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Response Deadline: May 21, 2007
Hearing Date: To Be Determined

**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)**

----- X
**TIA/SLV OBJECTION 3H: OBJECTION BY DELTA AIR LINES, INC. TO CERTAIN CLAIMS
ASSERTED BY WILMINGTON TRUST COMPANY, NATIONAL CITY BANK, SPCP GROUP
AND WELLS FARGO BANK FOR TAX INDEMNITY AND STIPULATED LOSS VALUE**

This Objection Relates To:

Tail No.: N635DL

Claim Nos.: 7094 (filed by Wilmington Trust Company, as Owner Trustee)
7127 (filed by National City Bank)
**7184 (filed by Global Principal Finance Company, LLC, and subsequently
transferred to SPCP Group, LLC, as agent for Silver Point Capital Fund,
L.P. and Silver Point Capital Offshore Fund, Ltd)**
7185 (filed by Wells Fargo Bank Northwest, N.A, as Indenture Trustee)

Delta Air Lines, Inc. (“**Delta**”), through its undersigned counsel, hereby submits this objection (the “**Objection**”) to Proof of Claim No. 7094, asserted by National City Bank (“**National City**”) seeking a tax indemnity payment with respect to the leveraged lease transaction involving the aircraft bearing the registration (“**tail**”) number identified above (the

¹ The 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.

“**Aircraft**”); to Proof of Claim No. 7127,² asserted by Wilmington Trust Company (“**WTC**”), as owner trustee, also seeking a tax indemnity payment with respect to the same transaction and Aircraft; Proof of Claim Nos. 7184,³ asserted by Global Principal Finance Company, LLC (“**Global Principal**”) and subsequently transferred to SPCP Group, L.L.C. (“**SPCP**”), seeking payment of stipulated loss value with respect to the same transaction and Aircraft;⁴ and Proof of Claim 7185, asserted by Wells Fargo Bank Northwest, N.A (“**Wells Fargo**”), as Indenture Trustee, also seeking payment of stipulated loss value with respect to the same transaction. Claims 7094 and 7127 are referred to herein as the “**TIA Claims.**” Claims 7184 and 7185 are referred to herein as the “**SLV Claims.**”

Summary of the Objection

The TIA Claims and the SLV Claims seek recovery for the same matters. The agreements that govern the leveraged lease transaction at issue in this Objection contain a number of provisions that recognize the overlap among the TIA Claims and the SLV Claims.

Among other provisions:

- Section 7(b) of the Indemnity Agreement (the “**TIA**”) states that no payment is due if “a party to any of the Operative Documents is required to pay Stipulated

² National City’s Proof of Claim No. 7094 and WTC’s Proof of Claim No. 7127 state that “[t]hrough the filing of separate proofs of claim, Wilmington Trust Company and National City are not seeking to recover twice,” but “desire only a single recovery under the Relevant agreement.”

³ On February 2, 2007, the Debtors objected to Claim 7184 on the basis, among others, that Global Principal is not the proper claimant of the stipulated loss value claim with respect to Tail No. N635DL. More specifically, Global Principal is not the indenture trustee to whom the stipulated loss value claim has been assigned, and is accordingly not the party that is entitled to assert such claim [Docket No. 4419]. The Debtors continue to object to Claim 7184 on the basis asserted in the February 2, 2007 objection, and bring this additional Objection against Claim 7184 in an abundance of caution. This Objection and the February 2, 2007 objection are each independently sufficient to disallow Claim 7184.

⁴ Claim No. 7184 was transferred to Merrill Lynch Credit Products, LLC, and subsequently transferred to SPCP Group, as agent for Silver Point Capital Fund, L.P. and Silver Point Capital Offshore Fund, Ltd., consistent with the transfer notices filed on February 20, 2007 [Docket Nos. 4612, 4622].

Loss Value or Termination Value, to the extent that such amounts have been paid and accurately compensates the Owner Participant for any loss, recapture or deferral of any of the ACRS Deductions, the Investment Credit, the Amortization Deductions or any of the State Tax Benefits that results from any such loss, damage, destruction, theft, detention, prevention, condemnation, seizure, requisition or prohibition on use[.]”

- Section 6(d) of the 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.”

