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Response Deadline: October 15, 2007
Hearing Date: November 13, 2007 2:30 p.m.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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: **In re:** : **Chapter 11**
: :
: **DELTA AIR LINES, INC. et al.,** : **Case No. 05-17923 (ASH)**
: :
: **Debtors.**¹ : **(Jointly Administered)**
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SUBSTITUTE TIA/SLV OBJECTION 3: OBJECTION BY DELTA AIR LINES, INC. TO CERTAIN CLAIMS ASSERTED BY BELL ATLANTIC TRICON LEASING CORPORATION, NCC GOLF COMPANY, NCC KEY COMPANY, NCC CHARLIE COMPANY AND THE BANK OF NEW YORK FOR TAX INDEMNITIES AND STIPULATED LOSS VALUES

This Objection Relates To:

Tails: N121DE, N917DL, N919DL, N920DL, N921DL, N922DL, N923DL, N924DL
Claims: 4703, 4704, 5335 (filed by The Bank of New York as Indenture Trustee)
6182, 6183, 6185 (filed by NCC Key Company as Owner Participant)
6184, 6216, 6217 (filed by NCC Golf Company as Owner Participant)
6186 (filed by NCC Charlie Company as Owner Participant)
6215 (filed by Bell Atlantic Tricon Leasing Corporation as Owner Participant)

Delta Air Lines, Inc. (“**Delta**”), through its undersigned counsel, submits this objection (the “**Objection**”) to Proof of Claim Nos. 6182, 6183 and 6185, filed by NCC Key Company (“**Key**”), Proof of Claim Nos. 6184, 6216 and 6217, filed by NCC Golf Company (“**Golf**”), Proof of Claim No. 6186, filed by NCC Charlie Company (“**Charlie**”), and Proof of Claim No. 6215, filed by Bell Atlantic Tricon Leasing Corporation, (“**Bell Atlantic**”, and together, with

¹ The Reorganized Debtors are: ASA Holdings, Inc.; Comair Holdings, LLC; Comair, Inc.; Comair Services, Inc.; Crown Rooms, Inc.; DAL Aircraft Trading, Inc.; DAL Global Services, LLC; DAL Moscow, Inc.; Delta AirElite Business Jets, Inc.; Delta Air Lines, Inc.; Delta Benefits Management, Inc.; Delta Connection Academy, Inc.; Delta Corporate Identity, Inc.; Delta Loyalty Management Services, LLC; Delta Technology, LLC; Delta Ventures III, LLC; Epsilon Trading, Inc.; Kappa Capital Management, Inc.; and Song, LLC.

Key, Golf, and Charlie, the “**Verizon Entities**”) (all such proofs of claim being referred to collectively as the “**TIA Claims**”), seeking tax indemnities with respect to leveraged lease transactions involving the aircraft bearing the registration (“**tail**”) numbers identified above (the “**Aircraft**”); and Proof of Claim Nos. 4703, 4704 and 5335 (the “**BNY Claims**” or the “**SLV Claims**”) filed by The Bank of New York (“**BNY**”) as Indenture Trustee, seeking payment of stipulated loss values with respect to the same transactions and Aircraft.

Summary of the Objection

The TIA Claims and the BNY Claims overlap with each other and seek compensation for some of the same matters. The agreements that govern the leveraged lease transactions at issue in this Objection contain a number of provisions that recognize this overlap and require that the TIA Claims and SLV Claims be adjusted to take account of each other. Among other provisions:

- Section 7 of the tax indemnity agreements for tails N121DE, N923DL and N924DL provide that no payment is due if “a party to any of the Operative Documents is required to pay Stipulated Loss Value or Termination Value, to the extent such amounts have been paid.”
- Section 7 of the tax indemnity agreements for tails N917DL, N919DL, N920DL, N921DL and N922DL similarly state that no payment is due if “a party to any of the Operative Documents is required to pay Stipulated Loss Value or Termination Value, to the extent such amounts have been paid (except to the extent that the calculation of Stipulated Loss Value or Termination Value does not accurately reflect the timing of any such event for Federal income tax purposes).”
- Section 6(d) of each Participation Agreement states that “[i]f any amount is paid by the Lessee to the Owner Participant pursuant to the Indemnity Agreement, the

amounts of Stipulated Loss Value and Termination Value set forth in Exhibit C to the Lease shall be recomputed in the manner set forth in Section 3(e) of the Lease.”

