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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 16-10429-shl

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In the Matter of:

REPUBLIC AIRWAYS HOLDINGS INC., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 22, 2016

11:09 AM

B E F O R E:

HON. SEAN H. LANE

U.S. BANKRUPTCY JUDGE

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Doc. #7 (Wages) Motion to Authorize / Debtors' motion pursuant to 11 U.S.C. Sections 363(b) and 105(a) for entry of interim and final orders (i) authorizing (a) payment of pre-petition wages, salaries and other compensation and employee benefits and (b) maintenance of employee benefit programs and payment of related administrative obligations and (ii) authorizing and directing financial institutions to honor and process related checks and transfers.

Doc. #11 Motion to Authorize / Debtors' motion pursuant to 11 U.S.C. Sections 105(a), 362(d), 363(b) and 365(a) for entry of interim and final orders (i) authorizing debtors (a) to assume clearinghouse agreements nunc pro tunc to the commencement date and (b) immediately satisfy certain related pre-petition settlement obligations, (ii) modifying the automatic stay, and (iii) authorizing and directing financial institutions to honor and process related checks and transfers.

Doc. #12 (Utilities) Motion to Authorize / Debtors' motion pursuant to 11 U.S.C. Sections 366 and 105(a) for entry of interim and final orders (i) approving debtors' proposed form of adequate assurance of payment to utilities, (ii) establishing procedures for resolving objections by utility companies, and (iii) prohibiting utilities from

1 altering, refusing, or discontinuing service, filed by Bruce
2 Robert Zirinsky on behalf of Republic Airways Holdings Inc.

3
4 Doc. #13 (Insurance) Motion to Authorize / Debtors' motion
5 pursuant to 11 U.S.C. Sections 105(a), 362(d), 363(b) and
6 503(b) for entry of orders (i) authorizing debtors to continue
7 their insurance programs and satisfy insurance obligations,
8 (ii) modifying the automatic stay with respect to workers'-
9 compensation claims, and (iii) authorizing and directing
10 financial institutions to honor and pay related checks and fund
11 transfers.

12
13 Doc. #14 (Taxes) Motion to Authorize / Debtors' motion pursuant
14 to 11 U.S.C. Sections 105(a), 363(b), 507(a)(8) and 541 for
15 entry of interim and final orders (i) authorizing, but not
16 directing, debtors to pay pre-petition taxes and assessments
17 and (ii) authorizing and directing financial institutions to
18 honor and process related checks and transfers.

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20 Doc. #24 Application to Employ / Debtors' application pursuant
21 to 11 U.S.C. Section 327(a), Fed. R. Bankr. P. 2014(a) and 2016
22 and Local Bankruptcy Rules 2014-1 and 2016-1 for authority to
23 retain and employ Zirinsky Law Partners PLLC as lead bankruptcy
24 attorneys for the debtors nunc pro tunc to the commencement
25 date.

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Doc. #25 Application to Employ / Debtors' application pursuant to 11 U.S.C. Section 327(a), Fed. R. Bankr. P. 2014(a) and 2016 and Local Bankruptcy Rules 2014-1 and 2016-1 for authority to retain and employ Hughes Hubbard & Reed LLP as attorneys for the debtors nunc pro tunc to the commencement date.

Doc. #27 Application to Employ / Debtors' application pursuant to 11 U.S.C. Section 327(a), Fed. R. Bankr. P. 2014(a) and 2016(a), and Local Bankruptcy Rules 2014-1 and 2016-1 for authority to employ and retain Prime Clerk LLC as administrative advisor nunc pro tunc to the commencement date.

Doc. #97 Application to Employ / Debtors' application for entry of an order authorizing and approving the employment and retention of KPMG LLP as tax consultant to the debtors nunc pro tunc to the commencement date.

Doc. #28 Motion to Authorize / Debtors' motion pursuant to 11 U.S.C. Sections 105(a), 327 and 330 for authority to employ professionals used in the ordinary course of business, nunc pro tunc to the commencement date.

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Doc. #29 Motion to Approve / Debtors' motion for entry of order pursuant to 11 U.S.C. Sections 331 and 105(a) establishing procedures for interim compensation and reimbursement of expenses of professionals.

Doc. #8 Motion to Authorize / Debtors' motion pursuant to 11 U.S.C. Sections 363(b), 105(a) and 503(b)(9) for entry of interim and final orders (i) authorizing, but not directing, debtors to pay pre-petition obligations owed to foreign creditors and (ii) authorizing and directing financial institutions to honor and process related checks and transfers.

Doc. #9 Motion to Authorize / Debtors' motion pursuant to 11 U.S.C. Sections 105(a), 363(b), 503(b) and 507(a) for entry of interim and final orders (i) authorizing, but not directing, debtors to pay certain pre-petition (a) charges of shippers, warehousemen, and other lien claimants and (b) customs duties, (ii) granting administrative-expense status for certain goods delivered post-petition, and (iii) authorizing and directing financial institutions to honor and process related checks and transfers.

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Doc. #10 (Critical Vendors) Motion to Authorize / Debtors' motion pursuant to 11 U.S.C. Sections 105(a), 363(b), and 503(b)(9) for entry of interim and final orders

(i) authorizing, but not directing, debtors to pay pre-petition obligations of critical vendors and (ii) authorizing and directing financial institutions to honor and process related checks and transfers.

Doc. #18 Motion to Approve / Debtors' motion pursuant to 11 U.S.C. Sections 362 and 105(a) for entry of interim and final orders establishing notification procedures and approving restrictions on certain transfers of claims against and interests in the debtors.

Doc. #22 Motion to Authorize / Debtors' motion for an order (i) authorizing, but not directing, debtors to pay pre-payment obligations to PK AirFinance US, Inc. under certain aircraft loan agreement and (ii) directing PK AirFinance US, Inc. and Wells Fargo Bank Northwest, N.A., as security trustee, to take all steps necessary to release related aircraft collateral.

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Doc. #23 Motion to Authorize / Debtors' motion for entry of an order authorizing the debtors to (i) enter into agreements under 11 U.S.C. Section 1110(a), (ii) enter into stipulations to extend the time to comply with 11 U.S.C. Section 1110, and (iii) file redacted Section 1110 election notices and Section 1110(b) stipulations.

Doc. #102 Motion to Assume / Debtors' motion for entry of order pursuant to 11 U.S.C. 365(a) approving assumption of consignment agreement with Diversified Aero Services Inc.

Doc. #103 (Seal) Motion to Seal / Debtors' motion for entry of order pursuant to 11 U.S.C. Section 107(b) and Fed. R. Bankr. P. 9018 authorizing the filing of certain information under seal in connection with Debtors' motion for entry of order pursuant to 11 U.S.C. Section 365(a) approving assumption of consignment agreement with Diversified Aero Services Inc.

Doc. #104 Motion to Approve / Debtors' motion for approval of expedited procedures for (i) the sale of certain assets free and clear of liens, claims and encumbrances and (ii) the abandonment of certain of the debtors' property.

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2 Doc. #101 (Seal) Motion to Seal / Debtors' motion for entry of
3 order pursuant to 11 U.S.C. Section 107(b) and Fed. R. Bankr.
4 P. 9018 authorizing the filing of certain information under
5 seal in connection with Debtors' first omnibus motion pursuant
6 to 11 U.S.C. Sections 105(a), 363(b), 365, 554 and 1110 and
7 Fed. R. Bankr. P. 6006 and 6007 for an order (I) authorizing
8 Debtors to transfer title and abandon certain owned aircraft
9 and engines and rejected related aircraft lease and
10 (II)(A) authorizing, but not directing, debtors to fulfill
11 their obligations under a certain engine purchase agreement and
12 (B) directing Citibank N.A. to take all steps to cooperate with
13 the closing of same.

14
15 Doc. #100 Motion to Authorize / Debtors' first omnibus motion
16 pursuant to 11 U.S.C. 105(a), 363(b), 365, 554 and 1110 and
17 Fed. R. Bankr. P. 6006 and 6007 for an order (I) authorizing
18 debtors to transfer title to and abandon certain owned aircraft
19 and engines and reject related aircraft lease and
20 (II)(A) authorizing, but not directing, Debtors to fulfill
21 their obligations under a certain engine purchase agreement and
22 (B) directing Citibank N.A. to take all steps to cooperate with
23 the closing of same.

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2 Doc. #6 (Cash Management) Motion to Authorize / Debtors' motion
3 pursuant to 11 U.S.C. Sections 105(a), 345(b), 363(b), 363(c),
4 364(a), 503(b) and 507(a) and Fed. R. Bankr. P. 6003 and 6004
5 for entry of interim and final orders (i) authorizing debtors
6 to (a) continue to use existing cash-management system,
7 (b) honor certain pre-petition obligations related to the use
8 thereof, (c) provide post-petition intercompany claims
9 administrative-expense priority, and (d) maintain existing
10 business forms and (ii) waiving the requirements of 11 U.S.C.
11 Section 345(b).

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13 Doc. #26 Application to Employ / Debtors' application for
14 authority to employ and retain Seabury Corporate Advisors LLC
15 and Seabury Securities LLC as financial advisor and investment
16 banker to the debtors nunc pro tunc to the commencement date.

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BY: CELINDA J. METRO, ESQ.

1 P R O C E E D I N G S

2 THE COURT: We are here this morning for second-day
3 hearing in Republic Airways. So let me get appearances from
4 counsel.

5 MS. RICHARDSON: Good morning, Your Honor. Sharon
6 Richardson from Zirinsky Law Partners. With me today is my
7 partner Gary Ticoll and our colleagues from Hughes Hubbard &
8 Reed: Chris Kiplok, Chris Gartman, Erin Diers and Lauren
9 Lipari.

10 THE COURT: All right, good morning.

11 MR. MILLER: Good morning, Your Honor. Brett Miller,
12 Morrison & Foerster, along with Todd Goren and Erica Richards.
13 We're proposed counsel for the official committee of unsecured
14 creditors.

15 THE COURT: All right.

16 MR. MASUMOTO: Good morning, Your Honor. Brian
17 Masumoto for the Office of the United States Trustees.

18 MR. HORNING: Good morning, Your Honor. Stephan
19 Hornung from Luskin, Stern & Eisler, on behalf of Citibank.

20 MR. GELBER: Good morning, Your Honor. Laurence
21 Gelber of Schulte Roth & Zabel, on behalf of the ad hoc
22 committee of equityholders.

23 MR. GOLDBERG: Good morning, Your Honor. Adam
24 Goldberg of Latham & Watkins, on behalf of GE Capital Aviation
25 Services.

1 MR. HUEBNER: Good morning, Your Honor. Marshall
2 Huebner of Davis Polk & Wardwell, on behalf of Delta Airlines.
3 Nice to be back before you.

4 MR. BARBUR: Good morning, Your Honor. Ryan Barbur of
5 Levy Ratner on behalf of International Brotherhood of
6 Teamsters.

7 MS. METRO: Good morning, Your Honor. Celinda Metro
8 from Watson Farley & Williams, for Aica Secured Bank AG (ph.).

9 THE COURT: All right. Anyone else?

10 MR. BURKE: Good morning, Your Honor. Michael Burke,
11 Sidley Austin, for United Airlines. Thank you.

12 THE COURT: All right. Good morning. Good to see all
13 of you.

14 Proceed.

15 MS. RICHARDSON: Good morning, Your Honor. Your
16 Honor, an amended agenda was filed yesterday afternoon and sent
17 over to chambers with two binders. Since that time, one
18 matter, the Seabury retention matter, which was the subject of
19 an objection, has been resolved. Your Honor's binders have
20 blacklines of proposed orders, but Your Honor's binder does not
21 have the Seabury order, which --

22 THE COURT: All right.

23 MS. RICHARDSON: -- we're happy to hand up if that --

24 THE COURT: Great.

25 MS. RICHARDSON: -- would be helpful.

1 THE COURT: Thank you.

2 Thank you very much.

3 MS. RICHARDSON: And copies have been provided to the
4 creditors' committee and the U.S. Trustee. And if anyone else
5 in the courtroom would like blacklined copies, we have plenty
6 available.

7 THE COURT: All right. Great. Thanks.

8 MS. RICHARDSON: Unless the Court has any questions,
9 may we proceed down the agenda?

10 THE COURT: Absolutely.

11 MS. RICHARDSON: Okay.

12 THE COURT: So I guess we're starting with binder 1;
13 correct?

14 MS. RICHARDSON: Binder 1, tab 1.

15 THE COURT: All right.

16 MS. RICHARDSON: And this is Republic's corrected
17 motion to pay pre-petition wages, salaries and benefits and
18 reimbursable business expenses; this is docket numbers 7 and
19 141. And, Your Honor, there are no objections to entry of the
20 final order. I would point out for the Court that the motion
21 had initially identified a 3,200-dollar severance obligation
22 that was owed to one individual. Subsequent to the interim
23 hearing, however, Republic recognized that the obligation is in
24 fact twelve biweekly payments of 3,200 dollars, for an
25 aggregate of approximately 38,000. Accordingly, we filed a

1 correction to the motion, which was at docket 141, and seek
2 authorization to pay the corrected amount along with the other
3 obligations requested in the motion.

4 As Your Honor may recall in connection with the
5 interim order, Republic agreed to provide the U.S. Trustee and
6 counsel for the creditors' committee with information regarding
7 the individuals to whom pre-petition bonuses and expense
8 reimbursements were paid, and the amounts. And that
9 information has been provided.

10 THE COURT: All right. And I see it's reflected in
11 the order as well.

12 MS. RICHARDSON: Yes.

13 THE COURT: All right, anybody wish to be heard as to
14 the request for a final order on this motion?

15 All right, seeing no objections and not having seen
16 any on the docket, I'm happy to enter the final order and grant
17 the request for final order dealing with the authorization of
18 payment of pre-petition wages, salaries and other compensation
19 benefits and maintaining various programs in connection
20 therewith.

21 MS. RICHARDSON: Thank you, Your Honor.

22 THE COURT: And to the extent that it's appropriate to
23 all four motions where you're seeking a final order and there's
24 been no objection, you want to bundle a couple that are
25 similar, that's fine; just in the interest of efficiency.

1 MS. RICHARDSON: I'd be happy to, Your Honor. I'm not
2 sure how many are similar, but we'll see as we go along.

3 THE COURT: All right. Fair enough.

4 MS. RICHARDSON: Item 2 on the agenda is docket number
5 11 relating to Republic's clearinghouse agreements, and this
6 motion requests authority for Republic to assume the
7 industrywide clearinghouse agreements with ACH and IATA that
8 provide for the settlement and reconciliation of obligations
9 among airlines as well as other participants. These agreements
10 are an essential component of the airline industry as they
11 facilitate inter-airline cooperative transactions. Republic
12 believes there are no defaults to be cured under the
13 clearinghouse agreements and none have been asserted.

14 The motion also requests, Your Honor, on a final
15 basis, authorization for Republic to continue to participate in
16 the ordinary-course weekly settlements, which would include,
17 for airline participants, settlements in respect of the
18 pre-petition as well as post-petition period and, for the
19 nonairline participants, settlements for the post-petition
20 period only.

21 In connection with the interim order, we provided the
22 U.S. Trustee and the committee, after it was appointed, with a
23 weekly list of the pre-petition reconciliations as had been
24 requested.

25 Unless the Court has any questions, we would request

1 entry of the proposed order.

2 THE COURT: All right, anyone wish to be heard as to
3 the request for a final order?

4 All right, seeing no one rise and seeing no objections
5 on the docket, I'll grant this motion for the same reasons I
6 granted the interim relief.

7 MS. RICHARDSON: thank you, Your Honor. Tab number 3,
8 docket number 12 is Republic's request for a final order
9 granting their utilities motion. In accordance with the
10 Court's interim order, Your Honor, within twenty days after the
11 commencement date, Republic deposited 122,000 dollars into a
12 segregated interest-bearing account as adequate assurance of
13 payment, and that represents the average two-week cost of
14 Republic's utility services.

15 Under the procedures established in the interim order,
16 which was served on the utilities, a utility is, thirty days
17 from entry of the interim order, to request additional
18 assurance, and Republic would have the greater of fourteen days
19 from receipt of the request, and thirty days from the
20 commencement date, to obtain a resolution or file an objection.
21 Pending resolution, the utility would be prohibited from
22 discontinuing service.

23 Your Honor, this may be a first; I am quite pleased to
24 report that there are no objections to the proposed utility
25 order.

1 THE COURT: Well, I think you got one out of the way
2 early, so maybe that was the -- that was the charm.

3 Yeah, anyone wish to be heard as to the request for
4 final order on utilities?

5 All right, I didn't see any objection in the courtroom
6 or on the docket. And the Waste Connections, of North
7 Carolina, opposition to the interim and final orders was
8 previously resolved, so there are no objections and I will
9 grant the requested relief.

10 MS. RICHARDSON: Thank you, Your Honor.

11 Tab number 4 is a request for a final order on
12 Republic's insurance programs. Tab number 5, which is docket
13 14, is a final order on Republic's motion to pay pre-petition
14 taxes. No objections have been received to either motion, Your
15 Honor.

16 THE COURT: All right, anyone wish to be heard as to
17 the request for final order on the insurance-programs motion or
18 the pre-petition tax and assessments order?

19 All right, seeing no objection here or on the docket,
20 I will grant both these requests as consistent with applicable
21 law and for the same reason I granted the interim relief.

22 MS. RICHARDSON: Thank you, Your Honor.

23 Tab number 6, dockets number 24 and 142, which is
24 Republic's application to retain and employ Zirinsky Law
25 Partners PLLC as the debtors' lead bankruptcy counsel nunc pro

1 tunc to the Chapter 11 commencement date.

2 Per the U.S. Trustee's request for additional
3 disclosures a la Pillowtex, we filed a supplement Zirinsky
4 declaration; that's the one at docket 142. In addition, we
5 added to the proposed order requested language regarding
6 application of our retainer, and that is reflected in the
7 blackline in the Court's binder. And there are no objections,
8 Your Honor.

9 THE COURT: All right. I'll grant the application --

10 MS. RICHARDSON: Thank you, Your Honor.

11 THE COURT: -- seeing no objection here in the
12 courtroom or on the docket.

13 And I guess we turn, then, to Hughes Hubbard & Reed.

14 MS. RICHARDSON: Yes, Your Honor, nunc pro tunc to the
15 commencement of the Chapter 11 cases, as co-attorneys for the
16 debtors. Your Honor, Hughes Hubbard has also agreed to
17 additional language -- I'm sorry; this is at docket 25.

18 THE COURT: Right.

19 MS. RICHARDSON: Your Honor, Hughes Hubbard has also
20 agreed to additional language requested by the U.S. Trustee,
21 regarding application of its retainer, and that is also
22 reflected in the blackline that is in the court's binder.
23 Similarly, there are no objections here.

24 THE COURT: All right. Anybody wish to be heard?

25 All right, this application is granted.

1 MS. RICHARDSON: Thank you.

2 Tab number 8, Your Honor, which is docket 27, is
3 Republic's application to employ and retain Prime Clerk LLC as
4 administrative advisor nunc pro tunc to the commencement date.
5 As the Court may recall, Prime Clerk has been retained as
6 claims and noticing agent. Its retention as administrative
7 advisor would encompass work that is outside that scope, such
8 as assisting the company with schedules of assets and
9 liabilities, which it has been doing.

10 The proposed order will have attached a copy of its
11 engagement letter and rates, which were also attached to the
12 claims-and-noticing-agent order.

13 Again, Your Honor, there are no objections here.

14 THE COURT: All right. Anybody wish to be heard as to
15 this application?

16 Seeing no objection here or on docket, I find it
17 appropriate and I'll grant this application as to additional
18 duties for Prime Clerk LLC.

19 MS. RICHARDSON: Tab number 9, which is docket 97,
20 Republic's application to employ and retain KPMG LLC (sic) as
21 tax consultant nunc pro tunc to the commencement date. Your
22 Honor, the application requests that to the extent additional
23 engagement letters are entered into, those additional letters
24 can be filed with the Court and, unless an objection is
25 interposed by the U.S. Trustee, the committee or the ad hoc

1 equity group within ten days, the retention would be deemed to
2 include those additional services, without the need to file
3 additional retention applications. If there's an objection,
4 Republic would schedule a hearing.

5 We understand, Your Honor, that the U.S. Trustee had
6 discussed with KPMG some proposed changes to the order; those
7 haven't made their way to our desk yet, but we will work with
8 them to incorporate --

9 THE COURT: Mr. Masumoto?

10 MR. MASUMOTO: Yeah. That's fine, Your Honor. I
11 guess, for the record, we ask for similar-type language in the
12 order, requiring that there not be an evergreen, that any
13 pre-petition retainer be applied upon the first approved order
14 by the Court.

15 In addition, with respect to KPMG, they, like Seabury,
16 have a fixed and hourly component and although, as Your Honor
17 is aware, typically fixed-fee components orders carve out U.S.
18 Trustee review under reasonableness grounds.

19 THE COURT: Right.

20 MR. MASUMOTO: But usually we require -- and I believe
21 Seabury has since incorporated it -- that the hourly component
22 should be subject to reasonable review by all parties, not just
23 restricted to the U.S. Trustee. My understanding is that KPMG
24 had agreed to make certain changes that would reflect that; I
25 wasn't quite sure. But they didn't seem to oppose the idea of

1 the expanded reasonableness to review for the hourly component.

2 And one final request: as we did with some of the
3 other professionals, we did require them -- requested that they
4 provide us with the ninety-day preferential-period payments to
5 be included as part of supplemental disclosure.

6 THE COURT: All right. Thank you.

7 All right, anybody else wish to be heard as to this
8 application?

9 All right, I will grant it. It sounds like you're
10 still wordsmithing the order. When you send that final order,
11 just make sure to reflect that all the changes have been worked
12 out. And if there's a disagreement, you can just call chambers
13 and we can set up a very short conference on the phone to
14 address whatever wordsmithing issues might still exist.

15 MS. RICHARDSON: Thank you, Your Honor.

16 THE COURT: All right. And I'll just -- consistent
17 with that, it's my usual practice, and I think it's a good idea
18 here; you all have given us lots of proposed orders, and that's
19 fine; I've looked at them and I appreciate you providing it to
20 me in advance. But I will wait for you to e-mail the final
21 versions of all the orders; that way, I don't have to worry
22 about which ones may be subject to tweaking and which ones may
23 be final. Most of these are already final but, just in an
24 abundance of caution, lest an order somehow be entered that
25 maybe was being revised, just do me a favor: after the

1 hearing, you can just send us maybe two e-mails, or something,
2 with "here are the final versions of the orders," and I'll use
3 those in terms of entering those after the hearing.

4 MS. RICHARDSON: Absolutely, Your Honor. We just
5 thought it would be helpful for the Court to see the changes
6 that had been made --

7 THE COURT: Oh, no, it's absolutely helpful --

8 MS. RICHARDSON: -- for purposes of the hearing.

9 THE COURT: -- and please --

10 MS. RICHARDSON: Okay.

11 THE COURT: -- continue to do that, because I look
12 through the orders in advance of the hearing. So --

13 MS. RICHARDSON: Okay.

14 THE COURT: -- it is very helpful. But that way, if
15 there's something that's tweaked, we don't have to sit in
16 chambers and try to keep track of which ones were being tweaked
17 and which --

18 MS. RICHARDSON: Okay.

19 THE COURT: -- ones weren't. It sounds like here it
20 may not be that difficult, but occasionally it gets to be a
21 little --

22 MS. RICHARDSON: Yeah.

23 THE COURT: -- it's quite a bit in flux.

24 MS. RICHARDSON: Of course. And if there's anything
25 in the binders, Your Honor, that the Court finds to be

1 excessive or can do without or wants us to skinny them down, we
2 can do that as well.

3 THE COURT: No, it's helpful. I end up hitting Print
4 otherwise so --

5 MS. RICHARDSON: Okay.

6 THE COURT: -- it's a little easier on the eyes.

7 So --

8 MS. RICHARDSON: Good.

9 THE COURT: -- even though they're sizable, it is
10 helpful.

11 What I would say is, in the future, for anything
12 that's been continued, before you generate another large binder
13 that entirely duplicates one you've provided already, just call
14 chambers, because I usually hold onto these if something's been
15 adjourned to another date.

16 MS. RICHARDSON: Will do. Thank you, Your Honor.

17 THE COURT: Thank you.

18 MS. RICHARDSON: Moving on to tab 10, docket 28 is
19 Republic's motion to employ ordinary-course professionals nunc
20 pro tunc to the commencement date, and this is a standard
21 SDNY --

22 THE COURT: Yes.

23 MS. RICHARDSON: -- OCP order, Your Honor; it only
24 applies to legal services and to those firms whose fees are not
25 expected to exceed 50,000 dollars on a monthly basis and

1 500,000 dollars throughout the case.

2 THE COURT: Right.

3 MS. RICHARDSON: OCPs would receive one hundred
4 percent of their monthly invoiced fees and expenses that are
5 approved by Republic. And the order provides for the filing of
6 the standard OCP disclosures and quarterly-payment reports and
7 would permit Republic to add to the list as circumstances
8 warrant.

9 One final thing I'd like to point out to the Court,
10 Your Honor, is that the proposed order also would permit
11 Republic, with the consent of the U.S. Trustee and the
12 committee, to increase the monthly and aggregate caps should
13 the need arise. Absent that, professionals who would be out of
14 compliance with the caps would be required to file fee
15 applications.

16 THE COURT: All right. Anybody --

17 MS. RICHARDSON: No objection --

18 THE COURT: -- wish to be heard as to this motion?

19 All right, it's pretty standard and for good reason,
20 so I'm happy to grant it.

21 MS. RICHARDSON: Thank you, Your Honor.

22 Tab number 11, docket 29, Republic's motion to
23 establish interim-compensation procedures. And again, this is
24 a standard SDNY motion --

25 THE COURT: Looks very familiar.

1 MS. RICHARDSON: -- and would provide for current
2 payment of eighty percent of monthly invoiced fees, with
3 invoices provided to the debtors, Debtors' counsel, U.S.
4 Trustee, creditors'-committee counsel, and counsel to the ad
5 hoc equity committee, with a twenty-percent holdback that would
6 be paid to the extent allowed, following an interim hearing.
7 Of course, fees that were the subject of an objection would not
8 be paid until allowed by the Court.

9 Under the proposed order, Your Honor, the first
10 monthly invoice would cover the February stub period from
11 commencement through March and would be filed on or about April
12 20th. The first interim-comp hearing would cover the period
13 from commencement through April 30th, with the first interim
14 fee applications to be filed by June 14th. And Republic would
15 give thirty days' notice of the first interim-fee hearing.

16 THE COURT: All right. Anybody wish to be heard as to
17 this motion?

18 Seeing no objections here or on the docket, and it
19 being a standard way of proceeding in these kinds of cases, I'm
20 happy to grant the request.

21 And I suspect you'll do this anyway but, certainly to
22 the extent when you're filing fee applications and there's
23 extensive backup documentation, people sometimes just put that
24 on a disk rather than print out the reams of paper. And I'm
25 certainly fine with that. If it's easier for you, it's fine

1 with me.

2 MS. RICHARDSON: Okay, thank you, Your Honor.

3 Going out of order to tab 24 --

4 THE COURT: Sure.

5 MS. RICHARDSON: -- this is -- I'll give the Court a
6 minute. It's a lot of paper.

7 THE COURT: I'm close enough.

8 MS. RICHARDSON: This is docket 26, Republic's
9 application to retain Seabury Group as financial advisor and
10 investment banker nunc pro tunc to the commencement date. Your
11 Honor, a corrected declaration of John Luth, including a
12 corrected exhibit, which is docket 59, and a supplemental
13 declaration of John Luth, at docket 181, reflecting additional
14 disclosures requested by the U.S. Trustee, have been filed.

15 Your Honor, the creditors' committee has filed an
16 object -- had filed an objection and Republic replied. Since
17 then, the parties continued to discuss the matter and, as
18 chambers has been informed, there's a resolution, which is
19 reflected in the proposed order that is to be submitted, the
20 one which I handed up earlier.