The contracts that govern the TIA Claims and the SLV Claims therefore recognize the overlap among them and require that the claims be adjusted to take account of each other.

Delta submits that a single loss gives rise to a single claim, and that overlapping claims cannot be allowed. Accordingly, the TIA Claims and the SLV Claims cannot be allowed. Instead, the TIA Claims and the SLV Claims must be adjusted to eliminate the overlaps among them.

Reservation of Other Objections

This Objection applies only to the extent that the TIA Claims seek payment pursuant to the tax indemnity agreement and to the extent that the SLV Claims seek payment of stipulated loss value. Delta reserves the right to assert additional objections to the TIA Claims and the SLV Claims at a later date, including without limitation (i) additional objections to the extent these claims relate to other aircraft, (ii) additional objections to the portions of the TIA Claims that seek recovery pursuant to the tax indemnity agreement 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 SLV Claims.⁵ Among other things, and without limiting the generality of the foregoing reservation of rights, Delta reserves the right to make a separate objection to National City's and WTC's TIA Claims on the grounds that they are duplicative of and overlap with each other; and to make a separate objection to SPCP's and Wells Fargo's SLV Claims on the grounds that they are also duplicative of and overlap with each other.

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. The Debtors are debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On September 28, 2005, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the “**Committee**”) pursuant to section 1102 of the Bankruptcy Code.

2. The Debtors and the Committee previously sought to resolve certain issues relating to leveraged lease claims pursuant to procedures that were approved by the Court in an Order entered on 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 transactions that would provide representative samples of the ways in which various of the Debtors' leveraged lease agreements were worded. Pursuant to the Court's request, the Debtors have grouped claims bearing similar characteristics into several categories and have filed objections with the Court based on a sample of tails from each of these categories.

⁵ Pursuant to a court-approved term sheet, Delta has previously agreed not to object to claims seeking stipulated loss value with respect to the aircraft involved in this particular Objection, except to the extent set forth in this Objection. Delta has reserved its rights to assert challenges to stipulated loss value calculations in claims not covered by the foregoing term sheet.

This language of the operative contracts is similar in relevant respects to the language of the contracts involved in TIA/SLV Objection 3, filed with the Court on March 9, 2007 [Docket No. 5110], and TIA/SLV Objection 5, filed with the court on March 23, 2007 [Docket No. 5401]. The Debtors request that this Objection not proceed to a hearing until TIA/SLV Objections 3 and 5 have been resolved.

3. This Objection relates to one leveraged lease transaction. 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. Many of the Debtors' aircraft are subject to leveraged lease financing transactions. A typical leveraged lease transaction includes these components:

(a) The parties enter into a master agreement (called a "**Participation Agreement**") that, among other things, 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 financing.

(c) The Owner Trust enters into an aircraft lease (the "**Lease**") with Delta and/or Comair, Inc. The Lease is usually a "net" lease which requires the lessee to pay

all taxes and operating expenses. 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

