous suit dismissed and pending appeal); see also DiSorbo v. Hoy, 343 F.3d 172, 183 (2d Cir. 2003) (holding that under New York law, state court decision collaterally estopped a party's assertion in a federal court action, even though the state court decision was subject to an unresolved appeal). The Debtors' ability to contest the merits of the Series C Claims is limited to such grounds as can be raised on appeal, and subject to the standard limitations on appellate review. Northwest's business judgment is that the limited prospects for prevailing on appeal is far outweighed by the long-term benefits of making good on the promise to repay its workers for their concessions embodied in the Agreements. To the extent it is necessary, Northwest requests, in addition to the other relief sought in the Motion, that the Court approve the decision not to pursue the appeal of the Series C Judgments under Bankruptcy Rule 9019.

B. Pre-petition Money Judgments are not Subject to Subordination

20. Because the promise to repay the Unions for the agreed to concessions took the form of preferred stock, coupled with a put, some parties have questioned whether the Series C Claims should be subordinated under section 510(b) of the Bankruptcy Code. Money judgments, however, are not subject to subordination under section 510(b) of the Bankruptcy Code.

21. For purposes of determining the application of section 510(b), claims are evaluated as of the petition date. As recently stated by this Court in another case, "It is black letter law that claims are analyzed as of the date of the filing of a petition, not as of a hypothetical date in the past." In re MarketXT Holdings Corp., Bankr. No. 04-12078 (ALG), Adv. Proc. No. 05-03238 (ALG), 2007 WL 634098, *15 (Bankr. S.D.N.Y. March 2, 2007). Even if the Unions took equity risk at the time of the concessions, on the Petition Date the Unions were creditors and not equity holders. Id. at *15 ("Softbank may have taken an equity risk when it purchased preferred stock, but by the date of the initial bankruptcy petition it was a creditor, not an equity holder"); see also Racusin v. Am. Wagering, Inc. (In re American Wagering, Inc.), 465 F.3d 1048, 1053 (9th Cir. 2006) (prepetition money judgment established a fixed debt and therefore claim was not subject to subordination).

22. Cases have consistently rejected applying section 510(b) to claims that only have a tenuous connection to securities purchases and sales. See Burtch v. Gannon (In re Cybersight LLC), No. 02-11033, Civ. A. 04-112JJF, 2004 WL 2713098, *3 (D. Del. Nov. 17, 2004) (equity interest converted into a debt obligation when claimant received a money judgment against the debtor); Montgomery Ward Holding Corp. v. Schoeberl (In re Montgomery Ward Holding Corp.), 272 B.R. 836 (Bankr. D. Del. 2001) (510(b) only applies to a claim that directly concerns the purchase and sale of a security); In re MarketXT Holdings Corp., at *14, 15 (claim that had its genesis in a stock interest held to no longer be subject to subordination where, at time of petition, the claim was based on a note).

23. In MarketXT, the claim at issue was based on a postpetition default judgment that arose from a lawsuit to collect on promissory notes. The notes were given to the claimant in exchange for preferred stock of the debtors. This Court refused to subordinate the claim, holding that there was an "insufficient causal relationship alleged between Softbank's

prior purchase of preferred stock and the claim it held on the date of the petition . . . ." 2007 WL 634098, at *15.

24. Here, the IBT and IAM sued the Debtors three years before the Petition Date and obtained money judgments against the Debtors prior to the commencement of these bankruptcy cases. As in MarketXT, there is an insufficient causal relationship between the Series C Preferred Stock and the claims the Unions held as of the Petition Date, and thus section 510(b) does not apply to the Series C Claims.

C. The Series C Claims Are Not Subject to Subordination Under Section 510(b) of the Bankruptcy Code Because the Unions Did Not Take Equity Risk or Provide an Equity Cushion To The Debtors

25. Wholly apart from the fact that the Series C Claims are based on pre-petition money judgments, a claim is not subject to subordination under section 510(b) when the claim lacks a causal relationship to the purchase and sale of stock, and when subordinating the claim would not further the purposes of section 510(b). See Rombro v. Dufrayne (In re Med Diversified, Inc.), 461 F.3d 251 (2d Cir. 2006). The Series C Claims do not have any causal connection to the purchase and sale of a security, because, as of the Petition Date, the claims were based on a money judgment, and not on any equity security interest. Further, the purposes of section 510(b) would not be served by subordination because the IAM and IBT did not take an equity risk in the Debtors, nor are the claims based on a capital infusion relied on by creditors as an equity cushion.

26. Section 510(b) provides, in pertinent part, that "a claim . . . for damages arising from the purchase or sale of [a security of the debtor] . . . shall be subordinated to all claims or interests that are senior or equal to the claim or interest represented by such security . . . ." 11 U.S.C. § 510(b). The Second Circuit recently articulated that a claim may be subordinated under section 510(b) only if the claimant "(1) took on the risk and return

expectations of a shareholder, rather than a creditor, or (2) seeks to recover a contribution to the equity pool presumably relied upon by creditors in deciding whether to extend credit to the debtor." In re Med Diversified, Inc., 461 F.3d at 256.

