

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

In re:

PINNACLE AIRLINES CORP., *et al.*,

Debtors.

Chapter 11

Case No. 12-11343 (REG)

(Jointly Administered)

**STIPULATION BETWEEN DEBTORS AND WORLD TRADE CENTER
PROPERTIES LLC, 3 WORLD TRADE CENTER LLC (FORMERLY
KNOWN AS 5 WORLD TRADE CENTER LLC)
AND 7 WORLD TRADE COMPANY, L.P.
MODIFYING AUTOMATIC STAY**

Pinnacle Airlines Corp. and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) respectfully represent:

Background and Jurisdiction

1. On April 1, 2012 (the “**Petition Date**”), each Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ cases (the “**Chapter 11 Cases**”) are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the court’s Order Granting Debtors’ Motion for Joint Administration of Chapter 11 dated April 2, 2012 [ECF No. 31].

2. Additional information about the Debtors' businesses and the events leading up to the Petition Date can be found in the Declaration of John Spanjers, Pinnacle Airline Corp.'s Executive Vice President and Chief Operating Officer, as filed April 1, 2012 [ECF. No. 3] which is incorporated herein by reference.

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

Claimant's Claim

4. World Trade Center Properties LLC, 1 World Trade Center LLC, 3 World Trade Center LLC (formerly known as 5 World Trade Center LLC), and 7 World Trade Company, L.P. (the "**WTC Entity Creditors**" or the "**Claimants**") contend that they have a claim (the "**Claim**") against Colgan Air, Inc. and Pinnacle Airlines Corp., who are among the Debtors (the "**Debtor Defendants**") arising from a civil action, on account of alleged property damage or injury to the Claimants as a result of the crash of American Airlines Flight 11 into One World Trade Center on September 11, 2001. This claim is asserted against the Debtors in the complaint filed in the matter World Trade Center Properties, et al., v. American Airlines, Inc., et al., No. 08 Civ. 3722 (AKH) (S.D.N.Y.) (the "**WTCP Tort Action**"), which is part of the September 11 litigation master docket entitled In re September 11 Property Damages and Business Loss Litigation, 21 MC 101 (AKH) (S.D.N.Y.).

5. On the Petition Date, the Claimants were automatically stayed under 11 U.S.C. § 362(a) (the “**Automatic Stay**”) from commencing or continuing an action to seek recovery for alleged property damage or injury to the Claimants.

6. On July 13, 2012, the Claimants timely filed proofs of claim (Claim Nos. 735, 782 and 783) in these chapter 11 cases (the “**WTCP Proofs of Claim**”).

7. Pursuant to this stipulation (the “**Stipulation**”), the Claimants agree to waive any and all claims asserted in the WTCP Proofs of Claim in the Chapter 11 Cases against the Debtor Defendants related to the Claim and agree to seek recovery from the Debtor Defendants in the WTCP Tort Action solely from the insurance coverage, if any, available to the Debtor Defendants under the one or more insurance policies issued to the Debtor Defendants to satisfy the Claim (the “**Available Coverage**”).

8. The parties to the Stipulation have agreed to modify the Automatic Stay solely on the terms and conditions set forth herein.

9. The Debtors are authorized under the Order Authorizing and Approving Procedures for Settling and Allowing Certain Claims, Litigations and Causes of Action entered in these chapter 11 cases on April 23, 2012 (the “**Settlement Procedures Order**”) to enter into and file this Stipulation with the Court.

It is hereby stipulated and agreed, subject to and in accordance with the Settlement Procedures Order, by and among the parties to this Stipulation, as follows:

1. The Automatic Stay is hereby modified solely to the limited extent necessary to enable (a) the Claim to proceed to final judgment or settlement and (b) the Claimants to attempt to recover any liquidated final judgment or settlement on the Claim solely from Available Coverage, if any; *provided, however*, that any final judgment or settlement shall be reduced by (x) the amount of any applicable deductible or self-insured retention under the applicable insurance policy and (y) any share of liability under the applicable insurance policy of any insolvent or non-performing insurer or co-insurer (or any reinsurer of any insolvent or non-performing insurer or co-insurer); and *provided further*, that the Automatic Stay shall not be modified for purposes of permitting the Claimants to attempt to recover from any party for intentional conduct or punitive damages.

2. It is expressly understood by the Claimants that (i) the automatic stay is hereby modified solely with respect to the specific Claim of the Claimants identified herein and (ii) the Claimants may seek satisfaction of the Claim only as set forth herein, and that in no event will the Debtors, their estates or any other Debtor Defendant be liable to the Claimants in any other way whatsoever with respect to the Claim.