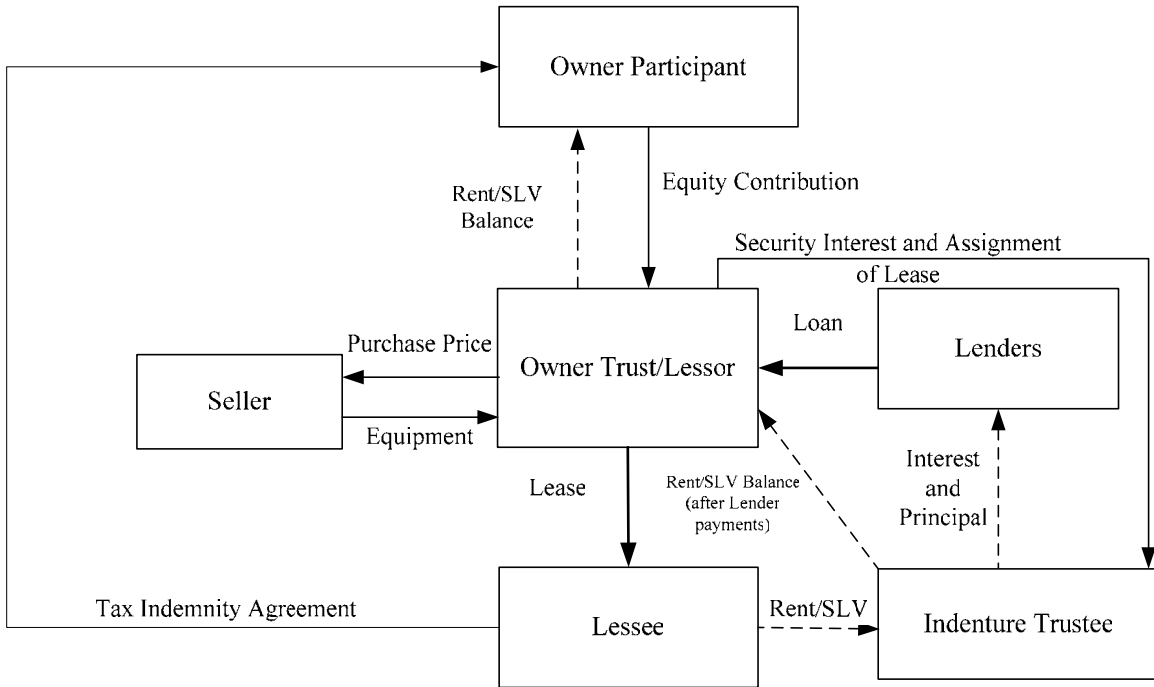
payoff of the remaining debt, and (ii) to allow the Owner Participant to earn an agreed-upon return through the date of termination. The calculation of SLV takes account of, among other things, the adverse tax consequences to the Owner Participant from a foreclosure or other event.

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. Some TIAs provide either (a) indemnification to the Owner Participant if the Lessee’s acts or omissions result in the “recapture” of prior depreciation deductions or (b) indemnification for unexpected inclusions in the Owner Participant’s taxable income as a result of certain listed causes. Other TIAs provide indemnification to the Owner Participant for both (a) and (b) above.

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 to other parties.

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

Leveraged Leases



10. As described above, stipulated loss value calculations and tax indemnity agreement claims each typically address the tax consequences, to an Owner Participant (or the tax group of which it is a member), that result from a foreclosure or from other specified events. In fact, the governing contracts usually contain provisions that recognize the overlaps between SLV and TIA claims. Regardless of whether or not the overlap is discussed in the contracts themselves, however, the fact remains that SLV and TIA claims typically include contractual rights to recovery for the same matters. *See* William A. Macan IV, “Review of US Tax Issues That Drive the Deals,” Thirteenth Annual US Cross-Border Leasing & Structured Finance Conference, p.19 (2002) (“Also noted is the somewhat duplicative claim to which the documents entitle the Investor when a T[ermination] V[alue]/SLV event occurs – the right to receive a TIA payment for the adverse tax consequences unless and until T[ermination] V[alue]/SLV has been paid in full.”).

C. The Leveraged Lease At Issue in This Objection

11. In 1988, Delta entered into a leveraged lease transaction for one Boeing-Model 757-232 aircraft with tail number N635DL. In this transaction, PLC Leasing Corporation (“**PLC**”) 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. Trust Company Bank was the Lender.

12. The transaction involved primarily the following agreements:

(a) Delta, PLC (the Owner Participant), WTC (as Owner Trustee), C&S (as Indenture Trustee), and Trust Company Bank (the Lender) all entered into a Participation Agreement for the Aircraft.

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

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

(d) Delta entered into an Indemnity Agreement (as previously defined, a “**TIA**”) with PLC, as described in the following paragraphs.⁶

13. Delta understands that, in the foregoing transaction, Wells Fargo has succeeded C&S as Indenture Trustee. Delta also understands that National City and/or Global Principal has succeeded PLC as Owner Participant.

⁶ Upon execution of appropriate confidentiality agreements, copies of the Lease, Participation Agreement, Trust Indenture, and TIA for this transaction will be supplied to the parties named in this Objection and to other parties who have claims in connection with the leveraged lease transaction and who wish to obtain copies.