Delta seeks entry of an Order pursuant to section 502(b)(1) of the Bankruptcy Code, disallowing and/or reducing the TIA Claims and the SLV Claims to eliminate the overlaps among them.

Reservation of Other Objections

This Objection applies only to the extent that the TIA Claims seek payments pursuant to tax indemnity agreements, and to the extent that the BNY Claims seek payments of stipulated loss value, with respect to leveraged lease transactions involving the Aircraft. Delta reserves the right to assert additional objections to the TIA Claims and the BNY Claims at a later date, including without limitation (i) additional objections to the extent that the TIA Claims and the BNY Claims relate to other aircraft, (ii) additional objections to the portions of the TIA Claims that seek recovery pursuant to tax indemnity agreements with respect to the Aircraft, and (iii) objections to other amounts, such as for legal fees or general indemnity, encompassed within the TIA Claims and the BNY Claims.

Background

A. Procedural History and Jurisdiction

1. On September 14, 2005, Delta and a number of its affiliates (collectively, the “**Debtors**”) each filed a voluntary Chapter 11 petition. On September 28, 2005, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the “**Committee**”). On April 25, 2007 this Court confirmed the Debtors’ Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the “**Plan**”). The Plan became effective on April 30, 2007.

2. The Debtors and the Committee sought to resolve certain issues relating to leveraged lease claims pursuant to procedures that were approved by the Court in an Order

entered October 12, 2006. During a conference on January 31, 2007, the Court suggested that it would prefer that the Debtors assert objections to individual claims, with the aim of identifying different “test cases” addressing samples of the ways in which various of the Debtors’ leveraged lease agreements were worded. This Objection serves as one such “test case.”

3. This objection is asserted under section 502 of the Bankruptcy Code and Bankruptcy Rule 3007. This Court has subject matter jurisdiction to consider this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

B. Leveraged Leases Generally

4. A typical leveraged lease transaction includes these components:

(a) The parties enter into a master agreement (called a “**Participation Agreement**”) that specifies the roles of the parties and that identifies the other agreements that are to be executed.

(b) A trust (the “**Owner Trust**”) obtains ownership of one or more aircraft. The Owner Trust finances its acquisition of the aircraft through (i) an equity contribution from the entity that is the beneficiary of the Owner Trust (the “**Owner Participant**”) and (ii) borrowings from one or more lenders (the “**Lenders**” or “**Lender Participants**”). In more complicated structures, the borrowings may include various forms of public debt.

(c) The Owner Trust enters into an aircraft lease (the “**Lease**”) with Delta and/or Comair, Inc. Basic rent payments are normally sufficient to amortize the debt payments to the Lenders, and often also provide a cash return – referred to as “equity free cash” – for the Owner Participant.

(d) In order to provide security for the borrowed funds, the Owner Trustee typically grants a security interest in its ownership interests in the aircraft, and also

assigns (for security purposes) its interests in the Lease (subject to certain exceptions), to an indenture trustee acting for the lenders (the “**Indenture Trustee**”). The Indenture Trustee makes debt payments from the lease rentals and distributes the excess (if any) to the Owner Trust. The Indenture Trustee usually is entitled to control the exercise of remedies upon the occurrence of an event of a default.

5. Leveraged lease transactions provide significant tax benefits to Owner Participants. Rental payments are treated as income, but interest payments on the outstanding debt are deductible, as are transaction expenses (over time). More importantly, the Owner Participant in a leveraged lease transaction is entitled to take accelerated depreciation deductions with respect to the aircraft. The excess of these deductions over the rental income may be used to offset other income that the Owner Participant has, or other income in the consolidated tax group of which the Owner Participant is a member.

