Hearing Date: October 13, 2016 at 9:00 a.m. (prevailing Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

JOINDER OF DELTA AIR LINES, INC. TO DEBTORS' RESPONSE TO THE LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS' MOTION PURSUANT TO SECTIONS 363(b) AND 365(a) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6004, 6006 AND 9019 FOR AUTHORIZATION TO (I) ASSUME CODESHARE AGREEMENT, AS AMENDED, WITH AMERICAN AIRLINES, INC., (II) ENTER INTO OR ASSUME RELATED AGREEMENTS, AND (III) SETTLE CLAIMS BETWEEN AMERICAN AIRLINES, INC. AND THE DEBTORS

[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.

Delta Air Lines, Inc. ("**Delta**") hereby joins in the Debtors' Response (the "**Response**") to the *Limited Objection of the Official Committee of Unsecured Creditors to the Debtors' Motion Pursuant to Section 363(b) and 365(a) of the Bankruptcy Code and Bankruptcy Rules 6004, 6006, and 9019 for Authorization to (i) Assume Codeshare Agreement, as Amended, with American Airlines, Inc., (ii) Enter into or Assume Related Agreements, and (iii) Settle Claims Between American Airlines, Inc. and the Debtors* [ECF No. 994] (the "**Limited Objection**"). Delta hereby incorporates by reference the arguments set forth in the Response, and in further support of the American Settlement Motion[2] respectfully represents as follows:

ARGUMENT

1. The primary purpose of these cases, critical to Republic's successful reorganization, is and has always been the restructuring of Republic's relationships with its Codeshare Partners—Delta, United, and American.[3] The Codeshare Partners are not only among the Debtors' largest unsecured creditors, but provide virtually all of the Debtors' revenue. In March 2016, Delta became the first Codeshare Partner to reach a global resolution with Republic (the "**Delta Settlement**") to restructure the contractual relationship between the parties, and to settle claims resulting from the Debtors' breach of the pre-petition codeshare agreements.[4]

2. As this Court noted, the Delta Settlement was made possible by a "most favored nations" clause (the "**Delta MFN**") in the Delta Settlement Order, which gave Delta assurance

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[2] *Debtors' Motion Pursuant to Sections 363(b) and 365(a) of the Bankruptcy Code and Bankruptcy Rules 6004, 6006 and 9019 for Authorization to (i) Assume Codeshare Agreement, as Amended, With American Airlines, Inc., (ii) Enter Into or Assume Related Agreements, and (iii) Settle Claims Between American Airlines, Inc. and the Debtors* [ECF No. 957] (the "**American Settlement Motion**").

[3] Terms used herein but not otherwise defined have the meanings ascribed to them in the American Settlement Motion and the Response.

[4] *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* [ECF No. 244] (the "**Delta Settlement Motion**").

that it would not be penalized for its willingness to be the first Codeshare Partner to reach a deal. *See* Delta Bench Ruling[5] at 24 (finding that the Delta MFN clause "provide[d] a needed incentive for Delta to be the first of the code share partners to enter into a settlement and new agreement with Republic").

3. This Court's approval of the Delta Settlement, a breakthrough development in these cases, established a framework for the Debtors to reach similar global resolutions with their two other Codeshare Partners. To that end, the Debtors successfully negotiated a global resolution with United, which this Court approved in June 2016. Both the Delta and United settlements have been consummated, and the lone objector to those settlements has recently withdrawn its appeals. This Court's approval of the Claim Settlement with American, the remaining piece of the global resolution with the final Codeshare Partner, will complete the foundation necessary for Republic's successful reorganization and exit from Chapter 11 to the benefit of all creditors.

4. In the Limited Objection, the Committee contends that the Claim Settlement should not be approved now because (i) the settlement is a "*sub rosa*" plan of reorganization and (ii) the Court does not currently have enough information about the aggregate amount of general unsecured claims that will ultimately be allowed to determine whether the settlement is in the best interests of the estates. These arguments both relate to a provision of the settlement (the "**American MFN**") pursuant to which the amount of the Codeshare Partners' allowed general unsecured claims may be proportionately increased if (and only if) the aggregate amount of general unsecured claims exceeds $1 billion. Ironically, the Committee attacks the American

[5] *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* [ECF No. 512] (the "**Delta Bench Ruling**").

MFN notwithstanding its prior support for the Delta and United Settlements, both of which included MFN provisions.

5. In any event, neither of the Committee's arguments is legally or factually meritorious. *First*, the Committee's argument that the Claim Settlement is a *sub rosa* plan of reorganization should be rejected as a red herring. A transaction will be deemed a *sub rosa* plan of reorganization in the rare circumstance where "pre-plan transactions constitute de facto reorganization plans," such as where "settlements . . . dispose of all of the debtors' assets, restrict creditors' rights to vote as they deem fit on a plan of reorganization, or dictate the terms of a plan of reorganization." *Official Comm. of Unsecured Creditors of Tower Auto. v. Debtors (In re Tower Auto.)*, 241 F.R.D. 162, 169 (S.D.N.Y. 2006) (internal quotation marks omitted). Here, however, the Claim Settlement does not dispose of any (let alone all) of the Debtors' assets, strip creditors of any voting or other plan protections, or dictate the terms of the Debtors' chapter 11 plan. Indeed, the Claim Settlement is silent on releases under a plan, classification of claims under a plan, voting rights under a plan and the myriad other provisions and rights that are part of a chapter 11 plan. That silence should be deafening to the Committee's argument that the Claim Settlement is a *sub rosa* plan.

6. *Second*, the record currently before this Court amply demonstrates that the settlement of American's claims for a $250 million allowed general unsecured claim with an MFN provision is "fair and equitable" given the strength and value of American's claims, and that the settlement is well above the lowest point in the range of reasonableness (especially given the risks associated with the litigation alternative). *See Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 462 (2d Cir. 2007). As described in the Response, and in contrast to the Committee's ungrounded speculation, under

likely scenarios the American MFN will either not be triggered (because the total allowed general unsecured claims do not exceed $1 billion) or will result in an increase in Codeshare Partner allowed claims that is more favorable to other creditors than potential results from litigation with American (if the total allowed general unsecured claims modestly exceed $1 billion). In light of this factual record, this Court need not—and should not—adopt the Committee's unnecessary "wait and see" approach, which will only delay the resolution of these chapter 11 cases and thus also delay distributions to creditors.

CONCLUSION

7. Accordingly, for all the reasons above and in the Response, Delta respectfully requests that the Court grant the American Settlement Motion in its entirety.[6]

Dated: New York, New York
September 29, 2016

By: /s/ Darren S. Klein

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[6] As the Debtors note in their Response, Delta's support of the Claim Settlement is premised upon the entry of a proposed order including provisions of the American MFN that satisfies Delta's rights under the Delta MFN.