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

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In re: : Chapter 11  
: :  
Republic Airways Holdings Inc., *et al.*,<sup>1</sup> : Case No. 16-10429 (SHL)  
: :  
: (Jointly Administered)  
Debtors. :  
: **Re: Docket No. 100**  
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**LIMITED OBJECTION OF AD HOC COMMITTEE OF EQUITY HOLDERS TO  
DEBTORS' FIRST OMNIBUS MOTION PURSUANT TO 11 U.S.C. §§ 105(a), 363(b),  
365, 554 & 1110 AND FED. R. BANKR. P. 6006 & 6007 FOR AN ORDER (I)  
AUTHORIZING DEBTORS TO TRANSFER TITLE TO AND ABANDON CERTAIN  
OWNED AIRCRAFT AND ENGINES AND REJECT RELATED AIRCRAFT LEASE  
AND (II) (A) AUTHORIZING, BUT NOT DIRECTING, DEBTORS TO  
FULFILL THEIR OBLIGATIONS UNDER A CERTAIN ENGINE PURCHASE  
AGREEMENT AND (B) DIRECTING CITIBANK N.A. TO TAKE ALL STEPS  
TO COOPERATE WITH THE CLOSING OF SAME**

The ad hoc committee of equity holders (the "Ad Hoc Committee") in the chapter 11 cases (the "Chapter 11 Cases") of each of the above-captioned debtors and debtors in possession, by and through its undersigned counsel, submits this limited objection to the *Debtors' First Omnibus Motion Pursuant to 11 U.S.C. §§ 105(a), 363(b), 365, 554 & 1110 and Fed. R. Bankr. P. 6006 & 6007 for an Order (I) Authorizing Debtors to Transfer Title to and Abandon Certain Owned Aircraft and Engines and Reject Related Aircraft Lease and (II) (A) Authorizing,*

<sup>1</sup> The last four digits of the taxpayer identification numbers of each of the Debtors are 9146, 2301, 1397, 2737, 9146, 8757, 0079, and 4344.

*But Not Directing, Debtors to Fulfill Their Obligations Under a Certain Engine Purchase Agreement and (B) Directing Citibank N.A. to Take All Steps to Cooperate with the Closing of Same* [Dkt. No. 100] (the "Motion").<sup>2</sup> In support of its limited objection, the Ad Hoc Committee respectfully states as follows:

**PRELIMINARY STATEMENT**

1. By the Motion, the Debtors seek to enter into a number of transactions that have the potential to significantly affect the interests of the members of the Ad Hoc Committee, as well as numerous other parties in interest. Nevertheless, the Debtors have not provided any meaningful information to counsel to the Ad Hoc Committee to enable it to adequately assess the ramifications of the relief sought. Such information is particularly important in a case such as this, where there is significant equity value for existing shareholders and every dollar of unsecured claims created by or against the Debtors serves to dilute that value.

2. The Ad Hoc Committee's ability to evaluate the relief requested in the Motion has been severely constrained by the paucity of information provided by the Debtors to date regarding the economic impact of their proposed actions. The Debtors nonetheless insist on going forward with the Motion immediately, while the Ad Hoc Committee, other parties in interest in these cases, and the Court, are effectively kept in the dark.

3. The Motion raises a number of concerns for the Ad Hoc Committee that remain unaddressed, and accordingly, unresolved. Nevertheless, at this time, the Ad Hoc Committee is not objecting to the substantive relief requested in the Motion. Rather, given the uncertainty surrounding, among other things, (a) the magnitude of any claims that may arise under the Citi Security Agreement, the Citi Credit Agreement, and any ancillary or related

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<sup>2</sup> Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Motion.

documents thereto, as a result of the abandonment of the Excess Owned Equipment, (b) the nature and extent of any rejection damage claims that may arise under the Lease proposed to be rejected, and (c) the costs of maintaining the Excess Owned Equipment, the Ad Hoc Committee submits that the hearing on the Motion should be adjourned for a short period of time. This will provide the Court, the Ad Hoc Committee, and other parties in interest with an adequate opportunity to fully vet these issues and reach an informed decision regarding the merits of the Debtors' requested relief.