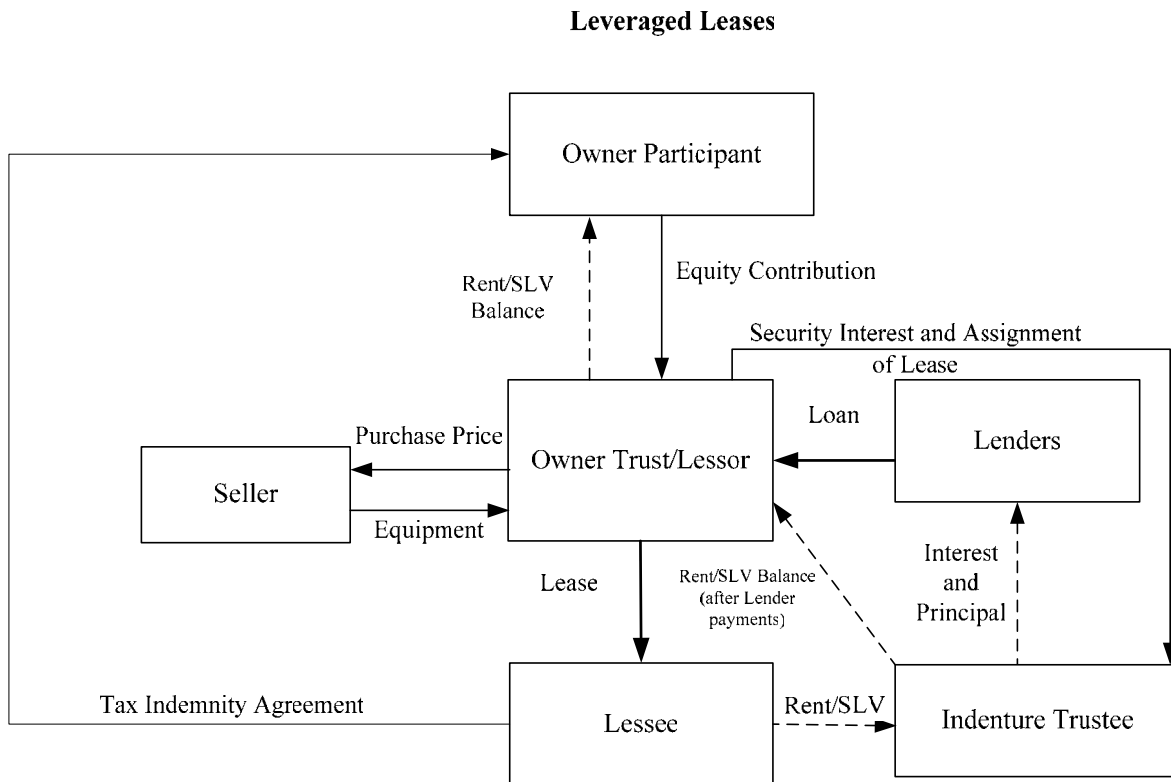
6. Leases in leveraged lease transactions typically provide for the payment of a “stipulated loss value” or a “termination value” (“**SLV**”) in the event of a foreclosure or other event. SLV is usually determined by reference to a schedule attached to the Lease that lists either dollar amounts to be paid (depending on the date of a triggering event) or SLV percentages which are multiplied by a fixed number (such as the Lessor’s cost) to generate the dollar amount of SLV. SLV can be calculated in different ways, but typically it is calculated (i) to permit the payoff of the remaining debt, and (ii) to allow the Owner Participant to earn an agreed-upon return through the date of termination. The calculation of SLV takes account of, among other things, the adverse tax consequences to the Owner Participant from a foreclosure or other event.

7. Lessees in leveraged lease transactions usually enter into Tax Indemnity Agreements (“**TIAs**”) with Owner Participants that also relate to the potential tax consequences

of various events. Most commonly, TIAs provide indemnification to the Owner Participant if the Lessee's acts or omissions result in the "recapture" of prior depreciation deductions. Some TIAs also provide indemnification for unexpected inclusions in the Owner Participant's taxable income as a result of certain listed causes.

8. As noted above, Leases typically are assigned to an Indenture Trustee. The assignments usually include an assignment (in whole or in part) of rights to collect SLV and to use payments to repay principal and interest on the outstanding debt plus certain fees and expenses. The assignment documents typically provide that the balance of any SLV payment is to be returned to the Owner Trustee. On the other hand, TIAs usually are not assigned.

9. A diagram of a typical leveraged lease structure is set forth below:



C. The Transaction Involving N121DE

10. In 1987, Delta entered into a leveraged lease transaction for one Boeing 767-332 aircraft with the tail number N121DE. In this transaction, National Funding Corporation (“**National Funding**”) was the Owner Participant, Wilmington Trust Company (“**WTC**”) was the Owner Trustee, and The Citizens and Southern National Bank (“**C&S**”) was the Indenture Trustee. There were various lenders involved in the transaction. The transaction involved primarily the following agreements:

(a) Delta, National Funding (the Owner Participant), the lenders, WTC (as Owner Trustee), and C&S (as Indenture Trustee) entered into a Participation Agreement.

(b) WTC (as Owner Trustee) and Delta entered into a Lease for the Aircraft.

