

Objection Deadline: March 30, 2009 at 4:00 p.m. (prevailing Eastern Time)
Hearing Date (if necessary): April 8, 2009 at 9:30 a.m. (prevailing Eastern Time)

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

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In re: : **Chapter 11 Case No.**
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DELTA AIR LINES, INC., et al., : **05-17923 (ASH)**
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: **(Jointly Administered)**
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Reorganized Debtors. :
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**REORGANIZED DEBTORS' MOTION FOR FOURTH EXTENSION
OF DEADLINE TO FILE OBJECTIONS TO CLAIMS**

Delta Air Lines, Inc. ("**Delta**")¹ and Comair, Inc. (together, the "**Reorganized Debtors**")² respectfully represent:

¹ Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Plan (as defined below).

² The following Delta subsidiaries were also debtors and debtors-in-possession in these proceedings: ASA Holdings, Inc.; Comair Holdings, LLC; Comair Services, Inc.; Crown Rooms, Inc.; DAL Global Services, LLC; DAL Moscow, Inc.; Delta AirElite Business Jets, Inc.; Delta Benefits Management, Inc.; Delta Connection Academy, Inc.; Delta Loyalty Management Services, LLC; Delta Technology, LLC; Epsilon Trading, LLC; and Kappa Capital Management, LLC. On September 26, 2007, the Bankruptcy Court entered a final decree closing these chapter 11 cases. However, the extension of the deadline to file claims objections requested herein would still apply to claims filed against these former (...continued)

Background and Jurisdiction

1. On September 14, 2005 (the “**Petition Date**”), the Reorganized Debtors commenced with this Court voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).
2. On May 31, 2006, the Reorganized Debtors filed Statements of Financial Affairs and Schedules of Assets and Liabilities (collectively, as may be amended from time to time, the “**Schedules**”). The Reorganized Debtors scheduled tens of thousands of claims in an aggregate amount of approximately \$15 billion (excluding intercompany claims). Approximately 30,000 of these claims were scheduled by the Reorganized Debtors on account of retirees.
3. By order dated June 5, 2006, the Court established August 21, 2006 as the last day by which certain proofs of claim could be timely filed in these chapter 11 cases. From time to time thereafter, separate bar dates have been established for various creditor groups, including Delta retirees. In all, more than 9,300 proofs of claim have been filed in these cases. The sum of the filed proofs of claim and unmatched³ Schedule entries (collectively representing more than 47,800 individual claims) in these chapter 11 cases was a staggering \$93.1 billion.

(continued...)

debtors, because each of the former debtors was either a Delta Debtor or a Comair Debtor under the Plan and, as such, claims against each are treated under the Plan as claims against the Delta Debtors or Comair Debtors as a whole.

³ “Unmatched” schedule entries are scheduled claims that did not correspond to a filed proof of claim.

4. On October 12, 2006, the Court entered its Order Establishing Procedures for Claims Objections, approving certain procedures regarding objections to proofs of claim.

5. On October 12, 2006, the Court entered an order approving procedures for the handling of certain objections to aircraft leveraged lease claims, which procedures have been adjusted over time to best resolve these claims.

6. On April 25, 2007, the Court entered an order confirming the Reorganized Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code (the "**Plan**"). On April 30, 2007, the Plan became effective (the "**Effective Date**"). The total duration of these chapter 11 cases was approximately 19 months.

7. On September 18, 2007, the Reorganized Debtors filed a motion seeking an extension of the deadline to file objections to claims (the "**First Extension Motion**"). No party objected to the First Extension Motion. On September 26, 2007, this Court entered an order granting the First Extension Motion.

8. On February 20, 2008, the Reorganized Debtors filed a second motion seeking an extension of the deadline to file objections to claims (the "**Second Extension Motion**"). No party objected to the Second Extension Motion. On March 10, 2008, this Court entered an order granting the Second Extension Motion.

