

Jeff J. Friedman, Esq.
KATTEN MUCHIN ROSENMAN LLP
575 Madison Avenue
New York, New York 10022-2585
Telephone: (212) 940-8800
Facsimile: (212) 940-8776

-and-

Thomas E. Healey, Esq.
KATTEN MUCHIN ROSENMAN LLP
2900 K Street, NW, North Tower, Suite 200
Washington DC, 20007-5118
Telephone: (202) 625-3500
Facsimile: (202) 298-7570

Attorneys for: Embraer Aircraft Customer Services, Inc.,
Embraer Aircraft Maintenance Services, Inc.,
Embraer S.A.,
Embraer Asia Pacific Pte Ltd., and
Embraer Aviation International SAS

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

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

**EMBRAER’S (I) RESPONSE TO DEBTORS’ REPORT AND
OBJECTIONS TO CLAIMS ASSERTED PURSUANT TO 11 U.S.C.
§503(b)(9) AND (II) SUPPLEMENTAL RESPONSE TO 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**

Embraer Aircraft Customer Services, Inc., Embraer Aircraft Maintenance Services, Inc.,
Embraer S.A., Embraer Asia Pacific Pte Ltd., and Embraer Aviation International SAS

(collectively, “*Embraer*”), by and through its undersigned counsel, responds to (I) Debtors’ Report and Objections to Claims Asserted Pursuant to 11 U.S.C. §503(b)(9) (“503(b)(9) Report”) (Dkt. No. 829) and (II) 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 (“Reclamation Notice”) as follows:

Background

1. On February 25, 2016 (“Petition Date”), each of the Debtors filed a voluntary petition under chapter 11 of title 11, United States Code (“Bankruptcy Code”) with this Court. Debtors currently operate their businesses and manage their properties as debtors-in-possession. No trustee or examiner has been appointed in Debtors’ cases.

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

3. On the Petition Date, the Debtors filed a “Motion For Entry Of Order Pursuant To 11 U.S.C. §§105(a) & 546(c) Establishing And Implementing Exclusive And Global Procedures For Treatment Of Reclamation Claims” (Dkt. No. 15) (“Reclamation Motion”), requesting procedures (“Reclamation Procedures”) to govern the resolution of reclamation claims made pursuant to §546(c) of the Bankruptcy Code.

4. On February 29, 2016, this Court granted the Reclamation Motion and entered an “Order Pursuant To 11 U.S.C. §§105(a) & 546(c) Establishing And Implementing Exclusive And Global Procedures For Treatment Of Reclamation Claims” (Dkt. No. 50) (the “Reclamation Procedures Order”).

5. Also on the Petition Date, the Debtors filed their “Motion For Entry of 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” (Dkt. No. 16) (the “503(b)(9) Motion”), requesting procedures (the “503(b)(9) Procedures”) to govern the resolution of administrative expense claims made pursuant to §503(b)(9) of the Bankruptcy Code (“Section 503(b)(9)”).

6. On February 29, 2016, this Court granted the 503(b)(9) Motion and entered an “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” (Dkt. No. 52) (the “503(b)(9) Procedures Order”).

7. Pursuant to the Reclamation Procedures Order, on March 16, 2016, Embraer timely filed its reclamation claims.

8. Pursuant to the 503(b)(9) Procedures Order, on May 10, 2016, Embraer timely filed its Section 503(b)(9) claims.

Responses to Debtors’ 503(b)(9) Report

9. Each Debtors’ 503(b)(9) Report and Reclamation Notice asserts generic, unsupported objections to Embraer’s Section 503(b)(9) and reclamation claims. Because Debtor’s objections lack any substance or specifics, they lack any merit. As such, the Court should overrule them and allow Embraer’s claims in full.

10. Debtors’ objections to Embraer’s Section 503(b)(9) claims—simply an ‘x’ in one or both of two columns called “Duplicate?” or “Insufficient Documentation?”— are meaningless

and provide neither Embraer nor the Court with any information allowing a response. Embraer notes in its claims that it is not clear in all instances which among certain Debtors is liable to pay for particular goods, so Embraer prophylactically filed claims against each of those Debtors, “but is only seeking a single satisfaction.” *See, e.g.*, Addendum to Proof of Section 503(b)(9) Claim of Embraer Aircraft Customer Services, Inc. Against Republic Airways Holdings, Inc. (Claim No. 336) at ¶1. At Debtors’ request, invoices for aircraft parts were often directed to Republic Airways Holdings, Inc., even though the parts could only be used by one of the two airline Debtors.