27. A claim has the risk and return expectations of a shareholder if its value is connected to the value of the debtor's stock. See In re Med Diversified, Inc., 461 F.3d at 256-57; In re Enron Corp., 341 B.R. 141, 168 (Bankr. S.D.N.Y. 2006), reconsideration denied, 352 B.R. 363 (Bankr. S.D.N.Y. 2006) (stock option claims subordinated under 510(b) because the cash value of the options varied with the value of the debtor's stock). Id. at 164.

28. Both the participation in profits and risk of loss and are crucial to the existence of an equity interest. Raven Media Inv. LLC v. DirecTV Latin Am., LLC (In re DirecTV Latin Am., LLC), No. 03-10805 (PJW), Civ. 03-981-SLR, 2004 WL 302303, at *4 (D. Del. Feb 4, 2004). "While participation in profits is a critical aspect of an equity interest, participation in the risk of loss is similarly crucial." In re DirecTV Latin America, LLC, 2004 WL 302303, at *4. Accordingly, where the claimant has not unequivocally assumed the risk of business failure, the purposes of section 510(b) would not be served and the Bankruptcy Court should not order subordination of the claim. Id. at *4.

29. With respect to the first prong of the Med Diversified test, the Series C Claims arise from a prepetition, contractual commitment under which the Debtors agreed to repurchase from the IAM and the IBT the Debtors' Series C Preferred Stock at a fixed price and at a fixed time. The repurchase price was a function of the value of the agreed concessions and the number of Series C Preferred Stock shares issued; it was not dependent on the financial performance of the Debtors, the market value of their publicly traded securities or any other indicia of risk commonly attendant to equity securities. Rather, the obligation was fixed in an amount pursuant to a formula, and matured at a fixed time. Because the Series C Claims are in a

fixed amount and not connected to the value of the Debtors' stock, the Series C Claims are not properly subject to subordination under section 510(b).[5]

30. The second prong of the Med Diversified test requires subordination if the claimant "seeks to recover a contribution to the equity pool presumably relied upon by creditors in deciding whether to extend credit to the debtor." 461 F.3d at 256. This test is intended to protect creditors' reliance on the equity cushion provided by shareholder investment. See Allen v. Geneva Steel Co., (In re Geneva Steel Co.), 281 F.3d 1173, 1176 (10th Cir. 2002); In re Granite Partners, L.P., 208 B.R. 332, 337 (Bankr. S.D.N.Y. 1997); In re PT-1 Communications, Inc., 304 B.R. 601, 609 (Bankr. E.D.N.Y. 2004). The Series C Preferred Stock, however, was not issued on account of an infusion of capital to the Debtors. Unlike an infusion of capital, which creates an asset on the company's balance sheet, the agreements giving rise to the issuance of the Series C Preferred Stock did not create an asset on Northwest's balance sheet.

31. Moreover, the Debtors' filings with the Securities and Exchange Commission after the grant of the Series C Preferred Stock fully disclosed the fixed obligation associated with the instrument. Thus, all creditors were on notice that the obligation became due independent of the Debtors' performance on a date certain. See, e.g., Northwest Airlines Corporation, Form S-1, filed Jan. 18, 1994, p. 2679-2722, 2612-2655 (on file with the United States Securities and Exchange Commission). No creditor could have extended credit to the Debtors in reliance on the Series C Preferred Stock as an added layer of incremental equity capital. See In re MarketXT Holdings Corp. 2007 WL 634098, at *15.

32. Because neither of the prongs of the Med Diversified test are satisfied, the Series C Claims are not subject to subordination under section 510(b).

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[5] Indeed, the Supreme Court found that NWA Corp. was required to honor the put at the agreed price regardless of its cash or financial position. See Exhibit D.

WAIVER OF MEMORANDUM OF LAW

33. This Motion does not raise any novel issues of law and is supported by citations to authorities. Accordingly, the Debtors respectfully request that the Court waive the requirement contained in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District that a separate memorandum of law be submitted.

NOTICE

34. No trustee has been appointed in these chapter 11 cases. The Debtors have served notice of this Motion on (i) the parties in interest listed on the Master Service List (as defined in the Court's Order establishing notice procedures and a master service list, dated September 15, 2005), (ii) IBT, by its counsel, (iii) IAM, by its counsel, and (iv) AFA, by its counsel. The Debtors submit that no other or further notice need be given.

NO PRIOR APPLICATION

35. No previous application for the relief sought herein has been made to this or to any other court.

CONCLUSION

For the foregoing reasons, the Debtors respectfully request that this Court enter an order allowing the Series C Claims and grant such further relief as the Court may deem just.

Dated: New York, New York
April 20, 2007

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