21 THE COURT: Right. All right, let me take a moment to
22 look at that.

23 MS. RICHARDSON: I can just tell the Court that the
24 resolution includes a reduction in the aggregate cap on
25 Seabury's compensation, to 10.25 million, along with the other

1 concessions and clarifications that were laid out in --

2 THE COURT: In the reply.

3 MS. RICHARDSON: -- Republic's reply.

4 Also --

5 THE COURT: All right --

6 MS. RICHARDSON: -- the committee has withdrawn the
7 discovery that it has propounded as part of this resolution.

8 (Pause)

9 THE COURT: All right. Anybody wish to be heard in
10 connection with this application?

11 MR. MILLER: Yes, Your Honor. Brett Miller of
12 Morrison & Foerster, on behalf of the proposed counsel for the
13 official committee.

14 The committee entered into negotiations with Seabury
15 approximately a week ago regarding the retention order and
16 application. It was never a question of whether or not Seabury
17 should be retained. It was a question of the economics. We
18 laid out a proposal for a resolution that the committee would
19 find acceptable. The first wave of acceptances were received
20 and put into the debtors' reply. The final point that was open
21 through the weekend was the aggregate cap, and the committee
22 yesterday reached an agreement with Seabury on a 10.25-million-
23 dollar cap, which we find acceptable and look forward to
24 working with Seabury and the debtor, in this case. Thank you.

25 THE COURT: All right. Anybody else wish to be heard?

1 All right, thank you for the heads-up yesterday about
2 the status of things; I appreciate that. I've read the papers
3 and was getting ready to spend a bit more time on the issues in
4 terms of what comparable cases would really be comparable
5 cases, and so you saved me from spending too much time on that
6 analysis. And I appreciate your efforts to work together,
7 because obviously that's really the way it's supposed to work
8 and it's in the best interests of the case.

9 So, given the changes which are set forth to the
10 original intention and that were listed and identified on the
11 record here today and are set forth in the reply papers, both
12 of which, other than the cap -- the replies filed at docket 176
13 and are memorialized in the revised order, I'm happy to grant
14 the Seabury retention.

15 MS. RICHARDSON: Thank you, Your Honor.

16 At this point I'm going to turn the podium over to
17 Mr. Ticoll for additional uncontested --

18 THE COURT: All right.

19 MS. RICHARDSON: -- matters.

20 MR. TICOLL: Good morning, Your Honor.

21 THE COURT: Good morning.

22 MR. TICOLL: Gary Ticoll from Zirinsky Law Partners,
23 on behalf of the debtors.

24 The next item is tab 12, ECF number 8. If it please
25 the Court, I think we can deal with the next three, which are

1 the -- tab 12, which is the foreign creditors --

2 THE COURT: Right.

3 MR. TICOLL: -- tab 13, which is warehousemen --

4 THE COURT: Right.

5 MR. TICOLL: -- and tab 14, which is critical vendors,
6 similar to what we did during the first-day hearing.

7 THE COURT: All right. That's fine.

8 MR. TICOLL: At this point, Your Honor, I can report
9 to the Court an update of what has actually --

10 THE COURT: Been paid.

11 MR. TICOLL: -- been spent in connection with these --

12 THE COURT: All right, that'd be helpful.

13 MR. TICOLL: -- orders. As Your Honor may recall, in
14 the critical-vendor interim order, we were allocated a spend of
15 155,000 and, in the final, requesting a cap of 310,000. I'm
16 pleased to report that, to date, Your Honor, the debtors have
17 actually expended zero dollars. As we had -- as we had
18 indicated from the start, it was not the debtors' intention to
19 spend around this money any more than absolutely necessary, and
20 that's indicative of that.

21 THE COURT: All right.

22 MR. TICOLL: With respect to the foreign vendors, the
23 amounts were 250,000 and 500,000, and the debtors have expended
24 the full amount of the interim amount as of to date. In the
25 case of the warehousemen, the amount requested in the interim

1 order was 3,590,000, which was identical to the final order,
2 and the spend to date has been 123,759. So, overall I think
3 the progress was very good, and the debtors have so far
4 succeeded in keeping that down to --

5 THE COURT: All right.

6 MR. TICOLL: -- a minimum.

7 THE COURT: I'm sure that made life for the committee
8 a little bit easier.

9 All right, I appreciate that and I think it seems to
10 be the wisdom that I've heard from counsel that it's much
11 better to have authorization by categories with discretion to
12 the debtor, than to propound these lists, which seem to just
13 build on themselves. So has that been your experience?

14 MR. TICOLL: Yes, Your Honor.

15 THE COURT: All right. Just helpful to know.

16 All right. Thank you for the update.

17 MR. TICOLL: And with that, I'd ask Your Honor to
18 approve the final order -- entry of the final orders.

19 THE COURT: All right. Anybody wish to be heard as to
20 any of these three motions, that is, critical vendors, foreign
21 vendors, and warehousemen?

22 All right, I am happy to grant all three motions on a
23 final basis, for the reasons that are set forth in the motions,
24 hearing no objection today at the hearing or on the docket.
25 And I trust that the debtors will continue to exercise their

1 best judgment in terms of keeping those kind of expenses down,
2 and I appreciate your efforts on that to date.

3 MR. TICOLL: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. TICOLL: That brings us to tab 15 --

6 THE COURT: All right.

7 MR. TICOLL: -- which is the notification procedures,
8 or the NOL order. Again, there's no objections to this order.
9 Your Honor, there have been, as the redline we provided shows,
10 some changes to the order; one in particular that might be
11 worth noting is, as Your Honor may recall, Axar was here at the
12 first-day hearing and reported that it had inadvertently traded
13 subsequent to the filing but prior to the hearing. And we had
14 included a provision that, at least with respect to the interim
15 order, made the order, as it applied to Axar, prospective. And
16 there was also a footnote reserving the debtors' rights, at the
17 final hearing, to request that that trade be unwound. Pleased
18 to report that we've agreed to delete that footnote. We're not
19 requesting that that trade be unwound.

20 THE COURT: All right. All right, anybody wish to be
21 heard as to the request for a final trading order establishing
22 notification procedures and other relief?

23 MR. MILLER: Your Honor, Brett Miller for the
24 creditors' committee.

25 Not an objection. Not a comment really. Just that

1 the committee will continue to work with the debtors, regarding
2 the NOL thresholds as the case moves on, and there could be a
3 potential change in the threshold, which may be advantageous to
4 creditors. So we'll just continue to work with them.

5 THE COURT: All right. And I trust that if there were
6 any changes, you'll just file a motion to amend the procedures?

7 MR. MILLER: Correct.

8 THE COURT: All right. Thank you.

9 And my only question about this is, I know that in the
10 interim order there were certain things that -- language that
11 dealt with not preserving the potential NOL and notification
12 but, rather, how something might be judged and arguments that
13 could be made, and I think those were taken out. I don't think
14 any of them made their way back in; I just wanted to confirm
15 that.

16 MR. TICOLL: They certainly didn't.

17 THE COURT: All right. Just because I think those are
18 all arguments people make if we ever have to litigate anything.

19 All right. Anyone else wish to be heard?

20 All right, seeing no objections and appreciating the
21 committee's comment on the matter, I'm happy to grant the
22 request for a final order on notification procedures and
23 restrictions on transfers, to preserve the NOLs. Thank you
24 very much.

25 MR. TICOLL: Thank you, Your Honor. So the next item

1 is tab number 16, ECF --

2 THE COURT: Oh, I think I switch binders at this
3 point.

4 MR. TICOLL: Sorry, Your Honor.

5 THE COURT: All right.

6 MR. TICOLL: Tab number 16, and ECF number 22.

7 THE COURT: All right.

8 MR. TICOLL: That's the debtors motion for an order
9 authorizing, but not directing, Debtors to pay pre-payment
10 obligations to PK AirFinance US, Inc. Your Honor, I'm happy to
11 report on this one that we've also resolved all the issues with
12 PK Finance; also had discussions with the committee,
13 surrounding this, and there are no objections. I do want to
14 mention, with respect to the final -- the proposed revised
15 order, which has been modified in connection with those
16 discussions, one of the things that are in there -- in the
17 final order is a cap on the fees that the debtors will be
18 liable to pay to PK Finance, and the cap is indicated as 20,000
19 dollars for fees incurred on or prior to March 22. And that
20 was a typo, so in the final order we'll submit, that will show
21 as March 21 rather than March 22.

22 THE COURT: All right. Anybody wish to be heard on
23 this motion?

24 All right. I will grant the requests for an order
25 authorizing but directing (sic) Debtors to pay pre-payment

1 obligations to PK AirFinance US under certain aircraft loan
2 agreement and directing them to take certain steps. I think it
3 satisfies the business-judgment standard under 363, and
4 there've been good business reasons articulated. I appreciate
5 the fact that when this came up on the first-day hearing, that
6 an extension was worked out to allow time for the committee to
7 take a look at it. Just given the kind of relief that was
8 requested, I thought that was appropriate. And I appreciate
9 that everybody was able to work that out so it could be dealt
10 with in the ordinary course of business and, as it turns out,
11 pretty efficiently. So, thank you for that. And I'm happy to
12 approve the request.

13 All right, so on to tab 17.

14 MR. TICOLL: Right, Your Honor, that's tab 17 and
15 that's the debtors' motion for entry of an order authorizing
16 the debtors to enter into agreements under 11 U.S.C. Section
17 1110(a) and enter into stipulations to extend the time to
18 comply with 11 U.S.C. Section 1110 and file redacted Section
19 1110 election notices and Section 1110(b) stipulations.

20 Your Honor, I'm very happy to be here with this in the
21 no-objection side of the ledger, because I think in typical
22 cases like this you'll see a lot of objections filed. We
23 worked very hard, and all the other parties worked very hard,
24 prior to the objection deadline, to negotiate an order that
25 would be satisfactory to everybody, and that included really a

1 myriad of secured parties, countless secured parties, and the
2 committee as well. And we were able to reach agreement on a
3 consensual order, without any objections being filed. So I
4 would be -- I'd like to ask the Court to approve this order.

5 THE COURT: All right. Anybody wish to be heard as to
6 this motion?

7 All right, I see no one rising. I saw no objection no
8 the docket. I'm happy to grant the motion. My experience is
9 that in fact there are lots of objections to these. So, thank
10 you for your efforts. And obviously, you're successful in
11 trying to reach a consensus. So I'm happy to approve the
12 procedures. It's certainly a big step forward in the case.

13 MR. TICOLL: So the next item, Your Honor, is docket
14 number 18, ECF number 102; that's the debtors' motion for entry
15 of an order approving assumption and assignment of a
16 consignment agreement with Diversified Aero Services Inc.,
17 which we refer to as the DASI motion. There's no objections to
18 this motion either, Your Honor. This is a very important
19 agreement for the debtor. The debtor shopped this agreement
20 prior to the petition date and it was entered into sometime
21 prior to the petition date. It's an important component of the
22 debtors' long-term planning and its ability to monetize the
23 spare parts that it has; and it has a large number of spare
24 parts, due to the retirement of various fleets. And after
25 considering all the alternatives, the debtors entered into this

1 agreement and we believe -- the debtors, in their business
2 judgment, that this agreement should be assumed --

3 THE COURT: All right.

4 MR. TICOLL: -- so they can go forward with it.

5 THE COURT: All right, anybody wish to be heard as to
6 this motion?

7 All right, I see no objection here in the court or on
8 the docket. I'm happy to grant the requested relief, and I
9 think it, as you say, satisfies the business-judgment standard,
10 and so I will approve the assumption of the consignment
11 agreement.

12 MR. TICOLL: That brings us, Your Honor, to tab 20,
13 ECF number 104; that's the debtors' motion for approval of
14 expedited procedures for the sale of certain assets, free and
15 clear of liens, claims and encumbrances, and the abandonment of
16 certain of Debtors' property; a motion that is often referred
17 to as the de minimis asset-sale motion, also very common in
18 airline cases, Your Honor.

19 The procedures set forth in this motion and in the
20 proposed procedures we're asking the Court to approve provide
21 that the debtors can sell assets up to 500,000 dollars without
22 further approval, subject, though -- one of the things we
23 negotiated -- to a cap of 1.5 million per month on this lower
24 level --

25 THE COURT: Right.

1 MR. TICOLL: -- after 1.5 million in a month that is
2 treated as if it were greater than 500,000. For amounts
3 greater than 500,000 to 3,000,000 dollars, the debtors are
4 required to provide a ten-day notice period to object. And for
5 amounts over 3,000,000 dollars, the debtors have to --

6 THE COURT: File a motion.

7 MR. TICOLL: -- go through the normal procedures.

8 After negotiations with the committee and others on
9 this, we've added some more robust reporting requirements than
10 there were in our initial motion.

11 THE COURT: All right, do you want to explain on the
12 record what those are?

13 MR. TICOLL: If you'll just give me a moment?

14 THE COURT: Sure.

15 MR. TICOLL: I'm in the wrong -- I'm in the wrong
16 place.

17 THE COURT: I assume they're the ones that were in the
18 redline of the changes.

19 MR. TICOLL: That's right. That's correct, Your
20 Honor.

21 THE COURT: All right. And so they've been on the
22 docket as --

23 MR. TICOLL: Right.

24 THE COURT: -- docket number 169.

25 All right, anybody wish to be heard in connection with

1 this motion?

2 MR. GELBER: Your Honor, again, Lawrence Gelber of
3 Schulte Roth & Zabel, for the ad hoc committee of
4 equityholders.

5 We have no objection to the motion. We encourage the
6 debtors to sell the assets that they don't need. And we were
7 one of the parties that discussed the motion and the procedures
8 with the debtors' counsel, in the interim. We were able to
9 reach agreement on virtually every point that we raised;
10 however, there were two points that we had raised that we felt
11 the debtors did not address or they told us they could not
12 address for us, and I would like to raise those for the Court
13 very briefly.

14 One point is that on the sale notice -- on the chart
15 attached to the sale notice, the debtors propose to only
16 identify the purchaser if that purchaser is an insider of the
17 debtor. We don't really understand why the debtor cannot
18 identify the purchaser in any event. If the debtor had to file
19 a sale motion, the debtor would have to identify the purchaser,
20 unless it sought to file that sale motion under seal. So by
21 not identifying the purchaser, they're getting the functional
22 effect of a sealing order, without requesting it and making
23 their case for it.

24 The only other point, Your Honor, is -- and the
25 debtors were gracious enough to add the ad hoc committee as a

1 notice party under this, but it's limited to attorneys' eyes
2 and financial advisors' eyes. We have at least one member of
3 the ad hoc committee who has already signed a confidentiality
4 agreement with the debtor and agreed to become restricted. And
5 we had requested that the debtors allow us to share the
6 information with that one member or any other member of the
7 committee who actually signed the confidentiality agreement,
8 and the debtors were unwilling to do so.