(c) WTC, C&S and Delta entered into a Trust Indenture and Security Agreement (a “**Trust Indenture**”) granting to C&S a security interest in WTC’s ownership interest in the Aircraft and assigning for security purposes WTC’s interest in the Lease to C&S. From the lease rentals, C&S made debt payments to the Lenders and distributed any excess to the Owner Trust.

(d) Delta entered into an Indemnity Agreement (as previously defined, a “**TIA**”) with National Funding, as described in the following paragraphs.²

11. Delta understands that Bell Atlantic has replaced National Funding as Owner Participant in this transaction. Delta also understands that BNY is the successor to C&S as Indenture Trustee in this transaction.

² Upon execution of appropriate confidentiality agreements, copies of the Lease, Participation Agreement, Trust Indenture and TIA for the transactions subject to this Objection will be supplied to the parties named in this Objection and to other parties who have claims in connection with the leveraged lease transactions and who wish to obtain copies.

12. The Verizon Claim for tail number N121DE seeks payment pursuant to a TIA.

The BNY Claim seeks payment of SLV under a Lease.

D. The Transactions Involving N917DL, N919DL, N920DL, N921DL and N922DL

13. In 1988, Delta entered into leveraged lease transactions for five McDonnell Douglas MD-88 aircraft with the tail numbers N917DL, N919DL, N920DL, N921DL and N922DL. In each of these transactions, Security Pacific Equipment Leasing, Inc. (“SPEL”), was the Owner Participant, Wilmington Trust Company (“WTC”) was the Owner Trustee, and The Citizens and Southern National Bank (“C&S”) was the Indenture Trustee. There were various lenders involved in the transaction.

14. The governing documents for these five transactions were substantially the same and included the following agreements:

(a) Delta, SPEL (the Owner Participant), the lenders, WTC (as Owner Trustee), and C&S (as Indenture Trustee) entered into a Participation Agreement.

(b) WTC (as Owner Trustee) and Delta entered into a Lease for the Aircraft.

(c) WTC, C&S and Delta entered into a Trust Indenture and Security Agreement (a “**Trust Indenture**”) granting to C&S a security interest in WTC’s ownership interest in the Aircraft and assigning for security purposes WTC’s interest in the Lease to C&S. From the lease rentals, C&S made debt payments to the Lenders and distributed any excess to the Owner Trust.

(d) Delta entered into an Indemnity Agreement (as previously defined, a “TIA”) with SPEL, as described in the following paragraphs.

15. Delta understands that Golf has replaced SPEL as Owner Participant with respect to tail numbers N917DL, N920DL and N922DL and Key has replaced SPEL as Owner

Participant with respect to tail numbers N919DL and N921DL. Delta also understands that BNY is the successor to C&S as Indenture Trustee.

16. In the foregoing transactions, each of the TIA Claims seeks payment of tax indemnities pursuant to the TIAs. Each of the BNY Claims seeks payment of SLV.

E. The Transactions Involving N923DL and N924DL

17. In 1988, Delta entered into leveraged lease transactions for two McDonnell Douglas MD-88 aircraft with the tail numbers N923DL and N924DL. In each of these transactions, Wells Fargo Leasing Corporation (“**Wells Fargo**”), was the Owner Participant, Wilmington Trust Company (“**WTC**”) was the Owner Trustee, and The Citizens and Southern National Bank (“**C&S**”) was the Indenture Trustee. There were various lenders involved in the transaction.

18. The governing documents for these two transactions were substantially the same and included the following agreements:

(a) Delta, Wells Fargo (the Owner Participant), the lenders, WTC (as Owner Trustee), and C&S (as Indenture Trustee) all entered into a Participation Agreement.

(b) WTC (as Owner Trustee) and Delta entered into a Lease for the Aircraft.

(c) WTC, C&S and Delta entered into a Trust Indenture and Security Agreement (a “**Trust Indenture**”) granting to C&S a security interest in WTC’s ownership interest in the Aircraft and assigning for security purposes WTC’s interest in the Lease to C&S. From the lease rentals, C&S made debt payments to the Lenders and distributed any excess to the Owner Trust.

(d) Delta entered into an Indemnity Agreement (as previously defined, a “TIA”) with Wells Fargo, as described in the following paragraphs.

19. Delta understands that Key has replaced Wells Fargo as Owner Participant with respect to tail number N923DL and Charlie has replaced Wells Fargo as Owner Participant with respect to tail number N924DL. Delta also understands that BNY is the successor to C&S as Indenture Trustee.

