

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

| | | |
|--|---|----------------------------|
| ----- | X | |
| | : | |
| In re: | : | Chapter 11 |
| | : | |
| Republic Airways Holdings Inc., <i>et al.</i> , ¹ | : | Case No. 16-10429 (SHL) |
| | : | |
| Debtors. | : | (Jointly Administered) |
| | : | |
| ----- | X | |
| | : | |
| Ad Hoc Committee of Equity Holders | : | |
| of Republic Airways Holdings Inc., | : | |
| Appellant, | : | |
| | : | Case No. 16-cv-03315 (KBF) |
| v. | : | |
| | : | [FILED UNDER SEAL] |
| Republic Airways Holdings Inc., <i>et al.</i> , | : | |
| Appellees. | : | |
| ----- | X | |

**APPELLANT AD HOC COMMITTEE OF EQUITY HOLDERS OF
REPUBLIC AIRWAYS HOLDINGS INC.'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD AND STATEMENT OF ISSUES
TO BE PRESENTED ON APPEAL**

The Ad Hoc Committee of Equity Holders of Republic Airways Holdings Inc. (the "Ad Hoc Committee"), the appellant in this appeal (the "Appeal"), hereby designates pursuant to Fed. R. Bankr. P. 8009 the following items to be included in the record on Appeal of the "*Order Pursuant to 11 U.S.C. §§ 363(b), 363(m) and 365(a) of the Bankruptcy Code and Bankruptcy Rules 6004, 6006 and 9019 for Authorization to (I) Assume Codeshare and Related Agreements, as Amended, with Delta Air Lines, Inc., (II) Lease Certain Property of the Estate and (III) Settle Certain Claims Between Delta Air Lines, Inc. and the Debtors*" (the "Order") dated and entered on May 3, 2016 [Dkt. No. 506] (as amended by order

¹ The Debtors in the chapter 11 cases below are the following entities: Republic Airways Holdings Inc.; Republic Airways Services, Inc.; Republic Airline Inc.; Shuttle America Corporation; Midwest Air Group, Inc.; Midwest Airlines, Inc.; and Skyway Airlines, Inc. The Debtors' employer tax identification numbers and addresses are set forth in their respective chapter 11 petitions.

dated May 5, 2016 [Dkt. No. 515]) of the United States Bankruptcy Court for the Southern District of New York, and the related "*Modified Bench Ruling Under Seal on Debtors' Motions to (I) Assume Codeshare and Related Agreements, as Amended, With Delta Air Lines, Inc., Lease Certain Property of the Estate, and Settlement Claims Between Delta Air Lines, Inc. and the Debtors, and (II) Authorize DIP Financing*" (the "Bench Ruling") dated May 3, 2016, and entered on May 4, 2016 [Dkt. No. 512]:

Docket Entries

| No. | Date Filed | Dkt. No. | Description |
|-----|------------|----------|---|
| 1 | 2/25/2016 | 1 | Chapter 11 Voluntary Petition for Non-Individual |
| 2 | 2/25/2016 | 4 | Declaration of Bryan K. Bedford Pursuant to Local Bankruptcy Rule 1007-2 |
| 3 | 3/24/2016 | 244 | Debtors' Motion Pursuant to Sections 363(b), 363(m) and 365(a) of the Bankruptcy Code and Bankruptcy Rules 6004, 6004 and 9019 for Authorization to (I) Assume Codeshare and Related Agreements, As Amended, with Delta Air Lines, Inc., (II) Lease Certain Property of the Estate and (III) Settle Claims Between Delta Air Lines, Inc. and the Debtors [<i>Unredacted Version Filed Under Seal</i>] |
| 4 | 4/14/2016 | 360 | Objection to Motion Objection of Ad Hoc Equity Committee to Debtors Motion Pursuant to Sections 363(b), 363(m), and 365(a) of the Bankruptcy Code and Bankruptcy Rules 6004, 6006 and 9019 For Authorization to (I) Assume Codeshare and Related Agreements, as Amended, with Delta Air Lines, Inc., (II) Lease Certain Property of the Estate and (III) Settle Claims Between Delta Air Lines, Inc. and the Debtors [<i>Unredacted Version Filed Under Seal</i>] |
| 5 | 4/14/2016 | 361 | Declaration of Lawrence V. Gelber in Support of Ad Hoc Committee's Objection [<i>Unredacted Version Filed Under Seal</i>] |
| 6 | 4/18/2016 | 381 | Debtors' Omnibus Response to Objections to the Debtors' Motion Pursuant to Sections 363(b), 363(m), and 365(a) of the Bankruptcy Code and Bankruptcy Rules 6004, 6006 and 9019 for Authorization to (I) Assume Codeshare and Related Agreements, as Amended, with Delta Air Lines, Inc., (II) Lease Certain Property of the Estate and (III) Settle Claims Between Delta Air Lines, Inc. and the Debtors [<i>Unredacted Version Filed Under Seal</i>] |

| No. | Date Filed | Dkt. No. | Description |
|-----|------------|----------|---|
| 7 | 4/18/2016 | 382 | Declaration of John E. Luth in Support of Debtors' Motions [<i>Unredacted Version Filed Under Seal</i>] |
| 8 | 4/18/2016 | 383 | Declaration of Joseph P. Allman in Support of Debtors' Motions [<i>Unredacted Version Filed Under Seal</i>] |
| 9 | 4/18/2016 | 384 | Response To the Objections of the Ad Hoc Equity Committee and the Unsecured Creditors' Committee to Debtors' Motions (I) to assume Codeshare and Related Agreements, as Amended, Lease Certain Property, and Settle Claims Between Delta Airlines, Inc. and the Debtors and (II) To Authorize Debtors to Obtain Post-Petition Financing [<i>Unredacted Version Filed Under Seal</i>] |
| 10 | 4/20/2016 | 400 | Debtors' Omnibus Response to Objections to the Debtors' Motion Pursuant to Sections 363(b), 363(m), and 365(a) of the Bankruptcy Code and Bankruptcy Rules 6004, 6006 and 9019 for Authorization to (I) Assume Codeshare and Related Agreements, as Amended, with Delta Air Lines, Inc., (II) Lease Certain Property of the Estate and (III) Settle Claims between Delta Air Lines, Inc., and the Debtors [<i>Unredacted Version Filed Under Seal</i>] |
| 11 | 5/2/2016 | 493 | Order Signed On 5/2/2016, Pursuant to U.S.C. § 107(b) and Fed. R. Bankr. P. 9018 Authorizing The Filing of Certain Information Under Seal In Connection With Debtors' Motion Pursuant to Sections 363(b), 363(m) and 365(a) of the Bankruptcy Code and Bankruptcy Rules 6004, 6004 and 9019 for Authorization to (I) Assume Codeshare and Related Agreements, As Amended, with Delta Air Lines, Inc., (II) Lease Certain Property of the Estate and (III) Settle Claims Between Delta Air Lines, Inc. and the Debtors |
| 12 | 5/3/2016 | 501 | Modified Bench Ruling Under Seal On Debtors' Motions To (I) Assume Codeshare And Related Agreements, As Amended, With Delta Air Lines, Inc., Lease Certain Property Of The Estate, And Settle Claims Between Delta Air Lines, Inc. And The Debtors, And (II) Authorize DIP Financing [<i>Unredacted Version Filed Under Seal</i>] |
| 13 | 5/3/2016 | 506 | Order signed on 5/3/2016 For Authorization to (I) Assume Codeshare and Related Agreements, as Amended, With Delta Air Lines, Inc., (II) Lease Certain Property of the Estate and (III) Settle Certain Claims Between Delta Air Lines, Inc. and the Debtors |

| No. | Date Filed | Dkt. No. | Description |
|-----|------------|----------|--|
| 14 | 5/3/2016 | 508 | Notice of Appeal of Order Pursuant to 11 U.S.C. §§ 363(b), 363(m) and 365(a) of the Bankruptcy Code and Bankruptcy Rules 6004, 6006 and 9019 for Authorization to (I) Assume Codeshare and Related Agreements, as Amended, with Delta Air Lines, Inc., (II) Lease Certain Property of the Estate and (III) Settle Certain Claims Between Delta Air Lines, Inc. and the Debtors |
| 15 | 5/4/2016 | 512 | Modified Bench Ruling Under Seal On Debtors' Motions To (I) Assume Codeshare And Related Agreements, As Amended, With Delta Air Lines, Inc., Lease Certain Property Of The Estate, And Settle Claims Between Delta Air Lines, Inc. And The Debtors, And (II) Authorize DIP Financing <i>[Redacted Version]</i> |
| 16 | 5/5/2016 | 515 | Order Amending Order Signed On 5/5/2016, For Authorization to (I) Assume Codeshare And Related Agreements, As Amended, With Delta Air Lines, Inc., (II) Lease Certain Property Of The Estate And (III) Settle Certain Claims Between Delta Air Lines, Inc. And The Debtors |