9 So the two points I have is: One, I think that the
10 identity of the purchaser is vital. I think they should be
11 required to identify the purchaser in any circumstance, whether
12 or not it's an insider. And if it is an insider, they should
13 say so. And the second is that I think the information -- we
14 should be permitted to share the information with any committee
15 member who is the subject of a confidentiality agreement with
16 the debtor.

17 THE COURT: All right, let me hear from other parties
18 on those issues.

19 MR. TICOLL: Your Honor, with respect to the first
20 issue, first of all, I'd like to say that the reporting
21 requirements that we agreed to, we more than met the requests
22 of the ad hoc committee halfway, far more than halfway. In
23 addition, the report -- and we don't hear an objection from the
24 creditors' committee on this.

25 In addition to that, our reporting requirements are

1 more robust than I've seen in any case we looked at. And the
2 ad hoc committee could not point me to any case that demanded
3 more than what we're doing. Don't forget, this is a de minimis
4 asset sale. It doesn't --

5 THE COURT: Right.

6 MR. TICOLL: -- necessarily require that reporting.

7 With respect to the insider, that was -- the cases
8 usually provide for affiliates. Insiders is much broader than
9 affiliates. And we agreed to meet them with that.

10 But I don't really have an understanding, and I
11 couldn't get an explanation, of why they had to -- why they
12 required the name. The committee's not requesting a name. In
13 some of these sales, there's some marketplace where you have to
14 be ready to act and there may be some purchasers who just are
15 going to be reluctant if they know that their names are being
16 disclosed in a bankruptcy proceeding, regardless of whether or
17 not it's subject to a confidentiality agreement.

18 So it could act to chill sales in some way or another,
19 and we don't see the benefit of it. And nobody could tell me
20 why those names were required and, for that reason, the debtors
21 were not willing to go further.

22 With respect to the professional-eyes-only, again,
23 we're treating the equity committee -- which they initially
24 asked me; they said they wanted to be treated the way the
25 committee was being treated. And they're being treated the way

1 the committee is being treated and the way the committee agreed
2 to be treated. Again, they're not an official committee;
3 they're not appointed. They're not a statutory committee. And
4 I think that -- I think that they're going too far in
5 requesting that any party who happens to join the committee,
6 the ad hoc equity committee -- it's not an appointment -- would
7 then get access.

8 Those are the reasons that we didn't agree to those
9 two points.

10 THE COURT: All right. Thank you.

11 Anything from the committee?

12 MR. GOREN: Thank you, Your Honor. Todd Goren,
13 Morrison & Foerster, on behalf of the committee.

14 With respect to these two points, I mean, the
15 committee was comfortable that, based on the nature of our
16 confidentiality agreements with the debtors, that if we need to
17 know the name of the party who the debtors are engaging in the
18 sale, we'll be able to get that information from the debtors.
19 Whether it needed to be included in a publicly filed notice, I
20 didn't see the import of that. I think we'll be able to get
21 the information that we needed.

22 As to sharing it with our committee members, obviously
23 there are certain transactions that might be engaged in here
24 that would be more significant, in which we might need to share
25 that information with our committee members. There's a

1 procedure in our confidentiality agreement with the debtors
2 that would allow us to work through that issue with the debtors
3 and share it with our committee if we deem necessary or for you
4 to decide it if we can agree to that. We were comfortable with
5 that procedure.

6 Obviously, to the extent Your Honor decides that the
7 ad hoc committee members should be granted access, we would ask
8 for the same thing. But as drafted, we believe that we have a
9 procedure we can work through with the debtors to work these
10 issues out. So --

11 THE COURT: All right.

12 MR. GOREN: -- thank you.

13 THE COURT: Thank you.

14 Anyone else wish to be heard?

15 MR. TICOLL: Your Honor, could I make --

16 THE COURT: Yeah.

17 MR. TICOLL: -- one little point?

18 THE COURT: Sure.

19 MR. TICOLL: Okay. Nothing compels the debtor to
20 enter into confidentiality agreements with an individual member
21 of the ad hoc committee. So this could actually have the
22 unintended consequence, for the ad hoc committee, of reducing
23 the ability of individual members to see confidential
24 information, because the debtors will just be reluctant to
25 enter into any, and that would essentially accomplish the same

1 thing with the debtors --

2 THE COURT: All right.

3 MR. TICOLL: -- and we don't want to do that.

4 THE COURT: All right. I'm not going to require those
5 two changes at this point, for a number of reasons; one is,
6 this is a de minimis asset-sale motion; it's designed to be
7 less of a burden than going through the traditional method, as
8 appropriate. And I think what's been proposed here is
9 reasonable and consistent with, I think, approaches taken, in
10 other cases, that I've found to be reasonable and other courts
11 have found to be reasonable. I do note that the debtors are
12 treating ad hoc committee as a committee, and that's fine.
13 They at this point are not an official committee.

14 And finally, if there's a dispute about this, at some
15 point something happens and somebody says, we really need X, Y
16 and Z, I suspect that I'll hear about it and we'll deal with an
17 actual case of controversy, which is always a much better way
18 to address these problems. I think, as a general matter, these
19 procedures are reasonable and so I'll approve them without
20 those two changes.

21 MR. TICOLL: Thank you, Your Honor.

22 THE COURT: All right. So --

23 MR. TICOLL: That's --

24 THE COURT: -- I just wanted to make sure there was no
25 other party that had any other comments or any other issues to

1 raise. I didn't see any objection on the docket and I don't
2 see any other objection here today. So I'm thereby ruling
3 on --

4 MR. TICOLL: And, Your Honor --

5 THE COURT: -- objections that were raised.

6 MR. TICOLL: -- there actually are two other motions
7 on "not objected to", which --

8 THE COURT: Yeah. Please.

9 MR. TICOLL: -- almost slipped my mind; that's the
10 motions to seal on the DASI motion and the motion to seal on
11 the de minimis asset motion.

12 THE COURT: All right. Anyone wish to be heard on
13 those motions to seal?

14 All right, I find they meet the standard for sealing,
15 that is, confidential information. I do have some standard
16 language that I use for orders of that type, in terms of
17 reserving the right of anybody, again, to come in and actually
18 seek to have the seal lifted. Pretty standard stuff in federal
19 courts. And I confess I didn't look to see if the order on
20 sealing have those, but I'll take a look and, if I need to make
21 those changes to put in that standard provision, I will do
22 that.

23 All right, but otherwise I will grant the request for
24 sealing. And so I think that brings us to the contested
25 matters.

1 MR. TICOLL: Yes, Your Honor. That brings us to tab
2 21, ECF number 101; that is Republic's motion to surrender
3 certain aircraft. The motion seeks authority to do three
4 things: first, to surrender six ERJ 145s and one related
5 Rolls-Royce spare engine to GE as secured party; second, to
6 sell a spare GE engine to MTU Maintenance Lease Services or, in
7 the alternative, surrender the spare GE engine to Citibank as
8 secured party; and third, to reject the lease of one of the ERJ
9 145s, which the debtors lease to Aerodynamics, Incorporated, or
10 ADI.

11 There were two limited objections filed to the motion,
12 Your Honor: one by the ad hoc equity committee and one by
13 Citibank. The ad hoc committee objection was seeking an
14 adjournment, but the ad hoc committee withdrew its objection
15 earlier today. So that leaves just the Citibank objection,
16 which related to the sale of the GE engine to MTU, and a few
17 issues related to what I would characterize generally as timing
18 issues.

19 THE COURT: Right.

20 MR. TICOLL: In addition, Citi filed yesterday what it
21 styled as a supplemental response, in which it raised an
22 entirely new objection and asked that the Court compel the
23 debtors to return the aircraft with, quote-unquote, "matching
24 engines on wing". Your Honor, the debtors are seeking, with
25 this motion, authority to surrender the excess equipment

1 because it's burdensome and of inconsequential value or benefit
2 to the debtors' estates. The excess equipment consists of ERJ
3 145 aircraft that are simply not part of Republic's long-term
4 business plan. Five of the six aircraft have been parked in
5 the Arizona Desert for at least six months. The excess
6 equipment continues to burden the debtors' estates with
7 storage, maintenance and insurance costs.

8 The debtors have satisfied the business-judgment
9 standard by determining to surrender the excess equipment,
10 based on their long-term business plan and the burdens and
11 inconsequential benefits that the excess equipment would
12 provide.

13 With respect to the Citi objection, Your Honor, I have
14 to say that I'm surprised and disappointed that the Citibank
15 objection was not resolved before today. When it was initially
16 filed, it seemed clear, from meeting the objection, that the
17 major issue was Citibank's objection to the sale of the GE
18 engine to MTU. The debtors, Your Honor, quickly resolved that
19 issue by informing Citibank, within a day of the filing of its
20 objection, that the debtors were withdrawing their request for
21 the sale of the GE engine and including the GE engine in the
22 surrender list, which Citibank had stated in its objection
23 would be an acceptable outcome.

24 The debtors believe that with the sale issue resolved,
25 resolution of the other issues would follow. And the debtors

1 promptly provided Citibank with a revised proposed order that
2 the debtors believe would satisfy Citibank's concerns.
3 However, although we were told a number of times that the
4 comments to the revised proposed order were being prepared and
5 would be forthcoming, we never received any comments and we
6 never received any counterproposal. Instead, last Friday
7 afternoon, Citibank's counsel informed us that Citibank would
8 move forward with the objection unless the debtors agreed to
9 give them additional time to inspect the excess equipment and
10 unless the debtors agreed, at the debtors' expense, to put all
11 the aircraft with their birth engines.

12 Your Honor, setting aside for a moment the issue of
13 deinstalling, reinstalling and transporting the engines and
14 aircraft, I believe that the revised proposed order that we
15 filed and served this past Sunday adequately, fairly and
16 reasonably addresses any and all legitimate issues raised in
17 Citibank's limited objection. Included in our reply to
18 Citibank's objection is Schedule 1, which includes a summary of
19 each objection and Republic's response as reflected in the
20 revised proposed order. All of the revisions to the revised
21 proposed order are consistent with similar orders entered in
22 airline cases in this and other districts, including Delta,
23 Northwest, Pinnacle, Mesa, and American Airlines.

24 Your Honor, I imagine you've reviewed Schedule 1, and
25 I'd be happy to answer questions regarding Schedule 1 or to

1 walk through each of the provisions. Otherwise, if it pleases
2 the Court, I'll move on to the issue of the Citibank demand to
3 deliver the aircraft with their birth engines.

4 THE COURT: I think the only question I had -- and
5 this may relate to the issue you're going to talk about in a
6 minute -- was the timing. I couldn't quite figure out if the
7 objection about timing had to do with if there was a need to
8 decouple an engine from an aircraft in order to surrender it,
9 that there was going to be a delay in the time you're making
10 that particular engine available for surrender and return and
11 essentially put it on the tarmac and say, here, come get it.
12 You couldn't do that, because it's in another aircraft that's
13 not part of the deal.

14 MR. TICOLL: Right.

15 THE COURT: But I couldn't quite figure out if that
16 was the problem that was being discussed or if it was something
17 else. So I don't know if you have any wisdom on that.

18 MR. TICOLL: Well, with respect to Schedule 1, we'll
19 be looking, in Schedule 1, at the objections that were made in
20 the limited objection. And of course we filed Schedule 1
21 before --

22 THE COURT: Right.

23 MR. TICOLL: -- they filed their supplemental
24 objection.

25 So when I said "timing issues", I meant I thought that

1 these were issues that could be resolved in the sense that
2 they're typical issues that you see raised, like what's the
3 timing of the insurance and maintenance coverage, is it three
4 days or is it five days --

5 THE COURT: Right.

6 MR. TICOLL: -- what's the timing of the return of the
7 documentation, is that immediately?

8 THE COURT: Right.

9 MR. TICOLL: Those are what I mean by tim -- they
10 seemed like eminently easily --

11 THE COURT: So they seem like --

12 MR. TICOLL: -- resolvable issues --

13 THE COURT: -- not related to a particular engine but,
14 rather, general --

15 MR. TICOLL: Right. Correct.

16 THE COURT: -- concerns.

17 MR. TICOLL: They seemed like the typical kind of
18 objections you see arise and they typically can be resolved
19 through negotiation. And we think that this addresses it and
20 that all of these provisions are fair.

21 THE COURT: All right. So let's then move on to your
22 discussion in the other issues --

23 MR. TICOLL: Okay.

24 THE COURT: -- then, I guess.

25 MR. TICOLL: Yeah, so, first, Your Honor, I have to

1 address the fact that Citibank did not raise this objection
2 when it filed its limited objection. As we stated in our
3 Sunday reply, Citibank should be barred from raising this
4 objection after the objection deadline and virtually on the eve
5 of the hearing. And I think we cited to a case that said that
6 in our pleading.

7 In addition, just yesterday, following the filing of
8 our reply, and in disregard of this Court's case-management
9 order, Citibank filed what it styled a supplemental response.
10 And in a way it was a surreply that was not on the schedule.

11 Ironically, in its response, Citibank inadvertently
12 acknowledges that it was reasonably foreseeable that some
13 engines would not be on their original aircraft, because
14 Citibank stated in the supplemental response that Citibank made
15 it clear in its limited objection that it did not know whether
16 the proper engines were on the proper airframes. Of course
17 Citibank, which is experienced in aircraft financing, knows
18 that engines are routinely and, in the ordinary course of
19 business, swapped from one airframe to another. This was not
20 something that arose by surprise. Citibank was well aware of
21 it. They stated in their limited objection that they chose not
22 to object.

23 In addition, prior to filing its limited objection,
24 Citibank did not ask the debtors any questions regarding the
25 placement of the engines, which in any event, was evident from

1 the schedules attached to the motion.

2 Moreover, even if Citibank didn't know that each
3 engine was mounted with its birth airframe, it could still have
4 raised a conditional objection. It's clear, Your Honor, that
5 Citibank did not raise the objection in its limited objection
6 because it chose not to, and certainly not as a result of
7 anything the debtors failed to disclose.

8 For these reasons, the debtors respectfully submit
9 that the Court should disregard the so-called supplemental
10 response of Citibank and any objections raised by Citibank at
11 this hearing that were not included in the limited objection.

12 Your Honor, under Section 1110, if a debtor doesn't
13 make an election under subsection (a)(2) or enter into a
14 stipulation under subsection (b), by the fifty-ninth day after
15 the petition date, the secured party becomes entitled to take
16 possession of such equipment and to enforce any of its rights
17 or remedies to sell, lease, or otherwise retain or dispose of
18 such equipment. That's what the statute says.

19 The rights available to the secured party, if the
20 debtor doesn't exercise either option, are only those rights
21 specified: the rights to possession and to sell, lease, or
22 otherwise dispose of the equipment.

23 Section 1110(c) provides that a secured party is
24 entitled, under subsection (a) to take possession of the
25 equipment. It may make a written demand on the debtor. In

1 this case, the motion is deemed the demand. And Section
2 1110(c) states that the debtor must immediately surrender and
3 return the equipment.

4 The purpose of Section 1110(c) is to make legal
5 possession automatic and to eliminate the need for further
6 judicial process. Although Congress did not define "surrender"
7 and "return", it must mean something that can occur immediately
8 and on demand.

9 Your Honor, the debtors want to comply with the
10 statute and immediately surrender the excess equipment to
11 Citibank. Citibank is asking the Court to turn the statute on
12 its head by converting the secured lenders' right to immediate
13 access into an ability to saddle a debtor with a thicket of
14 obligations and the attendant delay, burden, and risk.
15 Bankruptcy courts in this --

16 THE COURT: Well, I'm familiar with the case law under
17 1110. So my question is, as a practical matter, how does this
18 work? Because there's a standard of reasonableness that's
19 invoked by Judge Gropper and others in terms of -- consistent
20 with the statute and its purpose, which is speed.

21 How do we handle these engines? Are they -- in other
22 words, you can't immediately return, surrender, that is, make
23 available for someone to pick up, something that's in another
24 aircraft. So I don't know what the status is of these engines
25 and what the practical proposal is, whether they are already

1 separate or they will be separate. I'm not an aircraft
2 mechanic. I have no expertise to answer the question of how
3 long it would take to do something like that and sort of what
4 the debtors intend.

5 So I'm just trying to be practical about it,
6 consistent with the reasonableness standard.

7 MR. TICOLL: Your Honor, I'm not an aircraft mechanic
8 or an expert, by any means, either. But fortunately, I don't
9 think that the Court has to make that determination today. In
10 that sense, that's a very factual determination, and it's not
11 something that could really be made today, with respect to each
12 engine and each aircraft and each situation.

13 The debtor is required to surrender and deliver the
14 aircraft. Those aircrafts are made available. To the extent
15 that there's an engine on an aircraft that's not the correct
16 engine or is on the ground and should be put onto the aircraft,
17 Citibank -- the debtors have made that available and Citibank
18 can do the work that it wants to do, or it could ferry the
19 aircraft away.

20 In addition, the debtors are more than willing to work
21 with Citibank to effectuate whatever Citibank wants, but at
22 Citibank's expense. This is, in a sense, similar to a
23 voluntary foreclosure. Here's your equipment, take it or tell
24 me what you want to do, but you pay for it.

25 THE COURT: I have no problem with that. And my

1 thinking is pretty consistent, I think, with the case law. But
2 my question is, if it's in something else, and so you can't
3 surrender it because it's in some other aircraft, that's my
4 only question.

5 Obviously, there's plenty of case law that says you
6 can't require someone to pick up the engine out of one aircraft
7 and put it in another aircraft, the original aircraft. I get
8 it. It makes sense, because that would impose burdens that are
9 not in the statute. If somebody has a claim, they have a
10 claim; we'll deal with it later.

11 But I'm having a little trouble with surrender and
12 return if something is attached to something else that isn't
13 theirs. So I think the statute does contemplate that you're
14 able to say here, take it. It's in the conference room down
15 the hall. It's labeled; it's marked. Somebody will point you
16 to it. Just have your people, your truck, your aircraft,
17 whatever it is, just going to pick it up and cart it away.

18 If they can't come and get their engine, and that's
19 what they're coming to get, because it's attached to something
20 else, that's the stumbling block I'm having.

21 MR. TICOLL: Yeah. Although if it's attached to an
22 unencumbered aircraft of the debtors, as is the case here, I
23 think one or two cases, the debtors are saying, you can come
24 and get it. You'd hire the same people that we would hire to
25 remove the aircraft. Or if you'd like, we'll do it, but at

1 your expense.

2 And I think, in a way, this relates to what Your Honor
3 was stating earlier. If there's a true dispute, they could
4 come back here with respect to that dispute. But they haven't
5 even inspected these aircraft yet. They've just brought their
6 inspectors on yesterday.

7 THE COURT: Well, I understand, and I'm not trying to
8 impose any contractual requirement. The law, I think, rejects
9 that. You don't get to say well, here's what the lease says.
10 This is how it's supposed to be returned. But it seems the
11 standard of reasonableness would impose some requirement that
12 somebody could get their stuff, if they don't want the other
13 stuff that's attached to it. So that's the only thing I'm
14 having a concern about. Frankly, the rest of the objection
15 doesn't do a whole lot for me.

16 And so I'm not saying you have to take extraordinary
17 measures, but I'm just -- it would just seem surrender and
18 return would seem to imply that somebody has to come get their
19 stuff, and it's available for them to get.

20 MR. TICOLL: Um-hum.

21 THE COURT: And so that's -- there's a way, certainly,
22 to handle that in terms of procedures and notices and various
23 things. I don't know that that's how it's dealt with here.

24 The reason why I even ask is that the timeline seemed
25 to be from the effective -- this effective date is defined, and

1 I'm not sure when that is or would be for something that's, for
2 example, an engine in an aircraft that's not part of the
3 secured lender's collateral.

4 MR. TICOLL: The only thing that I would say, Your
5 Honor, is that these are issues that parties usually can work
6 out and do work out. For example, in the case -- one of the
7 cases cited by Citibank, an unreported decision -- I think it's
8 the Judge Beatty case -- Citibank says that the debtors were to
9 align the engine airframe subject to a 180,000-dollar cap.

10 And that was actually a consensual order. So
11 obviously it has absolutely zero bearing on what the
12 obligations are the party were. But in that case the parties
13 sat down and figured out what to do.

14 THE COURT: I agree with you. I'd much rather have
15 the parties --

16 MR. TICOLL: I just --

17 THE COURT: -- come in and figure out a way to do this
18 that's sensible.

19 MR. TICOLL: But what I want to add to that is, what
20 Citibank didn't disclose is that not only was there 180,000-
21 dollar cap on the debtor's spend, but in that order, there was
22 a 6,000-dollar cap per engine for the debtors to spend on
23 deinstallation and installation. That's, my understanding is,
24 pretty inexpensive for a deinstallation and installation,
25 implying that there was really a shared cost.

1 So my view is that if a Republic aircraft --

2 THE COURT: But that's inconsistent with your notion
3 that they should just come and take it.

4 MR. TICOLL: Well, this is my point, Your Honor. My
5 notion is that it's our view that if there's a Republic
6 aircraft there, unencumbered, and we give them permission, and
7 we've surrendered, it, they can come and take it off or they
8 can arrange with us to take it off and they'll pay for it.

9 At the end of the case, Your Honor, they can also file
10 an administrative claim. As you know, we have that language in
11 the order which allows them to file an administrative claim.

12 What happens instead, as probably happened in this
13 case, is the parties sat down and negotiated and said well,
14 look, I say you should pay all of it, and the other side said
15 no, you should pay all of it; and they came to this compromise.

16 I don't think, therefore, it's appropriate, now if the
17 Court were to order in these cases we have to deinstall,
18 because I think their opportunity to argue that should be at
19 the end of the case.

20 THE COURT: How many planes are we talking about
21 having the issue of uninstalling or deinstalling it from the
22 plane? How many -- do we have any idea of how many of these
23 engines would be in that situation?

24 MR. TICOLL: I did an attempt myself. This is not
25 through the businesspeople. So -- and I may have done it

1 improperly. But I saw that there were a total of -- and again,
2 I don't want you to take this as --

3 THE COURT: No, just ballpark.

4 MR. TICOLL: I found a total of four dismounts and
5 three mounts. And there might have been one engine that had to
6 be transported from one location to another. That would have
7 been --

8 THE COURT: Well, transported is a little different.

9 MR. TICOLL: -- that would have been to put them all
10 back together the way it was being requested.

11 If we were just dismounting, I'm not sure how many
12 that would be --

13 THE COURT: All right.

14 MR. TICOLL: -- if we just dismounted engines from
15 airframes that belonged to Citi.

16 THE COURT: All right.

17 MR. TICOLL: This would be something less than that.
18 It might be two or three dismounts. But my view is that we've
19 made it available. Anything after this should be at Citi's
20 expense, and then they can file an administrative claim and
21 we'll see how that comes out at a more appropriate time in the
22 case.

23 THE COURT: All right.

24 MR. TICOLL: That's what I think. And I also just
25 wanted -- there was a lot more I wanted to say about the cases

1 and things, but based on Your Honor's, I think, signaling to me
2 that I should move on --

3 THE COURT: Well, there's not a whole lot of case law
4 on 1110. And there's a lot of orders, and they're cited, that
5 are clearly --

6 MR. TICOLL: Right.

7 THE COURT: -- as you say, consensual. I've read
8 Judge Gropper's bench decision. I've read Judge Beatty's bench
9 decision. I've read the Eastern District -- I'm sorry -- the
10 Delaware case. There's the ATA case. So I think I've read
11 everything that everybody's cited.

12 MR. TICOLL: Could I --

13 THE COURT: So --

14 MR. TICOLL: So I won't belabor the point too much.
15 But I do want to talk a little but about delay and
16 reasonableness, because under 1110, it's not only the debtor
17 that's supposed to behave or comport itself reasonably, the
18 secured party is also supposed to comport itself reasonably.
19 And that's what Judge Gropper said in a case that we cited in
20 our pleading.

21 And one of the components of that is did the secured
22 party delay. And Judge Gropper said "it would be difficult to
23 convince this court that a lender has acted reasonably, if it
24 tarries in accepting surrender and return or taking possession
25 of its property."

1 Your Honor, we filed and served a motion on March the
2 4th. And although Citibank complained that it needed to do a
3 physical inspection, at the time we filed our reply, on March
4 20th, sixteen days later, Citibank had not even asked the
5 debtors to arrange any such inspection. In fact, it was only
6 this past Sunday, two days ago, coincidentally, two or three
7 hours after we filed our reply, pointing out to the Court that
8 Citi hasn't asked for an inspection.

9 On that day, Citibank requested by e-mail an
10 inspection. The debtors immediately consented to the
11 inspection. And according to Citibank's pleading that it filed
12 yesterday morning, they now have their consultants.

13 So Citibank wasted sixteen days. If they wasted
14 sixteen days, had they started then and talked to us, those
15 aircraft could be removed tomorrow, as soon as the Court enters
16 the order. All arrangements could have been made if Citibank
17 hadn't waited and sat on its hands.

18 So at this point, that's why I think that the relief
19 we're asking for with respect to our obligation to maintain
20 insurance and pay maintenance, these should be done. They had
21 sixteen days; they could have taken the aircraft tomorrow. If
22 they're not, we're happy to pay for those -- we're happy to
23 continue those programs in place, but Citibank should pay for
24 them if they want us to keep them in place.

25 THE COURT: All right.

1 MR. TICOLL: Thank you, Your Honor.

2 THE COURT: Let me hear from Citibank.

3 MR. HORNING: Good morning, Your Honor. Stephan

4 Hornung --

5 THE COURT: Good morning.

6 MR. HORNING: -- Luskin, Stern & Eisler, on behalf of
7 Citibank. I wanted to address a few of the questions that Your
8 Honor raised during Republic's counsel's presentation and also
9 a few of the things that Mr. Ticoll raised.

10 I do think that certain of the objections that
11 Citibank has raised have been resolved, for example, the GE
12 engine is no longer being sold. Citibank's happy to have that
13 surrender to it. It appears that there's language now in the
14 order that would preserve Citibank's ability to assert an admin
15 claim. Again, I think that's fine.

16 They have now changed the language related to the
17 proofs of claim. Before there was some doubt as to whether or
18 not any general bar date would apply to claims arising out of
19 the abandonment. Again, I think that's probably been taken
20 care of. And --

21 THE COURT: No, I went through -- I have a little
22 chart somewhere that sort of goes through all the issues based
23 on the chart I got.

24 But what's your authority for the notion that they
25 have any obligation to take the engine and marry it with its

1 original airframe? I don't see any cases that require that.
2 And it seems to be inconsistent with all the authority that
3 I've seen on 1110.

4 MR. HORNING: Well, Your Honor, I think we cited to
5 you three specific cases. Your Honor mentioned them during the
6 colloquy with opposing counsel. And in each of those
7 instances, the Court said you should return the proper engine
8 to the proper airframe.

9 THE COURT: But were there any instances where the
10 Court entered that ruling over the objection of the debtor, or
11 wasn't it simply just an agreement that was in an order? I
12 mean, Judge Gropper and Judge Beatty's opinions make it pretty
13 clear that you can't impose contract terms or lease terms. You
14 have a claim. And so you've got your language about a claim.

15 So just because I gave counsel a little bit of a hard
16 time about an engine that may be somewhere and bolted to
17 something else, doesn't mean I at all agree with you about your
18 request to marry that engine with its original frame. And why
19 can't they make one available in one spot and one available in
20 another spot, as long as they make it available for you to come
21 get?

22 MR. HORNING: Well, in response to that, I would
23 say -- and I think Your Honor touched on this -- that they're
24 not actually making the collateral available.

25 THE COURT: No, and I gave him a hard time about that.

1 But I'm getting to your point, what seems to be the position in
2 your papers, that they have to marry the two. And I don't see
3 any authority for that. And in fact, the authority I see says
4 exactly the opposite, unless I'm missing something. So I'm
5 asking, am I missing something?

6 MR. HORNING: Well, Your Honor, I would say this all
7 comes back to what's reasonable. And in any situation,
8 reasonableness is obviously a factually intensive
9 investigation. And what may be reasonable to one thing is not
10 necessarily reasonable in another.

11 And in this situation, we have six planes. You asked
12 some questions about the status of those planes. And we
13 actually had our consultants out there yesterday to look at the
14 planes. And Mr. Ticoll gave Citibank a hard time for delaying.

