Susheel Kirpalani (SK 8926)
James C. Tecce (JT 5910)
Joseph G. Minias (JM 6530)
QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
Telephone: (212) 849-7000
Telecopier: (212) 849-7100

Counsel For:

Anchorage Capital Group, L.L.C.
Latigo Partners, L.P.
Seneca Capital

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
	Case No. 05-17930 (ALG)
NORTHWEST AIRLINES CORPORATION, et al.,	Jointly Administered
	Hearing Date: TBD
Debtors.	**Oral Argument Requested**
	Responses Due: March 19, 2007 at 4:00 p.m.

MOTION OF CERTAIN EQUITY HOLDERS, PURSUANT TO 11 U.S.C. § 105(a), FED. R. CIV. P. 59(e) AND 60(b), AND L.R. BANKR. P. 9023-1(a) FOR RECONSIDERATION OF MEMORANDUM OF OPINION AND ORDER GRANTING DEBTORS' MOTION FOR AN ORDER COMPELLING AD HOC COMMITTEE TO FILE A VERIFIED STATEMENT PURSUANT TO BANKRUPTCY RULE 2019(a)

Anchorage Capital Group, L.L.C.; Latigo Partners, L.P. and Seneca Capital (collectively, "Movants"), holders of common stock issued by Northwest Airlines Corp. ("Northwest") hereby move (hereinafter, the "Reconsideration Motion") pursuant to 11 U.S.C. § 105(a), Fed. R. Civ. P. 59(e) and 60(b), made applicable under Fed. R. Bankr. P. 9023 and 9024, and Rule 9023-1(a) of the local rules, for reconsideration of the Court's Rule 2019 Decision[1] granting the Debtors' Rule 2019 Motion,[2] and in support thereof, respectfully state as follows:

[1] Memorandum Of Opinion And Order, dated February 26, 2007 (Docket No. 5032) (the "Rule 2019 Decision"), a copy of which is attached hereto as Exhibit A.

[2] Debtors' Motion For (I) An Order Imposing Civil Contempt Sanctions On Ad Hoc Committee And Awarding Attorneys' Fees And Costs To Debtors, (II) A Protective Order Pursuant To Rule

I. PRELIMINARY STATEMENT

1. ***Court Should Reconsider Linguistic And Historical Meaning Of Term "Committee."*** In 1937, Justice William O. Douglas, then-Chairman of the Securities and Exchange Commission, undertook a comprehensive review of perceived abuses in reorganization cases. As the Court noted in the Rule 2019 Decision, that report ultimately resulted in the adoption of Chapter X, including sections 10-210 and 10-211 thereof (which are the precursors to Rule 10-211 and ultimately Rule 2019). Movants respectfully request reconsideration of the Rule 2019 Decision to examine in greater detail those historic authorities (including the Douglas Report), focusing especially on the meaning (both plain and historical) of the term "committee" and the reason Rule 2019(a) must be limited to impose duties on committees in substance only -- not in empty nomenclature. Such a review will compel the conclusion that the Ad Hoc Committee is not a "committee" as the term is used in Rule 2019 and that Rule 2019(a)'s disclosure requirements are inapplicable.[3]

- ***Committees Are Delegated Trust And Authority.*** From a purely linguistic perspective, the term "committee" has no application to the Ad Hoc Committee's role in these cases. "Committee" denotes a group of entities representative of a larger group that are delegated decision making authority to act on the larger group's behalf. The Ad Hoc Committee's efforts are more appropriately described as a "consortium" -- financial institutions combining to undertake an operation beyond the resources of any member. The Ad Hoc Committee never styled itself as a representative of a larger group or anything more than a cost-sharing consortium.

26(c) And 45(c)(3) Of Federal Rules Of Civil Procedure, And (III) An Order Compelling Ad Hoc Committee To File A Verified Statement Pursuant To Bankruptcy Rule 2019(a), dated February 9, 2007 (Docket No. 4817) (the "Debtors' 2019 Motion").

[3] Counsel for the Ad Hoc Committee is nevertheless an "entity" representing multiple equity interest holders and, as such, is required to make Rule 2019(a) disclosures of itself.

- ***Historically, "Committees" To Which Rule 2019 Refers Occupied Representative Roles In Reorganization Cases***. Review of the Douglas Report reveals Justice Douglas' concern that "protective" or "outside" committees -- those motivated by self-interest that disingenuously hold themselves out to individual investors as their faithful representatives -- were abusing the reorganization process. The disclosure requirement was enacted to curb those abuses and enable individual investors to determine whether such "committees" really were representative of their interests.

