

Michael Luskin  
Stephan E. Hornung  
LUSKIN, STERN & EISLER LLP  
Eleven Times Square  
New York, New York 10036  
Telephone: (212) 597-8200  
Facsimile: (212) 974-3205

*Counsel for Citibank, N.A.*

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

In re:

REPUBLIC AIRWAYS HOLDINGS INC., *et al.*,  
Debtors.<sup>1</sup>

Chapter 11

Case No. 16-10429 (SHL)

(Jointly Administered)

**LIMITED OBJECTION OF CITIBANK, N.A. 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**

Citibank, N.A. ("Citibank"), by and through its undersigned counsel, hereby files this limited objection (this "Limited Objection") 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*

---

<sup>1</sup> 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.

*Citibank, N.A. to Take All Steps to Cooperate With the Closing of Same* (the “Motion”) [Dkt. No. 100].<sup>2</sup> In support of this Limited Objection, Citibank respectfully states as follows:

**Preliminary Statement**

1. Citibank has no general objection to the Debtors’ Motion insofar as it seeks permission to abandon, surrender and return certain Excess Owned Equipment to Citibank and understands (and is prepared to proceed cooperatively under) the economic and time constraints faced by the Debtors. However, Citibank has two objections to the specific relief sought: First, certain of the provisions in the Debtors’ proposed Order unduly prejudice Citibank in violation of section 1110 of the Bankruptcy Code. The Court should either decline to approve the Motion or require the Debtors to modify the proposed Order to address these issues (each discussed in greater detail below). Second, the Motion seeks approval of a private sale of one item of Citibank’s collateral – the GE Engine – free and clear of Citibank’s liens without satisfying any of the requirements of section 363(f) of the Bankruptcy Code. The Debtors must either conduct a proper marketing process for the GE Engine to obtain the “highest and best” purchase price available, or surrender and return the GE Engine to Citibank along with the rest of its collateral.

2. Citibank and the Debtors have been in ongoing negotiations regarding a consensual resolution to Citibank’s objections since the filing of the Motion. Unfortunately, a final resolution was not reached in advance of the objection deadline. Accordingly, Citibank now files this Limited Objection to preserve its rights under the Bankruptcy Code and other applicable law.

---

<sup>2</sup> Capitalized terms are defined in this Limited Objection or in the Motion.

## **Background**

### **I. The Chapter 11 Cases**

3. On February 25, 2016 (the “Petition Date”), Republic Airways Holdings Inc. (“RAH”) and certain of its subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors have continued in possession of their property and have continued to operate and manage their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On March 4, 2016, the United States Trustee appointed an Official Committee of Unsecured Creditors [Dkt. No. 89]. No trustee or examiner has been appointed.

5. The factual background relating to the commencement of the Chapter 11 Cases is set forth in detail in the *Declaration of Bryan K. Bedford Pursuant to Local Bankruptcy Rule 1007-2* (the “Bedford Decl.”) [Dkt. No. 4].

### **II. The Citibank Loan Documents**

6. On April 24, 2015, Republic Airline Inc. (“Republic Airline”) entered into a Credit and Guaranty Agreement (as amended, supplemented, or otherwise modified from time to time, the “Credit Agreement”), among Republic Airline, as borrower, Citibank, as administrative agent and initial lender, RAH, as parent and guarantor, and Shuttle America Corporation (“Shuttle”), as guarantor.<sup>3</sup> (See Bedford Decl. ¶ 35.)

7. The Credit Agreement provides for, among other things, a revolving credit facility (the “Revolving Facility”) in the maximum principal amount of \$25 million. (Id.)

---

<sup>3</sup> In October 2015, debtor Republic Airways Services, Inc. (“RAS”) and Citibank executed an Assumption and Joinder Agreement (the “Assumption and Joinder Agreement”). Pursuant to the Assumption and Joinder Agreement, RAS agreed to become a guarantor under the Credit Agreement.

8. As of the Petition Date, there was an outstanding principal balance of approximately \$23 million under the Credit Agreement. (Id.)

9. Republic Airline's obligations under the Credit Agreement are secured by certain aircraft and engines (the "Citibank Collateral") pursuant to a Mortgage and Security Agreement, dated as of July 22, 2015 (as amended, supplemented, or otherwise modified from time to time, the "Security Agreement"), between Shuttle and Citibank, as administrative agent. (Id.; Motion ¶ 9.)

10. Specifically, the Citibank Collateral consists of: (i) six Embraer ERJ-145LR aircraft (collectively, the "ERJ-145"); (ii) one Rolls-Royce AE3007 engine (the "Rolls-Royce Engine"); (iii) one General Electric CF34-10E6 engine (the "GE Engine," and together with the Rolls-Royce Engine, the "Engines"); and (iv) all records and documents related to the ERJ-145 and the Engines (collectively, the "Aircraft Records"). The Citibank Collateral is described further in the Annexes to the Motion.

### **III. The Motion**

11. On March 14, 2016, Republic filed the Motion as the "first step" in the process to "retire underutilized and idle aircraft and engines from its fleet through rejection or abandonment." (Motion ¶ 7.)

12. The Motion seeks five specific forms of relief: First, the Motion seeks authorization to surrender, return, and transfer title to the ERJ-145 and the Rolls-Royce Engine to Citibank, effective as of March 4, 2016 (the "Effective Date"). Second, the Motion seeks authorization to abandon the ERJ-145 and the Rolls-Royce Engine, effective as of the Effective Date. Third, the Motion seeks authorization to reject a lease with Aerodynamics Incorporated covering one ERJ-145, effective as of the Effective Date. Fourth, the Motion seeks authorization

for Shuttle to perform its obligations under an Engine Purchase Agreement (“MTU Purchase Agreement”) with MTU Maintenance Lease Services B.V. (“MTU”) pursuant to which Shuttle agreed to sell and MTU agreed to buy the GE Engine. Finally, the Motion seeks entry of an order directing Citibank to cooperate with the closing of the MTU Purchase Agreement and to take all steps necessary to release its liens on and security interests in the GE Engine.

### **Specific Objections**

#### **I. The Debtors’ Proposed “Surrender and Return” Procedures Do Not Satisfy Section 1110(c) of the Bankruptcy Code**

##### **A. The Debtors’ Proposed Abandonment Procedures**

13. To effectuate the return of the Excess Owned Equipment to the Owned Aircraft Secured Parties, the Debtors propose a two-step process: First, the Debtors seek to abandon the estates’ interests in the Excess Owned Equipment pursuant to section 554 of the Bankruptcy Code. Second, the Debtors seek to transfer title and surrender and return the Excess Owned Equipment to the Owned Aircraft Secured Parties pursuant to section 363(b) of the Bankruptcy Code. They propose to do this more or less simultaneously.

14. The Debtors propose that the following procedures govern the abandonment, transfer of title, surrender and return of the Citibank Collateral (the “Abandonment Procedures”):

- i. Each Owned Aircraft Secured Party must remove its Excess Owned Equipment from the locations designated on the annexes to the Motion within fifteen (15) days after the later of (x) entry of the Order and (y) the Effective Date (i.e., March 4, 2016). (Proposed Order at 4; Motion ¶ 25.)
- ii. If an Owned Aircraft Secured Party fails to remove its Excess Owned Equipment within that time, the Debtors seek authority to file a motion to compel the removal of the Excess Owned Equipment as well as require such Owned Aircraft Secured Party to pay for the costs of storing, maintaining and insuring the equipment incurred after the 15-day deadline. (Proposed Order at 4; Motion ¶ 25.)
- iii. The Debtors propose to continue storing, maintaining and insuring the equipment until the earlier of: (x) fifteen (15) days after the Effective Date

(i.e., March 19, 2016) or (ii) the date on which the Owned Aircraft Secured Party takes possession of its Excess Owned Equipment. Thereafter, however, the Debtors shall cease insuring and maintaining the Excess Owned Equipment. (Proposed Order at 5; Motion ¶ 26.)

- iv. Upon written request from an Owned Aircraft Secured Party, the Debtors shall cooperate reasonably with respect to the execution of or provision of information required for documentation to be filed with the FAA in connection with the Excess Owned Equipment; provided that such Owned Aircraft Secured Party shall be solely responsible for all costs associated with such documentation and for the filing thereof with the FAA. (Proposed Order at 5; Motion ¶ 5.)
- v. Lastly, the Debtors do not propose to return the Aircraft Records to the Owned Aircraft Secured Parties. Rather, the Debtors seek to (x) make the Aircraft Records “available” on the Effective Date or “when reasonably practicable” thereafter and (y) provide the Owned Aircraft Secured Parties with “reasonable access” to the Aircraft Records “when reasonably practicable” after entry of the order. (Proposed Order at 4; Motion ¶ 28.)

15. The Debtors propose to include a finding in the Order that the Abandonment Procedures described above satisfy the “surrender and return” requirements of section 1110(c) of the Bankruptcy Code. As set forth below, however, the Abandonment Procedures fall short of this standard in a number of respects.

B. Applicable Legal Standard

16. Section 1110 of the Bankruptcy Code sets forth special rules for secured parties, lessors and conditional vendors with respect to aircraft and related equipment. Specifically, the automatic stay with respect to aircraft mortgages and leases terminates unless, before 60 days after the filing of the petition, the trustee or debtor-in-possession “agrees to perform” all obligations of the debtor under the security agreement or lease and cures any defaults. 11 U.S.C. § 1110(a)(2). Additionally, section 1110 requires the trustee or debtor-in-possession to immediately “surrender and return” the aircraft if the lender or secured party becomes “entitled . . . to take possession” because of the termination of the stay. 11 U.S.C. § 1110(c)(1).

17. The exact legal standard governing a “surrender and return” under section 1110(c) is not defined in the Bankruptcy Code. However, courts have interpreted this requirement to impose a standard of “reasonableness” on all parties. See In re Northwest Airlines Corp., Case No. 05-17930 (ALG), Dkt. No. 1844, Oct. 7, 2005, Hrg. Tr. at 71:19–25 (Bankr. S.D.N.Y.) (a copy of the relevant portion of the transcript is annexed as Exhibit A) (stating that the “hallmark” of the section 1110(c) surrender and return requirements is “reasonableness”); In re FLYi, Inc., Case No. 05-20011(MFW), 2005 Bankr. LEXIS 3575, at \*5 (Bankr. D. Del. Dec. 5, 2005) (holding that a bankruptcy court applies a “reasonableness” test under section 1110(c) of the Bankruptcy Code).

18. Here, there is no dispute that section 1110 applies to the Citibank Collateral. The ERJ-145, the Engines and the Aircraft Records are all “equipment” within the meaning of sections 1110(a)(3)(A)(i) (covering aircraft and engines) and 1110(a)(3)(B) (covering records and documentation). The Citibank Collateral is therefore entitled to all protections afforded by section 1110(c), and any “surrender and return” under the Abandonment Procedures must be on a reasonable basis.<sup>4</sup>

C. A Fifteen–Day Period For Retrieval of Excess Owned Equipment is Unreasonable

19. The Abandonment Procedures require that Citibank retrieve the ERJ-145 and the Rolls-Royce Engine within 15 days after entry of the proposed Order.<sup>5</sup> If Citibank fails to retrieve the ERJ-145 and the Rolls-Royce Engine within this period, the Debtors seek to hold

---

<sup>4</sup> To the extent that section 1110(c)(1) requires a secured party to give “written demand” to a debtor as a condition precedent to the effectiveness of the debtor’s 1110(c) surrender and return obligations, Citibank submits that the filing of the Motion by the Debtors abrogated any requirement that Citibank provide such written notice with respect to the Citibank Collateral. Alternatively, this Limited Objection constitutes the required demand.

<sup>5</sup> As noted above, the Abandonment Procedures require each Owned Aircraft Secured Party to remove its Excess Owned Equipment within 15 days after the later of (i) entry of the proposed Order and (ii) the Effective Date. Fifteen days after the Effective Date (March 4, 2016) is March 19, 2016. Insofar as the hearing date on the Motion is not until March 22, 2016, this 15-day period will effectively run from entry of the proposed Order.

Citibank responsible for all applicable storage, maintenance and insurance costs. These requests are unreasonable and should be denied.

20. As an initial matter, Annex 1 to the Motion states that the ERJ-145 and the Rolls-Royce Engine are spread across four different locations: Kingman, Arizona; Louisville, Kentucky; Beachwood, Ohio; and Apodaca Nuevo Leon, Mexico.<sup>6</sup> Further, one ERJ-145 – MSN #145203 – is currently the subject of a lease with a third-party, and does not even appear to be in the Debtors' possession. (See Motion, Annex 2.)

21. For Citibank to transport the ERJ-145 and the Rolls-Royce Engine from their current locations, Citibank must first determine if the ERJ-145 and the Rolls-Royce Engine and their respective systems and component parts are intact, serviceable and capable of being removed or flown from their current locations. Similarly, each engine must be evaluated to determine whether it is in the proper airframe. These determinations will require Citibank to physically inspect, inventory and conduct the necessary operational systems checks on the ERJ-145 and the Rolls-Royce Engine, and to have access to the Aircraft Records (all currently in the Debtors' possession).

22. Accordingly, at this stage, Citibank is unable to determine when (if ever) the ERJ-145 and the Rolls-Royce Engine can be flown or otherwise retrieved. At a minimum, the Abandonment Procedures should be revised to provide Citibank 30 days from entry of the proposed Order to retrieve its collateral. This relief is consistent with that entered in other airline cases in this District. See, e.g., Delta Air Line, Inc., Case No. 05-17923 (PCB), Dkt. No. 790, at 3–4 (Bankr. S.D.N.Y. Oct. 17, 2005) (the “Delta Order,” a copy of which is annexed as

---

<sup>6</sup> According to Annex 3 to the Motion, the GE Engine is located in a fifth location in Columbus, Ohio.



Exhibit B) (providing for a 30-day period from entry of the applicable order to retrieve aircraft and engines).

D. The Debtors Should be Required to Maintain Insurance Coverage and Existing Storage Maintenance Programs

23. The proposed Order provides that the Debtors are “*authorized* (i) to maintain [their] current insurance coverage and continue the existing storage maintenance program applicable to each item of Excess Owned Equipment until the earlier of (a) *the fifteenth (15th) day after the relevant Effective Date* and (b) the date on which the relevant Owned Aircraft Secured Party takes possession of such Excess Owned Equipment and (ii) thereafter to cease insuring and maintaining such Excess Owned Equipment.” (Proposed Order at 5 (emphasis added).)

24. This request is nonsensical and extremely prejudicial to Citibank. As an initial matter, the Debtors should be “required” not “authorized” to honor their insurance, storage and maintenance obligations until the Debtors fulfill their statutory section 1110(c) obligations. Further, the fifteenth day after the Effective Date is March 19, 2016 – three days *before* the hearing on the Motion. Accordingly, as drafted, the Abandonment Procedures allow the Debtors to shift the burden of insuring, storing and maintaining the ERJ-145 and the Engines onto Citibank before the Court has even had an opportunity to hear the Motion. The proposed Order should be revised to require the Debtors to maintain all existing insurance coverage and storage maintenance programs until (at a minimum) the earlier of (i) 30 days after entry of the proposed Order and (ii) the date Citibank takes possession of the ERJ-145 and the Engines. See, e.g., Delta Order at 3–4.

E. Section 1110 Requires the Debtors to Return All Aircraft Records

25. The Debtors seek to make the Aircraft Records “available” on the Effective Date or “when reasonably practicable” thereafter, and to provide the Owned Aircraft Secured Parties with “reasonable access” to the Aircraft Records “when reasonably practicable” after entry of the proposed Order. (Proposed Order at 4.) Here, the Debtors again fail to meet the requirements set forth in section 1110.<sup>7</sup>

26. Section 1110(a)(3)(B) makes clear that the Debtors’ obligation to return and surrender “equipment” includes “all records and documents relating to such equipment that are required, under the terms of the security agreement . . . , *to be surrendered or returned by the debtor* in connection with the surrender or return of such equipment.” 11 U.S.C.

§ 1110(a)(3)(B)(emphasis added). Thus, the Debtors must “surrender and return” all Aircraft Records at the same time that the Debtors “surrender and return” the ERJ-145 and the Engines. However, as drafted, the Abandonment Procedures never actually require the Debtors to “surrender and return” the Aircraft Records. Rather, the Abandonment Procedures vaguely indicate that the Debtors will provide the Owned Aircraft Secured Parties with “reasonable access” to the Aircraft Records and “make available” the Aircraft Records “when reasonably practicable.” (Proposed Order at 4.)<sup>8</sup>

27. The Debtors’ proposal fails to comply with the explicit statutory requirements that the Aircraft Records be “surrendered and returned” with the ERJ-145 and the Engines. The proposed Order should therefore be revised to require the Debtors to “surrender and return” all

---

<sup>7</sup> In addition to requirements under section 1110 of the Bankruptcy Code, the Credit Agreement and the Security Agreement require Shuttle, upon reasonable prior notice, to provide Citibank’s representatives with access to the Aircraft Records. (See Credit Agreement § 5.13(b); Security Agreement § 3.03(a).) By this Limited Objection, Citibank requests access to all Aircraft Records to the extent Citibank has not already done so.

<sup>8</sup> As noted above, the Credit Agreement and the Security Agreement require this access.

Aircraft Records at the same time that the Debtors “surrender and return” the ERJ-145 and the Engines.

F. There Should Be No Presumption that the Debtors Have Satisfied Their Section 1110(c) Obligations

28. The Debtors argue that the Abandonment Procedures satisfy the “surrender and return” requirements of section 1110(c) and seek to include this finding in the final Order. (See Proposed Order at 4.) However, as discussed above, the Abandonment Procedures fail to comply with the section 1110(c) reasonableness standard. Further, it is premature for the Court to find that the Debtors are in compliance (or will be in compliance) with section 1110(c) when the actions to be taken to comply with such provision have not yet been taken, and are to occur in the future.

29. Moreover, a finding that the Debtors satisfied the “surrender and return” requirements of section 1110(c) would preclude filing claims against the Debtors based on the Debtors’ failure to comply with section 1110(c). The Debtors’ section 1110 obligations are post-petition statutory obligations and, as a result, any failure by the Debtors to satisfy their “surrender and return” obligations would give rise to a post-petition administrative expense claim. Accordingly, any Order should not include language that the Debtors have presumptively satisfied the “surrender and return” requirements of section 1110(c).

G. Citibank May Be Entitled to Assert an Administrative Expense Claim

30. The proposed Order should be modified to preserve Citibank’s rights to assert any administrative expense claims it may hold under applicable law, including as a result of the Debtor’s post-petition use of the Citibank Collateral, any post-petition breach of the Credit Agreement, the Security Agreement or the other loan documents, the Debtors’ abandonment of the Citibank Collateral and any failure, in whole or in part, of the Debtors to satisfy their section

1110(c) “surrender and return” obligations. These reservations of rights are routinely granted in airline cases in this District. See, e.g., In re AMR Corporation, Case No. 11-15463 (SHL), Dkt. No. 454 at 5 (Bankr. S.D.N.Y. Dec. 23, 2011) (the “AMR Order,” a copy of which is annexed as Exhibit C) (“that this Order . . . is without prejudice to the rights, if any, of . . . any Aircraft Financier . . . to assert a claim for damages for failure to comply or delay by the Debtors to satisfy all surrender, return or turnover provisions with respect to any portion of the Excess Leased Equipment or the Aircraft Records or for improper or inadequate record keeping with respect to the Aircraft Records, under the applicable Lease or other operative documents or under the Bankruptcy Code (including, without limitation, section 1110(c)), including entitlement to rent, supplemental rent or damages, ***or an administrative expense claim with respect to rent, supplemental rent or damages . . .***”) (emphasis added); In re Northwest Airlines Corp., Case No. 05-17930, Dkt. No. 713 ¶ 6 (Bankr. S.D.N.Y. Oct. 18, 2005) (annexed as Exhibit D) (“The entry of this Order is without prejudice to the ability of a . . . lender . . . to assert and file claims (***including a request for payment of an administrative expense claim***) for damages or other compensation arising under or in connection with . . . sections 503 or 1110 of the Bankruptcy Code, including any failures by the Debtors to comply with any terms and conditions, including return conditions and insurance provisions, contained in the Operative Agreements or to surrender and return in accordance with section 1110(c) of the Bankruptcy Code . . . .”) (emphasis added).)

31. As drafted, the proposed Order provides a limited reservation of rights, but it does not explicitly refer to administrative expense claims. (See Proposed Order at 4–5 (“Republic’s abandonment of the Excess Owned Equipment in accordance with this Order satisfies the ‘surrender and return’ requirements of section 1110(c) of the Bankruptcy Code, without

prejudice to the rights, if any, of (i) any Owned Aircraft Secured Party to assert a claim for damages for failure to comply or delay by the Debtors to satisfy all surrender, return, or turnover provisions with respect to any portion of the Excess Owned Equipment or for improper or inadequate record keeping with respect to the Aircraft Records”).) Further, the proposed Order provides that “claims arising out of any rejection *or abandonment* effected pursuant to these procedures must timely be filed in accordance with any order pursuant to Rule 3003(c) of the Federal Rules of Bankruptcy Procedure establishing a deadline by which *prepetition general unsecured claims* must be filed, on or before such deadline.” (Proposed Order at 6 (emphasis added).)

32. Taken together, these two provisions arguably bar Citibank from asserting administrative expense claims against the Debtors arising out of the Debtors’ post-petition use of the ERJ-145 and the Engines or the abandonment, transfer of title, and surrender and return thereof. Accordingly, the proposed Order should be revised to (i) broaden the reservation of rights to explicitly preserve Citibank’s right to assert administrative expense claims, if any, that it may be entitled to assert under applicable law and (ii) revise the requirement that all “claims arising out of any . . . abandonment” be filed on or before the general unsecured claims bar date to carve-out administrative expense claims.

H. The Order Should Provide for Relief from the Automatic Stay Upon Rejection

33. The proposed Order fails to provide for relief from the automatic stay to permit Citibank and its representatives and any other applicable parties to take the actions required of them by the Abandonment Procedures. While Citibank believes, based on sections 1110(a)(1) and (a)(2), that the Debtors’ “surrender and return” of the ERJ-145 and the Engines will nullify the automatic stay by operation of law, a Court order addressing that specific issue is necessary to remove any uncertainty. For the sake of clarity, the proposed Order should be revised to

provide that the automatic stay does not apply to any notices that may be given, or other actions that may be taken, in connection with the exercise of Citibank's rights and remedies with respect to the ERJ-145 and the Engines. This is consistent with orders entered in other airline cases in this District and should be included in any Order entered in this case. See, e.g., AMR Order at 4 (“[O]n the Effective Date, the automatic stay of section 362(a) of the Bankruptcy Code shall not apply to the Excess Leased Equipment or actions or proceedings taken by the Aircraft Financier in connection therewith, including but not limited to providing notices, enforcing rights and taking remedies permitted under the relevant Leases and applicable non-bankruptcy law with respect to the Excess Leased Equipment”).

**II. The Debtors Cannot Force Citibank to Sell the Collateral Immediately**

34. In the proposed Order, the Debtors request that the Court mandate Owned Aircraft Secured Parties to “sell their respective surrendered Excess Owned Equipment in a commercially reasonable manner as required by law, account to Republic and the Court for the proceeds, and return any surplus to Republic.” (Proposed Order at 3.) This language is inappropriate and contrary to applicable law and should therefore be stricken from the proposed Order. Upon abandonment of the ERJ-145 and the Engines pursuant to section 554(a) of the Bankruptcy Code, the ERJ-145 and the Engines will no longer be property of the Debtors' estates, and the Debtors will cease to have any interest whatsoever in the ERJ-145 and the Engines. As the fee owner of the ERJ-145 and the Engines, Citibank will have the option to sell, lease or retain title, in its discretion. Whatever option Citibank elects, its secured claim will be reduced in an appropriate amount (whether by application of sales proceeds or by reduction by the fair market value of any retained assets, as provided under the Uniform Commercial Code).

In any event, the claims reconciliation process—not this Motion—is the appropriate time for the Court to consider this issue.

**III. The Debtors' Proposed Sale to MTU Does Not Comply With the Bankruptcy Code**

35. The Debtors seek to sell the GE Engine to MTU pursuant to section 363(b) of the Bankruptcy Code. In support, the Debtors state that “section 363(b) of the Bankruptcy Code provides that a debtor can sell property of the estate where it has determined, in its business judgment, that the sale would be appropriate.” (Motion ¶ 21.) While this general proposition is true, the Debtors’ attempted sale to MTU ignores multiple basic principles of bankruptcy law.

**A. The Sale of the GE Engine to MTU Is Not Fair and Reasonable**

36. First, section 363 of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Governing precedent requires that such use, sale or lease be based upon the sound business judgment of the debtor. See, e.g., Official Comm. of Unsecured Creditors v. The LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 143 (2d Cir. 1992). Once a court is satisfied that there is a sound business justification for the proposed sale, the court must then determine whether (i) the debtor-in-possession has provided the interested parties with adequate and reasonable notice; (ii) the sale price is fair and reasonable; and (iii) the purchaser is proceeding in good faith. See, e.g., Polvay v. B.O. Acquisitions, Inc. (In re Betty Owens Sch., Inc.), No. 96 Civ. 3576 (PKL), 1997 U.S. Dist. LEXIS 5877, at \*12 (S.D.N.Y. Apr. 17, 1997) (citation omitted).

37. With respect to a “fair and reasonable” sale price, courts generally do not approve asset sales without an opportunity for competitive bidding in order to maximize the sale price of the assets to be sold. See, e.g., Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (Integrated Res., Inc.), 147 B.R. 650, 659 (S.D.N.Y. 1992) (“It is a well-established

principle of bankruptcy law that the . . . debtor’s duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.” (citations omitted)). For that reason, the sale process is almost universally subjected to a market test and an auction is a generally accepted method to test the value of the assets being sold. See, e.g., Section I.A., Guidelines for the Conduct of Asset Sales for the United States Bankruptcy Court for the Southern District of New York (“If no auction is contemplated or the debtor has not actively solicited or will not actively solicit higher and better offers, the motion seeking approval of the sale should explain why the debtor proposes to structure the sale in such manner.”); Section I.C.(2) (directing the sale proponent to provide evidence at the sale hearing sufficient for the court to make a finding that “the property has been adequately marketed, the purchase price constitutes the highest or otherwise best offer and provides fair and reasonable consideration”).

38. Here, the Debtors do not propose any auction or market test. Instead, the Debtors seek approval of a privately-negotiated sale that is unsupported by any evidence of market value or any explanation as to why an auction should not be held here. The Debtors do not state whether they solicited or even considered any competing bids, and merely make a conclusory statement that they negotiated a “good price” for the sale of the GE Engine. Absent a meaningful sale process, the MTU Purchase Agreement should not be approved.<sup>9</sup>

B. The Debtors’ Cannot Sell the GE Engine to MTU Free and Clear of Citibank’s Liens

39. Second, the Citibank Collateral cannot be sold free and clear of Citibank’s lien under section 363(f) of the Bankruptcy Code. Section 363(f) authorizes a debtor to sell property

---

<sup>9</sup> The proposed sale price has been redacted in the Motion, but has been provided by the Debtors to Citibank. Based on the information that Citibank has reviewed, Citibank believes that the GE Engine may be worth as much as \$1.5 million more than the proposed sale price.



under section 363(b) of the Bankruptcy Code “free and clear of any interest in such property of an entity other than the estate” only if it can satisfy one of five enumerated conditions:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). The Debtors bear the burden of proving they have satisfied one of the requirements of section 363(f). In re Ricco, Inc., No. 10-23, 2014 Bankr. LEXIS 1265, \*10 (Bankr. N.D. W. Va. Apr. 1, 2014) (citing In re Daufuskie Island Properties, LLC, 431 B.R. 626, 637 (Bankr. D.S.C. 2010)).

40. The Motion contains no discussion whatsoever of the requirements of section 363(f), or how they might be satisfied in connection with the MTU sale. Rather, the Motion appeals to the Court’s broad discretionary powers under section 105(a) of the Bankruptcy Code as a basis for forcing Citibank to release its lien on the GE Engine.<sup>10</sup> However, the proposed MTU sale does not satisfy any of the requirements of the five subsections of section 363(f). Citibank does not consent to the proposed sale, there is no dispute about Citibank’s claim, the

---

<sup>10</sup> The cases cited by the Debtors are irrelevant to the issue at hand. Schwartz v. Aquatic Dev. Group, Inc. (In re Aquatic Dev. Group, Inc.), 352 F.3d 671, 673 (2d Cir. 2003), involved an appeal from a bankruptcy court order granting the debtor-appellee’s motion to close its bankruptcy case *nunc pro tunc* pursuant to section 105(a), thereby relieving the debtor-appellee of its obligation to pay fees billed by the appellant U.S. Trustee prior to the effective date of the *nunc pro tunc* order. In fact, Judge Straub observed in a concurring opinion that “the general grant of equitable power contained in section 105(a) cannot trump specific provisions of the Bankruptcy Code, but must instead be exercised within the parameters of the Code itself.” Id. at 680 (concurring opinion) (citing Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206 (1988)). In re Gen. Growth Properties, Inc., 412 B.R. 122, 128 (Bankr. S.D.N.Y. 2009), is a generic order approving debtor-in-possession financing, the proceeds of which were used to repay the debtors’ obligations to their prepetition lenders in full.

proposed sale price is admittedly far less than the secured claim,<sup>11</sup> and there is no non-bankruptcy law that can compel the sale or allow it to be made free and clear of Citibank's claim and lien. Therefore, the Debtors cannot sell the GE Engine free and clear of Citibank's liens.

41. Based on the foregoing, the Debtors have two options with respect to the GE Engine. The Debtors may establish a competitive bidding process for the GE Engine under the guidance of the Court. If MTU is interested in participating in such a sale process, the MTU Purchase Agreement can be refashioned into a stalking horse bid, subject to higher and better offers, with the usual protections afforded stalking horse bidders in bankruptcy sales. At the conclusion of the sale process, the GE Engine will be transferred to the successful bidder and Citibank's lien will attach to the proceeds of the sale. If, however, the Debtors do not want to incur the cost and expense of conducting a sale process, the Debtors should abandon, surrender and return and transfer title to the GE Engine to Citibank in the same manner as the ERJ-145 and the Rolls-Royce Engine.

#### **IV. Reservation of Rights**

42. Lastly, the Motion inappropriately makes multiple conclusory statements regarding the value of the Citibank Collateral. (See Motion ¶ 13 (“Republic believes that the liens against the Excess Owned Equipment exceed the market value of the aircraft and engines, thereby leaving no equity for the estates.”); Motion ¶ 15 (“Republic does not believe it has any equity in the Excess Owned Equipment”).) The Debtors have submitted no valuation testimony supporting these assertions. The value of the Citibank Collateral is not relevant at this time except insofar as it relates to the Debtors' failure to comply with section 363(f)(3). This issue will be resolved in connection with the claims reconciliation process. Until then, Citibank

---

<sup>11</sup> As of the Petition Date, Citibank's claim was approximately \$23 million and was secured by all of the ERJ-145 and the Engines including the GE Engine.

objects to any premature statements regarding the value of the Citibank Collateral. Citibank reserves all rights and waives none with respect to its claim, valuation, remedies, and related issues.<sup>12</sup>

**Conclusion**

WHEREFORE, Citibank respectfully requests that the Court enter an order (i) denying approval of the Abandonment Procedures in their current form; (ii) denying approval of the MTU Purchase Agreement; and (iii) and granting such other relief as is appropriate.

Dated: New York, New York  
March 15, 2016

LUSKIN, STERN & EISLER LLP

By: /s/ Michael Luskin  
Michael Luskin  
Stephan E. Hornung

Eleven Times Square  
New York, New York 10036  
Telephone: (212) 597-8200  
Facsimile: (212) 974-3205  
Email: luskin@lsellp.com  
hornung@lsellp.com

*Counsel for Citibank, N.A.*

---

<sup>12</sup> Serious issues have been identified with respect to the appraisals of the Citibank Collateral performed pursuant to the Security Agreement. These are among the rights reserved by Citibank.

# EXHIBIT A

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:
  
In Re the Matter of: : 05-17930
  
:
  
NORTHWEST AIRLINES CORP., : One Bowling Green
  
: New York, New York
  
Debtors. : October 7, 2005
  
-----X

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE ALLAN G. GROPPER  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: BRUCE ZIRINSKY, ESQ.  
NATHAN HAYNES, ESQ.  
MARC ELLENBERG, ESQ.

For Unsec. Creditors: SCOTT HAZAN, ESQ.

For U.S. Bank: RICHARD HIERSTEINER, ESQ.

For Goldman, Sachs: DOUGLAS LIPKY, ESQ.

For ADHN Leasing: THOMAS MCAULEY, ESQ.

For Ad Hoc Committee: RISA ROSENBERG, ESQ.

For ABN Amro: MICHAEL RICHMAN, ESQ.

For GE Comm. Aviation: RICHARD P. KRASNOW, ESQ.

Court Transcriber: SHARI RIEMER  
TypeWrite Word Processing Service  
356 Eltingville Boulevard  
Staten Island, New York 10312

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service

1 "propose procedures for the rest of the rejection and  
2 abandonment process for creditors to review and be heard on."  
3 That is precisely what Section 1110 does not provide. Section  
4 1110(a)(1) of the Bankruptcy Code states that the right of a  
5 lessor or secured party to take possession of the equipment in  
6 compliance with a security agreement or lease, etc., shall not  
7 be limited. The corresponding obligation of the trustee or  
8 debtor-in-possession is to surrender and return the property.  
9 Congress did not require surrender and return of the property  
10 in compliance with the security agreement or lease, no doubt  
11 recognizing the cost and burdens this would place on the  
12 debtors, their estates and their other creditors.

13           The objectors have cited non-Section 1110 cases for  
14 the proposition that surrender and return mean something more  
15 than "go and pick it up," See, In Re: Smith, 207 BR 26,  
16 Bankruptcy Northern District of Georgia, 1997, where the  
17 Chapter 13 debtor told a finance company to pick up the car at  
18 a garage and pay the repair and storage bills.

19           This Court is not at this time going to set the  
20 precise surrender and return requirements as those terms are  
21 used in Section 1110(c). The hallmark as in any case is  
22 reasonableness. If the collateral of property is in storage  
23 and is to remain in storage in the desert, presumably, it  
24 should be returned there. If individual lessors or secured  
25 creditors have administrative claims because of the debtor's

# EXHIBIT B





1110 of the Bankruptcy Code, if applicable, as more fully described in the Motion; and upon consideration of the Declaration of Edward H. Bastian Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”) in Support of First-Day Motions and Applications, dated as of the Petition Date; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and consideration of the Motion and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b)(2); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Office of the United States Trustee for the Southern District of New York, those creditors holding the five largest secured claims against the Debtors’ estates, those creditors holding the thirty largest unsecured claims against the Debtors’ estates, counsel to the agent for the Debtors’ post-petition lenders and counsel for American Express Travel Related Services Company, Inc.; and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion and having held a hearing with appearances of parties in interest noted in the transcript thereof (the “**Hearing**”); and the Court having considered the arguments of counsel made, and the evidence proffered and adduced, at the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted

herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore, it is

ORDERED that the rejection of each of the leases (the “**Leases**”) of aircraft, engines, propellers and other related equipment listed on Schedule 1 attached to the Motion along with other equipment, records and documents described in section 1110(a)(3) of the Bankruptcy Code and subject to such Leases (collectively, the “**Excess Equipment**”) is authorized and approved effective as of the Petition Date (the “**Effective Date**”) pursuant to section 365(a) of the Bankruptcy Code; and it is further

ORDERED that promptly following the date of this Order, the Debtors shall relinquish possession of the Excess Equipment; and it is further

ORDERED that claims arising out of any rejection effected pursuant to these procedures must timely be filed in accordance with any order pursuant to Bankruptcy Rule 3003(c) establishing a deadline by which prepetition general unsecured claims must be filed (the “**Bar Date**”), on or before the later of (i) the Bar Date, or (ii) 30 days after the date of this Order. Any claim not timely filed will be irrevocably barred; and it is further

ORDERED that through the date that is thirty (30) days after entry of this Order, the Debtors shall maintain, and be solely responsible for the payment of, the storage, insurance and maintenance (under the storage, insurance and maintenance

storage program that existed as immediately prior to the Petition Date) obligations for the Excess Equipment, provided, however, that if and when, with respect to any Lease, the Lessor, loan trustee or controlling loan participants move the airframe from its current location, the Debtors shall cease being responsible for such obligations; and it is further

ORDERED that within five (5) business days after the date hereof, the Debtors shall pay into an escrow account established by counsel for the controlling loan participants an amount equal to \$180,000 to cover the costs for moving engines from the current airframe to the airframe associated with such engine, provided, however, that not more than \$3,000 shall be utilized for de-installation and re-installation of any single engine; and provided further that any portion of the \$180,000 not so utilized shall be returned to the Debtors on the earlier of (a) after completion of such installation and re-installation for all of the engines, the date that is ten (10) business days after the receipt of an invoice for such work and (b) March 31, 2006; and it is further

ORDERED that on or as soon as reasonably practicable after the Effective Date with respect to an item of Excess Equipment in accordance with these procedures, the Debtors shall surrender and return the records and documents (as defined in section 1110(a)(3)(B) of the Bankruptcy Code) relating to such Excess Equipment to the applicable Lessor, loan trustee or loan participant with authority to act with respect to the Lease governing the use of such Excess Equipment (such party, the "*Aircraft Financier*"); and it is further

ORDERED that if the Aircraft Financier affected by the rejection of a Lease does not retrieve or otherwise take control of the relevant Excess Equipment from the locations provided on Schedule C attached to the Debtors' Omnibus Response to Objections to Motions For an Order Authorizing Debtors to Reject Certain Aircraft, Engine and Propeller Leases and Subleases within 30 days after the date of entry of this Order, the Debtors may file a motion to compel removal of the Excess Equipment and/or payment to the Debtors of storage and other attendant costs, including without limitation all legal fees; and it is further

ORDERED that on the Effective Date, the automatic stay of section 362(a) of the Bankruptcy Code shall not apply to the Excess Equipment or actions or proceedings taken in connection with the enforcement of rights or remedies with respect to the Excess Equipment; and it is further

ORDERED that this Order is without prejudice to the rights of (i) any Aircraft Financier to assert a claim for rejection damages or for damages for failure by the Debtors to satisfy all surrender, return or turnover provisions with respect to the Excess Equipment under the applicable Lease or under the Bankruptcy Code (including, without limitation, section 1110(c) to the extent applicable), including entitlement to rent or supplemental rent, if any, or an administrative expense claim with respect to rent or supplemental rent, if any, or (ii) the Debtors or any other party to object to any such claims or their asserted priority; and it is further

ORDERED that upon written request from an affected Aircraft Financier, the Debtors agree to cooperate reasonably with such Lessor with respect to the execution of or provision of information required for a lease termination document to be filed with the Federal Aviation Administration (the "FAA") in connection with such Excess Equipment; provided, however, that the affected Aircraft Financier shall be solely responsible for all costs associated with such documentation and the filing thereof with the FAA; and it is further

ORDERED that the Debtors are hereby authorized to execute and deliver all instruments and documents and take any additional actions as may be necessary or appropriate to implement and effectuate the procedures; and it is further

ORDERED that, in addition to, and without limiting any obligations (if any) of, the Debtors under section 1110(c) of the Bankruptcy Code and the rights of the Aircraft Financiers under the sixth (surrender and return of records and documents) and ninth (ability to assert claims) ordered paragraphs of this Order, for a period of 90 days following entry of this Order, the Debtors shall use commercially reasonable efforts to provide technical documents and records to the Aircraft Financiers relating to the Excess Equipment; provided, however, except to the extent required (if required) under section 1110(c) or as otherwise ordered by this Court, the Debtors shall be under no obligation to incur expenses or costs relating to such efforts; and it is further

ORDERED that, subject to the proviso to this decretal paragraph, to ensure that damage claims against the Debtors are minimized, any warranties or similar manufacturer benefits (collectively, the “**Warranties**”) relating to the Excess Equipment held by the Debtors shall be assigned to the Aircraft Financiers and such Warranties shall remain in full force and effect as if such Warranties remain held by the Debtors, provided, however, that this decretal paragraph shall not impose upon the Debtors or any Aircraft Financier, or obligate the Debtors or any Aircraft Financier to assume or incur, any obligations, costs or expenses; and it is further

ORDERED that to the extent that loan participants and/or loan trustees, as Aircraft Financiers, have authority to take action with respect to the Excess Equipment under the Leases and other operative documents, such loan participants and/or loan trustees are hereby authorized to take all such actions; and it is further

ORDERED that to the extent that any Aircraft Financiers incur costs or other amounts to protect, preserve or maintain the Excess Equipment, or as otherwise contemplated under any Lease and/or the other operative documents with respect to the Excess Equipment, such costs and amounts may be charged against the interests, if any, of any Lessor in the Excess Equipment or against the Excess Equipment as provided under the Lease or other operative documents; and it is further

ORDERED that the notice procedures set forth in the Motion are good and sufficient notice and satisfy Bankruptcy Rules 2002(a), 6006, 6007 and 9014 and Local Rule 6007-1 by providing the counterparties with a notice and an opportunity to object and be heard at a hearing.

Dated: October 17, 2005  
New York, New York

/s/ Prudence Carter Beatty  
UNITED STATES BANKRUPTCY JUDGE

# EXHIBIT C



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

-----X  
**In re** :  
 : **Chapter 11 Case No.**  
 :  
**AMR CORPORATION, et al.,** : **11-15463 (SHL)**  
 :  
 : **(Jointly Administered)**  
 :  
**Debtors.** :  
-----X

**ORDER GRANTING DEBTORS' FIRST OMNIBUS MOTION PURSUANT TO  
SECTION 365 OF THE BANKRUPTCY CODE AND BANKRUPTCY  
RULE 6006 TO REJECT CERTAIN AIRCRAFT AND ENGINE LEASES**

Upon the motion dated November 29, 2011 (the "**Motion**")<sup>1</sup> of AMR Corporation ("**AMR Corp.**"), American Airlines, Inc. ("**American Airlines**"), AMR Eagle Holding Corporation, and certain of their subsidiaries, as debtors and debtors in possession (collectively, the "**Debtors**"), for authorization pursuant to section 365 of the Bankruptcy Code and Bankruptcy Rule 6006 to reject the leases (the "**Leases**") for aircraft (including engines and other related equipment) specified on Schedule 1 attached hereto (collectively, together with all related Aircraft Records (as defined herein) and all related "equipment," as described in section 1110(a)(3) of the Bankruptcy Code, the "**Excess Leased Equipment**"); and upon consideration of the Affidavit of Isabella D. Goren Pursuant to Rule 1007-2 of the Local Bankruptcy Rules of the Southern District of New York; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and consideration of the Motion and the requested relief

<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings given them in the Motion.

being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Lessors and (i) the Office of the United States Trustee for the Southern District of New York, (ii) the holders of the five largest secured claims against the Debtors (on a consolidated basis), (iii) the holders of the fifty largest unsecured claims against the Debtors (on a consolidated basis), (iv) the attorneys for the Allied Pilots Association, (v) the attorneys for the Air Line Pilots Association, International, (vi) the attorneys for the Association of Professional Flight Attendants, (vii) the attorneys for the Association of Flight Attendants – CWA, AFL-CIO, and (viii) the attorneys for the Transport Workers Union of America, AFL-CIO, and no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion and having held a hearing before the Court with appearances of parties in interest noted in the transcript thereof (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is hereby granted as provided herein; and it is further

ORDERED that, pursuant to section 365 of the Bankruptcy Code and Bankruptcy Rule 6006, the Debtors’ rejection of each Lease as of the relevant Effective Date (as set forth in the attached Schedule 1) is approved; and it is further

ORDERED that the obligation imposed under section 1110(c) of the Bankruptcy Code to immediately surrender and return an item of Excess Leased Equipment applies to the

Debtors to the extent that the Lease for such Excess Leased Equipment is covered by section 1110 of the Bankruptcy Code; and it is further

ORDERED that the Debtors shall, on the Effective Date, or as soon as reasonably practicable after the Effective Date, make available all “records and documents” (as defined in section 1110(a)(3)(B) of the Bankruptcy Code) in the Debtors’ possession related to the Excess Leased Equipment (collectively, the “**Aircraft Records**”) to the appropriate Aircraft Financier (as defined below) and that the Debtors shall (i) as soon as reasonably practicable after the entry of this Order, provide to such Aircraft Financier reasonable access to the Aircraft Records and (ii) from and after the entry of this Order, respond to reasonable inquiries regarding the Aircraft Records; and it is further

ORDERED that the Debtors be and hereby are directed to return the Excess Leased Equipment to the applicable controlling lessor, secured party, loan participant(s), loan trustee, owner trustee or owner participant(s) that has, in the reasonable determination of the Debtors, authority pursuant to the Lease and other related agreements to act with respect to such Excess Leased Equipment (such party or parties, the “**Aircraft Financier**”) at the location and in accordance with the return procedures set forth in the Motion (as modified hereby), *provided* that the Debtors and the Aircraft Financier may agree in writing that the Excess Leased Equipment will be returned to another location(s) or according to other return procedures (“**Agreed Arrangements**”) and *provided further* that the Debtors shall, as soon as reasonably practicable after entry of this Order, provide to such Aircraft Financier reasonable access to such Excess Leased Equipment; and it is further

ORDERED that if any of the Excess Leased Equipment happen to be non-serviceable, the Debtors are under no obligation to repair such Excess Leased Equipment to

make them serviceable, subject, however, to the reservation of rights provisions below regarding the assertion of administrative priority claims and/or general unsecured claims for damages and maintenance condition status; and it is further

ORDERED that, upon written request from an Aircraft Financier, the Debtors shall cooperate reasonably with such Aircraft Financier with respect to the execution of or provision of information required for a lease termination document or other documentation, as appropriate, to be filed with the Federal Aviation Administration (the "FAA") in connection with such Excess Leased Equipment, but that the Aircraft Financier shall be solely responsible for all costs associated with such documentation and for the filing thereof with the FAA; and it is further

ORDERED that the Debtors (i) shall maintain their current insurance coverage and continue the existing storage maintenance program applicable to each item of Excess Leased Equipment until the earlier of (a) the fifteenth (15th) day after the later of entry of the Order and the relevant Effective Date and (b) the date on which the appropriate Aircraft Financier takes possession of such Excess Leased Equipment and (ii) thereafter are authorized to cease insuring and maintaining such Excess Leased Equipment; and it is further

ORDERED that on the Effective Date, the automatic stay of section 362(a) of the Bankruptcy Code shall not apply to the Excess Leased Equipment or actions or proceedings taken by the Aircraft Financier in connection therewith, including but not limited to providing notices, enforcing rights and taking remedies permitted under the relevant Leases and applicable non-bankruptcy law with respect to the Excess Leased Equipment; and it is further

ORDERED that claims arising out of any rejection effected pursuant to these procedures must timely be filed in accordance with any order pursuant to Bankruptcy Rule

3003(c) establishing a deadline by which prepetition general unsecured claims must be filed (the “**Bar Date**”), on or before the Bar Date; and it is further

ORDERED that nothing set forth herein shall be deemed to determine the scope of the Debtors’ surrender and return obligations with respect to the Excess Leased Equipment and that this Order (including, without limitation, the Effective Dates set forth in Schedule 1) is without prejudice to the rights, if any, of (i) any Aircraft Financier in these transactions to assert a claim for damages for failure to comply or delay by the Debtors to satisfy all surrender, return or turnover provisions with respect to any portion of the Excess Leased Equipment or the Aircraft Records or for improper or inadequate record keeping with respect to the Aircraft Records, under the applicable Lease or other operative documents or under the Bankruptcy Code (including, without limitation, section 1110(c)), including entitlement to rent, supplemental rent or damages, or an administrative expense claim with respect to rent, supplemental rent or damages, if any, or a claim for other contractual payments, including any indemnities, fees and expenses of the trustee, if any, stipulated loss value or payments under a tax indemnity agreement, if any, or (ii) the Debtors or any other party to object to any such claims or their asserted priority; *provided, however*, that to the extent there are Agreed Arrangements, with respect to specific matters delineated therein, the Aircraft Financiers shall not have any claim for damages relating to the Debtors’ compliance with the Agreed Arrangements in lieu of the requirements for the applicable Lease (but all other claims and priority rights (and defenses thereto) are fully preserved); and it is further

ORDERED that the Debtors are authorized to execute and deliver all instruments and documents and take any additional actions as are necessary or appropriate to implement and effectuate the rejections approved hereby; and it is further

ORDERED that the Motion satisfies Bankruptcy Rules 6006 and 9014; and it is further

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

Dated: **December 23, 2011**  
New York, New York

/s/ Sean H. Lane  
HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

# EXHIBIT D

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
**In re:** : **Chapter 11**  
: **Case No. 05-17930 (ALG)**  
**NORTHWEST AIRLINES CORPORATION, et al.,** : **Jointly Administered**  
**Debtors.** :  
-----x