15 And as Your Honor can surely understand, Citibank
16 is a bank. It's not in the business of owning --

17 THE COURT: Oh, you --

18 MR. HORNING: The point is, we had --

19 THE COURT: No.

20 MR. HORNING: -- we had to interview --

21 THE COURT: Don't -- please don't trot that out here.
22 I have banks run in all the time on a dime when their interests
23 are threatened, as they should, and as they have a right to do.
24 But no. This is, I'm sure, not your first rodeo dealing with
25 1110. I firmly and completely reject the notion that they're

1 going to rely on the business-as-usual defense under these
2 circumstances.

3 MR. HORNING: I'm not --

4 THE COURT: So I'm not buying that. It's not -- it's
5 what litigators like to call a bad fact. So let's just move on
6 from that. And you can tell me whatever else you want to tell
7 me.

8 MR. HORNING: Again, Your Honor, the consultants have
9 now looked at the planes. And the issue with the planes is
10 this. If you look at the schedule that was attached to the
11 order, which I would add, has been a moving target, Your Honor,
12 that they changed the location of one of the engines. And
13 actually, I would have expected it would have inured to
14 Citibank's favor.

15 But when you actually go and look at the airplanes, we
16 have five airplanes that they looked at in Arizona, and four of
17 those airplanes have engines that belong to third parties. We
18 don't know which third party owns those engines. We don't know
19 how long -- and I understand this -- I'm letting you know for
20 the first time. I found this out at late last night.

21 But these are the facts. We found out on Friday that
22 the Citibank airframe had engines that belonged to third
23 parties, and we now know on Monday that, in fact, four of the
24 aircraft have engines that belong to third parties.

25 Now, the other issue is that the Citibank engines are

1 on other airframes that belong to third parties. So there's
2 really two components here. There's only a single airframe
3 that we've seen where it has a Citibank airframe with Citibank
4 engines on it.

5 Now, if what they were offering to do was to say look,
6 here's a Citibank airframe, it's got Citibank engines on it.
7 They're not the ones that came with it, but they're for the one
8 that's sitting over there, that would be one thing.

9 If they came to us and said look, the other engines
10 that are on here, they belong to us, but look, you can look at
11 the maintenance records, they're pretty much the same thing.
12 That would be another thing. But that's not what they're
13 doing.

14 They're intending -- if you look at the timeline, they
15 have an effective date of March 4th, the date they filed their
16 motion. So they've attempted to abandon property to us, I
17 guess, effective three weeks ago, before the judge ruled on
18 this, before we were even able to object. And it turns out
19 that we couldn't have gotten those planes if we wanted to,
20 because they have engines that belong to third parties.

21 If we go in there -- and say I had a pilot on standby,
22 he's ready to go to Cayman tomorrow --

23 THE COURT: Well, but that's really not an apt
24 hypothetical, right? I mean, there's plenty of cases that
25 return pieces of planes. They say well, here's the engine or

1 here's the frame. And so there's no requirement in any of the
2 cases that say well, since we're only sending a pilot, we're
3 not sending somebody to retrieve equipment, we're sending a
4 pilot who's going to fly the plane back, plenty of these
5 things -- the reason they're being abandoned, surrendered, or
6 whatever you want to call it, is because they don't work;
7 they're of no value to the ongoing operation. So the pilot
8 hypothetical doesn't work.

9 So Citibank, in talking about timing issues, is really
10 again, not in a great position here. But why doesn't it make
11 sense to do as the debtors' request and say, well, listen, we
12 understand there may be costs associated with dismantling the
13 aircraft. Let's call it an administrative claim. So we can
14 fight about it later, because after all, to comply with 1110,
15 we've got to get these things done, and we don't want to run
16 into additional costs associated with holding on to them and
17 have additional problems. And 1110 gives you the rights it
18 gives you. So you fight about a claim later.

19 MR. HORNING: Okay, Your Honor. But what they've
20 tried to do is they've tried to end -- I mean, in their
21 original order, they would have ended their insurance coverage
22 Saturday, before the motion was ever heard. They --

23 THE COURT: But why did it take you as long as it took
24 you go check these things out? Again, if your client had acted
25 with more deliberate speed, I'd be a little more sympathetic.

1 But it really didn't. And so that's why you filed the
2 surreply, because you didn't know what you needed to know when
3 you filed the original objection.

4 MR. HORNING: Well, Your Honor, we found out certain
5 of that information from counsel on Friday. Now, I can't tell
6 you specifically when it was asked. We did request
7 confirmation from debtors' counsel earlier than that as to
8 what's the story. Are our airplanes with our engines? Are
9 they not? What are we looking at here?

10 We got that information on Friday. And at the same
11 time, for the first time, we heard that actually the airframes
12 that you have have somebody else's engines. Now, they're going
13 to have to be taken off before you can get the airplane,
14 obviously. We can't go and take that. We'll be liable for
15 conversion at that point.

16 It seems to us that what's reasonable here is the
17 debtor, who knows where our engines are -- we don't even know
18 where some of these engines are. For example, they say that
19 one of the airframes, it's number 3 on their list, they say
20 okay, the airframe's in Cayman, both of the engines are in
21 Cayman. But when we go there, only one of the engines on that
22 plane is actually a Citibank engine. The other one belongs to
23 I-don't-know. And the Citibank engine that belongs with it
24 also is I-don't-know. We don't know where that is.

25 THE COURT: Well, if you're asking for a specific list

1 that says here's where things are that are yours, that I get.
2 I understand that. But conditions in terms of surrender and
3 return, other conditions seem to be more dubious. And I would
4 agree with debtors' counsel that it is something that's
5 normally worked out. That's why you don't have lots of
6 decisions debating, well, who's paying for the costs of doing
7 this, that, and the other thing, because people try to work
8 these things out, which frankly is sensible and reasonable.

9 But I don't -- once they give you that information as
10 to where something actually is, then I don't know that there's
11 a whole lot more that they're necessarily obligated to do,
12 subject to your right to file a claim.

13 MR. HORNING: Well, our view, obviously, is that this
14 is a reasonableness test. And if you look at the
15 reasonableness standard, they say that the purpose of this is
16 to allow us to get our collateral immediately. And we'll agree
17 with that for the sake of argument. I think it's probably
18 right.

19 But we can't get our collateral immediately, because
20 one, they haven't told us where it is; two, it's attached to
21 someone else's airframe, and the airframes that we have located
22 also have someone else's collateral.

23 Now, they're the ones who installed the engines.
24 They're the ones who should incur the risk, and they should be
25 the ones that take them off. If that's where we get to, that's

1 where we get to.

2 I understand Your Honor's not inclined to direct them
3 to transport the engines to a different airfield. But I think
4 even if Your Honor's not going to do that, there's an
5 intermediate step which would be hey, you have to make the
6 collateral actually available. And when it's attached to
7 someone else's engines and it's attached to someone else's
8 airframes, that's not immediately available.

9 And I think what's related to all of this is that it's
10 going to take some time for these engines to be removed from
11 the collateral, whether they belong to us and are on someone
12 else's airframes or vice versa. And every order I've seen --
13 just about every order; I can't say every order -- but almost
14 every order I've seen has given an amount of time for the
15 secured lender or the lessor, whoever it is, to actually go and
16 get their airplane, whether it's fifteen days or thirty days.
17 There's some amount of time where the debtors, almost
18 universally, are required to keep the insurance coverage and
19 the storage. And it makes sense for them to do it in the short
20 term. And that's what we're asking for here.

21 What they have proposed -- as I said originally, their
22 insurance cover under their original order ended on Saturday.
23 I guess they realized that wasn't quite reasonable, before the
24 motion had been heard. They've now decided that, well, it
25 should actually end as soon as Your Honor enters the order.

1 And as they cited for precedent was Your Honor's order
2 in American Airlines, which I'm sure you know better than I do.
3 But in that case, I think it's telling that Your Honor said
4 look, American, you got to keep insurance for fifteen days.
5 But there the effective date was a week after the order was
6 entered. So you had a de facto twenty-one-day period where
7 okay, let's give the parties some time to actually go and pick
8 up their collateral.

9 THE COURT: But that's the problem with citing all
10 these orders. Because I had a bench decision written in
11 American on 1110 that I didn't have to deliver, because people
12 worked their issues out, I think probably five minutes before
13 the hearing. So I guess these orders can be cited for what
14 people thought were reasonable in an individual case, that is
15 the parties and the court went along with it. But I don't know
16 much more that these orders can be cited for. And I think, at
17 least -- in at least one decision that I saw, it just seemed to
18 be an agreed-upon order that was reported in Westlaw.

19 All right. So what else do you want to tell me on
20 these issues?

21 MR. HORNING: Well, Your Honor, I think, as I made
22 clear, that there are severe issues about them being able to
23 actually turn over the collateral to us. I don't think it's
24 fair to characterize it as a birth engine issue, as they would
25 say. It's really a Citibank engine issue, because that's where

1 the security interest is.

2 I do not think that there's any reason to disregard
3 the arguments that we've made. There's no prejudice to the
4 other side about the issues that were raised. Indeed they --

5 THE COURT: All right. I'm sorry to interrupt you,
6 but I'm going through sort of my list of issues to see what's
7 still outstanding.

8 There was some revision to the order in connection
9 with a debate about aircraft records. Is that still an
10 objection, or has that been resolved?

11 MR. HORNING: I think there is an objection to -- it
12 needs some clarity from the other side. In their reply they
13 said they would be effective -- they would be ready on the
14 effective date. The effective date, under their papers, is
15 March 4th. So if they're telling me that, look, the records
16 are available, tell us where to send them, then I think that's
17 fine. I'll find out where to send them this afternoon; we'll
18 get them by tomorrow; and that'll be the end of that.

19 If they're saying well, look, we don't know when the
20 records are going to be available, that's something different.
21 And I think that goes to the reason why there should be at
22 least some period of time where the debtors are covering the
23 storage and maintenance costs.

24 THE COURT: All right. So it's not resolved, I'll
25 take it. All right.

1 As you mentioned there were a couple of things that
2 were resolved about a claim, your rights -- reservation of
3 rights on that, and relief from stay, and a few other things.

4 So all right, anything else?

5 MR. HORNING: Just on the reservation of rights. I
6 mean, I think we would like to submit a couple of tweaks just
7 to be clear on the reservation of admin claims. I believe they
8 will be noncontroversial, really just to clarify that the
9 reservation of rights applies to any claim whatsoever. We
10 don't want it to be read in a way that it somehow limits the
11 claim that was not intended to be affected by this order.

12 THE COURT: All right.

13 MR. HORNING: That's it on that. Automatic stay. And
14 on the commercially reasonableness standard, the reservation of
15 rights for them to argue that we didn't dispose of the
16 collateral in a commercially reasonable manner, that was new in
17 the order that we received on Sunday.

18 Conceptually, I don't think we have an issue with it.
19 I think we could be able to work out with the other side, if
20 there's a tweak here or there to make it cover both parties.
21 But I don't see that being an issue.

22 THE COURT: All right. Anything else?

23 MR. EDELMAN: Judge Lane, this is Mike Edelman from
24 Vedder Price.

25 THE COURT: All right. Let me just make sure Citibank

1 had concluded its remarks.

2 MR. EDELMAN: Sure.

3 THE COURT: Anything else?

4 MR. HORNING: No, Your Honor, that's it.

5 THE COURT: All right. Yes, Mr. Price -- Edelman.

6 MR. EDELMAN: I'm sorry, this is Mike Edelman from
7 Vedder Price, representing DVB and a bunch of other aircraft
8 financiers.

9 THE COURT: All right.

10 MR. EDELMAN: We didn't put any --

11 THE COURT: We didn't have an objection from you, and
12 you --

13 MR. EDELMAN: You did not.

14 THE COURT: -- were originally -- wait a minute. Wait
15 a minute. Wait a minute. I don't have an objection from you,
16 and you were originally on a listen-only line. I gave you a
17 live line because you were in a cab and had gotten stuck
18 somewhere.

19 So I'm not -- I just want to get a sense of, before
20 you launch into a speech, what the speech is about.

21 MR. EDELMAN: I just wanted to say that we represent a
22 bunch of aircraft financiers. The Citi rejection motion has its
23 own facts. I just want to say that we think -- we didn't put
24 in any papers. But this should be decided on its own facts and
25 shouldn't have any precedential effect on any other rejections

1 that may come --

2 THE COURT: I don't know what that means. I decide
3 things and I issue opinions as I have to. So it is what it is.
4 You can argue about that in front of a court of appeals
5 somewhere. But I don't know what that means. Every case is
6 decided on its own facts, and you can all argue in other cases
7 whether it's worth anything, which I think -- which is what
8 people are arguing about the worthwhileness or not of orders in
9 other cases.

10 So I -- Mr. Edelman, I can't really help you on that.
11 Anything else?

12 MR. EDELMAN: Well, we don't think all the cases
13 regarding 1110 were fully put before the Court or explained.

14 THE COURT: We're not going to talk about that
15 anymore. I'm going to make a ruling as I have to, and it is
16 what it is. All right.

17 Anything else from debtors on this issue?

18 MR. TICOLL: Your Honor, I'll be really brief. Just
19 with respect to the return of the aircraft. I mean, I believe
20 the representations made regarding the number of aircraft that
21 don't have -- that have engines on different flights are just
22 not -- on different aircraft and different frames are -- it's
23 just not correct.

24 But more importantly, I think, Your Honor, we provided
25 a schedule. We said where those aircraft are. If they're not

1 there to be picked up, then arguments can be made that we
2 didn't comply. But the aircraft and engines are located where
3 we scheduled them. And we have control of the aircraft, even
4 where they're non-Citi aircraft.

5 Citi can either hire someone to remove an engine from
6 that aircraft if it likes, with our permission, because that's
7 what we're offering up; or we can arrange it. If they had
8 asked us -- if Citi had asked us ten days ago to do this, it
9 would be all complete by now. Delivery could have been made
10 tomorrow, and it will take a week, perhaps, to put everything
11 back together -- Humpty Dumpty back together again, even the
12 birth engines, if that's what Citi wants. But it should be at
13 its expense.

14 With respect to the records, there's a hundred boxes
15 full of aircraft records sitting waiting to be delivered to an
16 address of Citibank's choosing when it lets us know, at
17 Citibank's expense. And on Thursday we asked Citibank for the
18 address where to send it. And we haven't received a response
19 yet. So I don't think the aircraft records is a problem,
20 because they're available.

