

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

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

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**ORDER PURSUANT TO 11 U.S.C. §§ 362, 363 & 365(a) AND FED. R.
BANKR. P. 6004, 6006 & 9019 (I) APPROVING THE LETTER OF INTENT
BETWEEN CERTAIN DEBTORS AND EMBRAER S.A., (II) AUTHORIZING THE
DEBTORS TO ASSUME AMENDED PURCHASE AGREEMENT, EAMS
MAINTENANCE AGREEMENT, AND AMENDED EPOOL AGREEMENT,
(III) APPROVING ALLOWED CLAIMS, AND (IV) GRANTING RELATED RELIEF**

A hearing having been held on December 8, 2016 (the "Hearing"), to consider the motion, dated November 15, 2016 (the "Motion"),² of 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"), pursuant to sections 362, 363, and 365(a) of the Bankruptcy Code and rules 6004, 6006 and 9019 of the Federal Rules of Bankruptcy Procedure, (i) approving the Letter of Intent Regarding Embraer-Republic Global Settlement, dated November 14, 2016, annexed to the Motion as Exhibit A (the "LOI") and authorizing, but not directing, Republic to enter into the binding agreements and other documents (the "Definitive Documents") required to give effect to the transactions contemplated in the LOI, including, but not limited to the Settlement Agreement and the amendments to the Purchase Agreement and EPool Agreement; (ii) authorizing the

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.
2. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

Debtors to assume the Restructured Purchase Agreement, the EAMS Maintenance Agreement, and the Restructured EPool Agreement; (iv) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the LOI; (v) authorizing, but not directing, the Debtors to transfer title to any of the ERJ Aircraft to the Embraer Parties; and (vi) allowing to the Embraer Parties prepetition general unsecured claims in the aggregate amount of \$99 million, each as more fully described in the Motion and set forth below; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion having been provided in accordance with the Court's Case Management Order dated March 2, 2016 (ECF No. 70) ("CMO"), and it appearing that no other or further notice need be given; and the Court having considered the Motion, the papers in support thereof, and all of the proceedings had before the Court; and the appearances of all interested parties having been noted in the record of the Hearing; and after due deliberation and sufficient cause appearing therefor, and for reasons stated in the record of the Hearing;

IT IS HEREBY FOUND AND CONCLUDED that:

- A. The statutory predicates for the relief requested in the Motion are sections 362, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 6004, 6006, and 9019.
- B. The Motion satisfies rules 2002, 6006, and 9019 of the Federal Rules of Bankruptcy Procedure.

C. Proper, timely, adequate, and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and the CMO, and no other or further notice of the Motion or the entry of this Order shall be required.

D. Based on the record before the Court, the Debtors have demonstrated good and sufficient reasons for the Court to approve the Motion.

E. Neither Embraer, nor its affiliates nor their respective representatives is an “insider” of any of the Debtors as that term is used in section 101(31) of the Bankruptcy Code.

F. The entry into the LOI and the transactions contemplated therein, and entry of this Order are in the best interests of the Debtors’ estates and creditors.

G. The LOI was negotiated, proposed and entered into by the parties in good faith, from arms’ length bargaining positions and without collusion or fraud.

H. Sound business reasons have been articulated for assuming the Assumed Embraer Agreements and the transactions contemplated therein and it is a sound exercise of business judgment to enter into and perform under the Assumed Embraer Agreements and consummate the transactions contemplated thereby.

I. The Embraer Parties are consenting to the assumption of the Assumed Embraer Agreements, and thus, no adequate assurance of future performance by the Debtors is required under section 365(b) of the Bankruptcy Code.

J. The settlement of the Embraer Claims (as defined herein) on the terms described herein is fair and reasonable.

K. Each of the foregoing findings by the Court will be deemed a finding of fact if and to the full extent that it makes and contains factual findings and a conclusion of law if and to the full extent that it makes legal conclusions.

IT IS HEREBY ORDERED that:

1. The Motion is hereby granted as provided herein. To the extent any objections or reservations of rights to the Motion have not been withdrawn or resolved by this Order, they are overruled in all respects on the merits.

2. The LOI and all the terms and conditions thereof and the transactions and agreements contemplated therein are authorized and approved in all respects.

3. The Debtors are authorized, but not directed, pursuant to section 363(b) of the Bankruptcy Code, to enter into the Definitive Documents and to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions that may be reasonably necessary or appropriate to implement the LOI and perform all obligations contemplated thereunder.

4. Upon effectiveness of the Settlement Agreement, which shall occur upon the satisfaction of the express conditions set forth therein:

a. The Debtors are authorized, pursuant to section 365(a) of the Bankruptcy Code, to assume the Restructured Purchase Agreement, the Restructured EPool Agreement and the EAMS Maintenance Agreement.

b. The automatic stay arising pursuant to section 362(a) of the Bankruptcy Code is modified to the extent necessary to effect the application of PDPs as set forth in the LOI.

c. In full settlement, satisfaction, release and discharge of all pre- and post-petition claims of the Embraer Parties, (a) (i) ECC Leasing Company Limited is hereby granted an allowed general unsecured claim in the amount of \$57 million against RAH and (ii) EACS is hereby granted an allowed general unsecured claim in the amount of \$19 million against RAH (subsections (a)(i)-(ii) of this paragraph 4(c), together, the “Embraer Guarantee Claims”) and (b) (i) ECC Leasing Company Limited is hereby granted an allowed general unsecured claim in the amount of \$80 million and (ii) EACS is hereby granted an allowed general unsecured claim in the amount of \$19 million (subsections b(i)-(ii) of this paragraph 4(c), together, the “Embraer Allocable Claims” and collectively with the Embraer Guarantee Claims, the “Embraer Claims”). The Embraer Allocable Claims shall each be split into two claims allocated by Republic Airline and Shuttle America (*pari passu* with the Delta Allocable Claim, the United Allocable Claim, and the American Allocable Claim (each a “Codeshare Allocable Claim”) as set forth in paragraph 4(c)(I) hereof.

I. At the time of determination of any distributions to be made on account of general unsecured claims under a plan of reorganization or upon any liquidation for Republic Airline or Shuttle America in the chapter 11 cases, or any superseding chapter 7 cases, an amount of each Embraer Allocable Claim, on a *pari passu* basis with each Codeshare Allocable Claim, shall be allocated between Shuttle America and Republic

Airline such that the percentage recoveries in respect of such distributions to general unsecured claims against Shuttle America and Republic Airline (inclusive of the Embraer Allocable Claims and the Codeshare Allocable Claims) are equal or as nearly equal as is possible given such allocation. In the event of any consolidation of the estates of any or all of Shuttle America and Republic Airline for purposes of distributions to creditors, the Embraer Parties shall receive distributions in respect of the Embraer Allocable Claims from the consolidated entity in the same percentage as distributions on account of all other general unsecured claims against the consolidated estates.

- d. The Debtors' court-appointed claims and noticing agent is authorized and directed to modify the Debtors' official claims registry to reflect the relief provided herein.
- e. The Asserted Claims are each resolved and other than the Embraer Claims, the Embraer Parties shall not assert any claims, including, without limitation, general unsecured claims, reclamation claims, or claims pursuant to section 503(b)(9) of the Bankruptcy Code in the chapter 11 cases of the Debtors arising pursuant to the Purchase Agreement, the Purchase Agreement Guaranty, the EPool Agreement, the EPool Guaranty, the EAMS Maintenance Agreement, the Master Agreement, the ERJ Aircraft, or the Supported EJets.

f. Any objections and liens filed by the Embraer Parties, including without limitation, the Statutory Liens, the Reclamation Response, and 503(b)(9) Response, shall be withdrawn with prejudice and all such objections and statutory liens shall be deemed resolved by the terms of the LOI.

5. Any transfer of the ERJ Aircraft effects a legal, valid, enforceable and effective transfer of the ERJ Aircraft to Embraer or its designee, and shall (upon closing) vest Embraer or its designee with all right, title, and interest in such ERJ Aircraft, as provided in the Definitive Documents, free and clear of any liens, claims and encumbrances. Embraer or its designee is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code and any reversal or modification on appeal of the authorization provided here to consummate the transfer of title to the ERJ Aircraft shall not affect the validity of the transfer of title to the ERJ Aircraft to Embraer or its designee.

6. The failure to specifically describe or include any particular provision in the LOI shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the LOI and all the terms and conditions thereof and the transactions and agreements contemplated therein be approved in their entirety.

7. Any person or entity that did not timely object to the Motion is deemed to consent to the relief granted herein.

8. The provisions and effect of this Order, any actions taken pursuant to this Order and the Embraer Parties' and the Debtors' respective rights, obligations, remedies, and protections provided for herein and in the LOI and Definitive Documents shall survive the conversion, dismissal, and/or closing of these chapter 11 cases, appointment of a trustee herein, confirmation of a plan or plans of reorganization, and/or the substantive consolidation of these

chapter 11 cases with any other case or cases, and the terms and provision of this Order as well as any protections granted to the Embraer Parties pursuant to this Order shall continue in full force and effect notwithstanding the entry of any such order.

9. Notwithstanding the provisions of rule 6004 of the Federal Rules of Bankruptcy Procedure, this Order shall not be stayed for 14 days after the entry hereof, but shall be effective and enforceable immediately upon entry by this Court.

10. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York

December 14, 2016

/s/ *Sean H. Lane*
Honorable Sean H. Lane
United States Bankruptcy Judge