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of Equity Security Holders

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|-------------------------|
| In re: | : | |
| | : | Chapter 11 |
| NORTHWEST AIRLINES CORPORATION, <u>et al.</u> , | : | |
| | : | Case No. 05-17930 (ALG) |
| Debtors. | : | |
| | : | (Jointly Administered) |

MOTION OF THE AD HOC EQUITY COMMITTEE FOR AN ORDER (A) PURSUANT TO SECTIONS 105(a) AND 107(b) OF THE BANKRUPTCY CODE AND RULE 9018 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE GRANTING LEAVE TO FILE ITS BANKRUPTCY RULE 2019(a) STATEMENT UNDER SEAL, AND (B) GRANTING A TEMPORARY STAY PENDING DETERMINATION OF THIS MOTION

TO: THE HONORABLE ALLAN L. GROPPER,
UNITED STATES BANKRUPTCY JUDGE:

The members of the Ad Hoc Committee of Equity Security Holders (collectively, the "Ad Hoc Equity Committee")¹ hereby submit this motion (the "Motion") for an order (a) allowing the members of the Ad Hoc Equity Committee to file under seal its statement (the "Committee

¹ The shareholders whom Kasowitz, Benson, Torres & Friedman LLP ("KBT&F") represent are Anchorage Capital Group, L.L.C., Citadel Limited Partnership, DKR Wolf Point Holding Fund Ltd., Gracie Capital, Greywolf Capital Management LP, Jeremy Hosking, Latigo Partners, L.P., Longacre Management, LLC, Marathon Asset Management (Services) Limited, Mason Capital Management, Owl Creek Asset Management, L.P., Sandell Asset Management Corp., Savannah-Baltimore Capital Management, LLC, Scoggin Capital Management, LP, Seneca Capital, Taconic Capital Advisors LLC, and Talek Investments, LLC.

Statement") pursuant to Rule 2019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and (b) staying the effect of the Court's Memorandum of Opinion and Order dated February 26, 2007 [Docket No. 5032] (the "Order" or the "Opinion") (or extending the "three business days" directive in the Order) until at least three business days after the Court decides this Motion. In support thereof, the Ad Hoc Equity Committee respectfully represents as follows:

JURISDICTION, VENUE AND PREDICATES FOR RELIEF

1. This Court has jurisdiction over 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 of this proceeding and this Motion is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief requested herein are Sections 105(a) and 107(b) of title 11 of the United States Code (the "Bankruptcy Code") and Bankruptcy Rules 2019 and 9018.

BACKGROUND

2. On September 14, 2005 (the "Petition Date"), the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York (the "Court"), thereby commencing these cases.² The Debtors continue to operate their businesses as debtors and debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. On September 30, 2005, the United States Trustee for Region 2 (the "UST") appointed the Official Committee of Unsecured Creditors (the "Creditors Committee") to represent the interests of the Debtors' unsecured creditors. On November 17, 2005, the UST

² NWA Aircraft Finance, Inc., filed its chapter 11 petition sixteen days later on September 30, 2005.

appointed a statutory committee of retired employees. No request has been made for the appointment of a trustee or, as of yet, for an examiner.

4. On January 11, 2007, the Ad Hoc Equity Committee moved this Court to direct the appointment of an official equity committee for all Northwest Airlines Corporation shareholders, whom, the Ad Hoc Equity Committee contends, are represented by no fiduciary in these cases. *See Motion of the Ad Hoc Committee of Equity Security Holders for an Order Compelling the Acting United States Trustee for Region 2 to Appoint an Official Committee of Equity Security Holders* [Docket No. 4490] (the "Equity Committee Motion").³

5. On January 16, 2007, KBT&F filed a *Verified Statement of Kasowitz, Benson, Torres & Friedman LLP Pursuant to Bankruptcy Rule 2019(a)* [Docket No. 4514] (the "First KBT&F Bankruptcy Rule 2019(a) Statement"), and on January 19, 2007, KBT&F filed its *Verified Amended Statement of Kasowitz, Benson, Torres & Friedman LLP Pursuant to Bankruptcy Rule 2019(a)* [Docket No. 4574] (the "Second KBT&F Bankruptcy Rule 2019(a) Statement," and with the First KBT&F Bankruptcy Rule 2019(a) Statement, the "KBTF Bankruptcy Rule 2019(a) Statement").

6. Over the next several weeks, KBTF resolved certain disputes raised by the Debtors regarding the KBTF Bankruptcy Rule 2019(a) Statement by agreeing to provide specified information that, due to its trade secret and confidential commercial information nature, the parties agreed would be maintained confidentially and submitted to the Court, if at all, under seal. The Debtors and the Ad Hoc Equity Committee entered into an email exchange agreement settling the issues. Nevertheless, a few days later the Debtors moved against the KBTF Bankruptcy Rule 2019(a) Statement. *See Motion of the Debtors for (I) an Order Imposing Civil*

³ On February 27, 2007, the Ad Hoc Equity Committee discontinued its prosecution of the Equity Committee Motion for the reasons, among others, stated in its notice of withdrawal. *See Statement of the Ad Hoc Committee Withdrawing Motion for Official Equity Committee* [Docket No. 5086].

Contempt Sanctions on the Ad Hoc Committee and Awarding Attorneys' Fees and Costs to the Debtors, (II) a Protective Order Pursuant to Rules 26(c) and 45(c) of the Federal Rules of Civil Procedure and (III) an Order Compelling the Ad Hoc Committee to File a Verified Statement Pursuant to Bankruptcy Rule 2019(a) [Docket No. 4817] (the "Motion to Compel"). At the February 14, 2007 hearing on the Motion to Compel, the Court reserved decision on the Rule 2019 issue.