9. On September 26, 2008, the Reorganized Debtors filed a third motion seeking an extension of the deadline to file objections to claims (the "**Third Extension Motion**"). A limited objection to the Third Extension Motion was filed on October 2, 2008 on behalf of David R. Mueller, Raymond A. Mueller and David A. Siebenburgen [ECF No. 7265] but was later withdrawn on October 6, 2008 [ECF No. 7267]. On

October 10, 2008, this Court entered an order (the “**Extension Order**”) granting the Third Extension Motion.

10. Since the Effective Date, the Reorganized Debtors have made distributions on account of more than 40,300 allowed administrative, priority, secured and unsecured claims with a face value of almost \$13.6 billion. There have so far been seven distribution dates for allowed unsecured claims:

- 232.2 (i) one in May 2007 (involving the distribution of approximately 233.2 million shares of New Delta Common Stock on unsecured claims in the face amount of approximately \$10.4 billion);
 - 20.8 (ii) one in the summer of 2007 (involving the distribution of an additional 20.8 million shares of stock on account of unsecured claims allowed as of and subsequent to the Effective Date of the Plan in the face amount of approximately \$996 million);
 - 23.5 (iii) one in November 2007 (involving the distribution of an additional 23.5 million shares of stock on account of unsecured claims allowed subsequent to the summer 2007 distribution date in the face amount of approximately \$1.1 billion);
 - 10.7 (iv) one in May 2008 (involving the distribution of an additional 10.7 million shares of stock on account of unsecured claims allowed subsequent to the November 2007 distribution date in the face amount of approximately \$504 million);
 - 4.8 (v) one in July 2008 (involving the distribution of an additional 4.8 million shares of stock on account of unsecured claims allowed
- 400 million shares + additional shares for
Comp Programs + Disputed Claims
Debt Allocation 93.2%*

4.8
3.5
23.9

319.4

subsequent to the May 2008 distribution date in the face amount of approximately \$258 million);

(vi) one in October 2008 (involving the distribution of an additional 3.5 million shares of stock on account of unsecured claims allowed subsequent to the July 2008 distribution date in the face amount of approximately \$186 million); and

(vii) a special interim distribution in February 2009 (involving the distribution of an additional 23.9 million shares of stock on account of previously allowed and distributed Delta Class 4 claims in excess of \$1 million and previously allowed and distributed Comair Class 4 claims.)

11. The Court has subject matter jurisdiction over this motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and may be determined by the Bankruptcy Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

12. Pursuant to Section 9.1(a) of the Plan and the Extension Order, the Reorganized Debtors and the Post-Effective Date Committee (the “**PEDC**”) are currently entitled to object to claims until 11:59 p.m. (prevailing Eastern time) on April 20, 2009 (the “**Present Claims Objection Deadline**”). Absent entry of the order attached hereto as Exhibit A fixing a later date, after the Present Claims Objection Deadline all claims to which the Reorganized Debtors have not objected automatically become “Allowed” under the Plan.

13. As described below, the Reorganized Debtors have made exceptional progress in resolving disputed claims (via settlement, objection or otherwise). However, because additional time is required to complete the claims reconciliation process with respect to the remaining disputed claims, the Reorganized Debtors respectfully request that the Court enter an order, pursuant to sections 105 and 502 of the Bankruptcy Code, Rule 9006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Section 9.1(a) of the Plan, extending the Present Claims Objection Deadline by an additional 182 days, through October 19, 2009 at 11:59 p.m. (prevailing Eastern time) in order to preserve the Reorganized Debtors’ ability to object appropriately to the remaining disputed proofs of claim in a manner that allows for proper analysis of the remaining claims and consultation with relevant creditors. The Reorganized Debtors submit that this time period falls well within the parameters of claims objection deadline extensions granted by courts in other cases of this size and complexity. Absent this extension of the Present Claims Objection Deadline, the Reorganized Debtors would be forced to interrupt ongoing negotiations and proceedings to file claims objections in order to preserve their rights with respect to the unresolved claims. This would be extraordinarily burdensome, wasteful and counter-productive to ongoing discussions.