14. National City as Owner Participant and WTC as Owner Trustee have filed tax indemnity claims asserting that “Wilmington Trust Company and National City are not seeking to recover twice,” but “desire only a single recovery under the Relevant agreement.” Proof Claim Nos. 7094 and 7127.

15. Global Principal, also as Owner Participant, filed a stipulated loss value claim (the “**Global Principal Claim**”). The Global Principal Claim was transferred to Merrill Lynch Credit Products, LLC, and then subsequently transferred to SPCP Group, consistent with the transfer notices filed on February 20, 2007 [Docket Nos. 4612, 4622].

16. The TIA Claims seek payment pursuant to a TIA. The SLV Claims seek SLV under the Lease.

Grounds for the Objection

17. The TIA Claims and the SLV Claims seek compensation for the same alleged loss and overlap with each other. The overlap among the TIA Claims and the SLV Claims is recognized in the contracts themselves. Section 1 of the Lease includes a definition of “Net Economic Return” that makes clear that the calculation of SLV includes an amount that is calculated to take the Owner Participant’s taxes into account and to preserve the Owner Participant’s anticipated after-tax returns:

“Net Economic Return” means the Owner Participant’s anticipated after-tax yield and aggregate after-tax cash flow and (in the case of any adjustment pursuant to Section 21 and 22 of the Participation Agreement) its anticipated periodic net income, utilizing the multiple investment sinking fund method of analysis, computed on the basis of the same methodology and assumptions as were utilized by the Owner Participant in determining Basic Rent, Stipulated Loss Value and Termination Value percentages as of the Closing Date, as such assumptions may be adjusted for events which have been the basis of adjustments to Rent pursuant to Section 3(e) hereof.

In addition, Section 7(b) of the TIA in this transaction states that no payment is owing under the TIA with respect to any event as to which the Lessee is “required to pay” SLV, “to the extent that such amounts have been paid and accurately compensates the Owner Participant for any loss” Section 6(d) of the 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.”

18. Delta submits that to the extent the TIA Claims and the SLV Claims overlap and seek compensation for the same loss, only one such claim may be allowed.

In addition, based on the language of the contracts in this transaction, the TIA Claims should be disallowed. Alternatively, the Court should reduce the TIA Claims and/or the SLV Claims to eliminate the overlaps among them.

A. The TIA Claims and the SLV Claims Overlap And Seek Recovery For The Same Loss, And To The Extent Of That Overlap Only One Claim Can Be Allowed

19. It is common, in the law, that a claimant may be entitled to recover for a single injury based on multiple legal theories. Persons injured by defective products, for example, may be entitled to recover compensation under theories of strict product liability, negligence, and/or breach of warranty. Persons who are deceived in connection with financial investments may be entitled to recover compensation under claims of fraud, negligent misrepresentation, breach of fiduciary duty, breach of contractual representations or warranties, and/or violations of federal or state disclosure statutes. Officers and directors who seek indemnification may be entitled to rely on statutory principles, corporate by-laws or individual employment contracts to provide such indemnification. There are a host of other examples that can easily be identified and that commonly arise both within bankruptcy and outside bankruptcy.

20. It is generally recognized that a loss provides a claimant with only one right of payment, no matter how many separate legal theories may be invoked in support of that right of payment. See *Diversified Graphics, Ltd. v. Groves*, 868 F.2d 293, 295 (8th Cir. 1989) (“Regardless of whether the harm was the result of negligence or breach of fiduciary duty or a combination of both, there is only a single injury and there may only be a single recovery”). This rule applies in bankruptcy cases as well. For bankruptcy purposes, a claim constitutes a “right to payment.” See 11 U.S.C. § 101. The existence of multiple *theories* under which recovery may be sought from a debtor does not change the fact that a single loss gives rise to a single right to payment and therefore a single “claim” against the debtor for bankruptcy purposes.

21. In bankruptcy, therefore, “multiple recoveries for an identical injury are generally disallowed.” See *In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey*, 160 B.R. 882, 894 (Bankr. S.D.N.Y. 1993). In *Finley*, the debtor had failed to make required pension plan contributions, resulting in an underfunding of its pension plan. *Id.* at 893. The pension plan trustee, on one hand, filed a claim against the debtor to collect the unpaid plan contributions. *Id.* at 887. The Pension Benefit Guaranty Corporation (“PBGC”), on the other hand, filed a claim against the debtor for the amount of the debtor’s unfunded benefit liabilities that were insured by the government. *Id.* Each claim was based on a different legal theory, but each claim related to the same “loss”: that is, the economic effect (on the pension plan) of the debtor’s failure to make a required payment. The bankruptcy trustee objected to the claims, arguing that both claims sought recovery for an identical injury. *Id.* at 893.