7. During the course of discovery in connection with the Ad Hoc Equity Committee's now-discontinued Equity Committee Motion, the Debtors and the Ad Hoc Equity Committee reached agreement (again) by which the Ad Hoc Equity Committee agreed to provide the Debtors and, if requested, the Creditors Committee with: (i) the aggregate amount of stock and claims purchased and sold by each member during the year prior to the Petition Date, (ii) the aggregate amount of stock and claims purchased and sold by each members after the Petition Date, and (iii) the aggregate amount of stock and claims purchased and sold by each of the individual committee members after the November 15, 2006 (a date chosen by the Debtors on which, among other things, US Airways announced its offer to purchase Delta Air Lines (collectively, as may be amended, the "Subject Information")). Again, in recognition that such information consisted of trade secrets and confidential commercial information, the Ad Hoc Equity Committee requested and the Debtors agreed to keep the Subject Information strictly confidential and to place the Subject Information under seal pursuant to a Confidentiality Agreement and the e-mail amendment thereto, which are annexed hereto as **Exhibit A**.

8. The parties made this Court aware of this agreement at a February 21, 2007 telephonic discovery conference in which the Court suggested that, if the information was to be

provided to the Creditors Committee, it should be on "attorneys' eyes only" designation. The Ad Hoc Equity Committee agreed.⁴

9. The Ad Hoc Equity Committee provided the Subject Information to the Debtors' counsel on February 23, 2007 and, as amended, on February 24, 2007.

10. On February 26, 2007, the Court issued its Opinion that requires the Ad Hoc Equity Committee to file an amended Bankruptcy Rule 2019(a) statement within three business days, which, the Ad Hoc Equity Committee, believes is by March 1, 2007 (the "Compliance Period"). *See* Opinion at 7. Pursuant to the Opinion, the required Committee Statement must contain "the amounts of claims or interests owned by members of the committee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof." *Id.* at 4. The latter three categories are the information that the Ad Hoc Equity Committee previously provided to the Debtors (by requested time period and with average pricing to avoid undue burden) on a confidential basis.

11. There are several Bankruptcy Rule 2019(a) statements on file in these cases as to which the Opinion's strictures would pertain, though, of course, the Debtors moved only against the Ad Hoc Equity Committee. There are at least two by ad hoc committees; the Ad Hoc Equity Committee and the Unofficial Committee of Unsecured Creditors (stated holders of no less than \$1.5 billion in Northwest claims). *See First Amended Verified Statement of Goodwin Procter LLP Pursuant to Bankruptcy Rule 2019(a)* [Docket No. 4987]. None of the ad hoc committees, creditor groups, and other Bankruptcy Rule 2019(a) statement providers have filed, under seal or otherwise, the information that the Court requires in the Opinion. To the best of the Ad Hoc Equity Committee's knowledge, information, and belief, no ad hoc committee, creditor or

⁴ The Creditors Committee did not seek this information in discovery. If it had, the Ad Hoc Equity Committee would have provided it subject to the agreed confidentiality strictures.

shareholder group in any chapter 11 case has been required to file confidential trade and cost basis information on a docket or otherwise disclose such information to the public.

RELIEF REQUESTED

12. The Ad Hoc Equity Committee respectfully requests that the Court enter an order pursuant to Sections 105(a) and 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 authorizing the Ad Hoc Equity Committee to file the Committee Statement containing the Subject Information under seal with the Court, and, as set forth in Bankruptcy Rule 2019, to update that information upon material change.

13. The Ad Hoc Equity Committee also respectfully requests that the Court:
(i) find that the Ad Hoc Equity Committee has complied with Bankruptcy Rule 2019(a) by filing the Committee Statement containing the Subject Information under seal and (ii) extend the Compliance Period until at least three business days after the Court decides this Motion.

14. Because of the nature of the information at hand and the fact that the Ad Hoc Equity Committee had already agreed to provide it to the Debtors and the Creditors Committee in discovery under agreed confidentiality, the Ad Hoc Equity Committee requested their consent to this Motion. The Debtors rejected the request; and the Creditors Committee did not respond either way.

BASIS FOR RELIEF REQUESTED

I. The Bankruptcy Code Requires That Confidential Commercial Information And Trade Secrets Be Filed Under Seal Upon Request Of A Party In Interest.

A. Section 107(b) Is Mandatory.

15. In today's marketplace, securities are traded using complex proprietary strategies. Accordingly, investment funds, such as those in the Ad Hoc Equity Committee, maintain strict confidentiality over their trading practices. Because the confidential trading information that the

Court has determined in the Opinion should be disclosed under Bankruptcy Rule 2019(a) is proprietary, constitutes trade secrets, and is sensitive and confidential commercial information, the disclosure of which is highly prejudicial to the shareholders yet would promote no public or cognizable private interest whatsoever, the Ad Hoc Equity Committee respectfully submits that it should be permitted to file this information under seal, available only to the Court and the United States Trustee under Section 107(b).

16. Section 107(b) of the Bankruptcy Code empowers this Court to protect parties from the potential harm resulting from disclosure of confidential and other highly sensitive information. Section 107(b) provides, in pertinent part:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may --

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; . . .

11 U.S.C. § 107(b) (emphasis added).

17. Bankruptcy Rule 9018 establishes the procedures by which a party may move for relief under Section 107(b) of the Bankruptcy Code, and provides that "[o]n motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, . . ." Fed. R. Bankr. P. 9018.

B. There Is Good Cause To Seal, Though The Statute Does Not Require That Showing.

18. Though the Ad Hoc Equity Committee has good cause, Section 107(b) does not require a determination of good cause. *See, e.g., Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994) ("*Orion Pictures*"); *Phar-Mor, Inc. v. Defendants Named Under Seal (In re Phar-Mor, Inc.)*, 191 B.R. 675, 679 (Bankr. N.D.