The Reorganized Debtors Have Made Exceptional Progress in Resolving Disputed Claims But There is More Work to be Done

14. Delta’s chapter 11 case was among the largest in U.S. history. As noted above, the sum of the filed claims and Schedule entries was an astronomical \$93.1 billion. Compilation of the Schedule entries required significant review and analysis of the Reorganized Debtors’ books and records and, in the case of the tens of thousands of

retiree claims, extensive research and calculation by Delta personnel and outside advisors to determine the correct claim amounts based on the agreements reached with the committees representing the various retiree groups. Additionally, each of the more than 9,300 proofs of claim filed in these cases had to be reviewed, compared to the Reorganized Debtors' records, and (if appropriate) discussed with the relevant creditor. Although some claims can be addressed quickly and in an omnibus fashion, many others involve complicated issues and transactions, and require detailed analysis and lengthy negotiations. It is in the interests of the Court and all parties-in-interest that objections be filed (and the costs associated with such objections be incurred) only after claims have been fully reviewed and then discussed and, where appropriate, negotiated with the relevant creditors.

15. The Reorganized Debtors have made enormous progress in disputing and resolving claims, making distributions on account of resolved claims and undertaking the necessary tasks related to the distributions. For instance:

- They have made seven distributions totaling approximately 320.6 million shares of New Delta Common Stock and approximately \$8.9 million in cash on account of approximately 36,700 allowed unsecured claims in a face amount of approximately \$13.5 billion.
- They have filed 29 prior omnibus objections covering more than 6,800 proofs of claim.
- They have resolved more than 6,200 disputed proofs of claim through objections, withdrawals and other resolutions. The initial face value of these resolved proofs of claim was approximately \$75.2 billion.
- They have filed ten additional omnibus objections with respect to at least 220 proofs of claim arising from aircraft-related transactions.
- They have analyzed and categorized variations in contract language from the operative documents of more than 200 separate aircraft leveraged lease

transactions with respect to which tax indemnity (“TIA”) claims and stipulated loss value (“SLV”) claims have been filed.

- They have filed five separate “test case” objections to TIA and SLV claims to determine Delta’s obligations, plus an omnibus objection with respect to remaining TIA claims and SLV claims.
 - In the first two test cases, Delta argued that TIA claims were barred where the TIAs stated that no claim could be asserted when Delta (i) was “required to pay” SLV or (ii) pays SLV “or an amount determined by reference thereto.” The Court sustained Delta’s objections in those cases. The parties appealed to the United States District Court for the Southern District of New York, which sustained this Court’s decisions. The District Court’s decision is now on appeal. *See* appeals filed by The Northwestern Mutual Life Insurance Company of the District Court’s September 29, 2008 decision and order (2d Cir. Case No. 08-5002-bk) and by DFO Partnership of the same decision and order (2d Cir. Case No. 08-5230-bk).
 - The other two test cases addressed TIAs that stated that no indemnity payment was required if Delta (i) was “required to pay” SLV “to the extent that such amounts have been paid” or (ii) “pays an amount equal to” SLV. On January 16, 2008, the Court held that the allowance and discharge of SLV claims constitutes a “payment” of SLV claims and therefore bars TIA claims when the underlying TIAs provide that the “payment” of SLV is a bar to a TIA claim (the “TIA/SLV Ruling”). The parties appealed to the United States District Court for the Southern District of New York, which sustained this Court’s decisions. The District Court’s decision is now on appeal. *See* appeals filed by AT&T Credit Holdings, Inc. of the District Court’s September 29, 2008 decision and order (2d Cir. Case No. 08-5236-bk) and by Bell Atlantic Tricon Leasing Corporation, NCC Golf Company, NCC Key Company and NCC Charlie Company of the same decision and order (2d Cir. Case No. 08-5296-bk).
- They have filed a test case objection to TIA claims based on language under tax indemnity agreements barring TIA claims after the Owner Participant has voluntarily transferred its beneficial interests in the relevant trust estates. The Court sustained the objection; the District Court reversed, and the Second Circuit Court of Appeals remanded for further evidentiary hearings in the Bankruptcy Court. *See* Order issued by the Second Circuit Court of Appeals, dated March 5, 2009 (2d Cir. Case No. 08-2825-bk).
- They have filed 39 other objections covering more than 240 TIA and SLV claims.
- They have resolved approximately 1,054 aircraft-related claims, including various SLV and TIA-related claims. Of those claims, they have allowed 369 aircraft-