22. The pension plan trustee and PBGC argued in *Finley* that their claims arose from different legal rights and that, even if they overlapped, the claims should only be reduced to the

extent that the debtor's estate actually paid the separate claims in "tiny bankruptcy dollars," not to the extent that the claims were allowed in pre-bankruptcy dollars. *Id.* The Bankruptcy Court rejected this position, finding it to be "entirely at odds with fundamental bankruptcy policy favoring equality of distribution among similarly situated creditors." *Id.* at 894. The Bankruptcy Court noted that the claims sought compensation for the same loss (the debtor's missed pension contribution), and that the allowance of both claims, or the reduction of the claims only to the extent of actual payment in "tiny bankruptcy dollars," would result in a distribution with respect to that loss that would exceed the ratable distribution to all other unsecured creditors. *Id.* at 894. The Bankruptcy Court held that such an outcome would be "inconsistent with the letter and spirit of Title 11," and disallowed the claims to the extent that they sought compensation for the same loss. *Id.*

23. Guided by the principles of ratable distribution and of uniform treatment for creditors, other bankruptcy courts also have stricken claims to the extent they overlap and to the extent they seek recovery for the same loss. *See, e.g., In re Simetco, Inc.*, No. 93-61772, 1996 WL 651001, at *3 (Bankr. N.D. Ohio Feb. 15, 1996) (disallowing claim to the extent it related to the same loss that was covered by another claim in light of the potential windfall to the creditor, and holding that multiple recoveries for the same loss "would violate the principles of ratable distribution and offend the notion of uniform treatment for creditors"); *In re Chateaugay Corp.*, 115 B.R. 760, 784 (Bankr. S.D.N.Y. 1990), *aff'd*, 130 B.R. 690 (Bankr. S.D.N.Y. 1991), *vacated by agreement of the parties*, 17 Employee Benefits Cas. (BNA) 1102 (S.D.N.Y. 1993)⁷ (holding that claims for unpaid contributions and claims for "plan insufficiency" were

⁷ Although the bankruptcy court's decision in *Chateaugay* was vacated by agreement, the *Simetco* court still found the reasoning persuasive with respect to its holding that duplicative claims should be disallowed based on bankruptcy policy. *In re Simetco, Inc.*, 1996 WL 651001, at *3 n.3.

duplicative of each other, and that allowing “two dollars of claims against the same Debtor for one dollar of loss violates the principles of equality of distribution and uniformity of treatment of creditors that are fundamental to the Code”); *In the Matter of Brinke Transp., Inc.*, No. 87-03785, 1989 WL 233147, at *3 (Bankr. D.N.J. Jan. 23, 1989) (where claims substantially overlapped, striking claim that was subsumed in other claims). The same result is necessary in the present case to prevent the affront to bankruptcy policy identified in *Finley* and in the other cases cited above.

24. The policy against duplicative recoveries is also reflected in 11 U.S.C. § 502(e), which bars duplicative claims by a creditor and by a guarantor of the creditor’s claim. *See* S. Rep. No. 95-989, 95th Cong., 2d Sess. 65 (1978), *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787, 5851; H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 354 (1977), *reprinted in* 1978 U.S. Code Cong. & Admin. News 5963, 6310 (stating that Section 502(e) “prevents competition between a creditor and its guarantor for the limited proceeds in the estate”); *Fine Organics Corp. v. Hexcel Corp. (In re Hexcel Corp.)*, 174 B.R. 807, 811 (Bankr. N.D. Cal. 1994) (“The legislative history surrounding the enactment of 11 U.S.C. § 502(e)(1)(B) reveals that § 502(e)(1)(B) was primarily intended to protect the limited assets of a bankruptcy estate from duplicative claims”).