### **BACKGROUND**

4. On February 25, 2016 (the "Petition Date"), each of the Debtors filed voluntary petitions with the Court and commenced the Chapter 11 Cases. The Debtors continue to manage and operate their businesses as debtors in possession under Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been appointed in these cases.

5. Shortly after the Petition Date, certain holders of common stock in Republic Airways Holdings Inc., one of the Debtors, formed the Ad Hoc Committee and retained counsel to represent their common interests in the Chapter 11 Cases.

6. On March 4, 2016, the Debtors filed the Motion seeking an order permitting the Debtors to, among other things, (a) surrender, return, and transfer title to certain aircraft, engines, and equipment, (b) abandon the Excess Owned Equipment listed on Annex 1 thereto, and (c) reject the Lease for the Excess Owned Equipment listed on Annex 2 thereto. Counsel to the Ad Hoc Committee subsequently requested from the Debtors' counsel certain information to enable the Ad Hoc Committee to evaluate the economic impact of the transactions contemplated by the Motion. Specifically, counsel to the Ad Hoc Committee requested information to allow it to gauge the nature and extent of (a) the Debtors' current cost to maintain the Excess Owned

Equipment, (b) any claims that would result from the abandonment of the Excess Owned Equipment on Annex 1, and (c) any potential rejection damage claims that would result from the Debtors' proposed rejection of the Lease. To date, however, counsel to the Ad Hoc Committee has only received a small fraction of the requested information—*i.e.*, it has been advised only that the current cost to maintain the Excess Owned Equipment is "nominal."

### **OBJECTION**

#### **A. The Debtors Have Not Proffered Any Evidence In Support of Their Purported Business Judgment**

7. As one of the cases cited by the Debtors plainly provides, "[T]here must be some articulated business justification ... [that] must be made by an express finding of the bankruptcy judge from the evidence presented at the hearing" in the context of a transfer of assets. *In re Thompson McKinnon Secs., Inc.*, 120 B.R. 301, 307 (Bankr. S.D.N.Y. 1990). Here, the Debtors have not articulated any business justification for the relief requested in the Motion beyond mere conclusory statements, nor have they offered any admissible evidence for the Court to consider. Instead, the Debtors instead merely make numerous unsubstantiated assertions that the relief sought in the Motion is in the best interests of the Debtors' estates or its creditors.

8. For example, the Debtors stress that "the costs of storage, maintenance, and labor associated with the excess Owned Equipment would be burdensome to Republic's estates, with little, if any, corresponding benefit to Republic or its creditors." (¶ 13). Yet the Debtors have not provided the Court or parties in interest with any information regarding costs of storage, maintenance, or labor. They have merely told counsel to the Ad Hoc Committee that currently such costs are "nominal"—making it impossible to determine whether there will be actually any corresponding benefit to creditors.

9. The Debtors similarly allege in the Motion that "surrendering, returning, and transferring title to the Excess Owned Equipment to the Owned Aircraft Secured Parties will divest Republic of burdensome obligations and inure to the benefit of Republic, its creditors, and all parties in interest." (¶ 14). Once again, absent some detail, the Court has no way to evaluate the Debtors' statement. Neither the Court nor the Ad Hoc Committee has been provided any information regarding the claims that would result from the Debtors' proposed actions. It is thus impossible for the Court or anyone else to determine what benefit, if any, will inure to the Debtors' creditors or any other parties in interest, including the members of the Ad Hoc Committee.