Ohio 1995). Instead, information that fits into a category specified in Section 107(b) and Bankruptcy Rule 9018 *must be protected*. As explained by one bankruptcy court:

If the information for which protection is sought fits into any of the categories specified in § 107(b), the court is required to protect a requesting interested party, and has no discretion to deny the application for a protective order. Good cause is not an element of Section 107. When Congress addressed the secrecy problem in § 107(b) of the Bankruptcy Code it imposed no requirement to show 'good cause' as a condition to sealing confidential commercial information. The only requirement is that the information the parties seek to have sealed be 'confidential and commercial in nature.'

In re Handy Andy Home Improvement Centers, Inc., 199 B.R. 376, 381 (Bankr. N.D. Ill. 1996) (internal citations omitted); *see also Orion Pictures.*, 21 F.3d at 27 (if the court determines that the documents in question fall within the parameters of Section 107(b), "the court is required to protect a requesting interested party and has no discretion to deny the application") (emphasis in original).

19. "Commercial information has been defined as information which would cause an unfair advantage to competitors by providing them information as to the commercial operations of the [disclosing party]." *Orion Pictures*, 21 F.3d at 28 (internal quotation marks and citations omitted). Courts consistently have recognized that information related to the buying and selling of securities on the open market is confidential, commercially sensitive, and proprietary. *See, e.g., Fed. Open Market Comm. of Fed. Reserve Sys. v. Merrill*, 443 U.S. 340, 363 (1978) (holding that the Federal Open Market Committee did not have to disclose commercial information relating to the buying and selling of securities on the open market); *In re Lomas Fin. Corp.*, 1991 U.S. Dist. LEXIS 1589, *4 (S.D.N.Y. Feb. 11, 1991) (rejecting narrow definition of commercial information that excluded information that would "affect the market in which [creditors] might sell their claims"; noting that "commercial information" includes information related "to the buying and selling of securities on the open market") (citing *Fed. Open Market*

Comm. of Fed. Reserve Sys. v. Merrill, 443 U.S. 340, 363 (1978)). Courts have also held that Bankruptcy Rule 2019(a) disclosure may be kept confidential and under seal. *Certain Underwriters at Lloyds v. Future Asbestos Claim Representative (In re Kaiser Aluminum Corp.)*, 327 B.R. 554, 560 (D. Del. 2005).

20. Here, the Subject Information also constitutes trade secrets. Therefore, the Court should protect the shareholders from the harm and prejudice that public disclosure causes. As explained by one bankruptcy court:

Trade secrets are not precisely defined under federal law. When determining whether something is a trade secret, courts draw from "commonly accepted criteria" such as the Restatement, Uniform Trade Secrets Act and other treatises. *See, e.g., Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1314 (11th Cir. 2001). In *Chicago Tribune Co.*, the Eleventh Circuit identified four required elements to establish that information constitutes a trade secret: (1) that the party seeking protection has consistently treated the information as closely guarded secrets; (2) that the information is of substantial value to the party seeking protection; (3) that the information would be valuable to the party's competitors; and (4) that the information derive its value from "the effort of its creation and lack of dissemination." *Id.* As an extension of the first element, the Supreme Court has stated that information that is public knowledge or generally known cannot be a trade secret. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1007, 104 S. Ct. 2862, 81 L. Ed. 2d 815 (1984).

In re El Toro Exterminator of Fla., Inc., 2006 Bankr. LEXIS 2427, *6-7 (Bankr. S.D. Fla. July 6, 2006); *see also Softel, Inc. v. Dragon Med. & Scientific Communications, Inc.*, 118 F.3d 955, 968 (2d Cir. 1997), *cert. denied*, 523 U.S. 1020 (1998) ("[A] trade secret is 'any formula, pattern, device or compilation of information which is used in one's business, and which gives [the owner] an opportunity to obtain an advantage over competitors who do not know or use it'" (quoting Restatement of Torts § 757 cmt. b (1939))); *Hudson Hotels Corp. v. Choice Hotels Int'l*, 995 F.2d 1173, 1176 (2d Cir. 1993) (same); *Lehman v. Dow Jones & Co.*, 783 F.2d 285, 297 (2d Cir. 1986) (same).

21. Here, in these cases, this Court has previously recognized the necessity of filing under seal information that the owner asserts is confidential commercial information. *See, e.g., Order Pursuant to Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9019 Authorizing the Filing of Credit Card Processing Agreements and Co-Branded Credit Card Agreements Under Seal* [Docket No. 79]; *Order Authorizing Northwest Airlines, Inc. and MLT, Inc. to (A) Assume Certain Agreements, as Modified, with American Express Travel Related Services Company, Inc. and Granting Security Interests and Liens With Respect Thereto and (B) File Portions of Such Agreements Under Seal* [Docket No. 1104]; *Order Pursuant to Sections 107 and 363 of the Bankruptcy Code Authorizing Debtor Northwest Airlines, Inc. to Sell Certain DC-10 Aircraft [N236NW, N238NW, N239NW, N240NW, N243NW, and N244NW] and to File Sale Agreement Under Seal* [Docket No. 3042]; *Order Pursuant to Sections 107 and 363 of the Bankruptcy Code Authorizing Debtor Northwest Airlines, Inc. to Sell Certain DC-10 Aircraft [N224NW, N225NW, N2226NW, N234NW, N235NW, N237NW, 241NW, and N242NW] and Related Property and to File Sale Agreement Under Seal* [Docket No. 4221].

C. Public Disclosure Irreparably Damages Shareholders And The Chapter 11 Process.

22. Requiring prejudicial public disclosure of the Subject Information will have a chilling effect on creditors and shareholders from actively participating in bankruptcy proceedings on a cost-effective basis when they have common interests because they would be damaged in the marketplace (which is why this information is not publicly disclosed in chapter 11 cases). Not surprisingly, individual Ad Hoc Equity Committee members have not shared and do not share the Subject Information even with each other, further supporting the proprietary, commercially sensitive, and individualized nature of the Subject Information. Counsel alone knows individual holdings, and, until the Debtors demanded the information in discovery,

counsel did not in fact know any of the information relating to dates of acquisition and sale or purchase price.