11. Further, Embraer submitted CDs containing hundreds of pages of supporting documentation with its claims, including every invoice evidencing the sale and receipt by Debtors of the goods for which a claim is asserted. Absent a specific objection, Embraer is unable to respond meaningfully to Debtors’ generic, blanket objection and such generic objections are not in keeping with the Court’s orders. *See, e.g.*, Fed. R. Bankr. P. Rule 3007(d); *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3d Cir.1992) (objector must introduce evidence to overcome claim’s presumption of validity and amount). Accordingly, “an objection does not deprive the proof of claim of presumptive validity unless the objection is supported by substantial evidence.” *Hemingway Transp., Inc. v. Kahn (In re Hemingway Transp., Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993) (emphasis in original); *see also, Miceli v. LVNV Funding, LLC (In re Miceli)*, NO.: 5-15-bk-05266-JJT (Bankr. M.D. Pa. 2016) (unpublished) (“more is required of the Debtor than a mere bald objection to a claim”).

12. Embraer has requested Debtors’ specific objections and related support multiple times, but each time Debtors have failed to provide any of the requested information.

Supplemental Response to Debtors' Reclamation Notice

13. On July 18, 2016, Embraer filed and served its "Preliminary Notice of Objection by Embraer Aircraft Customer Services, Inc., Embraer Aircraft Maintenance Services, Inc., Embraer S.A., Embraer Asia Pacific Pte Ltd., and Embraer Aviation International to 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" (Dkt. No. 790). The preliminary notice of objection noted the complete lack of specificity in the Debtors' responses rendering it impossible for Embraer to respond meaningfully to the Debtors' Reclamation Notice.

14. In the month since then, Embraer has requested information from Debtors to substantiate their positions in the Reclamation Notice, but Debtors have failed to provide the information requested. Because Debtors have failed to support their vague, generic objections, the Court should overrule them and allow Embraer's reclamation claims in full.

Notice

15. Notice of this Response has been provided to, among others, the attorneys for the Debtors, the Office of the U.S. Trustee, Counsel to the Creditors Committee, the Ad Hoc Committee of Equity Holders of Republic Airways Holdings Inc., and all entities requesting notice in Debtors' chapter 11 cases under Fed. R. Bankr. P. 2002.

WHEREFORE, Embraer respectfully requests that the Court (i) sustain its objections to Debtors' 503(b)(9) Report and Reclamation Notice and Debtors' proposed treatment of Embraer's Section 503(b)(9) Claims and Reclamation Claims, (ii) allow Embraer to reclaim the goods described in its Reclamation Claims, or in the alternative, allow such Reclamation Claim

in its entirety as an administrative expense claim, (iii) allow Embraer's Section 503(b)(9) claims in full, and (iv) grant such other and further relief as is just and proper.

Dated: August 24, 2016

By: /s/ Jeff J. Friedman
Jeff J. Friedman
KATTEN MUCHIN ROSENMAN LLP
575 Madison Avenue
New York, New York 10022-2585
Telephone: (212) 940-8800
Facsimile: (212) 940-8776

-and-

Thomas E. Healey, Esq.
KATTEN MUCHIN ROSENMAN LLP
2900 K Street, NW, North Tower, Suite 200
Washington DC, 20007-5118
Telephone: (202) 625-3500
Facsimile: (202) 298-7570

Attorneys for Embraer Aircraft Customer
Services, Inc., Embraer Aircraft
Maintenance Services, Inc., Embraer S.A.,
Embraer Asia Pacific Pte Ltd., and Embraer
Aviation International SAS

CERTIFICATE OF SERVICE

On August 24, 2016, the foregoing was served upon the persons listed below via Electronic Mail and By Hand or by Federal Express as noted. In addition, all parties requesting ECF notice in these chapter 11 cases were served electronically via the Court's ECF system on August 24, 2016.

/s/ Jeff J. Friedman

Jeff J. Friedman

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)
Gary D. Ticoll, Esq. (gticoll@zirinskylaw.com)
Attorneys for the Debtors

BY HAND

Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, New York 10004
Attn: Christopher K. Kiplok, Esq. (chris.kiplok@hugheshubbard.com)
Gregory Farrell, Esq. (gregory.farrell@hugheshubbard.com)
Attorneys for the Debtors

BY HAND

Office of the United States Trustee
201 Varick Street, Suite 1006
New York, NY 10014
Attn: Brian Masumoto, Esq.

**BY FEDERAL
EXPRESS**

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)
Erica J. Richards, Esq. (erichards@mofo.com)
Counsel to the Official Committee of Unsecured Creditors

**BY FEDERAL
EXPRESS**

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)
David M. Hillman, Esq. (david.hillman@srz.com)
*Counsel to the Ad Hoc Committee of Equity Holders of Republic
Airways Holdings Inc.*

**BY FEDERAL
EXPRESS**