20. In the foregoing transactions, each of the TIA Claims seeks payment of tax indemnities pursuant to the TIAs. Each of the BNY Claims seeks payment of SLV.

Grounds for the Objection

A. The TIA Claims And SLV Claims Both Address The Same Tax Loss And As A Matter Of Law Only One Claim Can Be Allowed With Respect To A Single Loss

21. Delta believes that the SLV Claims and TIA Claims provide compensation for the same economic consequences (the effect of a triggering event on the expected economic returns of the Owner Participant and the tax group of which the Owner Participant is a member) and that they simply represent multiple legal theories upon which a single loss may be recovered. As Delta has argued in prior objections and submissions to this Court, a single loss can give rise to only one “right to payment” and therefore only one claim against the debtor, regardless of how many separate contractual theories of recovery may be asserted. *See* TIA/SLV Objection 1 [Docket No. 4627], at 10-14.

22. This Court previously has overruled Delta’s objection on the foregoing ground. *See* Decision on TIA/SLV Objections 1 and 2, dated May 16, 2007 [Docket No. 6160.] That Decision is subject to a pending appeal and cross-appeal.

23. In light of the Court’s prior ruling on this issue, and as discussed previously with the Court during a status conference on August 20, 2007, Delta has not re-briefed these issues in this Objection. However, Delta does not waive these grounds for objection to the TIA Claims

and the SLV Claims and hereby incorporates, by reference, the grounds for objection stated in part “A” on pages 10-14 of TIA/SLV Objection 1.

B. The Contracts Require That The TIA Claims And SLV Claims Be Reduced

24. Section 7 of the TIA in each transaction states that no payment is owing with respect to any event as to which the Lessee is “required to pay” SLV, “to the extent that such amounts have been paid.” Section 6(d) of each Participation Agreement similarly provides that “[i]f any amount is paid by the Lessee to the Owner Participant pursuant to the Indemnity Agreement, the amounts of Stipulated Loss Value and Termination Value set forth in Exhibit C to the Lease shall be recomputed in the manner set forth in Section 3(e) of the Lease.” In these respects, the parties’ contracts recognize that TIA Claims and SLV Claims overlap with each other, and the contracts explicitly require that the claims must be adjusted and reduced to take account of each other.

C. The Claim Reductions Should Completely Eliminate The Overlaps In The Claims

25. Delta submits that it is appropriate to adjust the TIA Claims and SLV Claims so that the total of the “Allowed” TIA Claims and SLV Claims does not exceed the maximum “payment obligation” that Delta would have outside of bankruptcy. In this case, that requires that the claims be reduced so that the “Allowed” claims do not exceed the SLV Claims.

26. In bankruptcy, a “claim” is a “right to payment.” *See* 11 U.S.C. § 101. By definition, the total amount of the “allowed” TIA Claims and SLV Claims should not exceed the collective “right of payment” that the holders of those claims would have had outside of bankruptcy. In the case of the claims that are the subject of this Objection, this means that the collective allowed amount of the TIA Claims and the SLV Claims cannot exceed the SLV Claims in each transaction. This is because, under the parties’ contracts, (a) a payment of SLV

extinguishes any obligation to make payment under the tax indemnity agreement, and (b) any payment on a TIA Claim requires a reduction in SLV.

27. The parties' contracts do not specify whether TIA Claims or SLV Claims take priority where (as here) both claims have been asserted at the same time. In light of the absence of other guidance in the contracts Delta submits that the required adjustments to the claims should be apportioned equally, so that 50% of any required adjustment is applied against the relevant TIA Claim and 50% is applied against the relevant SLV Claim.³

D. Alternatively, The Claims Should Be Reduced Based On Estimated Distributions

28. Alternatively, Delta requests that the Court direct that the TIA Claims be reduced based on estimated distributions to be made in these cases, or such different method as the Court determines to be just and proper.

29. The Participation Agreement for each Transaction requires that SLV be reduced to reflect any amount that is "paid" with respect to a TIA Claim. Delta believes (as described above) that the term "paid" should be interpreted as being synonymous with "allowed" in the context of a bankruptcy case. Alternatively, the SLV Claims must be reduced by an amount that is at least equal to the expected distributions with respect to any TIA Claims.⁴

30. The TIA for each Transaction provides that there is no TIA Claim "to the extent" that SLV has been paid. Delta believes (as described above) that the term "paid" should be interpreted as synonymous with "allowed" in the context of this bankruptcy case. Alternatively,

³ A final determination of the amounts of the adjustments will require further proceedings to resolve other issues as to the TIA Claims.