23. Moreover, other investors, not burdened by onerous disclosure obligations, can exploit the Subject Information by copying or at least learning the trading strategies of the Ad Hoc Equity Committee members and otherwise gaining commercial advantage simply because shareholders laudably sought to protect their interests in these cases.

24. In addition, forced public disclosure of the Subject Information will impact the secondary trading market, long recognized to be beneficial to all entities, including the debtor, impacted by a bankruptcy. By forcing the members of the Ad Hoc Equity Committee to disclose the Subject Information, the Court would therefore unnecessarily limit market liquidity for equity and claims trading and benefit no cognizable interest. The secondary claims and equity markets provide substantial benefits to the administration of bankruptcy cases and facilitate the equitable payment of claims and interests. This market often strengthens the voice of the creditor and equity bodies in a bankruptcy case by concentrating claims and equity interests in the hands of purchasing holders who thereby have vested stakes in the case. *See Fortgang and Mayer, Trading Claims and Taking Control of Corporations In Chapter 11*, 12 *Cardozo L. Rev.* 1, 4-5 (1990). Because of their higher stakes, the purchasing creditors and equity holders allocate greater resources and attention to developments in the bankruptcy case and will be able to maximize the return to all creditors and equity holders holding the same class of claims or interests. *See id.* This clearly benefits parties holding smaller claims and equity interests, and facilitates the equitable payment of such claims and equity interests. Accordingly, public policy militates against requiring stakeholders to divulge trading information on a public docket. *See Certain Underwriters at Lloyds v. Future Asbestos Claim Representative (In re Kaiser Aluminum*

Corp.), 327 B.R. at 560 (affirming bankruptcy court's holding that Bankruptcy Rule 2019(a) statements would not be put on the electronic docket; all parties seeking to inspect the documents would have to file a motion seeking such relief to ensure that such "information is not misused").

25. By requiring the members of the Ad Hoc Equity Committee to disclose publicly the Subject Information, the Court would consequently harm the market for claims and equity interests trading and reduce the prices that those who seek to monetize their claims and equity interests would receive. *See In re Bidermann Indus. U.S.A., Inc.*, 203 B.R. 547, 522 (Bank. S.D.N.Y. 1997) (rejecting the debtor's and the unsecured creditors committee's contention that the secured noteholders were "simply trying to obtain more than the windfall which they will be already receiving for the claims which they acquired at a discount" and explaining that "there is, however, nothing inherently improper about purchasing claims at a discount" and stating [t]here is something to be said, in contrast, about the liquidity given to creditors through the existence of a secondary market for their claims"); *see also Mt. Rushmore Hotel Corp. v. Commerce Bank (In re Mt. Rushmore Hotel Corp.)*, 146 B.R. 33, 36 (Bankr. D. Kan. 1992) (denying the debtor's request to limit the allowance of a claim to its purchase price and holding that "[p]otential buyers from bond or debenture holders would be more hesitant to buy knowing their claims would be reduced in bankruptcy to the price they paid plus interest to the time a bankruptcy petition is filed instead of being allowed at the original issue price, and so would offer even lower prices or decline to buy at all").

26. This Court recognized, as others have, that "[a]d hoc or unofficial committees play an important role in reorganization cases." Opinion at 5. A failure to provide the required protection of indisputably commercially confidential, proprietary, trade secret information will

chill if not extinguish the formation and important activities that these unofficial committees play.

27. Moreover the Court would embrace no legitimate interest in forcing public disclosure of this confidential commercial information. Though the Ad Hoc Equity Committee submits that the date or price of a claims or share acquisition or sale *is decidedly not relevant to any cognizable dispute regarding allowance, treatment, or otherwise in a bankruptcy case*, if the Court believes it is, the Court will have that information. And, in a particular matter, that same information may be made available in discovery -- *as it was in connection with the Equity Committee Motion by the Ad Hoc Equity Committee* -- for a litigant to be able to argue later its relevance, if any. However, the Ad Hoc Equity Committee submits that the Court should not require damaging, prejudicial, public disclosure, that harms the very creditors and shareholders Bankruptcy Rule 2019 was designed to protect. Bankruptcy Rule 2019 was not promulgated to assure the public access to the identity of creditor or investor entities, but rather to prevent improper participation in a reorganization case by *attorneys* representing creditors and stockholders. Here, the Subject Information is unlikely to be necessary or appropriate in any actual dispute, but it would be available in any particular dispute when, if ever, relevant. There also is the obvious harm that would result from parties attempting to use tactically a creditor's or shareholder's commercially confidential information. Again, there simply are no provisions of the Bankruptcy Code that differentiate a creditor's or a shareholder's rights or remedies based upon its cost basis in the claim or interest or when acquired. Yet that will not stop parties from wasting time, effort and estate resources arguing about when they think recoveries "are good enough based on what you paid" rather than legally permissible or appropriate.

28. Nothing in Bankruptcy Rule 2019 trumps confidentiality or the provisions of Sections 105(a) and 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018. They are not mutually exclusive. Bankruptcy Rule 2019 may require a filing (as does Section 363 as to the prior Section 107(b) orders this Court has entered), but Section 107 requires that the Court protect the shareholders' trade secret, confidential research, development, and commercial information.

29. Accordingly, the Ad Hoc Equity Committee respectfully submits that Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 require and permit that the Committee Statement be sealed because the Subject Information consists of confidential commercial information and trade secrets. The Ad Hoc Equity Committee respectfully proposes that the Court and the UST receive copies of the Committee Statement filed under seal with the Clerk of the Court.

II. Compliance with the Opinion and Bankruptcy Rule 2019.

30. The Ad Hoc Equity Committee respectfully submits that the Subject Information⁵ provides sufficient, virtually complete information to comply with the purpose of Bankruptcy Rule 2019. *See* Bankruptcy Rule 2019(b) (stating a court may take action for failure to comply with Bankruptcy Rule 2019(a), *but is not required to do so*).