21 THE COURT: All right. Let me ask, I'm not sure these
22 are the options, but if these were the options, what your view
23 is. One is to say Citibank will get -- will just retrieve the
24 engines and the airframes, and to the extent that they have to
25 take anything apart in order to retrieve their collateral,

1 they'll file a claim and we'll get to it; or whether you think
2 it's more appropriate in these circumstances to say, consistent
3 with what certainly seems to appear in some of these orders
4 which looked to be consensual, anyway, is to say that it's a
5 matter of the reasonableness standard under Section 1110, that
6 the cost for separating the collateral from whatever they're
7 in, whether it's the engine from the frame, should be borne
8 equally by the parties, consistent with the reasonableness
9 requirement?

10 MR. TICOLL: Your Honor, we believe that the former is
11 the appropriate order to enter. And Citibank could file its
12 administrative claim later. We can either litigate it later or
13 we could settle it later.

14 THE COURT: All right.

15 MR. TICOLL: Thank you, Your Honor.

16 THE COURT: All right. I'll hear again from Citibank
17 and anybody else who may wish to be heard.

18 MR. HORNING: Judge, I just wanted to briefly respond.
19 Opposing counsel said that there was a hundred boxes of
20 records. That's many more -- we were told there were ten
21 banker's boxes of records last week. So a hundred is certainly
22 a new fact.

23 THE COURT: Well, whatever it is.

24 MR. HORNING: But --

25 THE COURT: I don't get the sense you client is -- the

1 urgency that you're invoking at the podium doesn't seem to be
2 the urgency at which your client is -- the speed at which it's
3 moving. So -- unless I'm missing something.

4 MR. HORNING: Well, Your Honor, I would say that we
5 have consultants now. They're ready to get started looking
6 through the documents. I will tell them where to send them
7 this afternoon, and we'll --

8 THE COURT: I know. But everybody knows that 1110
9 has -- fifty-nine days is a big deal, and that people and
10 debtors in all these cases try to get out in front of it by
11 filling 1110 procedures and by trying to return and abandon
12 aircrafts that are not profitable. So this will come as no
13 surprise, the speed at which the debtors are trying to move
14 here to anybody.

15 So do you have a view about my two possible options?

16 MR. HORNING: Well, Your Honor, certainly the option
17 that I would have preferred wasn't offered by Your Honor --

18 THE COURT: No, I'm sure --

19 MR. HORNING: -- but --

20 THE COURT: -- I'm sure it wasn't. I --

21 MR. HORNING: -- but --

22 THE COURT: -- I'm going to limit you to those two,
23 though.

24 MR. HORNING: Yeah. Look, as between those two
25 options, we would obviously choose something that made the

1 expenses shared between both parties, subject to the broad
2 reservation of rights, that if we think we have an admin claim
3 we can go ahead and make that admin claim, and Your Honor will
4 rule at that point in time.

5 THE COURT: All right. Anybody else wish to be heard
6 on this particular motion?

7 MR. TICOLL: Your Honor, could I make one last
8 comment?

9 THE COURT: Sure.

10 MR. TICOLL: I don't want to belabor the point, but
11 it's just something that occurred to me with respect to the two
12 options that the problem with the first option is it's going to
13 set the stage for disagreements about what has to be done. And
14 then we'll be back, perhaps --

15 THE COURT: The one splitting the costs?

16 MR. TICOLL: The one splitting the costs. It'll be --
17 it'll set the stage for further disputes.

18 THE COURT: While it has some facial appeal, I'm
19 afraid that it's probably not as Solomonic as it might sound at
20 first blush. All right.

21 MR. TICOLL: Thank you, Your Honor.

22 THE COURT: Anything else?

23 MR. HORNING: I have nothing to add.

24 THE COURT: All right. So here's what I'm going to
25 do. The hallmark of 1110 is speed. I'm not going to through a

1 lengthy bench decision here. I'm probably actually going to
2 write something on this, because frankly, there's not a lot of
3 case law out there. And I don't think there's a published or
4 any sort of written decision in this district, which is why
5 people are citing a million orders. So it probably, at a
6 certain point, is not very beneficial for that to be the case
7 in future cases.

8 But I think you all could write yourselves the
9 standard. But it's pretty clear 1110 does not talk about what
10 you must comply with. Colliers actually makes a big point of
11 that, that there's a lot of -- that the present version of
12 1110, as to what the debtors' obligations are, other than to
13 make the aircraft immediately available are pretty unclear.

14 But the cases in this district, in particular Judge
15 Gropper's decision in Northwest, make it clear that the
16 hallmark of Section 1110 is speed, and that Congress heeded the
17 insistence of aircraft lenders and lessors that they be able to
18 retrieve their property without delay. And he found it
19 difficult to be convinced that a lender has acted reasonably if
20 it tarries in accepting surrender and return or taking
21 possession of the property. And that's from the transcript
22 that you all have seen. It's attached to various papers filed
23 in this case.

24 And Judge Beatty had a similar take in refusing to
25 require a debtor to repair an aircraft to be airworthy and to

1 transport a serviceable aircraft to a particular financing
2 party. And so both judges rejected attempts to impose onerous
3 conditions on the returner of aircraft saying it's just not in
4 the statute.

5 I do think that the cases recognize, and the parties
6 have recognized, and the order that has been revised here, that
7 you have a claim; that Section 1110 is designed to do one
8 particular thing, and otherwise you have a claim. And so the
9 rest of it is reasonableness. Frankly, there's not a lot of
10 discussion about what that looks like, because parties usually
11 reach a conclusion about what reasonableness is, in this
12 particular instance. And frankly, parties are in a better
13 position to do that.

14 So since that's not where we are, what I'm going to do
15 is the following. I reject the notion that Citibank is
16 entitled to have its airframes married with its engines, either
17 actually to be in flying condition or to even be in the same
18 facility. It's not what the statute provides.

19 What the statute does provide is that somebody can
20 surrender their collateral, so they need to get their
21 collateral. So they do need to get their collateral. Frankly,
22 I don't know what a reasonable approach is as to these
23 particular airframes and engines. I'm the least knowledgeable
24 person in the room, probably, on that issue.

25 So in light of that, I think the cases suggest the

1 wisdom is to allow people to file claims, and that's what's
2 preserved in the order. So that's what we're going to do.

3 So Citibank will come, and if necessary, they will
4 bring their people to dismantle the engines from the airframe
5 that's not theirs and vice versa. It may be in the debtors'
6 best interests to look at those issues before that actually
7 happens and say, well, we can do some of that to keep any costs
8 of a potential claim down. And parties will do what they
9 should do in these circumstances, which is negotiate in good
10 faith about an appropriate way to handle it.

11 While, again, I was facially attracted to the idea of
12 splitting costs, that presumes a greater level of information
13 about the actual circumstances on the ground than I currently
14 have.

15 So in light of all that, I'm going to require and side
16 with the debtors largely on the fifteen-day period. The
17 fifteen days is going to be from the order. That's the time to
18 retrieve the equipment, not thirty days, but fifteen days from
19 the order.

20 And if for some reason something isn't available, it
21 will be fifteen days from the latter date of the order or the
22 date when something's made available. But here, "available"
23 will mean if it happens -- includes an engine that is sitting
24 in an airframe that is not Citibank's or vice versa.

25 I will require the debtors to maintain insurance

1 coverage of existing storage programs for those fifteen days,
2 just consistent with the reasonableness standard.

3 The aircraft records, I agree with the debtor, the
4 record that's in front of me is that they are ready. They
5 essentially have been surrendered and returned, for purposes of
6 the statute. They are there. And Citibank can come get them
7 or give some direction as to where to send them at its expense.

8 I'm satisfied with the language about the reservation
9 of rights. To the extent the parties agree that the revised
10 order should be revised further, and they can agree upon that,
11 I'm perfectly fine with that. But I find the existing language
12 to be appropriate. And that includes the "commercially
13 reasonable manner" issue which was discussed earlier.

14 Debtors took out some objected-to language about
15 presumptively satisfying the surrender and return requirements.
16 I think that was a good change. And I think the preservation
17 of rights is a good change. And I think that should address
18 all of the issues that were being debated.

19 If there's anything you think I haven't addressed,
20 please let me know now, and I'll make a ruling. All right.

21 As I said, I'm likely to issue something on this just
22 because I think it's not good in these cases to have to hunt
23 and peck for orders that are wonderfully consensual, but not
24 much use in trying to decide these issues going forward.

25 So all right, that's my ruling on that particular

1 motion. And I'll await a revised order that should just make
2 it clear that we had a hearing, we had an argument, and for the
3 reasons stated on the bench -- and then you can tweak the
4 relief in the order consistent with the ruling. Thank you.

5 MR. TICOLL: Thank you, Your Honor.

6 THE COURT: I think we have one left.

7 MR. TICOLL: Ms. Richardson.

8 THE COURT: All right. And that's cash management.

9 MS. RICHARDSON: I thought there was one left. I lost
10 count. Okay, Your Honor, Sharon Richardson --

11 THE COURT: I think it's just one.

12 MS. RICHARDSON: It is. I believe it is just one,
13 which is a request for a final order on Republic's motion for
14 authority to continue its bank accounts and cash-management
15 system and waiver of Section 345(b), to the extent applicable.

16 At the interim hearing, Your Honor, Mr. Masumoto
17 stated that he had some Section 345 issues, and we agreed to
18 confer to see if we could sort them out. And we did confer
19 over a period of weeks: numerous phone calls, numerous
20 e-mails. Unfortunately, Your Honor, however, we're back here
21 today requesting a resolution.

22 THE COURT: All right. It's as to the three accounts,
23 right, the Canadian account, the investment account, and the
24 Deutsche Bank account?

25 MS. RICHARDSON: And a trust account that's not

1 Republic's property, yes.

2 THE COURT: Right. And that's the Deutsche Bank
3 account, right?

4 MS. RICHARDSON: Correct.

5 THE COURT: My only questions -- and I went back and
6 forth with the parties' papers -- had to do with just some
7 facts about the Deutsche Bank account. I just didn't feel like
8 I had enough information to figure out what was going on.

9 So it's not used in the ordinary course of business to
10 pay the trust fund taxes that come out of the Bank of America
11 account. But it's, I guess, an extra precaution to make sure
12 that no principals are liable, because that's the way trust
13 fund taxes work?

14 MS. RICHARDSON: That's exactly right.

15 THE COURT: All right. But how does it -- since it's
16 not the regular account to pay those taxes, what happens to it?
17 I'm just sort of wondering why it was set up that way? Does it
18 have any other purposes?

19 MS. RICHARDSON: It doesn't have --

20 THE COURT: What happens to it if it's not spent?

21 MS. RICHARDSON: Well, those are good questions, Your
22 Honor. And I must say, I may not know the answers to all of
23 them. There's a trust -- it is a Delaware trust. A Delaware
24 trust was established along the lines of what had been
25 established for Northwest Airlines.

1 There's a trust document that governs the trust.
2 Deutsche is the owner/trustee. Republic deposited into that --
3 into the trust approximately four million dollars. And that
4 money sits there, unless and until, for whatever reason,
5 Republic does not pay so-called trust fund taxes that could
6 expose Ds and Os to personal liability.

7 THE COURT: So it's not refreshed. It's not really an
8 operating account. The money was put there and it's parked
9 there, really, just as a backup?

10 MS. RICHARDSON: Exactly.

11 THE COURT: Okay. All right. What happens to it? Is
12 there anything that informs us as to what happens to it at any
13 point? Does it -- is there any timing mechanism? At a certain
14 point something happens to it, or does it just stay there until
15 Republic --

16 MS. RICHARDSON: Perpetuity?

17 THE COURT: -- gets out of the business of paying
18 trust fund taxes?

19 MS. RICHARDSON: I have to say, Your Honor, I don't
20 know the complete answer to your question. There is a
21 waterfall in terms of a payment. If, for whatever reason,
22 trust fund taxes are not paid by Republic -- it's never
23 happened; it's not intended to happen -- then Republic could
24 give a direction to the owner/trustee to pay out those taxes.
25 And then there's an order. And at the end of the day, if

1 there's money left over, it goes to charity.

2 Republic has no reversionary interest in this trust.

3 THE COURT: All right. All right. That's helpful to
4 know. All right. I think I went through all the parties'
5 papers, but if there's anything you want to add on that account
6 or the other two accounts?

7 MS. RICHARDSON: I would say, Your Honor, that we
8 submitted, in addition to our reply papers to the U.S.
9 Trustee's objection, a declaration of Jason Secore who is the
10 vice president of finance and treasurer of Republic. And
11 Mr. Secore is in the courtroom today. And I would like to move
12 his declaration into evidence; and if called to testify, he
13 would testify the contents of his declaration are true and
14 correct to the best of his knowledge, information, and belief.

15 THE COURT: All right, any objection?

16 All right. It's admitted.

17 (Declaration of Jason Secore was hereby received into evidence,
18 as of this date.)

19 MS. RICHARDSON: Your Honor, I can go through an
20 argument with respect to each of the objections. I didn't know
21 if --

22 THE COURT: Well --

23 MS. RICHARDSON: -- if the Court was --

24 THE COURT: -- I think, as to the Canadian account, I
25 understand basically you say you need the flexibility for

1 ongoing operations, and the alternatives are less than ideal
2 and cumbersome and restrictive --

3 MS. RICHARDSON: And expensive.

4 THE COURT: -- and that given the size of it, it makes
5 sense to allow that. So I think I get the factual part of
6 that, and I think these are all factual.

7 Is there anything else on the Canadian account that
8 you think is worth noting at this point?

9 MS. RICHARDSON: I would just mention, Your Honor,
10 that one of the alternatives suggested by the U.S. Trustee is
11 the direct purchase of U.S. treasuries. In addition to the
12 loss of 200,000 dollars in annual interest and the operational
13 difficulties that would result, because they don't mature on a
14 daily basis and may not be able to be liquidated as needed, in
15 fact, Mr. Secore's investment contact in the fixed income sales
16 group of BofA told him that she doesn't have any clients that
17 just buy treasuries exactly for this reason: they're
18 cumbersome, they can't be liquidated as needed. And so as a
19 practical matter, people don't just buy treasuries; companies
20 don't --

21 THE COURT: Well, let me ask. There was a reference
22 in, I think it was the reply, saying that you -- the debtors
23 have offered to transfer money into funds that invest in those
24 treasuries saying that it provides the same security, and you
25 invoke the Local Rule 4001-3 in Delaware. Are you saying that

1 you have an account that you think would satisfy that Local
2 Rule? And I guess we've segued into the investment account
3 part of the program, I guess.

