

\$318,498,136, to reflect Northwest's ability to delay payment on the put for up to 6 months. Although the Plan's option is exercisable at anytime, unlike a normal option, Northwest does not have to immediately settle. Northwest has from 30 to 180 days to settle the option. The 4.48% discount represents what Eclat used for Pinnacle's pre-tax cost of debt (9.6%) adjusted for a six-month period. Fiduciary Counselors assumed that since Northwest could take up to 180 days to settle the option that it would. Although Eclat cannot know what market conditions might be like during this settlement period, this rate also exceeds the Plan's assumed asset earnings rate.

The value was then increased to reflect the value of the put. The Put Option is exercisable at any time by the Plan. Eclat used the Black-Scholes option-pricing model to determine the value of the Put Option. Using the Black-Scholes American option pricing model, Eclat determined the value of the Put Option to be \$20,680,684.

The Independent Fiduciary's Determinations

Fiduciary Counselors notes that under section 404(a)(1) of ERISA, a fiduciary must discharge its duties with respect to a plan solely in the interest of plan participants and beneficiaries. In addition, a fiduciary must act for the exclusive purpose of providing benefits to participants and beneficiaries; must act prudently; and must diversify the investment of plan assets to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. For the reasons set forth below, the Independent Fiduciary has concluded that it is prudent for the Plans to accept the Contribution and that the Contribution is in the interest of the Plans and their participants and beneficiaries:

- Participants and beneficiaries of the Plans stand to benefit from an IPO of the Pinnacle Stock. The ASA provides a range of revenues to be paid by Northwest to Pinnacle, and Eclat valued the Company based on the minimum revenues, which would result from the ASA. If Pinnacle in fact achieves the maximum operating margin provided under the ASA, Eclat estimated that the value of Pinnacle would be approximately 20 percent greater than the value used for purposes of the contribution.

- In valuing Pinnacle Stock, the Independent Fiduciary specifically applied a 15% liquidity discount and a 5% discount to take into account that, for some period, the Plans would be a minority shareholder.

- The Independent Fiduciary negotiated the terms of the Put Option which provide downside protection by permitting the Plans to sell the Pinnacle Stock back to Northwest for the greater of the original value at which it was credited to the funding standard account or its fair market value at the time it is sold back to Northwest.

Transfer restrictions on Pinnacle Stock held by the Plans are reasonable in light of the Put Option. Specifically, the Independent Fiduciary negotiated a limited period for the transfer restrictions (until July 1, 2006) and the elimination of such restrictions upon the occurrence of an Early Termination Event.

- The Independent Fiduciary negotiated voting and governance rights to be accorded to the Plans that protect the interests of the Plans (*e.g.* protect the plans from adverse changes in the ASA, in Pinnacle's capital structure, *etc.*).

- Registration rights and Plan director's rights preserve the value of the Pinnacle Stock while held by the Plans.

- The Independent Fiduciary retained an independent, expert airlines valuation firm, Eclat, to provide valuation services. Eclat determined that Pinnacle and Northwest are healthy companies, even in light of current economic conditions in the airline industry.

- The terms of the ASA and related agreements are more favorable to Pinnacle than an arm's length transaction between unrelated parties, and substantially determine and enhance the value of Pinnacle. The requirement that the director nominated by the Plans approve any changes in the ASA will ensure that any modification of those terms is done only if the changes, taken as a whole, are favorable to Pinnacle and its shareholders, including the Plans.

- Participants and beneficiaries of the Plans benefit from Northwest's improved liquidity and continued viability and competitiveness in the current economic environment.

- The Independent Fiduciary considered, and determined, that the Plans' holding of Pinnacle Stock was consistent with the Plans' investment guidelines and would not impair the Plans' diversification. The Pension Investment Committee informed the Independent Fiduciary that the holding of Pinnacle Stock constituting the Initial Contribution to the Plans would not and was not expected in the foreseeable future to impair the liquidity of the Plans and that the Plans would be able to pay benefits and expenses when due.

- Based on the Eclat and AIC valuations, the Independent Fiduciary determined that the contribution of 1,938,000 shares of Pinnacle Stock should be valued at \$43,821,894 as of January 15, 2003, the date the contribution occurred.

Duties of the Independent Fiduciary

The Department notes that the appointment of an independent fiduciary to represent the interests of the Plans with respect to the transactions that are the subject of the exemption request was a material factor in its determination to propose exemptive relief. In response to the commenters' concerns about the role of the independent fiduciary, the Department believes that it would be helpful to provide its views on the responsibilities of an independent fiduciary in connection with the in-kind contribution of property to an employee benefit plan.

As noted in the Department's Interpretive Bulletin, 29 CFR 2509.94-3(d) (59 FR 66736, December 28 1994), apart from consideration of the prohibited transaction provisions, plan fiduciaries must determine that acceptance of an in-kind contribution is consistent with ERISA's general standards of fiduciary conduct. It is the view of the Department that acceptance of an in-kind contribution is a fiduciary act subject to section 404 of ERISA. In this regard, section 404(a)(1)(A) and (B) of ERISA requires that fiduciaries discharge their duties to a plan solely in the interests of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable administrative expenses, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In addition, section 404(a)(1)(C) requires that fiduciaries diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. Accordingly, the fiduciaries of a plan must act "prudently," "solely in the interest" of the plan's participants and beneficiaries, and with a view to the need to diversify plan assets when deciding whether to accept an in-kind contribution. If accepting an in-kind contribution is not "prudent," not "solely in the interest" of the participants and beneficiaries of the plan, or would result in an improper lack of diversification of plan assets, the responsible fiduciaries of the plan