2. ***Collective Action Is Not "Committee" Action.*** Using modern convention, the members regrettably ascribed the sobriquet of "committee" to their agreement to pool resources in aid of their participation in these cases. The distinction is semantic, because the "Ad Hoc Committee" did not function as a "committee" in the traditional sense but instead like a group of entities economically motivated by the need for joint representation. Substance, not nomenclature, guides results in bankruptcy cases. Indeed, the Court has an ongoing duty to apply the Bankruptcy Rules to the substance of relationships -- not to the nomenclature coined. The Ad Hoc Committee did not act as a "committee" in the literal or historical sense. It did not "represent" multiple shareholders, its members did not delegate any authority to anyone (other than counsel), and each member was free to withdraw at any time under any circumstance. The Ad Hoc Committee served solely as a "cost-sharing" arrangement to enable a group of equity holders to divide and allocate pro rata fees incurred by the attorneys representing them in advancing their self interests (to the extent that, and for as long as, those interests were common). As such, the Ad Hoc Committee was not a "committee" for purposes of Rule 2019(a), and the rule's heightened disclosure requirements do not apply.

3. ***Potential For Manifest Injustice Warrants Reconsideration.*** The Rule 2019 Decision emboldens chapter 11 debtors with a considerable (and unjustified) advantage. Creditors and shareholders desirous of appearing and being heard in chapter 11 cases must either disclose highly confidential and proprietary information relating to their trading practices or represent themselves without economic collaboration. This diminution in their rights under section 1109(b) of the Bankruptcy Code hardly was intended by Congress (or Justice Douglas).

Moreover, the decision's negative impact reaches far beyond these cases. It will essentially chill the market for secondary market trading in securities of bankrupt companies, injuring individual stakeholders who require the liquidity of the secondary market. Reconsideration is especially warranted given the significance of the decision on the capital markets and the potential that they will be disserved.

II. FACTUAL BACKGROUND

4. The Ad Hoc Committee of Equity Security Holders (the "Ad Hoc Committee") is a consortium of institutions holding Northwest common stock.[4] When joining the Ad Hoc Committee, each institution executed an engagement letter providing, among other things, that it would share responsibility with others with others pro rata for attorneys' fees.[5] Movants are members of the Ad Hoc Committee.

5. The Rule 2019 Decision directed the Ad Hoc Committee to update the Verified Statement to disclose "the amounts of claims or interests owned by the members ... the times when acquired, the amounts paid therefor, and any sales or other dispositions thereof."[6] The Court first determined that the "plain meaning" of Rule 2019(a) -- specifically subsection (a)(4) thereof -- required such disclosure.[7] Finding the Ad Hoc Committee constitutes a "committee" for purposes of Rule 2019(a)(4), the Court reasoned the Ad Hoc Committee appeared in these cases as a committee, requested the appointment of an official equity

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4 See Verified Statement Of Kasowitz, Benson, Torres & Friedman LLP Pursuant To Bankruptcy Rule 2019(a), dated January 16, 2007 (Docket No. 4514) (the "Verified Statement"), a copy of which is attached hereto as Exhibit B).

5 See Ex. B (annexing letter). The engagement letter also makes clear the law firm will be acting as counsel to the institution in its capacity as a member of the Ad Hoc Committee.

6 Rule 2019 Decision at p. 2.

7 Id. at p. 4 ("By its plain terms, the Rule requires disclosure of 'the amounts of claims or interests owned by the members of the committee, the times when acquired, the amounts paid therefor'") (citing Rule 2019(a)(4)).

committee, and actively litigated discovery issues.[8] The Court deduced that in light of its activities, made in furtherance of consolidated collection efforts, "the committee is required to provide the information plainly required by Rule 2019 on behalf of each of its members."[9]

6. The Court found support for its conclusion by examining the role unofficial committees play in reorganization cases, surmising their members "purport to speak for a group and implicitly ask the court and other parties to give their positions a degree of credibility appropriate to a unified group with large holdings."[10] The Court also discussed a report prepared by then-SEC Chairman William O. Douglas (and later Supreme Court Justice Douglas) in 1937[11] which "centered on the perceived abuses by unofficial committees in equity receiverships and other corporate reorganizations" and which the Court noted "led directly to the adoption of Chapter X and Rule 10-211 thereunder, which provided for disclosure of the 'personnel and activities of those acting in a representative capacity' in order to help foster fair and equitable plans free from deception and overreaching."[12] With respect to the current version of Rule 2019, the Court concluded "the drafters of the 1978 Bankruptcy Code and the rules thereunder retained the substance of former Rule 10-211 in Bankruptcy Rule 2019 as 'a comprehensive regulation of representation in chapter 9 and in chapter 11 reorganization cases.' The Rule is longstanding, and there is no basis for failure to apply it as written."[13]

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[8] Id.

[9] Id. at p. 5.

[10] Id.

[11] Report On the Study And Investigation Of The Work, Activities, Personnel And Functions Of Protective And Reorganization Committees (1937) (hereinafter, the "Douglas Report"). A copy of the relevant portions of the Douglas Report is attached hereto as Exhibit C.

[12] Rule 2019 Decision at p. 6 (citations omitted).

[13] Id. at p. 6 (citation omitted).