3. In connection with this modification of the Automatic Stay, the Claimants on behalf of themselves, their heirs, representatives and assigns, do hereby fully, finally and forever waive, release and/or discharge the Debtors, their

estates, the Debtor Defendants and their respective heirs, successors, assigns, affiliates, officers, directors, shareholders, associates, parents, subsidiaries, predecessors, successors, employees, attorneys and agents from the Claim (whether prepetition unsecured, priority or administrative) and from all related actions, causes of action, suits, debts, obligations, liabilities, accounts, damages, defenses, or demands whatsoever, known or unknown, that arise from the Claim, except to the extent of the Available Coverage.

4. Claim Nos. 735, 782 and 783 are hereby deemed to be disallowed with prejudice without further order of Court, and the Debtors' claims and noticing agent is authorized and directed to remove Claim Nos. 735, 782 and 783 and any and all other claims arising from the Claim filed by or on behalf of Claimants from the Debtors' claims register; *provided, however*, that the withdrawal of any proof of claim shall not prejudice Claimants' ability to collect on the claim from any Available Coverage.

5. The agreement by the Debtors to the modification of the Automatic Stay on the terms and conditions set forth herein shall not be deemed an agreement by the Debtors to provide assistance to or to cooperate with the Claimants in any way in the efforts of the Claimants to prosecute the Claim or secure payment on the Claim under the Available Coverage.

6. Nothing contained herein shall be deemed an admission of liability or otherwise on the part of the Debtors or their insurance carriers with respect to the Claim.

7. Nothing in this Stipulation shall be deemed or construed to impact, impair, affect, determine, release, waive, modify, limit or expand: (i) the terms and conditions of any insurance policy; (ii) any of the rights, remedies, defenses to coverage and other defenses of any insurer under or in respect of any insurance policy (including the right of any insurer to disclaim coverage); or (iii) any claim or payment right of any insurer against any of the Debtors including, but not limited to, any claim or payment right for, on account of, arising from or related to any premium, deductible, reimbursement, self-insured retention or otherwise. All such rights, remedies, defenses, defenses to coverage, claims and payment rights are expressly reserved and preserved. All rights of subrogation and contribution also are expressly reserved and preserved. Furthermore, nothing in this Stipulation shall affect the existing obligations of any insurer to pay defense fees or expenses or the existing arrangements for the payment thereof.

8. Nothing in this Stipulation shall be deemed or construed to impact, impair, affect, determine, release, waive, modify or limit Claimants' rights to prosecute their claims against the Debtor Defendants in the WTCP Tort Action for the full amount of Available Coverage.

9. The modification of the Automatic Stay as set forth herein shall have no effect as to parties that are not a party to this Stipulation, and the Automatic Stay shall remain in full force and effect with respect to such parties and their claims or causes of action, if any, against the Debtors and their estates.

10. Neither this Stipulation, nor any terms contained herein shall be offered or received in evidence or in any way referred to in any legal action or

administrative proceeding among or between the parties hereto, other than as may be necessary: (a) to obtain approval of and to enforce this Stipulation; (b) to seek damages or injunctive relief in connection therewith; or (c) to prove that the Automatic Stay has been modified to allow prosecution of the Claim in accordance with the terms hereof.

11. This Stipulation may be signed in counterpart originals and delivered by facsimile, which, when fully executed, shall constitute a single original.

12. This Stipulation constitutes the entire agreement and understanding of the parties regarding the Stipulation and the subject matter thereof. The terms set forth in this Stipulation are part of a comprehensive compromise and each element is an integral aspect of the agreed settlement and is non-severable.

13. The Court shall retain jurisdiction (and the Claimants consent to such retention of jurisdiction) with respect to any disputes arising from or other actions to interpret, administer or enforce the terms and provisions of this Stipulation.

14. Each of the undersigned counsel represents that he/she is authorized to execute this Stipulation on behalf of his/her respective client.

15. This Stipulation is effective upon filing without further order of Court and shall not be modified, altered, amended or vacated without written consent of all parties hereto, subject to Court approval.

/s/ Jason Cohen

for the WTC Entity Creditors

Jason Cohen
Flemming Zulack Williamson
Zauderer LLP
One Liberty Plaza
New York, New York 10006

/s/ James I. McClammy

for the Debtors

Amelia T.R. Starr
James I. McClammy
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017

SO ORDERED

s/ **Robert E. Gerber** 2/19/2013

THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE