

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: March 23, 2016
HEARING TIME: 10:00 a.m.

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In re :
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Republic Airways Holdings, Inc., *et al.*, :
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Debtors. :
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Case No. 16-10429 (SHL)
(Chapter 11)

OBJECTION OF UNITED STATES TRUSTEE TO DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105(a), 345(b), 363(b), 363(c), 364(a), 503(b) & 507(a) AND FED. R. BANKR. P. 6003 & 6004 FOR ENTRY OF INTERIM AND FINAL ORDERS (i) AUTHORIZING DEBTORS TO (A) CONTINUE USING EXISTING CASH MANAGEMENT SYSTEM, (B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED TO THE USE THEREOF, (C) PROVIDE POSTPETITION INTERCOMPANY CLAIMS ADMINISTRATIVE EXPENSE PRIORITY, AND (D) MAINTAIN EXISTING BANK ACCOUNTS AND BUSINESS FORMS AND (ii) WAIVING THE REQUIREMENTS OF 11 U.S.C. § 345(b)

To: HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE:

William K. Harrington, the United States Trustee for Region 2 (the "United States Trustee"), hereby submits this objection to the Debtors' Motion Pursuant To 11 U.S.C. §§ 105(a), 345(b), 363(b), 363(c), 364(a), 503(b) & 507(a) And Fed. R. Bankr. P. 6003 & 6004 For Entry Of Interim And Final Orders (i) Authorizing Debtors To (A) Continue Using Existing Cash Management System, (B) Honor Certain Prepetition Obligations Related To The Use Thereof, (C) Provide Postpetition Intercompany Claims Administrative Expense Priority, And (D) Maintain Existing Bank Accounts And Business Forms And (ii) Waiving The Requirements Of 11 U.S.C. § 345(b) (the "Motion"). ECF Doc. No. 6. In support thereof, the United States Trustee respectfully states:

I. PRELIMINARY STATEMENT

Section 345(b) of title 11, United States Code (the “Bankruptcy Code”) was promulgated to protect all creditors of bankrupt entities against the loss of estate funds deposited or invested by debtors. In accordance with the Interim Cash Management Order, the Debtors have attempted to determine whether certain accounts described in the motion comply with the requirements of Section 345(b) of the Bankruptcy Code. At this time, on information and belief, the Debtors seek a waiver of the Section 345 requirements with respect to its Investment Account (defined below) and their Canadian Account (defined below) which currently contain \$138,328,561.40 and \$147,077.69, respectively. The United States Trustee objects to the waiver sought on the basis that the Debtors have not established requisite cause mandated by Section 345(b).

In addition, the United States Trustee requests that that the Court direct the Debtors to ensure that the Deutsche Bank irrevocable trust account, currently holding \$4,000,000, be protected in a manner comparable to the safeguards set forth in Section 345.

II. BACKGROUND

A. General Background

1. On February 25, 2016 (the “Petition Date”), Republic Airways Holdings Inc. (“RAH”) and certain of its direct and indirect subsidiaries (each a “Debtor” and collectively, the “Debtors” or “Republic”) each filed petitions for relief under chapter 11, title 11, United States Code (the “Bankruptcy Code”). ECF Doc. No. 1.

2. RAH, a holding company incorporated in 1996, provides scheduled regional passenger services through its wholly-owned operating air carrier subsidiaries, Shuttle America

Corporation (“Shuttle America”) and Republic Airline Inc. (“Republic Airline”). Republic offers approximately 1,000 flights daily to 105 cities in 38 states, Canada, the Caribbean, and the Bahamas through Republic’s fixed-fee code-share agreements with United Continental Holdings, Inc. (“United”), Delta Air Lines, Inc. (“Delta”), and American Airlines Group, Inc. (“American,” and collectively with United and Delta, the “Codeshare Partners”), operating under the designations of United Express, Delta Connection, and American Eagle, including service out of the Codeshare Partners’ respective hubs and focus cities. Republic’s operation is concentrated in key markets in the Northeast, Mid-Atlantic, and Midwest regions of the U.S. Republic exclusively operates approximately 40 non-stop routes, most of which connect smaller cities to major cities (e.g. New York area, Washington D.C., and other major hubs in Miami and Detroit). Republic provides just under 3.5% of the total domestic industry seats with higher concentrations in the Northeast, Mid-Atlantic, and Midwest regions. Declaration of Bryan K. Bedford, President and Chief Executive Officer of the Debtors Pursuant to Local Bankruptcy Rule 1007-2 (the “Bedford Declaration”), ECF Doc. No. 4, ¶ 2.

3. The Debtors reported that on a consolidated basis, Republic had assets of \$3,561,000,000, liabilities of \$2,971,000,000, unrestricted cash and short-term investments of \$132,300,000 and stockholders’ equity of \$590,000,000. *Id.* at ¶ 33.

B. The Motion

4. The Debtors filed the Motion on the Petition Date seeking the entry of an interim order authorizing them to, among other things, continue to use their existing bank accounts. Motion, at ¶ 7.

5. As of the Petition Date, the Debtors maintain approximately 33 bank accounts in the United States and Canada (collectively, the “Bank Accounts”). Motion, Schedule 1.

6. Schedule 1 shows 14 accounts at Bank of America, 5 accounts at JP Morgan Chase, 2 at US Bank, 1 Deutsche Bank, and 11 at Key Bank. *Id.*

7. There are two Canadian bank accounts, one at Bank of America and one at Key Bank. *Id.*

8. There is a Canadian account maintained at Key Bank listed in Schedule 1 with an Indianapolis, IN address. *Id.* The Debtors have advised that the account is inactive.

9. The Canadian Account maintained at the Bank of America branch in Canada generally does not hold funds exceeding CAD \$500,000.00. Motion, p. 6, n. 4. The Debtors have advised that as of March 14, 2016 the Canadian account holds \$147,077.69.

10. The account maintained at Deutsche Bank is identified as an “Irrevocable Trust.” *Id.* The Debtors advised the office of the United States Trustee that the account is a statutory irrevocable trust under Delaware law. According to counsel for the Debtors, Deutsche Bank Trust Company Delaware is the owner trustee, and RAH is the trust depositor and does not have a reversionary interest. The investments from the account are in a money market fund custodian at State Street. The purpose of the irrevocable trust is to provide for the payment of certain tax obligations that could otherwise give rise to personal liability on the part of directors and officers of the Debtors in the event certain taxes were unpaid. The Debtors advise that as of March 14, 2016, the Irrevocable Trust account contains \$4,000,000.

11. On a regular basis, funds in excess of \$25 million (in the aggregate) are swept from the Main Operating Accounts into the RAH account at JP Morgan Chase (the “Investment

Account”), where the cash is invested in highly-liquid short-term investments, typically money-market funds, in accordance with Republic’s Investment Policy. Motion at ¶ 18.

12. Funds received by Republic are deposited in the Debtors’ Main Operating Accounts. Motion, at ¶ 12. Republic has represented that the Main Operating Accounts are maintained with Banks that have been approved as authorized depositories under the United States Trustee Guidelines. Motion, ¶¶ 36-7.

13. The Debtors have advised the Office of the United States Trustee that the accounts at Bank of America (excluding the Canadian account), Key Bank and US Bank are authorized depositories that will collateralize the Debtors’ bankruptcy accounts. The Debtors have advised that as of March 14, 2016, the aggregate amounts held by the banks is as follows: Bank of America (excluding the Canadian Account, \$27,249,796.14); Key Bank (Inactive); and US Bank (\$485,430.50).

14. The Debtors have advised that the non-investment accounts at JP Morgan Chase will not exceed the \$250,000 FDIC protection amount. The Debtors have advised that as of March 14, 2016 the aggregate amount held in JP Morgan Chase non-investment accounts total \$141,281.01.

15. At the hearing held on February 26, 2016, Republic provided the Court and the United States Trustee with a list of eight investment funds containing approximately \$83 million on the Petition Date.

16. As of March 14, 2016, the Debtors reported that the JP Morgan Investment Account contained \$138,328,561.40.

17. The Motion seeks a Final Order that would allow the Debtors a waiver of the requirements set forth in Section 345.

18. Based on the foregoing, the United States Trustee understands that the Debtors are seeking a waiver of the funds held in the Investment Account and the Canadian Account, which currently contain \$138,328,561.40 and \$147,077.69, respectively.

III. OBJECTION

A. The Statutory Standard

Bankruptcy Code Section 345(b) provides that money of the estate shall be insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States. 11 U.S.C. § 345(b). Money of the estate may also be deposited in an entity that has posted a bond in favor of the United States or has deposited securities with the Federal Reserve Bank in an account maintained by the United States Trustee *Id.* A court may waive the requirements of Section 345 upon the showing of “cause.” *Id.*

B. The Debtors Have Not Established Cause

The Debtors have advised that, by the Motion, they intend to ask the Court for a Final Order that includes, among other things, a provision authorizing the Debtors to continue to use and maintain the Canadian Account and the Investment Account that do not comply with Section 345 of the Bankruptcy Code. The Debtors have not provided evidence to support a finding that cause exists for the waiver of the requirements of Section 345 of the Bankruptcy Code. Because the Debtors have not demonstrated cause for a waiver of the requirements set forth in

Section 345, the United States Trustee respectfully objects to the Debtors' Motion to the extent it seeks entry of a Final Order waiving the requirements of Section 345.

The Debtors argue that the cost associated with satisfying the requirements of Section 345(b) would be burdensome, and the process of satisfying those requirements would lead to needless inefficiencies in the management of Republic's business. They further argue that the yield on its Investment Account exceeds the value that would be obtained in an insured account. Motion, at ¶ 37. Those arguments are available to virtually every debtor, and, if sufficient to establish cause in every case, would render the protections contemplated by Section 345 totally ineffective.

While the Deutsche Bank irrevocable trust account may or may not be property of the estate, the concern of the United States Trustee is that should a failure contemplated by Section 345 occur resulting in the loss of funds in the Irrevocable Trust (currently \$4,000,000) the Debtors (or the directors and/or officers) would still remain liable for the unpaid taxes. Accordingly, the United States Trustee requests that the Court direct the Debtors to insure that the irrevocable trust funds be protected against the loss of such funds in a manner comparable to the requirements set forth in Section 345.

WHEREFORE, the United States Trustee respectfully requests that the Court deny the Motion and grant such other and further relief as the Court deems appropriate.

Dated: New York, New York
March 15, 2016

Respectfully Submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE

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