Transcripts

| No. | Date Filed | Dkt. No. | Description |
|-----|------------|----------|--|
| 17 | 4/25/2016 | 482 | Transcript regarding Hearing Held on 04/21/16 at 9:28 am RE: Doc. #245 (Seal) Motion to Seal / Debtors' Motion for Entry of Order Pursuant to 11 U.S.C. Section 107(b) and Fed. R. Bankr. P.9018 Authorizing the Filing of Certain Information Under Seal in Connection with Debtors' Motion Pursuant to Sections 363(b), 363(m), and 365(a) of the Bankruptcy Code and Bankruptcy Rules 6004, 6006 and 9019 for Authorization to (I) Assume codeshare and Related Agreements, as Amended, with Delta Air Lines, Inc., (II) Lease Certain Property of the Estate and (III) Settle Claims Between Delta Air Lines, Inc. and the Debtors et al. <i>[Unredacted Version Filed Under Seal]</i> |
| 18 | 5/4/2016 | 513 | Transcript regarding Hearing Held on 4/29/2016 11:35AM RE: Redacted Transcript of Hearing: Bench Ruling Under Seal. <i>[Unredacted Version Filed Under Seal]</i> |

Trial Exhibits

| No. | Exh. No. | Description |
|-----|----------|---|
| 19 | 1 | [REDACTED] (Confidential) |
| 20 | 1-A | [REDACTED] (Confidential) |
| 21 | 1-B | [REDACTED] (Confidential) |
| 22 | 1-C | [REDACTED] (Confidential) |
| 23 | 1-D | [REDACTED] (Confidential) |
| 24 | 1-E | [REDACTED] (Confidential) |
| 25 | 1-F | [REDACTED] (Confidential) |
| 26 | 1-G | [REDACTED] (Confidential) |
| 27 | 1-H | Proposed Amendment [REDACTED] to Delta Connection Agreement, [REDACTED] (Confidential) |
| 28 | 2 | [REDACTED] (Confidential) |
| 29 | 2-A | [REDACTED] (Confidential) |
| 30 | 2-B | [REDACTED] (Confidential) |
| 31 | 2-C | [REDACTED] (Confidential) |
| 32 | 2-D | [REDACTED] (Confidential) |
| 33 | 2-E | [REDACTED] (Confidential) |
| 34 | 2-F | [REDACTED] (Confidential) |
| 35 | 2-G | [REDACTED] (Confidential) |
| 36 | 2-H | [REDACTED] (Confidential) |
| 37 | 2-I | [REDACTED] (Confidential) |
| 38 | 2-J | [REDACTED] (Confidential) |

| No. | Exh. No. | Description |
|-----|----------|--|
| 39 | 2-K | [REDACTED] (Confidential) |
| 40 | 2-L | [REDACTED] (Confidential) |
| 41 | 2-M | Proposed Amendment [REDACTED] to Delta Connection Agreement, [REDACTED] (Confidential) |
| 42 | 3 | [REDACTED] (Confidential) |
| 43 | 4 | Amended and Restated LaGuardia Slot Agreement, [REDACTED] (Confidential) |
| 44 | 5 | LaGuardia Slot Agreement, [REDACTED] (Confidential) |
| 45 | 6 | Amendment to Connection Carrier Handling Agreement, [REDACTED] (Confidential) |
| 46 | 7 | Current Report (Form 8-K), Republic Airways Holdings Inc. (filed April 5, 2016) (Debtors' Letter to Office of the United States Trustee in Opposition to Appointment of Equity Committee, dated April 4, 2016) |
| 47 | 8 | Excerpts of Annual Report (Form 10-K), Republic Airways Holdings Inc. (filed March 11, 2016) |
| 48 | 9 | Current Report (Form 8-K), Republic Airways Holdings Inc. (filed Nov. 4, 2015), at Ex. 99.1 (Press Release) |
| 49 | 10 | Excerpts of Annual Report (Form 10-K), Delta Air Lines, Inc. (filed February 15, 2016) |
| 50 | 11 | Excerpts of Annual Report (Form 10-K), Republic Airways Holdings Inc. (filed February 27, 2015) |
| 51 | 12 | Current Report (Form 8-K), Republic Airways Holdings Inc. (filed October 27, 2015) |
| 52 | 13 | Current Report (Form 8-K), Republic Airways Holdings Inc. (filed November 27, 2015) |
| 53 | 14 | Quarterly Report (Form 10-Q), Republic Airways Holdings Inc. (filed November 5, 2015) |