⁴ A final determination of these amounts will require further proceedings, as (a) the amount of each TIA Claim needs to be resolved, and (b) an estimated distribution percentage needs to be determined.

the TIA Claims must be reduced by an amount that is at least equal to the expected distributions with respect to any SLV Claims.⁵

Procedure for Responses to Objection

31. Any party wishing to oppose the relief requested herein must file a response in accordance with the Court's Order Establishing Procedures for Claims Objections entered October 12, 2006, docket number 3381 (the "**Claims Objection Procedures Order**"), a copy of which is available at no charge on the Debtors' Case Information Website (located at www.deltadocket.com). In the event a party does not wish to oppose the relief requested herein, it is not necessary for such party to file any response with the Court, notify Delta or its counsel or undertake any further action.

32. The deadline to file a response to this Objection is noted on the cover page hereof. Consistent with the Claims Objection Procedures Order, no response shall be accepted or considered unless, prior to such deadline, it is filed with the Court, 300 Quarropas Street, White Plains, New York 10601 and actually received by (a) counsel to the Reorganized Debtors, Debevoise & Plimpton LLP, 919 Third Avenue, New York, NY 10022, Attn: Michael E. Wiles, and (b) the attorneys for the Post-Effective Date Committee, Akin Gump Strauss Hauer & Feld LLP, 590 Madison Avenue, New York, New York 10022, attn: David H. Botter, Esq. In addition, as set forth in the Claims Objection Procedures Order, no response shall be accepted or considered by the Court unless it includes, among other things, the following:

- (a) an appropriate caption, including the title and date of the objection to which the response is directed;

⁵ A final determination of these amounts will also require further proceedings (a) to resolve any objections as to SLV calculations, and (b) to determine an estimated distribution percentage.

(b) the name of the claimant, the claim number of the proof of claim (as identified on the claims register maintained on the Debtors' case information website (located at *www.deltadocket.com*) and a description of the basis for the amount of the proof of claim;

(c) a concise statement setting forth the reasons why the Court should not sustain the objection, including, but not limited to, the specific factual and legal bases upon which the claimant relies in opposing the objection;

(d) copies of any documentation and other evidence upon which the claimant will rely in opposing the objection at a hearing;⁶

(e) sworn declarations of persons with personal knowledge of any new facts relied upon to support the response;⁷ and

(f) the name, address, telephone number and facsimile number of a person authorized to reconcile, settle or otherwise resolve the claim on the claimant's behalf.

33. A failure by the Claimant to file a response in such manner shall be deemed a waiver by the Claimant of all rights to respond to this Objection and consent by the Claimant to the relief requested in this Objection with respect to the Claim.

34. Pursuant to the Claims Objection Procedures Order, if a proper and timely response with respect to the Claim is not filed and served in compliance with the procedures specified therein, the Court may sustain this Objection with regard to the Claim without further notice or a hearing.

⁶ If the claimant cannot timely provide such documentation and other evidence, the claimant is required to provide a detailed explanation in the response as to why it was not possible to timely provide such documentation and other evidence.

⁷ If the claimant cannot timely provide such declarations, the claimant is required to provide a detailed explanation in the response as to why it was not possible to timely submit such declarations.

35. If the relief requested herein is granted, Epiq Systems-Bankruptcy Solutions, as the Debtors' authorized claims agent, will be authorized and directed to amend the claims register accordingly.

Service of Notice

36. Delta has served notice of this Objection consistent with the procedures set forth in the Claims Objection Procedures Order. In addition, consistent with the procedures described in the Court's Order Approving Notice, Case Management and Administrative Procedures entered October 6, 2005 (the "**Case Management Order**"), as modified by Section 17.16 of the Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, which was confirmed on April 25, 2007. *See* Order Confirming Chapter 11 Plan [Docket No. 5998.] Delta has also served notice of this Objection on (a) the chambers of the Honorable Adlai S. Hardin, (b) the attorneys for the Debtors, Davis Polk & Wardwell, (c) Epiq Systems-Bankruptcy Solutions, and (d) the attorneys for the Post-Effective Date Committee, Akin Gump Strauss Hauer & Feld LLP.

Relief Requested

37. For the foregoing reasons, Delta respectfully requests that the TIA Claims and SLV Claims be reduced and/or disallowed in the manner specified above, and that the court grant such other and further relief as may be just and proper.

Dated: New York, New York
September 14, 2007

Respectfully submitted,

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