31. Requiring the individual members of the Ad Hoc Equity Committee to compile the trading information (including each individual times when acquired, each individual amount paid therefor, and again for each individual sale or other disposition) for potentially any number

⁵ As described above, the Subject Information includes (i) the aggregate amount of stock and claims purchased and sold by each of the individual committee members during the year prior to the Petition Date together with average purchase/sale prices, (ii) the aggregate amount of stock and claims purchased and sold by each of the individual committee members after the Petition Date together with average purchase/sale prices, and (iii) the aggregate amount of stock and claims purchased and sold by each of the individual committee members after the November 15, 2006 announcement of US Airways offer to purchase Delta Air Lines together with average purchase/sale prices. Again this was the breakdown the Debtors requested and to which the Ad Hoc Equity Committee agreed and already provided.

(perhaps hundreds or thousands) of individual trades would require a tremendous and taxing expenditure of time and expense on the individual members that are not imposed on other parties that act individually, is not actually required by Rule 2019, and would add little if any information to the Subject Information. Ultimately, some of the individual members might choose not to participate further in bankruptcy proceedings if forced to bear such time and expense. That result, putting a procedural and damaging burden on shareholders at the cost of losing their substantive rights, plainly undermines the "important role in reorganization cases" that ad hoc or unofficial committees play. Opinion at 5.

32. Other courts have permitted parties to disclose only summary information to satisfy Bankruptcy Rule 2019(a). In *Kaiser Aluminum*, United States District Court for the District of Delaware affirmed the Bankruptcy Court's holding that asbestos lawyers need only file "exemplars" of the "representation" documents authorizing the lawyers to act on behalf of victims of asbestos exposure. Noting that "it has been recognized that Rule 2019 need not always be strictly applied," the Court held that the exemplars comported with the purpose of Rule 2019 because it "took into account the realities of mass tort litigation." *Kaiser Aluminum*, 327 B.R. at 560. The same result should apply here, particularly, where virtually complete information is being provided.

33. The Subject Information in total provides generally all of the information that Bankruptcy Rule 2019 requests. There are public markets in the Debtors' claims and interests so the Subject Information provides virtually the complete detail, the time period breakdown's are finite, short, and easily understood, and the information is presented in a manner actually requested by the Debtors (though irrelevant to the matter then in dispute in the Ad Hoc Equity Committee's view).

34. Again, pricing information, though highly confidential and sensitive to the shareholders is utterly irrelevant to any issue in these cases. All shareholders -- no matter when they acquired shares and at what price -- have the same legal rights. The Subject Information allows the Court should it deem it appropriate to ascertain the financial interests of members of the Ad Hoc Equity Committee.

III. Cause Exists For A Brief Stay.

35. The Ad Hoc Equity Committee respectfully requests that the Court stay or continue the Compliance Period set forth in its Opinion until at least three business days after the Court decides this Motion.

36. Granting the requested stay (set forth in the accompanying Order to Show Cause) would permit this Court to determine whether it will permit the shareholders' confidential commercial information and trade secrets protection *prior to* dissemination of the actual information as the Order, absent a brief stay to hear this matter, now requires. If not stayed, then the shareholders will have suffered the complete irreparable harm, which at that point will be absolutely incapable of repair or monetary satisfaction, and no corresponding interest whatsoever will have been advanced. Inasmuch as Section 107(b) is mandatory and, particularly in view of the Ad Hoc Equity's Committee's voluntary discontinuance of the only pending motion or matter it has before the Court such that there is nothing in the next several days on which the Court need hear (or restrict from hearing) the Ad Hoc Equity Committee, even if viewed permissively, the balance of the hardships favor the shareholders. Accordingly (i) the shareholders likely will prevail on this Motion seeking only to protect their confidential commercial information in accordance with mandatory provision of the Bankruptcy Code, (ii) the shareholders will be irreparably harmed absent a stay, (iii) no other party will be harmed from a stay in any respect,

and (iv) a brief stay will promote, not inhibit, the public interest. *See Country Squire Assocs., L.P. v. Rochester Community Sav. Bank (In re Country Squire Assocs., L.P.)*, 203 B.R. 182, 183 (2d Cir. B.A.P. 1996) (granting stay of bankruptcy court's order).

WAIVER OF MEMORANDUM OF LAW

37. Because this Motion does not present any novel or difficult issues of law and contains authorities within, the Ad Hoc Equity Committee respectfully requests that the Court waive the requirement of submission of a memorandum of law pursuant to Local Bankruptcy Rule 9013-1(b) in the event and to the extent they are not met by authorities cited herein.

NO PRIOR REQUEST

38. No other or prior application or motion for the relief requested herein has been made to this or any other Court.

CONCLUSION

39. WHEREFORE, the Ad Hoc Equity Committee respectfully requests entry of an order, substantially in the form annexed hereto as **Exhibit B**, granting the relief requested herein and such other or further relief as is just.

Dated: New York, New York
March 1, 2007

By: /s/ David S. Rosner
David S. Rosner (DR-4214)
Daniel P. Goldberg (DG-6322)
Andrew K. Glenn (AG-9934)
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Attorneys for the Ad Hoc Committee
of Equity Security Holders

EXHIBIT A

Scott Bernstein

From: Daniel P. Goldberg
Sent: Friday, February 23, 2007 2:44 PM
To: Alycia Benenati; Scott Bernstein; Daniel A. Fliman
Subject: FW: Signed Confidentiality Agreement

-----Original Message-----

From: Dahan, Israel [mailto:Israel.Dahan@cwt.com]
Sent: Friday, February 23, 2007 2:37 PM
To: Daniel P. Goldberg
Cc: Petrick, Gregory; David S. Rosner; Andrew K. Glenn
Subject: Re: Signed Confidentiality Agreement

Agree.