related claims and have received permission from this Court to expunge 685 aircraft-related claims.

- After considerable expense and effort, the Reorganized Debtors have finalized, calculated, withheld tax on account of and made distributions of cash and New Delta Common Stock on account of all of the thousands⁴ of individual Delta retiree claims entitled to general unsecured claims in these cases.
- After a hearing on the parties' motions for summary judgment and extended settlement negotiations, Delta, The Bank of New York Mellon (the "**Bond Trustee**") and the Hillsborough County Aviation Authority (the "**Authority**") reached a settlement of the claims underlying the adversary proceeding filed by the Authority and the Bond Trustee in August 2007. The settlement agreement was approved by the Court pursuant to rule 9019 and section 502 on September 8, 2008.

16. This substantial progress has been made possible due to the significant resources Delta has allocated to the claims process. The Reorganized Debtors' claims team consists of a full-time Delta employee who coordinates the efforts of personnel affiliated with 11 claims-related working groups across various areas of the Reorganized Debtors' operations. This team works closely with their counsel as well as with Epiq Bankruptcy Solutions, LLC (the Reorganized Debtors' Claims Agent), Wells Fargo Shareowner Services (the Reorganized Debtors' distribution agent) and Fidelity Stock Plan Services (the broker selected by the Reorganized Debtors to provide stock distributions to individual claimholders).

17. Although very substantial progress has been made to date, there is still work to be done:

- There are still approximately 174 non-aircraft claims that remain unresolved, representing approximately \$1.8 billion in total claimed amount.

⁴ It is difficult to overstate the complexity associated with administering and processing the claims of Delta's many thousands of individual retirees – each of whose claims are affected by numerous, often extremely retiree-specific, fact patterns and actuarial considerations.

- Although most TIA and SLV claims have been settled, a number of TIA claims (involving many hundreds of millions of dollars in claimed amounts) are subject to orders that have been appealed, and it could be some time before the appeals are resolved. There are also a number of SLV claims that have not finally been resolved because open issues still exist as to the underlying TIA claims, and whether those TIA claims require any reduction to the associated SLV claims.
- Further, there are many other objections to TIA claims and SLV claims that the Reorganized Debtors could pursue, and that the Reorganized Debtors have identified in prior filings, but which may not need to be pursued at all in light of the TIA/SLV Ruling. Unless the Present Claims Objection Deadline is extended, however, the Reorganized Debtors will be forced to file all of the possible objections that they might ever wish to pursue as to each and every one of the remaining TIA claims and SLV claims to protect themselves against the possibility that the TIA/SLV Ruling might be overturned on appeal, which would be an enormous waste of resources.

Compared to Other Relevant Chapter 11 Cases, the Reorganized Debtors Have Had a Brief Period in which to Resolve Disputed Claims

18. As noted in the Reorganized Debtors' First Extension Motion, in the bankruptcy case of United Airlines and its affiliates, the airline bankruptcy most comparable to these chapter 11 cases in size, complexity and issues, the debtors' plan of reorganization provided no deadline for the debtors to object to claims. Indeed, in that case (which lasted nearly twice as long as Delta's chapter 11 case), the debtors continue to file omnibus claims objections – the most recent of which was filed approximately two years and seven months after the company emerged from chapter 11. *See In re UAL Corp., et al.*, Case No. 02-48191 (Bankr. N.D. Ill.) [Docket No. 17156].