III. JURISDICTION AND VENUE

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

IV. ARGUMENT[14]

A. STANDARDS APPLICABLE TO RECONSIDERATION MOTIONS

8. "Motions for re-argument or reconsideration are governed by Local Bankruptcy Rule 9023-1(a)." In re Teligent, Inc., 325 B.R. 134, 135 (Bankr. S.D.N.Y. 2005).[15] Reconsideration is appropriate if "controlling decisions or factual matters that might materially have influenced [the Court's] earlier decision" were overlooked or "the need to correct a clear error or prevent manifest injustice" is shown. Id. See also Morser v. AT&T Inf. Sys., 715 F. Supp. 516, 517 (S.D.N.Y. 1989) (reviewing request for re-argument under analogous rule; requiring showing that "matters or controlling decisions" were overlooked that "might materially have influenced [the Court's] earlier decision").

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14 Movants opposed the Debtors' Rule 2019 Motion through the objection thereto filed by the Ad Hoc Committee's counsel and therefore have standing to seek reconsideration of the Rule 2019 Decision in their individual capacities. See, e.g., Dunlop v. Pan Am. World Airways, 672 F.2d 1044, 1049 (2d Cir. 1982) (finding former airline employees had standing to challenge dismissal stipulation resolving litigation among airline and Secretary of Labor when they were "sufficiently connected and identified with the Secretary's suit to entitle them to standing to invoke Rule 60(b)(6)"); Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2865 ("[Rule 60(b)] allows relief from a judgment to be given to a 'party or his legal representative.' ***This allows one who is in privity with a party to move under the rule***") (emphasis added).

15 See L.R. Bankr. P. 9023-1 ("A motion for re[-]argument of a court order determining a motion shall be served within 10 days after the entry of the Court's order determining the original motion ... and, unless the Court orders otherwise, shall be made returnable within the same amount of time as required for the original motion. The motion shall set forth concisely the matters or controlling decision which counsel believes the Court has not considered. No oral argument shall be heard unless the Court grants the motion and specifically orders that the matter be re-argued orally").

9. Rule 59(e) of the Federal Rules of Civil Procedure also authorizes motions to alter or amend a judgment if they are filed within ten days of the judgment's entry. "The standards that apply to ... motions to reargue also apply to Rule 59(e) motions to alter or amend the judgment." Id. (examining S.D.N.Y. local rules). Rule 60(b) of the Federal Rules of Civil Procedure enables the court to relieve "a party or a party's legal representative from a final judgment, order, or proceeding ... [for (1)] mistake, inadvertence, surprise or excusable neglect ... [and (6)] any other reason justifying relief from the operation of the judgment." Fed. R. Civ. P. 60(b)(1), (b)(6).[16]

B. TERM "COMMITTEE" HAS A PARTICULARIZED MEANING IN RULE 2019 THAT IS INAPPLICABLE TO AD HOC COMMITTEE'S RAISON D'ETRE IN THESE CASES

10. While the Bankruptcy Code does not define the word "committee," from a linguistic perspective, a "committee" is a body to which outside creditors or equity interest holders delegate trust and which undertakes to act on their behalf and in furtherance of their best interests. From a historical perspective, a "committee" is an entity that undertakes to represent others apart from its own members (such as the statutory entities appointed under section 1102 of the Bankruptcy Code) and ***not*** its own members in their individual, self-interested capacities.

(i). LINGUISTIC PERSPECTIVE: A "CONSORTIUM" -- NOT A "COMMITTEE"

11. Neither the engagement letter nor the Verified Statement suggested the Ad Hoc Committee was an entity in whom the members placed their trust -- or that purports to represent any interests beyond those of its members. Rather, the nomenclature used to describe

[16] It also is well established that section 105(a) of the Bankruptcy Code enables Courts to modify and interpret their own orders. See, e.g., In re Grossot, 205 B.R. 341, 343 (Bankr. M.D. Fla. 1997) (noting bankruptcy court has power "to correct, modify or vacate" its own orders) (citing Cogging v. Coggin (In re Coggin), 30 F.3d 1443, 1451 (11th Cir. 1994)); American Bank And Trust Co. of Pa v. Lebanon Steel Foundry (In re Lebanon Steel Foundry), 48 B.R. 520, 523 (Bankr. M.D. Pa. 1985) ("The power of the bankruptcy court to reconsider and to modify its own orders is indisputable") (citing In re Pottasch Bros., Inc., 79 F.2d 613, 616 (2d Cir. 1935)).

this arrangement -- "ad hoc committee" -- is a colloquialism well known in modern bankruptcy parlance to denote a group of otherwise unaffiliated creditors or equity interest holders who enter into a fee-sharing "consortium"[17] for the limited purpose of economically advancing common goals when participating in chapter 11 cases. Notwithstanding this colloquial (and admittedly imprecise) nomenclature, the members of this consortium did not agree to defer decision-making power with respect to their securities to any other entity. Moreover, the Ad Hoc Committee never agreed to represent, nor held itself out as a representative of, any other investors, claimants or interest holders. Indeed, the Ad Hoc Committee does not "represent" any entity as the term "representative" is understood plainly, legally and historically. In point of fact, it is the members of the Ad Hoc Committee that are being represented -- and not by any fiduciary body, but by their common attorney. Rule 2019(a)'s use of the term "committee" in circumstances where members act as representatives ***for others*** (e.g., in the context of "official" committees) underscores the argument.[18]

12. Also relevant is that the key constituencies in these cases have never been misinformed with respect to the Ad Hoc Committee's status as a mere consortium of economically self-motivated shareholders. The Debtors' depictions of the Ad Hoc Committee as "opportunists" illustrate that understanding,[19] and the Ad Hoc Committee never misled any

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17 The word "consortium" provides a much more appropriate description the arrangement among the members of the Ad Hoc Committee than the term "committee." See American Heritage® Dictionary of the English Language (4th ed. 2004) (defining "consortium" as, inter alia, "[1] an association or a combination, as of businesses, financial institutions, or investors, for the purpose of engaging in a joint venture. [2] A cooperative arrangement among groups or institutions ... [and (3)] [a]n association or society").