----- Original Message -----

From: Daniel P. Goldberg <DGoldberg@kasowitz.com>
To: Dahan, Israel
Cc: Petrick, Gregory; David S. Rosner <DRosner@kasowitz.com>; Andrew K. Glenn <AGlenn@kasowitz.com>
Sent: Fri Feb 23 14:30:34 2007
Subject: RE: Signed Confidentiality Agreement

Something occurs to me. Both of us have documents that we are producing to each other that we are agreeing to maintain as lawyers' and experts'/consultants' eyes only, but our actual confidentiality agreements do not reflect such a construct.

Can we agree that documents marked "Highly Confidential" shall be maintained on a lawyers'/experts'/consultants' eyes only basis, and that such materials will not be disclosed to anyone else, each copy will be returned or destroyed at the conclusion of the case, and will be submitted to the Court only under seal?

If you agree, please confirm by return e-mail, and we can consider both of our respective confidentiality agreements so amended.

Dan Goldberg

-----Original Message-----

From: Dahan, Israel [mailto:Israel.Dahan@cwt.com]
Sent: Friday, February 23, 2007 12:58 PM
To: Daniel P. Goldberg
Cc: Petrick, Gregory
Subject: Signed Confidentiality Agreement

Attached please find a signed confidentiality agreement. Please forward the Ad Hoc Committee trading material as we discussed. Thank you

Israel Dahan
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2/23/2007

"EMF <CWT.COM>" made the following annotations.

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AGREEMENT OF CONFIDENTIALITY

1. In connection with the administratively consolidated bankruptcy cases (the “Cases”) of Northwest Airlines Corporation (05-17930), NWA Fuel Services Corporation (05-17925), Northwest Airlines Holdings Corporation (05-17938), NWA Inc. (05-17940), Northwest Aerospace Training Corp. (05-17944), Northwest Airlines, Inc. (05-17933), MLT Inc. (05-17948), Northwest Airlines Cargo, Inc. (05-17949), NWA Retail Sales Inc. (05-17950), Montana Enterprises, Inc. (05-17952), NW Red Baron LLC (05-17953), Aircraft Foreign Sales, Inc. (05-17955), NWA Worldclub, Inc. (05-17956) and NWA Aircraft Finance, Inc. (05-19287) (collectively, the “Debtors” or “Northwest”), certain members of the Ad Hoc Committee (defined below) including Anchorage Capital Group, L.L.C., Citadel Limited Partnership, DKR Wolf Point Holding Fund Ltd., Gracie Capital, Greywolf Capital Management LP, Jeremy Hosking, Halcyon Asset Management LLC, Latigo Partners, L.P., Longacre Management, LLC, Marathon Asset Management (Services) Limited, Mason Capital Management LLC, Owl Creek Asset Management, L.P., Sandell Asset Management Corp., Savannah-Baltimore Capital Management, LLC, Scoggin Capital Management, LP, Seneca Capital, Smith Management LLC, Talek Investments LLC and Taconic Capital Advisors LLC, and additional parties who may from time to time become members thereto (each, a “Member” and, collectively, the “Ad Hoc Committee”), whose Motion For An Order Compelling The Acting United States Trustee For Region 2 To Appoint An Official Committee of Equity Security Holders (the “Motion”) is currently pending in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), may be disclosing to the Debtors certain information which is confidential and/or proprietary (the “Subject Material”). In recognition of the concern of the Ad

Hoc Committee over the sensitivity of the Subject Material, the Debtors, together with (a) the Debtors' legal and financial advisors including, without limitation, Cadwalader, Wickersham & Taft LLP, Seabury Group LLC, Evercore Partners and Huron Consulting Group (collectively, the "Debtor Advisors"), and (b) each person associated with a Debtor Advisor who provides direct assistance to that Debtor Advisor including (i) individuals to whom such persons report as part of their ordinary functions, and (ii) such Debtor Advisor's legal counsel and advisors (collectively with the Debtor Advisors, "Permitted Persons") hereby agree to treat all Subject Material that is received by or is furnished to (whether orally or in writing) the Debtors and/or any of their Permitted Persons in accordance with the provisions of this confidentiality agreement (the "Agreement") and, to take, or refrain from taking, certain actions as herein set forth.

2. The term "Subject Material" shall include all information, data, reports, computations, projections, forecasts, records, memoranda, summaries, oral conversations, notes, analyses, compilations, studies, interpretations or other documents or materials in whatever form maintained, whether documentary, computerized or otherwise, provided by the Ad Hoc Committee or its Members, or persons acting on their behalf, which contain, reflect or are based upon, in whole or in part, any confidential information regarding the Ad Hoc Committee or its Members received by or furnished to the Debtors or their Permitted Persons pursuant hereto. The term "Subject Material" shall not include information which (i) is or becomes generally available to, or known by, the public other than as a result of the unauthorized disclosure by the Debtors or their Permitted Persons; or (ii) becomes available to the Debtors or any of their Permitted Persons (a "Recipient") on a non-confidential basis from a source other than the Ad Hoc Committee, its Members or any of their advisors, agents or affiliates, provided that the information from such source is not known, or reasonably should have been known, by the Recipient to be bound by a confidentiality agreement with, or other obligation of secrecy to,

whether by a contractual, legal or fiduciary obligation, the Ad Hoc Committee or its Members. If there is a dispute regarding the confidentiality of any materials designated by the Ad Hoc Committee as Subject Material the Debtors may request a ruling from the Bankruptcy Court on no less than three (3) business days' notice.

3. The Debtors, on behalf of themselves and each Permitted Person, agree that the Subject Material shall be used exclusively in connection with the Cases, including with respect to the Motion, and for no other purpose whatsoever. The Subject Material will be kept confidential by the Debtors and their Permitted Persons, and shall only be disclosed as permitted hereunder, provided, however, that nothing herein shall be deemed to restrict the Debtors or their Permitted Persons from submitting the Subject Material to the Bankruptcy Court under seal of the court to maintain its confidentiality; provided further, however, that nothing herein shall restrict the Debtors or their Permitted Persons from seeking an order of the Bankruptcy Court upon three business days notice to the Ad Hoc Committee to make disclosure of the Subject Material filed under seal.

4. The Debtor Advisors and each of their Permitted Persons acknowledge that they will receive non-public information from the Ad Hoc Committee and its Members and agree that they will keep such non-public information confidential. The Debtor Advisors shall enact appropriate screening procedures to restrict electronic or other access to Subject Material and the content thereof, from any other personnel within their organization. The Debtor Advisors, and each of their Permitted Persons acknowledge that they have instructed the members of their organization employed in connection with the Debtors to not discuss or disclose information provided hereunder to any other personnel in their organization. The Debtor Advisors and each of their respective Permitted Persons will, upon the request of the Ad

Hoc Committee, certify compliance with this paragraph, with such requests to be made no more frequently than every thirty (30) days.

5. Nothing herein shall prevent the disclosure of Subject Material by the Debtors and their Permitted Persons to (a) outside regulatory authorities (with respect to any audits of the books and records of the Debtors or Permitted Persons); and (b) such entities with which Recipients may be required to communicate by operation of law, including, without limitation, by subpoena or other legal process (in which event, the provisions of paragraph 10 hereof shall apply) or pursuant to a request from the Executive Branch of the United States, the Comptroller General, or Congress, or any committee thereof, with each such exception to be consistent with and subject to all laws and regulations pertaining to non-public information including public securities laws.

6. The Debtors and each Permitted Person, prior to the distribution of any Subject Material, shall be (i) informed of the confidential nature of the Subject Material; (ii) informed of this Agreement; and (iii) be directed to comply with the terms and provisions of this Agreement to treat such information confidentially in the manner provided in, and subject to the terms of, this Agreement.

7. If the Ad Hoc Committee believes in good faith that an actual conflict of interest exists between the Ad Hoc Committee or a particular Member and the Debtors, a particular Debtor Advisor or a particular Permitted Person as to a particular issue, and that existing procedures are not adequate to protect against the risk posed by such conflict of interest, the Ad Hoc Committee may request of the Debtors that information pertinent to that issue not be viewed by, nor its substance revealed to, a specified or certain or all of the Debtors' Permitted Persons (collectively, the "Excluded Persons"). The Ad Hoc Committee shall designate any such information in advance and specify the Permitted Person(s) that the Ad Hoc Committee

believes should not be permitted to have access thereto and shall inform counsel for the Debtors in advance of the specific reason therefor. The Debtors shall consider any such requests in good faith and inform the Ad Hoc Committee of its decision whether or not to withhold such information from an Excluded Person. The Debtors are permitted to inform the Excluded Persons of the Ad Hoc Committee's request. The Debtors shall afford the Ad Hoc Committee at least three business days after the Ad Hoc Committee identifies a person as an Excluded Person to seek a protective agreement or order before delivering such information (or additional such information, as the case may be) to an Excluded Person. Excluded Persons retain all rights and remedies to seek access to the information through application to the Bankruptcy Court.

8. The Debtors and each Permitted Person acting on behalf of the Debtors acknowledges that they are aware that the use of Subject Material for any purpose inconsistent with the purposes stated in paragraph 3 hereof will violate this Agreement.

9. In the event that the Debtors or their Permitted Persons are subpoenaed or otherwise required (or requested (i) by a court of competent jurisdiction, (ii) in connection with a proceeding or litigation, or (iii) by a federal, state or local governmental or regulatory body) to disclose any Subject Material supplied to the Debtors or their Permitted Persons, such party will provide the Ad Hoc Committee with five business days' notice before making such disclosure. After such five-day period, and absent agreement or other order, the Debtors or their Permitted Persons may without liability hereunder disclose that portion of the Subject Material that is required or requested to be disclosed, as set forth above..

10. All Permitted Persons shall remain subject to the provisions of this agreement notwithstanding their resignation or the termination of their retention and employment in connection with the Cases. All Permitted Persons shall comply with Paragraph 11 hereof

upon their resignation or the termination of their retention and employment in connection with the Cases.

11. Upon the Effective Date of any Plan of Reorganization (the "Termination Date") or upon the date a Permitted Person ceases to be retained by or in connection with the Debtors or the Cases, as applicable, and following a written request from the Ad Hoc Committee, the Debtors and their Permitted Persons may, subject to institutional document retention requirements and at the Ad Hoc Committee's sole cost, either (i) make a good faith effort to destroy the Subject Material (including relevant portions of documents, memoranda, notes and other writings whatsoever prepared by, or caused to be prepared by the Debtors or any of their Permitted Persons, based on the Subject Material) in their possession or (ii) make a good faith effort to return the Subject Material received directly or indirectly from the Ad Hoc Committee, its Members, their counsel or advisors to the Ad Hoc Committee's counsel, provided, however, that all Parties acknowledge that electronic copies will be deleted but may remain on backup tapes, hard drives, and similar formats (but upon the written request of the Ad Hoc Committee, and at the Ad Hoc Committee's sole cost, commercially reasonable, good faith efforts will be made to delete such back-up information, subject to institutional document and file retention policies). Except as required pursuant to institutional document or file retention requirements and as otherwise permitted herein, following a written request of the Ad Hoc Committee to destroy or return Subject Material upon the Termination Date, neither the Debtors nor any Permitted Persons will retain any copies, extracts or other reproductions in whole or in part of the Subject Material (including relevant portions of documents, memoranda, notes and other writings whatsoever prepared by, or caused to be prepared by, either the Debtors or any of their Permitted Persons, based on the Subject Material). Any such retained material shall remain subject to the restrictions imposed hereunder. The delivery or destruction of Subject Material

shall not relieve the Debtors or their Permitted Persons of their confidentiality obligations under this Agreement. Notwithstanding anything herein to the contrary, if any applicable non-bankruptcy law or institutional document and file retention policy requires the preservation or retention of the Subject Material beyond the Termination Date, then such material shall, at the Ad Hoc Committee's sole cost, be destroyed or turned over to the Ad Hoc Committee's counsel in accordance with this paragraph by such later date in accordance with applicable non-bankruptcy law or institutional document and file retention policy. The confidentiality provisions contained herein shall survive for a period of one year after the Termination Date, provided, however, that the confidentiality provisions related to trade secrets, confidential research, development, or commercial information shall remain and survive for a period of three years after the Termination Date.

12. The Parties hereby agree and acknowledge that this Agreement resolves confidentiality objections only, and that neither the execution nor the implementation of this Agreement, nor any statement, action or position taken herein, or document prepared or executed in connection with such Agreement, shall be deemed to be, or construed as, an agreement by the Ad Hoc Committee that it or its Members that any discovery request from the Debtors, the Debtor Advisors, or any of their respective Permitted Persons is otherwise proper or that any Subject Material is otherwise discoverable. The Debtors and their Permitted Persons agree that they shall not assert in any judicial proceeding that this Agreement constitutes such an agreement. In the event that the Ad Hoc Committee and/or its Members do provide the Debtors or any of their Permitted Persons with Subject Material, this Agreement will govern.

13. The Debtors, and each Permitted Person acting on behalf of the Debtors, acknowledge and agree that money damages are an inadequate remedy for any breach of this Agreement, and that the Ad Hoc Committee and its Members have no adequate remedy at law

for any such breach. Accordingly, the Ad Hoc Committee and its Members shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach of the provisions of this Agreement, in addition to all other remedies available at law or in equity.

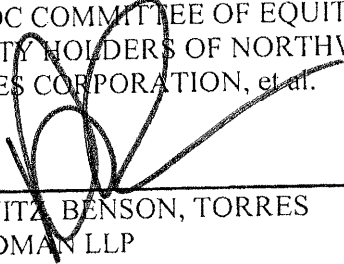
14. This Agreement shall be governed and construed in accordance with the laws of the State of New York.

15. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original document, but all of which counterparts shall together constitute one and the same agreement.

Dated: New York, New York
February 23, 2007

STIPULATED AND AGREED:

THE AD HOC COMMITTEE OF EQUITY
SECURITY HOLDERS OF NORTHWEST
AIRLINES CORPORATION, et al.

By: 
KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP
Name: Daniel P. Goldberg
Name: David S. Rosner
Name: Andrew K. Glenn
Attorneys for the Ad Hoc Committee of Equity
Security Holders

Acknowledged And Agreed

NORTHWEST AIRLINES CORPORATION, on
behalf of itself and each other Debtor.

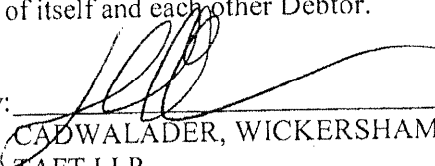
By: 
CADWALADER, WICKERSHAM &
TAFT LLP,
Name: Bruce Zirinsky
Name: Gregory M. Petrick
Name: Israel Dahan
Attorneys for the Debtors

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|-------------------------|
| In re: | : | |
| | : | Chapter 11 |
| NORTHWEST AIRLINES CORPORATION, <u>et al.</u> , | : | |
| | : | Case No. 05-17930 (ALG) |
| Debtors. | : | |
| | : | (Jointly Administered) |
| | : | |

**ORDER PURSUANT TO SECTIONS 105(a) AND 107(b) OF THE BANKRUPTCY
CODE AND RULE 9018 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE
GRANTING THE AD HOC EQUITY COMMITTEE LEAVE TO FILE ITS
STATEMENT UNDER BANKRUPTCY RULE 2019(a) UNDER SEAL**

Upon the motion (the "Motion")¹ dated March 1, 2007 of the ad hoc committee of equity security holders (the "Ad Hoc Equity Committee") for entry of an order sealing its Bankruptcy Rule 2019(a) statement (the "Committee Statement") required pursuant to that certain February 26, 2007 Memorandum of Opinion and Order (the "Opinion"), pursuant to Sections 105(a) and 107(b) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), it appearing that the Court has jurisdiction over this matter and the relief requested in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and due and sufficient notice of the Motion having been given under the circumstances; therefore, upon the Motion and all the proceedings before the Court and after due deliberation and sufficient cause appearing thereby, the Court hereby finds that the Committee Statement containing the Subject Information complies with Rule 2019 of the Bankruptcy Rules and the Opinion in all respects, and, accordingly, it is hereby

ORDERED that the Motion is granted; and it is further

¹ All capitalized terms used in the Order shall have the meanings given to them in the Motion unless otherwise provided in this Order.

ORDERED that pursuant to Sections 105(a) and 107(b) of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure, the Ad Hoc Equity Committee is authorized to file the Committee Statement under seal and to take all necessary measures to ensure the confidentiality of the Committee Statement and the Subject Information set forth therein; and it is further

ORDERED that pursuant to Section 107(c) of the Bankruptcy Code copies of the Committee Statement will be served confidentially on the UST who shall maintain the confidentiality of the Committee Statement and the Subject Information; and it further

ORDERED that the Court retains jurisdiction to enforce this Order and the confidentiality of the Committee Statement and the Subject Information set forth therein, including the authority to impose sanctions on any party or entity that violates this Order; and it is further

ORDERED that nothing in this Order precludes any party from appropriately seeking discovery of the Subject Information in accordance with the applicable Bankruptcy Rules; and it is further

ORDERED that the requirement pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that the Ad Hoc Equity Committee file a memorandum of law in support of the Motion is hereby waived.

Dated: New York, New York
March __, 2007

THE HONORABLE ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE