

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In Re:
WORLD AIRWAYS LITIGATION

Case No: CV 2004-0304
(RJD) (MDG)

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THIS DOCUMENT RELATES TO: ALL CASES

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**MEMORANDUM IN SUPPORT OF APPOINTMENT OF
ECHERUO COUNSEL, ATTORNEYS AT LAW, LLP AND
THACHER PROFFITT & WOOD LLP AS LEAD PLAINTIFFS' COUNSEL**

Plaintiffs *Anyoku, et al.* (CV 2004-0304) and *Inim, et al.* (CV 2004-0719), by and through their attorneys Echeruo, Counsel, Attorneys at Law, LLP and Thacher Proffitt & Wood LLP, submit this memorandum, pursuant to Federal Rule of Civil Procedure 23(g) and Your Honor's instructions at the April 13, 2004 conference, in support of their request that their counsel be appointed Co-Lead Counsel for all plaintiffs.

Echeruo, Counsel and Thacher Proffitt should be appointed Co-Lead Counsel because they:

- a. immediately took the lead and worked diligently to identify and investigate potential claims and class members, and filed the first complaint, which other counsel copied almost verbatim;
- b. conferred the most valuable benefits upon the class thus far, including obtaining relief for a number of class members to allow them to finally fly home, personal service upon defendant Mr. Obafemi, identifying

potential Ritetime bank accounts for recovery, and securing a U.S. Department of Transportation investigation;

- c. have extensive experience handling class actions and other high-profile complex, cross-border litigations, particularly in the aviation industry, including successful representation of the families of passengers and crew members killed in the Concorde crash; and
- d. given Thacher Proffitt's size, have the resources, personnel and technological capability to best represent the class.

I. COUNSEL'S INITIATIVES AND THE BENEFITS CONFERRED ON THE CLASS

In stark contrast to plaintiffs' counsel in later-filed, "tag-along" cases, Echeruo, Counsel and Madu Edozie & Madu P.C. have been dynamic advocates of the interests of the prospective class, including:

a. Preliminary Relief: Motions brought by Order to Show Cause by counsel have secured the return of 20 members of the prospective class to Nigeria. In addition, Defendant World Airways, Inc. ("World") is considering returning up to an additional 13 prospective class members to Nigeria. The defendants chose to return these passengers to Nigeria, despite their repeated denial of any obligation to do so, rather than oppose the motion papers filed by counsel. To secure this relief, counsel:

- (i) researched entitlement to preliminary injunctive relief, prepared affidavits and memoranda of law to support the motion for relief;
- (ii) retained an experienced immigration attorney to review the situation of prospective class members and render an opinion to the Court;

- (iii) sought and obtained an Order to Show Cause from the Honorable Raymond J. Dearie, requiring defendants to show cause why prospective class member should not be returned to Nigeria;
- (iv) were forceful advocates on behalf of prospective class members at hearings before Judge Dearie on March 10 and March 15, 2004; and
- (v) are currently working with World and Ritetime Aviation and Travel Services, Inc. (“Ritetime”) to facilitate the travel arrangements of prospective class members to Nigeria. This includes coordinating the travel dates for prospective class members, providing proof to defendants that the passengers are members of the prospective class, and arranging for the delivery of tickets to class members.

Squitieri & Fearon LLP, counsel for *James, et. al.* (CV 2004-0514), stated at the March 10, 2004 hearing that they intended to seek preliminary relief for prospective class members stranded in the United States.¹ To date, they have not sought such relief from the Court.

b. Identified Non-Obvious Theories of Liability Against World and Filed the First Complaint in this Court: Counsel first identified certain non-obvious legal theories under which World is liable to the prospective class arising from “Public Charter” Regulations (14 C.F.R. § 212 and 14 C.F.R. § 380).

Counsel was the first to file a complaint in this Court.

c. Obtained Service on All Defendants: Counsel has successfully served all defendants, including defendant Mr. Obafemi who stipulated through counsel that he would not contest service. Upon information and belief, at present Mr. Obafemi is in

¹ See Letter of Lee Squitieri, Esq. to Honorable Raymond J. Dearie, dated March 12, 2004.

Nigeria and/or not in the United States, making such service extremely valuable. Squitieri & Fearon LLP and The Thorgood Law Firm purport to have served Mr. Obafemi in Nigeria by leaving a copy of the summons and complaint at his residence, but it is unclear whether that will be deemed effective service. *See* Exhibit A to Letter from Lee Squitieri, Esq. to Honorable Marilyn Go, dated April 13, 2004.

d. Sought and Obtained U.S. Department of Transportation Investigation of Defendants: Counsel has had numerous conversations and correspondence with the U.S. Department of Transportation and was a catalyst in bringing about their ongoing investigation into the defendants.

e. Investigated Activities of Defendants: Counsel has aggressively investigated the activities of the defendants, including Ritetime and Mr. Obafemi. These investigations have led counsel to various bank accounts through which Ritetime and Mr. Obafemi apparently moved funds. Counsel has, or will shortly, serve subpoenas seeking information on these accounts, and take other steps, as necessary. In addition, counsel's investigations have revealed apparently fraudulent bank transfers by Ritetime and Mr. Obafemi in the United States and Nigeria. Counsel is continuing to investigate these claims and track funds from these fraudulent transfers.

f. Created a Database of Prospective Class Members: Counsel, working with a software engineer, has created an electronic database of prospective class members based on APIS manifest information provided by the defendants. This database, among other things, enables the prospective class to establish the number of passengers carried by defendants each month, the relevant flights, etc. and provides information on the number of times each individual was transported by defendants, which may be used to

establish numerosity for class certification. A detailed description of the electronic database is attached as Exhibit A. Counsel has also established an electronic database containing information on the approximately 250 prospective class members they represent.

At present, counsel has signed retainer agreements from more than 200 individuals, and has received written responses to a questionnaire from 50 additional persons.

g. Publicized Claims of Prospective Class Members: In light of defendants' callous conduct, public attention serves the interest of the prospective class by providing the defendants with additional incentives to provide relief to prospective class members.

- (i) Counsel, unlike counsel in any of the "tag-along" cases, has successfully generated publicity for the plight of the prospective class. This publicity includes articles in the Atlanta Journal Constitution, (Stranded Fliers Sue World Airways, March 4, 2004), Atlanta Business Chronicle, (World Airways To Return Passenger To Nigeria, March 11, 2004, World Airways To Appear In N.Y. Court In March, February 27, 2004 and DOT Investigates World Airways' Cessation Of Nigeria Flights, February 9, 2004 and several articles in the Nigerian press. Copies of the articles are attached as Exhibit B.
- (ii) Counsel has established, since January 30, 2004, a website www.waclassaction.com which provides information, updates on the litigation, and copies of all court filings to members of the prospective

class and members of the public. A copy of the website is attached as Exhibit C.

h. Retained Prominent Nigerian Law Firm: Counsel has retained the prominent Nigerian law firm of Banwo & Ighodalo² to investigate regulatory filings made by the defendants in Nigeria and to handle other factual and legal issues related to the Nigerian aspects of the case.

II. ECHERUO, COUNSEL, AND THACHER PROFFITT ARE COMPETENT AND EXPERIENCED COUNSEL

Echeruo, Counsel, Attorneys at Law, LLP and Thacher Proffitt & Wood LLP have the requisite experience and competence to serve as Co-Lead Counsel. Echeruo, Counsel's familiarity with the plaintiffs and their claims and Thacher Proffitt's breadth of experience and resources make them the best advocates for the class. If appointed, counsel will continue to work with Madu, Edozie & Madu, P.C.,³ as appropriate.

a. Echeruo, Counsel, Attorneys at Law, LLP

Mr. Echeruo, a Nigerian national, is a law graduate of the University of Nigeria and holds a Master of Laws (L.L.M.) degree and an M.B.A. from Indiana University. He

² The firm is listed in the list of recommended law firm maintained by the United States Embassy in Nigeria. A listing for the firm can also be found in the Martindale-Hubbell International Law Directory, (Volume I International Edition, 2000) Page AF121B. The firm is also listed amongst the top ten corporate/commercial and energy firms in Nigeria at pages 512 - 514 of the 2001 - 2002 Chambers Global directory of the World's Leading Lawyers.

³ Mr. Edozie is a partner in the firm of Madu, Edozie and Madu P.C. and concentrates his practice in general civil and commercial litigation and general corporate and commercial law. Prior to joining the firm, he was an associate at Herzfeld and Rubin, PC where he participated in a number of products liability cases. He has extensive experience in areas of commercial and insurance litigation, including class action litigation. While at Herzfeld & Rubin, Mr. Edozie also worked in the Tort Litigation group litigating in the areas involving mass tort, multi district litigation and class action lawsuits. Currently Pfizer has retained Mr. Edozie in its defense of a class action lawsuit venued in the Southern District of New York arising out of allegations against Pfizer for performing unauthorized medical experiments on Nigerian children in Kano, Nigeria. Mr. Edozie has been licensed to practiced law in Nigeria since 1985 and has a Master of Laws (L.L.M.) degree from Boston University. He was the first president of the Nigerian Lawyers' Association. He was admitted to the New York bar in 1991. He is admitted to practice in the Eastern and Southern Districts of New York.