**AMENDED ORDER (A) PURSUANT TO SECTION 365 OF THE BANKRUPTCY  
CODE AUTHORIZING REJECTION OF CERTAIN AIRCRAFT LEASES AND  
(B) PURSUANT TO SECTION 554 OF THE BANKRUPTCY CODE  
AUTHORIZING ABANDONMENT OF CERTAIN AIRCRAFT**

Upon consideration of the motion (the “Motion”)<sup>1</sup> of Northwest Airlines Corporation (“NWA Corp.”), and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “Debtors”),<sup>2</sup> seeking entry of an order pursuant to sections 365 and 554 of title 11, United States Code (the “Bankruptcy Code”) authorizing the Debtors to (a) reject the leases relating to certain excess aircraft and (b) abandon certain other excess aircraft; 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 due notice of the Motion having been provided to (i) the lessors and lenders having direct interests in the aircraft to be returned

---

<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

<sup>2</sup> Specifically, in addition to NWA Corp., the Debtors consist of: NWA Fuel Services Corporation (“NFS”), Northwest Airlines Holdings Corporation (“Holdings”), NWA Inc. (“NWA Inc.”), Northwest Aerospace Training Corp. (“NATCO”), Northwest Airlines, Inc. (“Northwest Airlines”), MLT Inc. (“MLT”), Northwest Airlines Cargo, Inc. (“Cargo”), NWA Retail Sales Inc. (“NWA Retail”), Montana Enterprises, Inc. (“Montana”), NW Red Baron LLC (“Red Baron”), Aircraft Foreign Sales, Inc. (“Foreign Sales”) and NWA Worldclub, Inc. (“WorldClub”). This Order also applies to NWA Aircraft Finance, Inc., which shall be included in the definition of “Debtors” for purposes of this Order.



pursuant to the Motion, (ii) the Debtors' twenty largest unsecured creditors, (iii) the Debtors' five largest pre-petition secured lenders or any agent therefor, (iv) the United States Trustee for this District, and (v) the Securities and Exchange Commission; and it appearing that no other or further notice of the Motion need be provided; and objections to the Motion having been filed as reflected on the docket of these cases; and the Court having determined that the relief sought in the Motion, to the extent granted herein, is in the best interests of the Debtors, their estates and all parties in interest; and the Court having further found that Section 1110 of the Bankruptcy Code applies to the Debtor Northwest Airlines and that upon rejection of a qualifying lease relating to qualifying equipment or abandonment of a qualifying equipment securing a qualifying loan Section 1110(c) governs the return and surrender of the equipment, notwithstanding that the rejection or abandonment is within 60 days of the petition date and notwithstanding the absence of a written demand for return of the aircraft; and upon the Motion, the declaration of Douglas M. Steenland, dated as of the Petition Date, the declaration of Neal S. Cohen Pursuant to Local Bankruptcy Rule 1007-2 and in Support of the Debtors' Chapter 11 Petitions and First Day Orders, dated as of the Petition Date, and the Debtors' omnibus reply to the objections; and all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, and for the reasons stated from the bench at the conclusion of the hearing on the Motion, it is hereby ORDERED as follows:

1. All objections to the Motion, as they relate to aircraft listed on the amended Exhibit A to the Motion, attached to this Order as Exhibit A, are overruled, sustained, reserved or otherwise resolved as set forth below.

2. A hearing to consider the relief requested in the Motion relating to the aircraft identified on amended Exhibit B to the Motion, attached to this Order as Exhibit B, shall be held on October 19, 2005 at 10:00 a.m.

3. The Motion is granted and approved to the extent set forth herein.

4. As and to the extent applicable, pursuant to section 365 of the Bankruptcy Code, and subject to the terms of this Order, the leases for the aircraft identified on Exhibit A hereto are hereby rejected, effective as of October 7, 2005.

5. As and to the extent applicable, pursuant to section 554 of the Bankruptcy Code, and subject to the terms of this Order, the aircraft identified on Exhibit A hereto that are owned by any of the Debtors are hereby abandoned, effective as of October 7, 2005.

6. The Debtors are authorized to and shall maintain the current insurance coverage on the aircraft identified on Exhibit A hereto and maintain the storage maintenance program under which any such aircraft is being maintained for the shorter of the following periods (such period, the 'Excess Aircraft Coverage Period'): (a) the thirtieth (30th) day after the Petition Date, and (b) the date on which the lessor, lender, or other affected party, as the case may be, takes possession of such aircraft and equipment. At the conclusion of the Excess Aircraft Coverage Period, the Debtors shall cease insuring and maintaining such Excess Aircraft, unless the Court determines, on request of a lessor, lender or other affected party, that such action would be unreasonable under the specific circumstances presented to the Court.

7. The Debtors are authorized to reject any subleases related to any leases rejected pursuant to this Order.

8. To the extent a lease or loan transaction on Exhibit A is covered by Section 1110 of the Bankruptcy Code, the obligation imposed by Section 1110(c)(1) to immediately surrender and return equipment (as defined by Section 1110(a)(3)) ('Equipment') applies to the Debtors; provided however that this does not require the Debtor to comply with the surrender and return provisions of the security agreement or lease, as applicable, to the extent such return conditions exceed the surrender and return obligation of Section 1110(c)(1); and

provided further that this Order does not define the precise contours of the terms surrender and return for purposes of Section 1110.

9. The entry of this Order is without prejudice to the ability of a lender, lessor, or other affected party whose Equipment is the subject of a lease that is rejected or is abandoned, as applicable, to assert and file claims (including a request for payment of an administrative expense claim) for damages or other compensation arising under or in connection with (1) the applicable leases or financing documents (such leases or financing documents and related documents, collectively, the "Operative Agreements") and/or (2) sections 503 or 1110 of the Bankruptcy Code, including any failures by the Debtors to comply with any terms and conditions, including return conditions and insurance provisions, contained in the Operative Agreements or to surrender and return in accordance with section 1110(c) of the Bankruptcy Code; provided, that this Order is without prejudice to the Debtors' defenses and objections to such claims.

10. To the extent necessary, the automatic stay provided by section 362 of the Bankruptcy Code is hereby modified as to any and all of the Debtors' estates to allow the parties to effectuate the provisions of this Order and to transfer, move and dispose of the abandoned or rejected Equipment.

11. The Debtors will cooperate with lessors and lenders and other affected parties in the execution and delivery of lease termination statements and title transfer documents in a form adequate for filing with the Federal Aviation Administration.

12. This order is without prejudice to the rights of any party asserting a mechanic's lien against aircraft on Exhibit A.

13. Notwithstanding the possible applicability of Bankruptcy Rules 6007, 7062, 9014, any other provision of the Bankruptcy Rules, Bankruptcy Code or otherwise, this Order shall take effect immediately upon signature by this Court.

14. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

15. Service of the Motion as provided therein shall be deemed good and sufficient notice of such Motion.

16. The requirement under Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York for the filing of a memorandum of law is waived.

Dated: New York, New York  
October 18, 2005

/s/ Allan L. Gropper  
UNITED STATES BANKRUPTCY JUDGE