

Objection Deadline: July 18, 2016 at 4:00 p.m. (Eastern Time)

Bruce R. Zirinsky
Sharon J. Richardson
Gary D. Ticoll
ZIRINSKY LAW PARTNERS PLLC
375 Park Avenue, Suite 2607
New York, New York 10152
(212) 763-0192

Christopher K. Kiplok
Gregory C. Farrell
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6000

*Attorneys for the Debtors
and Debtors in Possession*

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

-----X

In re : **Chapter 11 Case No.**
REPUBLIC AIRWAYS HOLDINGS INC., et al., : **16-10429 (SHL)**
Debtors.¹ : **(Jointly Administered)**

-----X

**NOTICE OF FILING OF DEBTORS' RECLAMATION
NOTICE UNDER ORDER PURSUANT TO 11 U.S.C. §§ 105 & 546(c)
ESTABLISHING AND IMPLEMENTING EXCLUSIVE AND GLOBAL
PROCEDURES FOR TREATMENT OF RECLAMATION CLAIMS**

PLEASE TAKE NOTICE that, in accordance with the Order Pursuant to 11
U.S.C. §§ 105 & 546(c) Establishing and Implementing Exclusive and Global Procedures for
Treatment of Reclamation Claims (ECF No. 50) (the "Reclamation Procedures Order"),

-
1. The Debtors in these chapter 11 cases 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.

Republic Airways Holdings Inc. (“RAH”), and certain of its wholly-owned direct and indirect subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively with RAH, “Republic” or the “Debtors”), have filed the annexed notice (the “Reclamation Notice”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Reclamation Notice (the “Objections”) must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, and shall be filed with the Bankruptcy Court (a) by registered users of the Bankruptcy Court’s case filing system, electronically in accordance with General Order M-399 (which can be found at <http://nysb.uscourts.gov>) and (b) by all other parties in interest, on a 3.5 inch disk, in text- searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served on (i) the attorneys for the Debtors, Zirinsky Law Partners PLLC, 375 Park Avenue, Suite 2607, New York, New York 10152 (Attn: Bruce R. Zirinsky, Esq. (bzirinsky@zirinskylaw.com), Sharon J. Richardson, Esq. (srichardson@zirinskylaw.com), and Gary D. Ticoll, Esq. (gticoll@zirinskylaw.com)) and Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, New York 10004 (Attn: Christopher K. Kiplok, Esq. (chris.kiplok@hugheshubbard.com) and Gabrielle Glemann, Esq. (gabrielle.glemann@hugheshubbard.com)), (ii) the Office of the United States Trustee, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: Brian Masumoto, Esq.), (iii) counsel to the Official Committee of Unsecured Creditors, Morrison & Foerster LLP, 250 West 55th Street, New York, New York 10019 (Attn: Brett H. Miller, Esq. (bmiller@mofo.com), Todd M. Goren, Esq. (tgoren@mofo.com), and Erica J. Richards, Esq. (erichards@mofo.com)),

(iv) the Ad Hoc Committee of Equity Holders of Republic Airways Holdings Inc., Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022 (Attn: Adam C. Harris, Esq. (adam.harris@srz.com), Lawrence V. Gelber, Esq. (lawrence.gelber@srz.com), and David M. Hillman, Esq. (david.hillman@srz.com)), and (v) all entities that requested notice in these chapter 11 cases under Fed. R. Bankr. P. 2002, so as to be received no later than **July 18, 2016 at 4:00 p.m. (Eastern Time)** (the “Objection Deadline”).

Dated: New York, New York
June 28, 2016

/s/ Gary D. Ticoll
Bruce R. Zirinsky
Sharon J. Richardson
Gary D. Ticoll
ZIRINSKY LAW PARTNERS PLLC
375 Park Avenue, Suite 2607
New York, New York 10152
(212) 763-0192
bzirinsky@zirinskylaw.com
srichardson@zirinskylaw.com
gticoll@zirinskylaw.com

Christopher K. Kiplok
Gregory C. Farrell
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6000
chris.kiplok@hugheshubbard.com
gregory.farrell@hugheshubbard.com

Attorneys for the Debtors and Debtors in Possession

Objection Deadline: July 18, 2016 at 4:00 p.m. (Eastern Time)

Bruce R. Zirinsky
Sharon J. Richardson
Gary D. Ticoll
ZIRINSKY LAW PARTNERS PLLC
375 Park Avenue, Suite 2607
New York, New York 10152
(212) 763-0192

Christopher K. Kiplok
Gregory C. Farrell
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6000

*Attorneys for the Debtors
and Debtors in Possession*

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

-----X

In re : **Chapter 11 Case No.**
REPUBLIC AIRWAYS HOLDINGS INC., et al., : **16-10429 (SHL)**
Debtors.¹ : **(Jointly Administered)**

-----X

**DEBTORS' RECLAMATION NOTICE UNDER THE ORDER PURSUANT TO 11
U.S.C. §§ 105 & 546(c) ESTABLISHING AND IMPLEMENTING EXCLUSIVE
AND GLOBAL PROCEDURES FOR TREATMENT OF RECLAMATION CLAIMS**

TO THE HONORABLE SEAN H. LANE,
UNITED STATES BANKRUPTCY JUDGE:

Republic Airways Holdings Inc. ("RAH"), and certain of its wholly-owned direct
and indirect subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11

1. The Debtors in these chapter 11 cases 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.

cases (collectively with RAH, “Republic” or the “Debtors”), in accordance with the Order Pursuant to 11 U.S.C. §§ 105(a) & 546(c) Establishing and Implementing Exclusive and Global Procedures for Treatment of Reclamation Claims (ECF No. 50) (the “Reclamation Procedures Order”), hereby submit their notice (“Notice”) on Reclamation Claims.²

Background

1. On February 25, 2016 (the “Commencement Date”) each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of title 11, United States Code (the “Bankruptcy Code”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

2. Pursuant to Federal Rule of Bankruptcy Procedure 1015(b), the Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered.

3. On March 4, 2016, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors (the “Creditors Committee”).

4. Detailed information regarding Republic’s business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the Declaration of Bryan K. Bedford Pursuant to Local Bankruptcy Rule 1007-2, filed with the Court on the Commencement Date (ECF No. 4).

5. On the Commencement Date, the Debtors filed their Motion for Entry of Order Pursuant to 11 U.S.C. §§ 105(a) & 546(c) Establishing and Implementing Exclusive and

2. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion (as defined below).

Global Procedures for Treatment of Reclamation Claims (ECF No. 15) (the “Motion”) and requested that the Court establish reclamation procedures (the “Reclamation Procedures”) to govern the resolution of reclamation claims they expected to be asserted by the Debtors’ Vendors pursuant to section 546(c) of the Bankruptcy Code. On February 29, 2016, the Court entered the Reclamation Procedures Order granting the Motion.

6. Pursuant to the Reclamation Procedures set forth in the Reclamation Procedures Order, any Vendor asserting a Reclamation Claim (an “Asserted Reclamation Claim”) was required to deliver to the Debtors its Reclamation Demand such that the Reclamation Demand was received by the Debtors and their counsel on or before 20 calendar days after the commencement of these chapter 11 cases (the “Reclamation Deadline”), which is the statutory deadline set forth in section 546(c) of the Bankruptcy Code. To date, the Debtors have received 16 Reclamation Demands by the Vendors listed on Exhibit A annexed hereto (the “Requesting Vendors”).

7. As required by the Reclamation Procedures, the Debtors file this Reclamation Notice listing the Reclamation Demands and the amount (if any) of each Asserted Reclamation Claim that the Debtors determine to be valid. Annexed hereto as Exhibit A is a list of all Asserted Reclamation Claims and the Debtors’ determination as to the validity of each such Asserted Reclamation Claim. The Asserted Reclamation Claims (or portions thereof) that are listed as invalid on Exhibit A are invalid based on one or more of the following grounds: (i) the Asserted Reclamation Claim will be allowed as an administrative expense pursuant to section 503(b)(9) of the Bankruptcy Code; (ii) the Asserted Reclamation Claim was not filed before the Reclamation Deadline; (iii) the Asserted Reclamation Claim is for services rather than goods; (iv) the Asserted Reclamation Claim was received by the Debtors outside the

Reclamation Period (as defined below); (v) the Asserted Reclamation Claim is for goods that are not specifically identifiable or are not in the Debtors' possession; (vi) there is insufficient information or documentation for the Debtors to evaluate the Asserted Reclamation Claim; and (vii) the amount of the Asserted Reclamation Claim does not match the Debtors' books and records. Accordingly, the Debtors request that each of the Asserted Reclamation Claims listed on Exhibit A be allowed to the extent, and in the amount, listed in the column labeled "Amount of Asserted Reclamation Claim Deemed Valid" on Exhibit A and be disallowed, to the extent, and in the amount, listed in the column labeled "Amount of Asserted Reclamation Claim Deemed Invalid" on Exhibit A.

Applicable Law

8. Upon the commencement of a chapter 11 case, reclamation rights are governed by section 546(c) of the Bankruptcy Code. Section 546(c) of the Bankruptcy Code provides, in relevant part:

[S]ubject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the trustee . . . are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of commencement of a case under this title, but such a seller may not reclaim such goods unless such seller demands in writing reclamation of such goods (A) not later than 45 days after the date of receipt of such goods by the debtor; or (B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

11 U.S.C. § 546(c)(1). The seller has the burden to prove all elements of its right to reclamation by a fair preponderance of the evidence. *See, e.g., In re Pittsburgh Canfield Corp.*, 309 B.R. 277, 284 (6th Cir. B.A.P. 2004); *In re Rawson Food Serv., Inc.*, 846 F.2d 1343, 1344 (11th Cir.

1988); *In re Adventist Living Ctrs., Inc.*, 171 B.R. 310, 312–13 (N.D. Ill. 1994), *aff'd*, 52 F.3d 159 (7th Cir. 1995).

9. Section 546(c) and applicable bankruptcy law place limitations on the reclamation rights of sellers of goods that render certain Asserted Reclamation Claims invalid, at least in part. For example, section 546(c) requires that a vendor may only reclaim goods if, among other things, such goods were received within 45 days before the commencement of the chapter 11 case (the “Reclamation Period”). Certain of the Reclamation Demands, however, seek to reclaim goods that were received by the Debtors outside the Reclamation Period and, thus, are invalid. Moreover, section 546(c) requires that the Requesting Vendors submit their Reclamation Demands on or before the Reclamation Deadline, or March 16, 2016. Certain of the Reclamation Demands were not received by the Debtors until after the Reclamation Deadline. Thus, these Asserted Reclamation Claims are invalid.

10. In addition, certain of the Reclamation Demands seek to reclaim services, rather than goods. Reclamation rights arise, however, only in connection with the sale of goods. Courts generally define “goods” in accordance with section 2-105(1) of the Uniform Commercial Code (the “UCC”). *See, e.g., In re GIC Gov’t Sec.*, 64 B.R. 161, 162 (Bankr. M.D. Fla. 1986). Section 2-105(1) of the UCC provides that “[g]oods’ means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action.” U.C.C. § 2-105(1). Accordingly, those Asserted Reclamation Claims that seek to reclaim services, not goods, are invalid.

11. Moreover, because rights arising under section 546(c) are rooted in the ability of a seller of goods to reclaim physical possession of the goods it has delivered to a

debtor, and because of state law protection of good faith purchasers, Courts routinely impose the additional requirements on reclamation claimants that the subject goods be identifiable and in the debtor's possession on the date of the reclamation demand. *See, e.g., In re Dana Corp.*, 367 B.R. 409, 417–18 (Bankr. S.D.N.Y. 2007) (discussing how Congress could not have intended to permit reclamation of goods that had been sold to consumers or good faith purchasers); *In re Charter Oil Co.*, 54 B.R. 91, 92–93 (Bankr. M.D. Fla. 1985) (requiring goods to be identifiable and in debtor's possession); *McCain Foods, Inc. v. Flagstaff Foodservice Co. New England, Inc. (In re Flagstaff Foodservice Corp.)*, 14 B.R. 462, 465–66 (Bankr. S.D.N.Y. 1981) (“[T]he remedy of reclamation . . . is secure as to the identifiable goods in the possession of the purchaser.”). In *Flagstaff*, for example, the court found that a seller of frozen french fries was entitled to reclamation only to the extent that the debtor was in possession of the french fries on the date of the seller's reclamation demand. 14 B.R. at 463. To the extent that the seller's products were no longer in the debtor's possession on the date of the demand, they were not subject to reclamation. Also, to the extent that the goods in question have been commingled or processed such that they are no longer identifiable, the reclamation claims are invalid. *See In re Arlco, Inc.*, 239 B.R. 261, 266 (Bankr. S.D.N.Y. 1999); *In re Landy Beef Co.*, 30 B.R. 19, 21 (Bankr. D. Mass. 1983). Accordingly, Asserted Reclamation Claims are invalid to the extent that they seek to reclaim goods that were not identifiable or that were not in the Debtors' possession on the date the Reclamation Demand was received.

12. Further, Courts require that the form of a reclamation claimant's demand sufficiently identify the goods the seller seeks to reclaim. *See, e.g., In re Braniff, Inc.*, 113 B.R. 745, 752 (Bankr. M.D. Fla. 1990). In *Braniff*, for example, the Court stated that due to the “fundamental purpose of a demand for reclamation,” such demand, to be sufficient, “must

identify the goods as to which reclamation is sought so as to permit their return pursuant to the demand at the time the demand is made,” and that an insufficient demand “must of necessity fail as a matter of law.” *Id.* at 752; *see also In re Hechinger Inv. Co. of Del., Inc.*, 274 B.R. 402, 406–07 (Bankr. D. Del. 2001) (finding that a reclamation demand must describe the subject goods in a manner that would allow the debtor to identify them upon reasonable investigation). Certain of the Reclamation Demands do not provide sufficient information to allow the Debtors to reasonably identify from their books and records the goods the Requesting Vendor seeks to reclaim. Accordingly, those Asserted Reclamation Claims are invalid.

13. In addition, there are a number of Asserted Reclamation Claims where the claim amount asserted by the Requesting Vendor differs from the amount that the Debtors have recorded on their books as owed to the Requesting Vendor. In these instances, the Debtors dispute the amount of the Asserted Reclamation Claim and request that the Court allow the Asserted Reclamation Claim only in the amounts reflected in the Debtors’ books and records.

14. Moreover, certain of the Asserted Reclamation Claims qualify as administrative expenses pursuant to section 503(b)(9) of the Bankruptcy Code (the “Section 503(b)(9) Claims”) and, thus, should not be reclaimed (even if the reclamation amount is otherwise valid). The Debtors intend to allow these Section 503(b)(9) Claims pursuant to the Order Pursuant to 11 U.S.C. §§ 503(b)(9) & 105(a) (i) Establishing Deadline and Approving Procedures for the Assertion, Resolution, and Satisfaction of Claims Asserted Pursuant to 11 U.S.C. § 503(b)(9) and (ii) Prohibiting Vendors from Pursuing Such Claims Outside the Procedures. (ECF No. 52) (the “Section 503(b)(9) Procedures Order”). Pursuant to the Section 503(b)(9) Procedures Order, the Section 503(b)(9) Claims of the Requesting Vendors

will be addressed in a separate report, to be filed on or before July 25, 2016 (the “503(b)(9) Report”).

15. Finally, there are a number of Asserted Reclamation Claims that seek to reclaim goods that have either already been returned to the Requesting Vendor or that were not received by the Debtors. To the extent that the Asserted Reclamation Claims seek the return of goods that are not in the Debtors’ possession, they are invalid. *See Flagstaff*, 14 B.R. at 462 (imposing requirement that goods be in debtor’s possession).

16. The applicability of the foregoing limitations to each Requesting Vendor’s Asserted Reclamation Claim is set forth on Exhibit A.³

3. The Debtors reserve the right to revise and supplement the list of Asserted Reclamation Claims set forth on Exhibit A, as well as their objections thereto.

Notice

17. Pursuant to the terms of the Reclamation Procedures Order, notice of this Notice has been provided to (i) the U.S. Trustee; (ii) the attorneys for the Creditors Committee; and (iii) each Vendor listed in the Reclamation Notice, at the address indicated in the respective Vendor's Reclamation Demand. In view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

Dated: New York, New York
June 28, 2016

/s/ Gary D. Ticoll
Bruce R. Zirinsky
Sharon J. Richardson
Gary D. Ticoll
ZIRINSKY LAW PARTNERS PLLC
375 Park Avenue, Suite 2607
New York, New York 10152
(212) 763-0192
bzirinsky@zirinskylaw.com
srichardson@zirinskylaw.com
gticoll@zirinskylaw.com

Christopher K. Kiplok
Gregory C. Farrell
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6000
chris.kiplok@hugheshubbard.com
gregory.farrell@hugheshubbard.com

*Attorneys for the Debtors and
Debtors in Possession*

EXHIBIT "A"

ASSERTED RECLAMATION CLAIMS

Requesting Vendor	Amount of Asserted Reclamation Claims ¹	Amount to be Allowed as a 503(b)(9) Claim ²	Amount not timely filed	Amount that is for services rather than goods	Amount that is for goods received outside the Reclamation Period	Amount of goods not specifically identifiable or in the Debtors possession on the date of the Asserted Reclamation Claim	Amount with respect to which there is insufficient information or documentation for the Debtors to evaluate the Asserted Reclamation Claim	Amount that does not match Debtors' books and records	Amount of Asserted Reclamation Claim Deemed Invalid	Amount of Asserted Reclamation Claim Deemed Valid
C&D Zodiac, Inc.	\$527,819.12	\$569.46		\$14,038.54	\$4,922.90	\$295,569.54		\$157.29	\$315,257.73	\$212,561.39
Embraer Aircraft Customer Services, Inc.	\$1,242,193.97	\$643,945.96			\$9,678.02	\$39,348.53	\$82,026.00		\$774,998.51	\$467,195.46
Embraer Aircraft Maintenance Services, Inc.	\$844,829.24	\$263,816.14		\$23,373.98	\$319,488.72	\$581,013.06			\$844,829.24	\$0.00
Embraer Asia Pacific Pte. Ltd.	\$14,325.97					\$14,325.97			\$14,325.97	\$0.00
Embraer Aviation International SAS	\$2,310.93					\$2,310.93			\$2,310.93	\$0.00
Embraer S.A.	\$49,500.00			\$49,500.00				\$49,500.00	\$49,500.00	\$0.00
GE Aviation	\$903,073.00	\$683,190.00			\$21,689.00	\$7,704.00		\$617.50	\$713,200.50	\$189,872.50
Heico Corporation	\$338,390.28	\$13,495.00		\$68,797.13	\$1,505.74			\$184,029.06	\$267,826.93	\$70,563.35
Honeywell Aerospace Credit & Collections	\$718,169.63		\$718,169.63	\$718,169.63				\$718,169.63	\$718,169.63	\$0.00
Meggitt Aircraft Braking Systems Corporation	\$674,713.41	\$147,556.63	\$666,733.58	\$512,031.80		\$5,899.14			\$674,713.41	\$0.00

1. The amount of each Asserted Reclamation Claim listed herein reflects the amounts listed on the invoices attached to the applicable Reclamation Demand. In certain instances, the cover letters to the Reclamation Demands assert claims in an amount greater than the amounts listed on the annexed invoices. The Debtors have deemed any amount in the cover letter that exceeds the amounts set forth in the annexed invoices to be invalid.
2. These amounts will be reflected in the 503(b)(9) Report that will be filed by the Debtors on or before July 25, 2016.

Requesting Vendor	Amount of Asserted Reclamation Claims ¹	Amount to be Allowed as a 503(b)(9) Claim ²	Amount not timely filed	Amount that is for services rather than goods	Amount that is for goods received outside the Reclamation Period	Amount of goods not specifically identifiable or in the Debtors possession on the date of the Asserted Reclamation Claim	Amount with respect to which there is insufficient information or documentation for the Debtors to evaluate the Asserted Reclamation Claim	Amount that does not match Debtors' books and records	Amount of Asserted Reclamation Claim Deemed Invalid	Amount of Asserted Reclamation Claim Deemed Valid
Mitchell Aircraft Expendables, LLC	\$3,480.00								\$0.00	\$3,480.00
Mitchell Aircraft Spares Inc.	\$26,800.00					\$10,900.00			\$10,900.00	\$15,900.00
PPG Industries, Inc.	\$396,389.15	\$113,058.73		\$3,116.80	\$33,016.53	\$306.54		\$9,216.00	\$158,714.60	\$237,674.55
Pratt & Whitney Canada Corp.	\$1,038,118.86							\$1,038,118.86	\$1,038,118.86	\$0.00
Presidio Networked Solutions, Inc.	\$358,182.59						\$358,182.59		\$358,182.59	\$0.00
Zodiac Seats California LLC	\$416,798.48	\$196,924.91			\$57,671.05		\$28,841.94	\$12,956.36	\$296,403.26	\$120,395.22

-
1. The amount of each Asserted Reclamation Claim listed herein reflects the amounts listed on the invoices attached to the applicable Reclamation Demand. In certain instances, the cover letters to the Reclamation Demands assert claims in an amount greater than the amounts listed on the annexed invoices. The Debtors have deemed any amount in the cover letter that exceeds the amounts set forth in the annexed invoices to be invalid.
 2. These amounts will be reflected in the 503(b)(9) Report that will be filed by the Debtors on or before July 25, 2016.