was admitted to the New York bar in 1993 and has practiced law for over 11 years. Prior to founding Echeruo, Counsel, Attorneys at Law, LLP, he practiced law at Thacher Proffitt & Wood. Mr. Echeruo has represented clients in complex litigation. For instance, he obtained summary judgment for one of the largest travel companies in the United States in a significant litigation. *See Doe, et al. v. Liberty Travel, et al.*, 661 N.Y.S.2d 690 (App. Div. 4th Dep't 1997). He is admitted to practice in the Eastern, Southern and Northern Districts of New York. Prior to Thacher Proffitt's notice of appearance herein, he drafted, in association with John Edozie, Esq., all of plaintiffs' submissions in *Anyoku* and *Inim*.

b. Thacher Proffitt & Wood LLP

Thacher Proffitt & Wood LLP is a full-service law firm headquartered in New York City. The Firm, which was founded in 1848 and which today has more than 200 lawyers, has a broad business, commercial and international practice, including litigation and dispute resolution, international arbitration, aviation, maritime and insurance, technology and intellectual property, business reorganization and bankruptcy, banking, real estate, structured finance, corporate, employment, compensation and benefits law, trusts and estates, environmental law and taxation.

Thacher Proffitt's Litigation and Dispute Resolution Group has an expansive practice ranging from state and federal cases throughout the United States, to international and domestic arbitrations, mediations and proceedings before administrative agencies. The nine partners, four counsel and twenty-five associates in the Litigation and Dispute Resolution Group represent a varied base of clients, including aviation and shipping concerns, financial institutions, corporations of all sizes, insurance companies,

foreign and local governments, media groups, governmental agencies and private individuals.

Thacher Proffitt has a global legal practice, and the litigators in the International Practice Group handle precedent-setting commercial arbitration and litigation throughout the world. The International Practice Group, comprised of attorneys from each of our main departments, assists clients in a variety of matters in virtually every business center worldwide. A Firm brochure is attached as Exhibit D and a representative list of commercial and international litigations, including aviation matters, is attached as Exhibit E.

The Firm's international aircraft litigation practice draws upon its traditional strength in handling complex breach of contract and tort matters from commencement of suit through judgment or settlement. Most recently, Thacher Proffitt successfully represented the families of both passengers and crew members for claims arising from the crash of the Concorde on July 25, 2000 outside of Paris, France, one of the most significant and highest-profile airline disasters in recent memory. *See Kruse v. Continental Airlines, Inc.* (Harris Co., Texas 2002); *Schnitter v. Air France S.A.* (S.D.N.Y. 2001). After filing these suits, we successfully negotiated favorable settlements in face-to-face meetings in Paris, London, New York and Houston with the London-based insurers for the families of both passengers and crew members. In addition, we have a particular entrée with the aviation insurance industry, who generally guide such settlement negotiations, given the Firm's century-old relationship with the Lloyd's of London insurance market.

Joel Harris, Esq. and John P. Doherty, Esq., who are core members of Thacher Proffitt's aircraft litigation practice and who handled the Concorde litigations, will have principal responsibility for this case.

Joel B. Harris is the former Chairman of the Litigation and Dispute Resolution Group at Thacher Proffitt. Mr. Harris graduated with honors from Harvard Law School and received an LL.M. degree from the University of London. Prior to joining Thacher Proffitt, he was an Assistant U.S. Attorney, Southern District of New York and a Partner at Weil, Gotshal & Manges. Mr. Harris specializes in complex commercial and international litigation and arbitration. He regularly represents foreign and domestic clients in large international cases, both in U.S. and foreign courts, as well as in international arbitrations – – before ICC, AAA, ICSID and ad hoc panels, around the world. For example, *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409 (1986); *Minzer v. Keegan*, 218 F. 3d 144 (2d Cir. 2000), *cert. den.*, 531 U.S. 1192 (2001); *F.D.I.C. v. Home Sav. Bank*, 1993 WL 41818 (E.D.N.Y. 1993); *Kahn v. MSB Bancorp, Inc.*, 1998 WL 409335 (Del. Ch. July 16, 1998), *aff'd*, 734 A2d 158 (Del. Sup. Ct. 1999); *BBC Capital Market, Inc. v. Carver Bancorp, Inc.*, C.A. No. 17743 (Del. Ch. Feb. 16, 2000). He is Past Chair of the International Law & Practice Section, New York State Bar Association, and has chaired various bar association committees on international dispute resolution. Mr. Harris has conducted numerous jury and non-jury trials in federal and state courts, and argued many appeals. He is admitted to practice in the State of New York, the U.S. Supreme Court, the U.S. Courts of Appeal for the Second and Third Circuits, the Eastern and Southern Districts of New York, and has appeared *pro hac vice*

in numerous federal district courts around the country. A frequent speaker on international and domestic litigation and arbitration, Mr. Harris is also the author of numerous law review articles, lecture materials and chapters of litigation and trial handbooks.