18 See Fed. R. Bankr. P. 2019(a) (carving out "a committee appointed pursuant to § 1102 or 1114 of the Code" from disclosure obligations); 8 Collier on Bankruptcy ¶ 2019.03, pp. 2019-3 to 2019-5 (15th ed. 1989) ("Rule 2019 covers entities which act ***in a fiduciary capacity*** but which are not otherwise subject to the control of the court") (emphasis added); In re CF Holding Corp., 145 B.R. 124, 126 (Bankr. D. Conn. 1992). The statutorily appointed "committee" for purposes of § 1102 is different, not just in degree, but in kind to the self-selecting consortium colloquially referred to as an "ad hoc committee."

19 See Debtors Memorandum Of Law In Opposition To Motion Of Ad Hoc Committee Of Equity

constituency regarding its limited objectives or acted in any way purporting to represent ***other*** equity interest holders.[20] By imploring the United States Trustee to exercise its discretion to appoint an "official" committee to represent equity interest holders, the Ad Hoc Committee did not represent itself as a proxy to serve as that "official" committee.[21] The request itself expressly disclaims any responsibility for serving in that capacity.

Security Holders For An Order Compelling Acting United States Trustee For Region 2 To Appoint An Official Committee Of Equity Security Holders, dated February 20, 2007 (Docket No. 4943) at p. 18 ("The Ad Hoc Committee is comprised of twenty sophisticated, well financed hedge funds, that regularly invest opportunistically in distressed companies .... Through its participation in these cases to date, the committee already has demonstrated it has the financial resources and economic incentive to appear and be heard without the formation of an official committee .... All of these measures and tactics reflect the sophistication and resources of the Ad Hoc Committee to represent their interests without an official committee") at p. 19 ("[T]he members of the Ad Hoc Committee are only very recent investors in the Debtors who have not contributed any value to these cases or made any sacrifices. To the contrary, the committee members are attempting to capture through opportunism and aggressive litigation, the value sacrificed from the Debtors' other constituents").

[20] Movants respectfully submit the Court improperly presumed the Ad Hoc Committee was acting in a fiduciary capacity, as evidenced by subsequent remarks. See Tr., Hearing, March 7, 2007, at p. 7:15-18 ("[THE COURT:] Although you say that your group is not acting as a fiduciary, I know that's your group's position. I don't know if that's the position they can take as a would-be ad hoc committee in the case, but I understand your position"), a copy of the relevant portions of which are attached hereto as Exhibit D.

[21] See, e.g., Memorandum Of Law Of Ad Hoc Committee of Equity Security Holders In Support Of Motion For An Order Compelling Acting United States Trustee For Region 2 To Appoint An Official Committee Of Equity Security Holders, dated January 11, 2007 (Docket No. 4491) at pp. 23-24 ("The Debtors and the Creditors' Committee suggest that the Ad Hoc Committee can protect stockbrokers and should rely on a 'substantial contribution' claim. This really asks the Ad Hoc Committee***, which is not a fiduciary***, to bear a significant reimbursement risk for the benefit of all equity holders. The reality is that ***an informal group of shareholders who have no fiduciary duties to the tens or hundreds of thousands of shareholders cannot represent all Northwest public stockholders***") (emphasis added).

(ii). HISTORICAL PERSPECTIVE: RULE WAS INTENDED TO GUARD INDIVIDUAL INVESTORS AGAINST "PROTECTIVE" AND "OUTSIDE" COMMITTEES, NOT TO PREVENT INVESTOR CONSORTIUMS FROM COLLABORATING TO ECONOMIZE CASE PARTICIPATION

13. The Court properly looked to the origins of the text of Rule 2019(a)(4), but applied words that had specific meaning in 1937 to current conventions. Proper application of the terms set forth in the Douglas Report to year 2007 conventions compels a different reading of Rule 2019(a) -- specifically one that excludes the Ad Hoc Committee from the definition of "committee." The rule was designed to combat "protective" and "outside" committees who deceived individual investors by holding themselves out as faithful representatives for a class of interests. The rule was not promulgated in response to any concerns (there were none) about consortiums of focused investors that banded to economize representation costs (i.e., groups like the Ad Hoc Committee).

14. The Douglas Report's essential conclusion was that public investors needed protection from insiders in reorganization cases -- particularly from "protective committees," their counsel, and their use of "deposit agreements."[22] Protective committees were commonplace in equity receiverships and were governed by these deposit agreements, which Douglas found particularly insidious. The agreements typically required investors to deposit their securities with the committee and to grant the committee broad powers. Douglas noted, "[t]he agreements developed by the reorganization bar have grown solely in one direction -- more powers for the committee; fewer rights for the security holders. Committees once formed are subject to but little control by the security holders who have deposited with them."[23] Rarely, if ever, did the investors even see the deposit agreement. Douglas believed protective

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[22] See Charles Jordan Tabb, The History of the Bankruptcy Laws in the United States, 3 Am. Bankr. Inst. L. Rev. 5, 30 (1995), a copy of which is attached hereto as Exhibit E.

[23] See Douglas Report at p. 586 (referring to deposit agreements: "[T]his contract is not one that has been negotiated by persons dealing at arm's length. Whether or not particular provisions should be included has been the decision of the committee, or more realistically, of its counsel; in this decision depositors have not participated").

committees were more beholden to debtors and their investment bankers than to the very investors to whom they owed fiduciary duties.[24] He expressed an equally suspicious view of their attorneys, who were permitted to set their own fees without independent supervision or review -- making them a primary motivation when organizing a committee.[25]

15. The Douglas Report's most pervasive theme, then, was the need to protect investors against misconduct perpetrated by faithless committees that purport to represent their interests. While Douglas was an ardent supporter of individual investors, he did not intend to impose needless restrictions on them or to discourage (or make more costly) their participation in reorganizations.[26] Instead, Douglas focused on ensuring that if an entity purported to act in a representative capacity, then the entity ***should be indeed representative in fact based on the***

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24 "[T]he debtors ... together with the investment bankers for the corporation have been able to control the effective formation and operation of protective committees. The individual investor has had little choice but to throw in his lot with committees sanctioned and sponsored by banker-management groups. These groups have been able to prevent the effective operation of committees by others; and they have been able ... to set up their own committees and in practical effect to dominate the vehicles supposedly representing the security holders. I cannot emphasize too strongly that committee members are fiduciaries. As such they owe exclusive loyalty to the class of investors they represent. They owe that class diligence, efficiency, and single-minded devotion. But their fiduciary standards have been frequently flouted to the ultimate detriment and distress of countless numbers of investors .... In the welter of conflicting interests, ulterior objectives, and self-serving actions which flow from investment banker-management dominance over committees, these committees have lost sight of their essential functions which they can perform to advance the interests of investors."

Excerpt from a statement made by William Douglas the Interstate and Foreign Commerce Committee of the House on June 8, 1937, during consideration of the Lea Bill to regulate protective committees (attached with Exhibit C hereto).

25 See Douglas Report at pp. 215-16 ("[T]he vice is that the bar has been charging all that the traffic will bear. It has forsaken the tradition that its members are officers of the court and should request and expect only modest fees. This condition has prevailed to an extent throughout the profession. And it is not a new development; it is a practice of long standing. But it has been accentuated in [the] case of the financial bar, which has been dominant in reorganizations").

26 See Douglas Report at p. 897 ("It is essential that measures should be taken to place the control of reorganizations with bona fide security holders and their direct representatives .... The right to be heard in all matters arising in a reorganization proceeding, and the privilege of submitting plans and suggestions for plans should be freely accorded them. The activities of independent groups who represent bona fide interests should be encouraged").

price paid for its investment. The Douglas Report ultimately led to the adoption of Sections 210 and 211 of Chapter X, the text of which reflects Douglas' concerns.[27] These sections of Chapter X eventually were combined to form Rule 10-211 (under Chapter X), the text of which is virtually identical to existing Rule 2019.[28]

16. The Ad Hoc Committee is neither a "protective committee" nor an "outside" committee. It has neither solicited nor spoken on behalf of an entire class and never purported to speak in a representative capacity for any other parties. Accordingly, Justice Douglas would not have considered it a "protective" committee, it should not be considered a

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27 See Chapter X § 210 ("An attorney for creditors or stockholders shall not be heard unless he has first filed with the court a statement setting forth the names and addresses of such creditors or stockholders, the nature and amounts of their claims or stock, and the time of acquisition thereof, except as to claims or stock alleged to have been acquired more than one year prior to the filing of the petition"); § 211 ("Every person or committee, representing more than twelve creditors or stockholders, and even indenture trustee, who appears in this proceeding shall file with the court a statement, under oath, which shall include -- (1) a copy of the instrument, if any, whereby such person, committee, or indenture trustee is empowered to act on behalf of creditors or stockholders; (2) a recital of the pertinent facts and circumstances in connection with the employment of such person or indenture trustee, and, in the case of a committee, the name or names of the person or persons at whose instance, directly or indirectly, such employment was arranged or the committee was organized or formed or agreed to act; (3) with reference to the time of the employment of such person, or the organization or formation of such committee, or the appearance in the proceeding of any indenture trustee, a showing of the amounts of claims or stock owned by such person or persons at whose instance, directly or indirectly, such employment was arranged or the committee was organized or formed or agreed to act; and (4) a showing of the claims or stock represented by such person or committee and the respective amounts thereof, with an averment that each holder of such claims or stock acquired them at least one year before the filing of the petition or with a showing of the times of acquisition thereof").

28 See Chapter X, Rule 10-211 ("Every person or committee representing more than one creditor or stockholder, and every indenture trustee, shall file a signed statement with the court setting forth (1) the names and addresses of such creditors or stockholder; (2) the nature and amounts of their claims or stock and the time of acquisition thereof unless they are alleged to have been acquired more than one year prior to the filing of the petition; (3) a recital of the pertinent fact and circumstances in connection with the employment of such person or indenture trustee, and, in the case of a committee, the name or names of the person or persons at those instance, directly or indirectly, such employment was arranged or the committee was organized or agreed to act; and (4) with reference to the time of the employment of such person, or the organization or formation of such committee, or the appearance in the case of any indenture trustee, a showing of the amounts of claims or stock owned by such person, the members of such committee or such indenture trustee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof").

"committee" for purposes of Rule 2019(a), and is not subject to the disclosure requirements of Rule 2019(a).[29]

17. Further corroboration of the connection between the use of "committee" in Rule 2019 and "protective committees" as they were understood and scrutinized by Justice Douglas is found in Rule 2019's instrument disclosure requirement."[30] As noted, "deposit" agreements often afforded committees considerable power, including power over the deposited securities. The only "instrument" (if it can be called that) governing the relationship among the members of the Ad Hoc Committee and their attorneys is the engagement letter.[31] Notably absent are provisions approaching the level of trust and delegation of decision making authority reflected in the deposit agreements. Instead, the letter governs principally the allocation of fees and each members' ability to terminate its relationship with the others at any time. It hardly constitutes the "instrument," which was the sine qua non of overreaching committees.[32]

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[29] To the extent the Court nevertheless believes that words should be given their "plainest" meaning, even non-legal dictionaries decide the key concept that a committee is "[a] person to whom a trust or charge is committed." American Heritage® Dictionary of the English Language (4th ed. 2004).

[30] Notably, the Ad Hoc Committee does not have any by-laws or other governance documents.

[31] See Fed. R. Bankr. P. 2019(a) (requiring, with respect to the verified statement, that it include "a copy of the instrument, if any, whereby the entity, committee or indenture trustee is empowered to act on behalf of creditors or equity security holders").

[32] Moreover, Collier's recitation (relied upon in the Rule 2019 Decision) that Rule 10-211 aimed to "foster fair and equitable plans free from deception and overreaching" must be understood in context. Where there is no claim of representation on behalf of other claims and interests, there can be no deception or overreaching.

(iii). AD HOC COMMITTEE'S COUNSEL, NOT COMMITTEE ITSELF, REPRESENTS MORE THAN ONE CREDITOR OR EQUITY SECURITY HOLDER; RULE 2019(A)'S DISCLOSURE REQUIREMENTS APPLY ONLY TO ITS COUNSEL

18. Bankruptcy Rule 2019 imposes disclosure requirements on two different types of entities, both of which historically had abused their charges: (i) an entity representing more than one creditor or equity security holder, and (ii) a committee representing more than one creditor or equity security holder. The rule does not impose any disclosure obligations on the individual members of a consortium (who do not represent more than one creditor or equity security holder). Instead, the Rule's disclosure obligations only apply to a consortium's common representative, i.e., their counsel. Indeed, their counsel is the only "entity" with alliances to more than one creditor or equity security holder.[33] No risk of deception or overreaching would be mitigated by requiring a consortium of equity holders to disclose their individual ownership details when the consortium does not represent any other entities and instead exists for the singular purpose of pursing common goals through one representative. The at-will nature of the Ad Hoc Committee, whose members remain free to withdraw from the arrangement at any time, under any circumstance -- further bolsters the members' clear understanding that they will combine "for the time being" because it is economical and enables their participation in reorganization cases.[34]

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[33] The Rule 2019 Decision appears to acknowledge as much. See Rule 2019 Decision at 5 ("There may be cases where a law firm represents several individual clients and is the only entity required to file a Rule 2019 statement, on its own behalf") (citing In re CF Holding Corp., 145 B.R. 124 (D. Conn. 1992)).

[34] Notably, the cases relied upon in the Rule 2019 Decision examined the "first tier" disclosure obligations of the ***representatives*** to various committees, associations and claimants. They therefore are distinguishable from the instant case, where the issue presented is not the "first tier" disclosure obligations of the Ad Hoc Committee's representative, its attorneys, but instead the ***second tier disclosure obligations (if any) of the consortium that is being represented*** (i.e., the "representee") -- the Ad Hoc Committee. See, e.g., In re Kaiser Aluminum Corp., 327 B.R. 554 (D. Del. 2005) (law firm representing asbestos personal injury claimants); Baron & Budd, P.C. v. Unsecured Asbestos Claimants' Committee, 321 B.R. 147 (D.N.J. 2005) (law firm representing multiple tort victim creditors); In re Keene Corp., 205 B.R. 690 (Bankr. S.D.N.Y. 1997) (request for law firm disclosure); In re CF Holding Corp., 145 B.R. 124 (Bankr. D. Conn. 1992) (law firm representing multiple claimants and interest holders); In re Ionosphere Clubs, Inc., 101 B.R. 844

C. RECONSIDERATION IS WARRANTED TO PREVENT MANIFEST INJUSTICE THAT WILL RESULT IF EQUITY PURCHASERS MUST DISCLOSE PRICE

(i). RULE 2019 DECISION WILL CHILL SMALL-HOLDER PARTICIPATION

19. The mandatory disclosure requirements under Rule 2019 afford chapter 11 debtors a decidedly unfair advantage over creditors and equity security holders in the reorganization process. Faced with the prospect of disclosing highly confidential and proprietary information, investors will not coordinate efforts in chapter 11 cases. The Rule 2019 Decision therefore has the direct and immediate effect of discouraging participation by individual institutions holding small positions because, in order to appear and be heard, each investor would be required to retain its own counsel and speak separately in duplicative filings before the Court. Eviscerating the ability of parties in interest to appear and be heard under section 1109(b) of the Bankruptcy Code could not have been the intent of Congress (or for that matter, Justice Douglas, the champion of individual investors).

20. The Rule 2019 Decision also provides singular large holders with a presumably unintended advantage. Larger investors acting unilaterally need not disclose the price paid for their investment, even if they accumulate such investment in contemplation of bankruptcy or thereafter. Smaller holders, however, who have pooled their resources must make proprietary disclosures allowing management to discredit their stake. Again, neither Congress nor Justice Douglas could have intended that Rule 2019 serves to favor large investors while simultaneously penalizing any two smaller investors that retain counsel together in a chapter 11 case -- contradicting the maxim that "equality is equity."[35]

(Bankr. S.D.N.Y. 1989) (consumers' union representing airline ticket-holders). Cf., Lafayette v. Oklahoma PAC First Ltd. Partnership, 122 B.R. 387, 393 (D. Ariz. 1990) (noting "the Court should also play a role in ensuring that lawyers adhere to certain ethical standards. Bankruptcy Rule 2019 was designed for such a purpose").

[35] See, e.g., Cunningham v. Brown, 265 U.S. 1, 13 (1924); United States Rubber Co. v. American Oak Leather Co., 181 U.S. 434, 453 (1901).

(ii). NO LEGITIMATE PURPOSE CAN BE SERVED IN REQUIRING DISCLOSURE OF PROPRIETARY INFORMATION

21. The requested disclosure also fails to serve any legitimate purpose in advancing the reorganization cases. The information the Debtors' have pursued tenaciously -- the price paid for the equity securities -- has absolutely no bearing on any determination that will be made in these cases. Indeed, it is utterly irrelevant to plan negotiations, because the price paid for the equity securities has no relation to plan classification or treatment under the Bankruptcy Code.[36] Even if the information were relevant to ascertaining whether a particular equity interest holder should be qualified to serve in a representative capacity (for example, on an official committee), that issue has never been germane in these cases.

22. Compelling disclosure of purchase prices for claims and equity securities also will have a detrimental effect on the market for distressed debt and equity. Among other things, the liquidity currently available to individual creditors and equity security holders seeking to avoid the time and expense associated with vindicating their rights in protracted bankruptcy cases will be negatively impacted -- a result contrary to well-recognized public policy:

> Financial institutions and other sophisticated investors acquire bankruptcy claims at a discount to make a profit upon resale or the ultimate distribution to creditors under a chapter 11 plan .... Public policy benefits of claim trading include (i) increased market liquidity, (ii) enhancement of sellers' recovery, (iii) certain sellers' tax planning, and (iv) consolidation of diverse interests in the hands of a few sophisticated investors, leading to more rigorous negotiations, rapid reorganizations and maximization for remaining creditors because the consolidated creditor group has greater strength.[37]

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[36] See, e.g., Hon. Robert D. Drain, Are Bankruptcy Claims Subject To The Federal Securities Laws?, 10 Am. Bankr. Inst. L. Rev. 569, 578 (2002) (hereinafter, the "Judge Drain Article") at n.31 ("[A] discounted purchase price is irrelevant to the ability to enforce the claim in full) (citing In re Executive office Ctrs., Inc., 96 B.R. 642, 649 (Bankr. W.D. La. 1988) for the proposition that "purchaser[s] of bankruptcy claim[s] succeed[] to rights of seller[s] regardless of discounted purchase price"). A copy of Judge Drain's Article is attached hereto as Exhibit F.

[37] Id. at pp. 575-76.

23. Such mandated disclosure also offends the very foundation of our capital markets. No less a founder of our capital markets than this nation's first Treasury Secretary, Alexander Hamilton, faced a similar issue, resolving it in a way that "laid the foundations for America's future financial preeminence:"

> During the Revolution, many affluent citizens had invested in bonds, and many war veterans had been paid with IOUs that then plummeted in price under the confederation. In many cases, these upright patriots, either needing cash or convinced they would never be repaid, had sold their securities to speculators for as little as fifteen cents on the dollar .... This ... presented a political quandary. If the bonds appreciated, should speculators pocket the windfall? .... The answer to this perplexing question, Hamilton knew, would define the future character of American capital markets .... [Hamilton] wrote that 'after the most mature reflection' about whether to reward original holders and punish current speculators, he had decided against this approach as 'ruinous to public credit.'[38]

24. The principle of rewarding an assignee of debts who speculates for profit has since 1790 been the law of the land in the United States, and such a strong public policy must be weighed against the lack of a legitimate purpose for public disclosure of proprietary information. Invading the confidentiality associated with purchase price (without any allegation of violating special fiduciary duties) will chill liquidity and equity purchases and sales. Again, neither Congress (nor Justice Douglas) could have intended that Rule 2019 would disserve our financial markets and the small investors who benefit from the liquidity Hamilton's decision foretold.

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[38] R. Chernow, Alexander Hamilton 297-98 (2004) (citing Report On Public Credit, January 1790), the relevant portions of which are attached hereto as Exhibit G.

D. RECENT AMENDMENTS TO BANKRUPTCY RULES FURTHER SUPPORT LIMITING STRICT READING OF DETAILED DISCLOSURE TO REPRESENTATIVES AND NOT INDIVIDUALS

25. Rule 3001(e) of the Federal Rules of Bankruptcy Procedure governs the notice requirements for (and the recognition of) transferred claims, stating, in pertinent part:

> (2) *Transfer Of Claim Other Than For Security After Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee .... If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor.

Fed. R. Bankr. P. 3001(e)(2) (emphasis added).

26. In the original version, Bankruptcy Rule 3001(e) required a statement of the consideration given in exchange for the transfer.[39] In 1991, however, Bankruptcy Rule 3001(e) was "amended to limit the court's role to the adjudication of disputes regarding transfers of claims."[40] This amendment expressly provided "***there is no need to state the consideration for the transfer***."[41] Thus, "[i]t is apparent from the history of Rule 3001(e) that the consideration supporting a transfer of a claim is not, in the absence of special fiduciary obligations to the debtor or the circumvention of statutory disabilities, pertinent to the validity and allowance of the claim." Burnett, 306 B.R. at 319. The only internally consistent way to read Rule 3001(e) with Rule 2019(a) (which required no corollary amendment) is that Rule 2019(a) has always been understood to require disclosures from those acting with special representations in fiduciary capacities. The Ad Hoc Committee never purported to act as a fiduciary on any party's behalf,

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[39] The original advisory committee notes indicated that "[s]uch a disclosure will assist the court in dealing with evils that may arise out of post-bankruptcy traffic in claims against an estate." These evils included the following perceived abuses: "acquisition of corporate obligations at a discount by directors while a corporation is insolvent," and "the transfer of a fractional interest in a claim so as to circumvent a statutory disability on voting for a bankruptcy trustee." See Resurgent Capital Services v. Burnett (In re Burnett), 306 B.R. 313, 319 (BAP 9th Cir. 2004).

[40] Advisory Committee Note 1991; see Burnett, 306 B.R. at 318 ("The silence of Rule 3001(e)(1) about the consideration for the transfer is deliberate").

[41] Advisory Committee Note 1991 (emphasis added).

represents no entity other than itself, and exists solely for the purpose of pooling costs for as long as it makes sense to its members to do so. Moreover, the consideration a member paid has no bearing on the validity of the interest, or on any other issue in a chapter 11 case (unless such member purported to act in a representative capacity). Given the similarities of the purpose of the original Rule 3001(e) and Rule 2019(a) (i.e., to prevent abuse), the amendment of Rule 3001(e) without a corollary amendment to Rule 2019(a) suggests but one consistent interpretation.

V. NOTICE

27. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this motion has been given to (a) counsel for the Debtors; (b) counsel to the Official Committee of Unsecured Creditors; and (c) the parties listed on the Master Service List (as defined in the Court's Order dated September 15, 2005). In light of the nature of the relief requested herein, Movants submit that no other or further notice need be given.

VI. WAIVER OF MEMORANDUM OF LAW

28. Because this motion presents no novel issues of law and the authorities relied upon by Movants are set forth herein, Movants respectfully request that the Court waive the requirement for the filing of a separate memorandum of law in support of this motion pursuant to L.R. Bankr. P. 9013-1(b), but Movants expressly reserve the right to file a brief in reply to any objection to this motion.

VII. NO PRIOR RELIEF REQUESTED

29. No previous application for the relief requested herein has been made to this or any other Court.

VIII. CONCLUSION

WHEREFORE, Movants respectfully requests that the Court enter an Order granting the Reconsideration Motion, vacating the Rule 2019 Decision, denying the Debtors' Rule 2019 Motion, and awarding Movants such further, different relief as it deems just and proper.

Dated: New York, New York
March 8, 2007

Respectfully submitted,

QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP

By: /s/ Susheel Kirpalani
Susheel Kirpalani (SK 8926)
James C. Tecce (JT 5910)
Joseph G. Minias (JM 6530)

51 Madison Avenue, 22nd Floor
New York, New York 10010
Telephone: (212) 849-7000
Telecopier: (212) 849-7100

Counsel For:

Anchorage Capital Group, L.L.C.
Latigo Partners, L.P.
Seneca Capital