19. In “mega” airline cases in which a debtor's chapter 11 plan actually provides for a claims objection deadline, these deadlines are routinely extended, often for two years or more. For example, in the *U.S. Airways II* bankruptcy cases, the debtor emerged in September 2005 and the claims objection deadline was extended for more than two years. *See In re US Airways Group, Inc., et al.*, Case No. 04-13819 (Bankr.

E.D. Va.) (objection deadline extended multiple times through December 31, 2007) [Docket No. 4674]. Moreover, claims filed after July 1, 2007 are not subject to any objection deadline). *See id.* [Docket No. 4733] *See also In re Polaroid Corp, et al.*, Case No. 01-10864 (Bankr. D. Del.) (claims objection deadline extended on numerous occasions for approximately three years and five months) [Docket No. 4584]; *In re the IT Group*, Case No. 02-10118 (Bankr. D. Del.) (claims objection deadline extended for approximately five years) [Docket No. 6861].

20. The Reorganized Debtors will not rehash here the many examples set forth in the First Extension Motion, but instead merely note that many large, complex chapter 11 debtors that have spent months or even years longer in bankruptcy than the Reorganized Debtors have regularly required comparable or even substantially longer periods of time to resolve claims than the Reorganized Debtors request by this motion.

Basis for Relief

21. Pursuant to Bankruptcy Rule 9006(b)(1), “when an act is required or allowed to be done at or within a specified period . . . by order of the court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed” Fed. R. Bankr. P. 9006(b)(1). The Supreme Court has generally instructed that any analysis of a motion brought under Rule 9006 is “at bottom an equitable one, taking account of all relevant circumstances,” including “the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.” *Pioneer Inv. Serv.*

Co. v. Brunswick Assocs. P'ship, 507 U.S. 380, 395 (1993); *see also In re Mmahat*, No. 94-292, 1994 U.S. Dist. LEXIS 5475, at *20 (E.D. La. 1994) (characterizing the Rule 9006 standard as a "lenient" one).

22. This is the Reorganized Debtors' fourth request for an extension of the deadline to object to claims. Although the Reorganized Debtors have made substantial progress in reviewing, reconciling, negotiating, disputing (where necessary) and making distributions on account of many tens of thousands of claims, they have not yet had the opportunity to complete this massive task. This process has taken a very significant amount of time and attention in order that it be done accurately and correctly. Moreover, as this Court knows, certain discrete issues have proven incredibly complex, have involved dozens of opposing parties and are not yet complete. The proposed extension is therefore necessary to the efficient and equitable administration of these cases.

23. The Reorganized Debtors also submit that the extension will not materially prejudice claimants. To the contrary, absent an extension, the Reorganized Debtors would have no alternative but to move for either the omnibus disallowance or the omnibus allowance of all heretofore unobjected proofs of claim. Moving for the omnibus disallowance of all heretofore unobjected proofs of claim would decidedly not be in the best interests of any *bona fide* creditor, would engender substantial additional cost and litigation and – with respect to leveraged lease aircraft claims – would effectively circumvent the procedures already devised by this Court. Omnibus allowance would be similarly inequitable and – for no other reason but that the Reorganized Debtors have not had an adequate opportunity to complete the claims process – would cause a substantial dilution in the value of the claims of the tens of thousands of retirees, bondholders, trade

creditors and other parties who have legitimate allowed claims in these cases. The Reorganized Debtors submit that the proposed extension is therefore the best solution for all parties in these chapter 11 cases.