| No. | Exh. No. | Description |
|-----|----------|---|
| 54 | 15 | Current Report (Form 8-K), Republic Airways Holdings Inc. (filed February 26, 2016) |
| 55 | 16 | Complaint, <i>Delta Air Lines, Inc. v. Republic Airways Holdings, Inc. and Shuttle America Corp.</i> , (Case No. 2015-cv-03839) |
| 56 | 17 | Answer and Counterclaim of Defendant Shuttle America Corporation, <i>Delta Air Lines, Inc. v. Republic Airways Holdings, Inc. and Shuttle America Corporation</i> (Case No. 2015-cv-03839) |
| 57 | 18 | Memorandum of Law in Support of Motion to Dismiss, <i>Delta Air Lines, Inc. v. Republic Airways Holdings Inc. and Shuttle America Corp.</i> (Case No. 15-03839) [Dkt. No. 15] (N.D. Ga., filed Nov. 18, 2015) |
| 58 | 19 | [REDACTED] (Confidential) |
| 59 | 20 | [REDACTED] (Confidential) |
| 60 | 21 | [REDACTED] (Confidential) |
| 61 | 22 | [REDACTED] (Confidential) |
| 62 | 23 | [REDACTED] (Confidential) |
| 63 | 24 | [REDACTED] (Confidential) |
| 64 | 25 | [REDACTED] (Confidential) |
| 65 | 26 | [REDACTED] (Confidential) |
| 66 | 27 | [REDACTED] (Confidential) |
| 67 | 28 | [REDACTED] (Confidential) |
| 68 | 42 | [REDACTED] (Confidential) |
| 69 | 43 | [REDACTED] (Confidential) |
| 70 | 44 | [REDACTED] (Confidential) |

| No. | Exh. No. | Description |
|-----|----------|---------------------------|
| 71 | 45 | [REDACTED] (Confidential) |
| 72 | 46 | [REDACTED] (Confidential) |
| 73 | 47 | [REDACTED] (Confidential) |
| 74 | 48 | [REDACTED] (Confidential) |
| 75 | 49 | [REDACTED] (Confidential) |
| 76 | 50 | [REDACTED] (Confidential) |

The Appellant respectfully reserves the right to supplement and amend the record on Appeal designated herein.

Statement of Issues to Be Presented on Appeal

1. Did the lower court err, as a matter of law, by authorizing Republic Airways Holdings, Inc. and Shuttle America Corp. (together, the "Debtors") to grant an allowed pre-petition claim to Delta Air Lines, Inc. ("Delta") pursuant to 11 U.S.C. §§ 363, 365 and Fed. R. Bankr. P. 9019 as consideration for, among other things, Delta's post-petition agreement to modify certain executory contracts when applicable law does not expressly permit a debtor to create a pre-petition allowed claim in exchange for post-petition contractual modifications?

2. Did the lower court err, as a matter of law, in evaluating the transaction as a single global litigation settlement despite the fact that a worksheet prepared by the Debtors summarizing information provided by Delta, a "most favored nations" clause inuring to Delta's benefit, and other evidence undeniably showed that [REDACTED] of the \$170 million prepetition claim granted to Delta was admittedly in consideration for post-petition contract modifications (as opposed to settlement of prepetition litigation claims)?

3. Did the lower court err by approving a settlement between the Debtors and Delta where [REDACTED] of the liability alleged by Delta lacked a credible evidentiary basis when such alleged liability was on account of lost profits to be realized by Delta during a five year "extension period," when the uncontroverted evidence shows that (a) Delta purported to unilaterally extend the term of the applicable agreements only 44 days after the Debtors advised Delta that they would be unable to perform its obligations under such agreements; (b) the applicable agreements contained no right in favor of Delta to unilaterally extend the term of such agreements; and (c) the Debtors never publicly disclosed in any filing with the Securities and Exchange Commission (the "SEC") that its potential liability to Delta was in the range of "hundreds of millions of dollars" or in excess of \$1 billion?

4. Did the lower court err by finding that the Debtors and Delta acted in good faith in connection with the settlement when [REDACTED] of the alleged liability was based on (a) Delta's

purported unilateral extension of the applicable agreements only 44 days after the Debtors advised Delta that they would be unable to perform its obligations thereunder and (b) the applicable agreements contained no right for a unilateral extension by Delta?

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Dated: May 17, 2016
New York, New York

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