John P. Doherty graduated from Fordham University School of Law, where he was a Stein Scholar for Ethics and Public Interest Law, and the University of Notre Dame. Prior to joining Thacher Proffitt, he was an associate at Donovan Leisure Newton & Irvine. Mr. Doherty has broad experience in complex domestic and international matters, including litigation and arbitration involving commercial disputes, contracts, torts, insurance, and aviation. For example, *Commercial Union Assur. Co., PLC v. Oak Park Marina, Inc.*, 198 F.3d 55 (2nd Cir. 1999); *Merck & Co., Inc. v. Tecnoquímicas S.A.*, 2001 WL 963977 (S.D.N.Y. Aug 22, 2001); *In re Apponline.Com, Inc.*, 284 B.R. 181 (E.D.N.Y. Bankr. 2002). He has conducted trials and appeals in state and federal court and, for instance, he was part of a team that successfully defended a bankruptcy trustee against breach of contract and breach of fiduciary duty claims by creditors. *See 105 East 2nd Street Associates v. Schachter*, (S.D.N.Y. Bankr. 1997). He is an adjunct professor at St. Francis College in Brooklyn, New York, where he teaches a seminar class entitled “Introduction to Law.” He is admitted to practice in the State of New York and in the Eastern and Southern Districts of New York.

Thacher Proffitt’s lawyers have extensive experience handling in class action lawsuits. A representative sample of Mr. Harris and Mr. Doherty’s specific experience includes: 1. *Gordon Partners v. Blumenthal* (S.D.N.Y. 2002) and *In re NTL, Inc. Securities Litigation* (S.D.N.Y. 2002) (Mr. Harris represents certain members of the class

in a pending class action lawsuit); 2. *Minzer, et al. v. Keegan, et al.* (2nd Cir; U.S. Sup. Ct. 2000) (Mr. Harris successfully defended a bank and its board in class action suit seeking to enjoin \$300 million acquisition on grounds of alleged proxy rule violations); 3. *White v. Home Federal Savings Bank* (N.D. Ill. 1999) (Mr. Harris and Mr. Doherty negotiated voluntary dismissal of a class action lawsuit, without any payment by client bank); 4. *Kadison v. Long Island Savings Bank, FSB* (2nd Dept. 1996) (Mr. Harris obtained the dismissal of the complaint for lack of subject matter jurisdiction, which was affirmed by the Appellate Division, Second Department, in New York); 5. *Adamson v. Alliance Mortg. Co.* (4th Cir. 1988) (Mr. Harris obtained the dismissal of the complaint, which was affirmed by the U.S. Court of Appeals for the 4th Circuit); 6. *Balsam v. Eastchester Financial Corp.* (E.D.N.Y. 1991); 7. *Rosenfield v. Integrated Container Service Industries Corp.* (S.D.N.Y. 1970).

* * *

In contrast, Squitieri & Fearon and Thorgood have not shown that they should be appointed lead counsel. While we do not doubt their competence, based upon their submission to the Court, they have not demonstrated any experience in the subject matter of this lawsuit. Squitieri & Fearon appear to be almost exclusively a securities litigation firm. See Exhibit C to Letter from Mr. Squitieri to Honorable Marilyn Go, dated April 13, 2004 (10 of 12 cases referred to are securities cases); see also <http://nysecuritieslaw.leadcounsel.com>. Thorgood did not submit any details of its practice areas or expertise, but based upon its website, it is a predominantly a tax law firm, and does not appear to have any plaintiffs, aviation or class action experience. See www.thorgoodlaw.com.

Moreover, Squitieri & Fearon and Thorgood arrived late on the scene and have simply piggybacked on our efforts. Most tellingly, they filed a complaint that was virtually a word-for-word copy of the *Anyoku* complaint, including the claims relating to Public Charter regulations. For instance, *Anyoku* Complaint ¶ 77 and *James* Complaint ¶ 55 both read:

World Airways' conduct is in violation of 49 U.S.C. S 41101, 49 U.S.C. S 41102, 49 U.S.C. S 41712, 14 C.F.R 212 and 14 C.F.R 380, which, among other things, mandates that "[c] arrier operating a U.S.-originating passenger charter shall be responsible to return to his or her point of origin any passenger who purchased round trip transportation on that charter and who was transported by that carrier on his or her outbound flight..."

In addition, Squitieri & Fearon LLP and Thorgood (which together have six lawyers) simply cannot offer the size, resources and experience of Thacher Proffitt, which is a further key consideration in this large, possibly complex class action.

III. CONCLUSION

For the foregoing reasons, the Court should appoint Echeruo, Counsel, Attorneys at Law, LLP and Thacher Proffitt & Wood LLP as Co-Lead Counsel for all plaintiffs.

Dated: New York, New York
April 20, 2004

Respectfully Submitted,

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