25. The SLV Claims and the TIA Claims are set forth in separate contracts. However, to the extent that the SLV Claims and the 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), they simply represent multiple legal theories upon which the same loss may be recovered. For bankruptcy purposes, a single loss can give rise to only one “right to payment” and only one

claim against the debtor, regardless of how many separate contractual theories of recovery may be asserted.

26. In the transaction at issue in this Objection, the Lease (and the SLV Claim) was assigned to the Indenture Trustee (now Wells Fargo) as security for loans that were made. Further, in addition to the Indenture Trustee, Global Principal as Owner Participant filed an SLV Claim, which SPCP presently holds. As a result, the TIA Claims and the SLV Claims have been asserted by different parties. However, to the extent that the SLV Claims and the TIA Claims address the same loss, only one claim may be allowed, and that is true regardless of whether one of the overlapping contract claims was assigned to a different party. The fact that the same loss is addressed in two separate contracts, the fact that one contract is assigned to an Indenture Trustee while another is retained by the Owner Participant, and the fact that multiple parties are asserting claims for such loss on the basis of these contracts cannot convert a single right to payment into multiple separate rights to payment.

B. The Total Of The “Allowed” TIA Claims and SLV Claims Cannot Exceed The Collective “Right to Payment” Under The Parties’ Contracts

27. Delta’s maximum payment obligation with respect to the TIA Claims and the SLV Claims would be equal to the amount specified as SLV for this transaction. More specifically, Section 7(b) of the tax indemnity agreement at issue in this Objection states 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 that such amounts have been paid and accurately compensates the Owner Participant for any loss, recapture or deferral of any of the ACRS Deductions, the Investment Credit, the Amortization Deductions or any of the State Tax Benefits that results from any such loss, damage, destruction, theft, detention, prevention, condemnation, seizure, requisition or prohibition on use[.]” Accordingly, if the Lessee were to pay SLV, then

the TIA Claim would be eliminated in its entirety. Additionally, Section 6(d) of the 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.” Accordingly, if any amount were to be paid on a TIA Claim, the SLV Claim would have to be reduced by that amount.

28. 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 cannot 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 that is specified for this transaction.

29. If this Court were to allow the TIA Claims and the SLV Claims, without adjustment for the overlaps among them, then (a) the allowed claims would exceed the collective “right of payment” that the claimants have, and (b) the claimants would receive a higher percentage recovery with respect to their “right of payment” than other creditors would receive. An example helps to illustrate this:

(a) Assume, for purposes of illustration, that the required SLV payment in a given transaction were \$100, of which \$75 represented payment of outstanding debt and \$25 represented compensation to the Owner Participant for its anticipated actual losses.

(b) Assume also that Delta’s distributions to unsecured creditors (in bankruptcy) would be equal to 60% of creditors’ claims.

(c) Outside of bankruptcy, if Delta satisfied the \$100 SLV obligation, then (i) \$75 would be used to repay lenders, (ii) the remaining \$25 would be paid to the Owner Participant to cover its losses, and (iii) the TIA Claim would be extinguished. In that case, Delta's total out-of-bankruptcy payment obligation – or the collective “right of payment” possessed by the Indenture Trustee and the Owner Participant – would be \$100.

(d) In bankruptcy, the collective “claims” asserted by the Indenture Trustee and the Owner Participant similarly should be equal to \$100 – the amount of the collective “right to payment” that they would have outside of bankruptcy.

(e) If the Court were instead to allow an SLV Claim in the amount of \$100, and also to allow a TIA Claim in the amount of \$25, then the total of the allowed claims would not reflect the actual “right of payment” that those claimants possess. Instead, the allowed claims would equal \$125, compared to a collective “right of payment” of only \$100.

(f) Similarly, if the Court were to allow both the SLV Claim and the TIA Claim, Delta would then distribute a total of \$75 with respect to those two claims (60% times \$125). That would mean a distribution of 75% with respect to an out-of-bankruptcy payment obligation of \$100, or a recovery of 75% – compared to a recovery by other unsecured creditors of only 60%.

As the courts have consistently found, such an inequitable distribution would be entirely “inconsistent with the letter and spirit of Title 11.” *See Finley*, 160 B.R. at 894.

28. In light of the fact that the TIA Claims overlap with the SLV Claims, Delta submits that the total allowable amount for the TIA Claims and the SLV Claims cannot exceed the amount of the SLV Claim asserted by SPCP and/or Wells Fargo.

C. The TIA Claims And The SLV Claims Should Be Adjusted To Eliminate Overlaps Between Them.

30. In the transaction covered by this Objection, the parties' agreements make clear that the TIA Claims and SLV Claims must be adjusted to take account of each other, based primarily on the timing of payments that are made. If SLV has been paid, Section 7(b) of the tax indemnity agreement provides that the tax indemnity claim is extinguished. If an amount has been paid under the tax indemnity agreement, Section 6(d) of the Participation Agreement requires that SLV be reduced.

31. The parties' agreements are less clear, however, in defining which agreement should take priority over the other. On the one hand, the documents make clear that the rights to collect Stipulated Loss Value have been assigned to the Indenture Trustee.⁸ On the other hand, the documents also state that the Owner Participant retained the TIA Claim and that that claim is not part of the trust estate held by indenture trustee. Since the TIA Claims and the SLV Claims overlap with each other, those provisions simply are in conflict with each other

32. The parties' contracts appear to make timing the only decisive factor in determining the priority of the parties' respective claims, requiring that one claim be adjusted if any part of the overlapping claim is paid. In this regard:

⁸ As previously stated, the Debtors have also objected to SPCP's SLV Claim on the basis that SPCP is not the indenture trustee to whom the stipulated loss value claim has been assigned, and is accordingly not the party that is entitled to assert such claim with respect to the Aircraft [Docket No. 4419].

(a) The Lease and the Trust Indenture make clear that the Indenture Trustee is entitled to claim payment of stipulated loss value upon the occurrence of certain events of default, including failures to make the full payments specified in the Lease. Lease, §§ 14, 15; Indenture, § 4. Wells Fargo and Global Principal have asserted claims to recover SLV pursuant to those provisions.

(b) By contrast, claims under the TIA accrue only as and when the Owner Participant actually incurs an increase in tax liabilities for a given tax year and pays those increased taxes. TIA, §§ 6, 8.

In the ordinary course of events, therefore, the SLV Claim likely would have accrued prior to the time when the TIA Claim would have accrued.

33. To the extent that this Court agrees, it would appear to Delta that the terms of the agreements would give priority to the SLV Claim over the TIA Claim. To the extent the Court concludes otherwise, Delta respectfully requests that the Court adjust the TIA Claims and the SLV Claims in such other manner as the Court deems just based on the underlying circumstances and equities. In either event, Delta submits that an Order must be entered eliminating the overlap among those claims, with the result that the total of the allowed TIA Claims and SLV Claims does not exceed the SLV that is specified for this transaction.

Procedure for Responses to Objection

34. 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 and the Committee or their counsel or undertake any further action.

35. 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 Debtors, Debevoise & Plimpton LLP, 919 Third Avenue, New York, NY 10022, Attn: Michael E. Wiles, and (b) the attorneys for the Official Committee of Unsecured Creditors, 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;
- (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;⁹

(e) sworn declarations of persons with personal knowledge of any new facts relied upon to support the response;¹⁰ 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.

36. 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.

37. 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.

38. If the relief requested herein is granted, Bankruptcy Services, LLC, as the Debtors' authorized claims agent, will be authorized and directed to amend the claims register accordingly.

Service of Notice

39. 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

⁹ 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.

¹⁰ 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.

entered October 6, 2005 (the “**Case Management Order**”), Delta has served notice of this Objection on (a) the Core Parties (as that term is defined in the Case Management Order) and (b) the Non-ECF Service Parties (as that term is defined in the Case Management Order).

Relief Requested

40. For the foregoing reasons, Delta respectfully requests (a) a determination that only one claim be allowed for a single tax-related loss in this transaction; (b) the disallowance and/or reduction of the TIA Claims and/or the SLV Claims to eliminate the overlaps among them; and (c) such other and further relief as is deemed just and proper.

Dated: New York, New York
April 20, 2007

Respectfully submitted,

DEBEVOISE & PLIMPTON LLP

/s/ Michael E. Wiles

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