10. The Debtors also have not met their burden with respect to rejecting the Lease. Once again, the Debtors' own cases state the rule that "[u]nder the 'business judgment' test, an executory contract ... should be rejected if the debtor can demonstrate that rejection will benefit the estate." *See In re Penn Traffic Co.*, 524 F.3d 373, 383 (2d Cir. 2008) (citation omitted); *In re Old Carco LLC*, 406 B.R. 180, 188 (Bankr. S.D.N.Y. 2009) (same). How is the Court to determine if there is any benefit to the estate when the Debtors have not provided any evidence regarding potential rejection damage claims that could result from their proposed rejection of the Lease? Clearly, it cannot.

**B. The Hearing Should Be Adjourned**

11. Given the dearth of information provided by the Debtors to date, as described above, the Court should adjourn the hearing on the Motion until the Ad Hoc Committee and others are provided with sufficient information and time to evaluate the economic impact of the Debtors' proposed transactions. Review and analysis of this information will allow the Ad Hoc

Committee members to evaluate the economic effect on their interests, with little, if any, prejudice to the Debtors.

12. Indeed, the Debtors will not be at all prejudiced by a short adjournment of the hearing. The Debtors have 60 days from the Petition Date, *i.e.*, until April 25, 2016, to agree with Citi to perform all obligations under any security agreement, lease, or conditional sale contract pursuant to 11 U.S.C. § 1110(a)(2). *See In re AMR Corp.*, 730 F.3d 88, 108 (2d Cir. 2013) (A debtor "may secure the protection of the automatic stay (preventing, *inter alia*, repossession of its equipment) if within 60 days of a bankruptcy filing it: (1) agrees to perform 'all obligations of the debtor' pursuant to its agreement with the secured creditor; and (2) it cures any default not 'of a kind specified in section 365(b)(2)' within a defined period.") Accordingly, whether the Motion is granted promptly or following a short adjournment of the hearing is inconsequential as long as the Debtors obtain their relief, if warranted, before April 25, 2016. The Ad Hoc Committee believes that its advisors can complete their evaluation swiftly (and comfortably before April 25, 2016) if the Debtors promptly provide the Ad Hoc Committee with the information it requests.

13. The Debtors also have until March 31, 2016 to conclude the sale of the GE Engine contemplated by the MTU Purchase Agreement. While the Ad Hoc Committee believes that its advisors likely can complete their evaluation of the relief sought in the Motion before that time (if the Debtors promptly provide the Ad Hoc Committee with the information it requests), the Ad Hoc Committee does not object to a bifurcation of the Motion that permits the Debtors to proceed with the sale under the MTU Purchase Agreement while adjourning the hearing on the balance of the Motion.

14. The Ad Hoc Committee, on the other hand, would be significantly prejudiced if an adjournment is not granted. At the time of filing of this response, the Ad Hoc Committee is in the final stages of engaging a financial advisor to assist it in these cases. That financial advisor's first task will be to evaluate the economic consequences of the Debtors' proposed abandonment of the Excess Owned Equipment. Because of the significant equity value in these cases, the Debtors are transacting with the shareholders' money. The shareholders should have a say in, or at a minimum be afforded a full and complete understanding of, how their value is being spent by the Debtors. To do so, the Ad Hoc Committee must be permitted to evaluate the magnitude of the claims that may result from abandonment of the Excess Owned Equipment and determine whether disposal of the aircraft via abandonment is the most efficient and cost-effective option for the Debtors. Accordingly, the hearing on the Motion should be adjourned for a short time to allow the Ad Hoc Committee to undertake and complete that evaluation.

#### **RESERVATION OF RIGHTS**

15. The Ad Hoc Committee expressly reserves its right to assert, amend, modify or supplement this or any substantive objection to the Motion and to seek discovery and/or present evidence at any hearing in connection with the Motion.

**CONCLUSION**

**WHEREFORE**, for the reasons described above, the Ad Hoc Committee respectfully requests that the Court (a) adjourn the hearing on the Motion until such time as the Ad Hoc Committee is provided with sufficient information and time to evaluate the economic impact of the Debtors' proposed transactions, and (b) grant such other relief as the Court deems just and proper.

Dated: March 15, 2016  
New York, New York

Respectfully submitted,

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