24. As noted above and in the First, Second and Third Extension Motions, similar relief has been routinely granted in this district and elsewhere. *See, e.g., In re Metromedia Fiber Network, Inc., et al.*, Case No. 02-22736 (ASH) (Bankr. S.D.N.Y. 2002); *In re U.S. Airways Group Inc.*, Case No. 02-83984 (Bankr. E.D. Va. 2002); *In re US Airways Group, Inc., et al.*, Case No. 04-13819 (Bankr. D. Del. 2004); *In re Acterna Corp.*, No. 03-12837 (BRL) (Bankr. S.D.N.Y. 2003); *Magellan Health Servs., Inc.*, No. 03-40515 (PCB) (Bankr. S.D.N.Y. 2003); *Sunbeam Corp.*, No. 01-40291 (AJG) (Bankr. S.D.N.Y. 2001); *Rhythms Netconnections Inc.*, 01-14283 through 01-14287 (BRL) (Bankr. S.D.N.Y. 2001); *Carmike Cinemas, Inc.*, No. 00-03302 through 00-03305 (SLR) (Bankr. D. Del. 2000); *Genesis Health Ventures Inc.*, No. 00-02692 (JHW) (Bankr. D. Del. 2000).

25. For all of the foregoing reasons, the Reorganized Debtors submit that the relief requested is in the best interest of all of the parties-in-interest in these chapter 11 cases and that good cause exists for it to be granted, without prejudice to the Reorganized Debtors' right to seek a further extension of time as the circumstances may warrant.

Notice

26. Pursuant to section 17.16 of the Plan, the Reorganized Debtors have served this Motion on counsel for the Post-Effective Date Committee. In addition, all parties in these cases are receiving notice of this Motion electronically via the Court's ECF system.

27. Objections, if any, to the proposed order must be made in writing, filed and served in accordance with the Court's Order Approving Notice, Case Management and Administrative Procedures entered October 6, 2005 not later than March 30, 2009 at 4:00 pm. (prevailing Eastern Time). Unless objections are received by that time, the proposed order may be signed and entered without a hearing.

28. No previous request for the relief sought herein has been made by the Reorganized Debtors to this or any other court.

Dated: New York, New York
March 20, 2009

By: /s/ Timothy E. Graulich
Marshall S. Huebner
Timothy E. Graulich
Damian S. Schaible

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Exhibit A

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

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In re: :
: **Chapter 11 Case No.**
:
DELTA AIR LINES, INC., et al., : **05-17923 (ASH)**
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: **(Jointly Administered)**
: **Reorganized Debtors.** :
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ORDER EXTENDING CLAIMS OBJECTION DEADLINE

Upon the motion, dated March 12, 2009 (the “**Motion**”), of the Reorganized Debtors¹ for an order extending, through and including 11:59 p.m. on October 19, 2009, the time during which the Reorganized Debtors may object to Claims, Interests and Administrative Claims² pursuant to the Plan; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C.

¹ Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Motion.

² Claims, Interests and Administrative Claims, each as defined in the Reorganized Debtors’ Plan.

§§ 1408 and 1409; and the Court having reviewed the Motion and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED, that the Present Claims Objection Deadline (as such term is defined in the Plan) is hereby extended through and including 11:59 p.m. on October 19, 2009; and it is further

ORDERED, that the relief granted herein shall not otherwise alter any rights of parties-in-interest pursuant to (i) the provisions of the Plan (except with respect to the date set forth therein in the definition of “Claims Objection Deadline”) or (ii) the provisions of this Court’s order confirming the Plan, dated April 25, 2007; and it is further

ORDERED that the relief granted herein should not be construed to limit the Reorganized Debtors’ right to assert additional objections against claims to which the Reorganized Debtors have previously objected; and it is further

ORDERED, that the relief granted herein is without prejudice to the Reorganized Debtors’ right to request further extensions of the Claims Objection Deadline for cause shown.

Dated: White Plains, New York
_____, 2009

UNITED STATES BANKRUPTCY JUDGE