4 MS. RICHARDSON: That's fine. Your Honor, Republic
5 offered that as a compromise position to the U.S. Trustee, in
6 lieu of the direct purchase of U.S. treasuries, which doesn't
7 work. Republic could invest in treasury funds.

8 THE COURT: Right.

9 MS. RICHARDSON: There would still be a loss of
10 200,000 dollars, which is a significant amount of money on an
11 annual basis. But it could do that. The U.S. Trustee declined
12 the proposal because it didn't comply.

13 THE COURT: No, I understand that, but it sounds like
14 that would comply with the rule in Delaware.

15 MS. RICHARDSON: It would comply --

16 THE COURT: I confess I --

17 MS. RICHARDSON: I believe it would comply with the
18 rule in Delaware.

19 THE COURT: I probably should have known that rule. I
20 wasn't aware of that rule.

21 MS. RICHARDSON: It's a great rule.

22 THE COURT: And it sounds like it's a rule worth
23 exploring here in this district. So I was just trying to get
24 your view. You have an option that would comply with that
25 rule.

1 MS. RICHARDSON: Yes.

2 THE COURT: And I suspect the Delaware court passed it
3 because they run into the same problems we do. This is a
4 sticking point in a lot of cases.

5 MS. RICHARDSON: It's a sticking point. It's a
6 difficult point because when you file a debtor for Chapter 11
7 relief, you know, you can't start calling up banks and saying,
8 hey, I'm going to file for Chapter 11; will you collateralize
9 my bank account? I mean, as a practical matter, it just
10 doesn't work. And then it creates big problems once the case
11 is filed and there's 8,000 things going on and you're spending
12 half your day trying to figure out the company's cash-
13 management system with it. So it would be helpful.

14 The only other point that I would make on the
15 investment account, Your Honor, is that Section 345 applies to
16 cases in Chapter 7 and Chapter 13 as well as Chapter 11. And
17 we submit that a sophisticated debtor-in-possession, such as
18 Republic, which has a sophisticated dedicated treasury
19 department, should not be subject to a formalistic requirement
20 to adhere to the same practices as an individual Chapter 11
21 debtor. And Congress didn't think so. And Congress, in
22 providing a four-cause exception to 345(b), exclusively
23 recognized that Section 345 is not one size fits all.

24 THE COURT: I saw that you invoked Section 345(a),
25 talking about prudent investment yielding maximum return,

1 taking into account the safety of the deposit or the
2 investment. Are there cases that you're aware of that talk
3 about the interplay between 345(a) and (b)?

4 MS. RICHARDSON: Well, there are --

5 THE COURT: I confess I've had a number -- this has
6 come repeatedly in cases, and I haven't actually had somebody,
7 believe it or not, cite 345(a) in addressing a 345(b) waiver.

8 MS. RICHARDSON: Well, I do, Your Honor, believe that
9 the statute needs to be read as a whole. Unfortunately,
10 there's a dearth of case law on this, and perhaps the Court, at
11 one point, would be willing to put pen to paper so that we
12 could have some guidance. But you know, we cited one case in
13 our papers, and that's pretty much the only cases that's out
14 there. But we believe that (a) and (b) need to be read
15 together. And in the first instance the debtor needs to act --
16 the debtor-in-possession should be acting prudently, which is
17 exactly what the Republic's investments are, prudent
18 investments, AAA-rated, prime money market funds. They're
19 safe. I mean, the U.S. Trustee --

20 THE COURT: Of course you have the detriment -- I
21 think I watched The Big Short this weekend, so it's probably
22 not a good --

23 MS. RICHARDSON: Oh.

24 THE COURT: -- a good movie to watch before having one
25 of these debates, but --

1 MS. RICHARDSON: You know exactly where I was going.

2 THE COURT: But I think I understand where you're
3 coming from, that this is an account that is managed, it's
4 watched.

5 How much money is actually in the account currently?
6 Have I got it right that it's about 240 million?

7 MS. RICHARDSON: In the investment account -- that's
8 Exhibit B to Mr. Secora's declaration -- as of March 16th, it
9 was 146 million plus.

10 THE COURT: Okay. All right. All right. Anything
11 else that you want to mention?

12 MS. RICHARDSON: I would just add that -- I think I'll
13 quit while I'm head, Your Honor.

14 THE COURT: All right. Let me hear from the U.S.
15 Trustee's office.

16 MR. MASUMOTO: Good morning, Your Honor. Brian
17 Masumoto for the Office of the United States Trustee.

18 Your Honor, I think a lot of the issues have already
19 been raised, so let me see if I can just sort of briefly go
20 over, I guess, the more salient facts.

21 With respect to the Canadian account, as discussed,
22 part of the issue is that the U.S. Trustee's office does not
23 support the funds in a foreign jurisdiction because we have no
24 way of verifying whether or not it's collateralized or not. I
25 confirmed again this morning, based upon, I guess, some

1 comments or conversations that I had with the debtor, that we
2 don't attain reports regarding foreign bank accounts. So we
3 have no idea of -- even though it's a branch bank of the Bank
4 of America, we have no idea what funds are in the Canadian bank
5 account or to what degree those funds are protected.

6 And even having said that, once again, the issue of
7 the credit worthiness of Bank of America is really not at issue
8 because, as a domestic bank, they're still subject to the
9 collateralization requirements. The fact that the debtors
10 obviously believe that it's an institution that's not likely to
11 fail doesn't preclude it from having to satisfy those
12 requirements.

13 Having said that, I don't know whether or not it's
14 been formally said in prior cases, but I just wanted to make
15 clear, I guess, some of the recent events that have occurred
16 and sometimes some confusions that have arisen regarding what's
17 referred to as authorized depositories. There are institutions
18 that normally comply with the authorized depository
19 requirements by filling out a form that's set up by the U.S.
20 Trustee program which indicates they will comply with the
21 requirements.

22 Unfortunately, it's come to our attention that
23 recently -- and again, certainly after the economic collapse --
24 that banks that are listed as authorized depositories
25 apparently believe they retain the discretion whether or not to

1 collateralize bankruptcy accounts. So in fact, what the
2 debtors have indicated is quite true, especially with respect
3 to small debtors. We hear constant complaints from small
4 debtors looking to open bankruptcy accounts and being refused
5 by major banks, including --

6 THE COURT: I had one of your colleagues in a case in
7 front of me struggle with this. We talked about it on and off
8 for weeks as the search for a bank went on.

9 MR. MASUMOTO: And that's part of the problem. Many
10 people now say if they have their funds deposited in an
11 authorized depository that automatically complies with the
12 collateralization requirements. There are nuances to that, and
13 the formerly complete belief that everything was complied with
14 by the authorized depository designation now has certain
15 ramifications or certain subtleties that don't apply across the
16 board.

17 So having said that, again, it ties into my issue with
18 the Canadian bank account: we don't get reports on foreign
19 bank accounts of domestic branch banks. So from our standpoint
20 and our understanding currently, there's no way for us to
21 determine that the collateralization requirements, even for an
22 authorized depository branch bank in a foreign country, is
23 satisfied.

24 THE COURT: Okay.

25 MR. MASUMOTO: So --

1 THE COURT: Fair enough.

2 MR. MASUMOTO: So with respect to -- that's with
3 respect to the Canadian bank account. With respect to the
4 investment account, the only point I'd like to make, in terms
5 of the proposal that you had heard that was made, is exactly, I
6 think, the issue that you saw in terms of The Big Short. If
7 you -- say you have Goldman Sachs currently, and they have an
8 investment fund that is dedicated to the purchase of U.S.
9 treasuries, if in fact Goldman Sachs were to fail, that account
10 would be subject to failure. It wouldn't be protected simply
11 because it invested in treasuries. The investors who invested
12 in those funds would still lose their investment, as opposed to
13 the situation where in fact if Goldman Sachs, I suppose, served
14 as a custodian, if at the instruction of the investor they said
15 we're acquiring U.S. treasuries and we're holding the
16 treasuries on behalf of the investor.

17 THE COURT: But that sounds like that scenario doesn't
18 exist. You're having enough trouble getting authorized
19 depositories to behave in a way that's consistent with -- what
20 the requirements you'd like to see.

21 MR. MASUMOTO: Your Honor, I don't know, and you're
22 probably right, although I do believe that situation can occur.
23 As a practical matter, that's correct. I mean, even if they're
24 holding it as -- or especially if they're holding it as
25 custodians, the problems that were addressed as to sale and so

1 forth would continue to exist, only presumably through the
2 intermediary of the investment company. I was just making the
3 distinction the reason why the proposal that was offered, at
4 least from the perspective of the program, why it's not
5 sufficient, you still run into the potential failure of the
6 investment vehicle, and as such --

7 THE COURT: No, I understand that. How do you read
8 345(a) and 345(b)?

9 MR. MASUMOTO: Again, I don't regard the 345(a)
10 requirement for maximization to in anyway undercut the
11 requirement of collateralization. I think the idea is that --

12 THE COURT: I mean, it has to, as a practical matter,
13 right? I mean, because one -- you're giving up returns to get
14 more safety in the account, and the safety that is not a normal
15 level of safety in the circumstances. In other words, the
16 debtors weren't doing this before they went into bankruptcy;
17 this is a bankruptcy requirement. So I mean, there does seem
18 to be a yin-yang to this in terms of the pull between -- and
19 that it's in (a) which says you try to maximize your return
20 consistent with the safety of the investment.

21 MR. MASUMOTO: And I would say that, again, different
22 banks may offer different incentives or different benefits
23 in -- I just learned, I guess, in terms of the detail, that
24 Bank of American apparently has a requirement for this debtor
25 that the 8,000-dollar bank service charge apparently is covered

1 by -- requires 40 million dollars. Now, I'm not sure if in
2 fact another bank might offer different rates or -- in the
3 past, having funds in the account, even if collateralized,
4 seemed to be to the benefit of the banks. They were still able
5 to, I guess, perhaps look at alternative investments and still
6 be able to make, I assume, some profit. It appears that, based
7 upon the decline in interest rates to such low rates, that in
8 fact, you know, the interest rates offered are such that
9 perhaps the banks -- I assume that the banks are no longer
10 being able to find any way to maximize the benefit when having
11 these funds, even though they may be hundreds of millions or
12 even --

13 THE COURT: Right.

14 MR. MASUMOTO: -- billions of dollars, the banks
15 apparently are unwilling to hold the amounts without any
16 likelihood of return.

17 THE COURT: So you are -- but your office's current
18 view is that the local law in Delaware is not something that
19 you're comfortable with for the reasons that you articulated?

20 MR. MASUMOTO: Yes, Your Honor. It's my understanding
21 that the current program position is that the statute under
22 345 --

23 THE COURT: Do you think it's better? Do you think
24 it's an improvement --

25 MR. MASUMOTO: Over?

1 THE COURT: I mean, you may not have a view on that,
2 and I may be putting you on the spot, but it certainly seems to
3 be an improvement. You know, there are few guarantees in life,
4 so it's not a guarantee, but it certainly seems, to me, to
5 minimize the level of risk.

6 MR. MASUMOTO: I think it may minimize the risk of the
7 particular -- of the investment itself --

8 THE COURT: Right.

9 MR. MASUMOTO: -- but not of the institution in which
10 it's held --

11 THE COURT: No, I --

12 MR. MASUMOTO: -- which is part of the problem.

13 THE COURT: I get it.

14 MR. MASUMOTO: I mean, say you got -- well, I'm just
15 saying if just before Lehman filed you said, you know, we have
16 an investment fund at Lehman that only invests in treasury, so
17 I mean, we're safe, you know, as indicated by Your Honor,
18 that's certainly no guarantee. And --

19 THE COURT: Yeah, I wasn't trying to invoke that movie
20 as a backdrop to this entire discussion, but it certainly does
21 counsel that there's some reason to always be prudent as
22 appropriate in any individual case.

23 MR. MASUMOTO: And I guess -- Your Honor, if I may, I
24 guess I've been, I guess, advised or charged with having to
25 make the point that is illustrated in the movie that, from our

1 perspective, there is no financial institution that's too large
2 to fail. Ansd that is the approach that the program is
3 concerned about.

4 THE COURT: Well --

5 MR. MASUMOTO: So moving on to the Deloitte bank
6 account -- or, I'm sorry, not Deloitte, Deutsche Bank account.

7 THE COURT: Deutsche Bank, right.

8 MR. MASUMOTO: We have some difficulty in
9 understanding the facts also. Initially we thought there was a
10 reference to a tax account. We thought it was being used to
11 pay taxing authorities, and then later on discovered what was
12 disclosed in the papers and by counsel that it's in fact sort
13 of a protective reserve for which the debtors would have no
14 residuary interest.

15 So in some respects, not entirely the same, but it
16 seems to be a form of insurance that's designed to protect the
17 D&O, the debtors' officers and directors, against any potential
18 responsible personal liability for the taxes.

19 THE COURT: Right.

20 MR. MASUMOTO: Now, I guess from that perspective,
21 part of my concern is that what happens if the institution in
22 which the investment -- the irrevocable trust fails, and the
23 same scenario that we're all concerned about, that protection
24 no longer exists. So if the debtors and officers and directors
25 were in fact to continue to be protected, where would the funds

1 come from?

2 THE COURT: But it's not clear to me they can get the
3 funds back because they don't have a reversionary interest so
4 that --

5 MR. MASUMOTO: Well --

6 THE COURT: -- mechanically speaking, I don't know
7 that they can direct the funds to go elsewhere at this point
8 given the way the trust has been created.

9 MR. MASUMOTO: Well, that I'm not sure about. We did
10 not see the underlying trust. But my only point being that in
11 fact if those funds were to somehow disappear because of the
12 failure of the institution which the funds are in, presumably
13 the debtor would feel obligated to create a similar trust fund
14 in order to protect their directors and officers.

15 Now, one way -- I can't even say whether it would
16 satisfy our requirements, because I don't even believe that
17 they would be willing to do it, if the officers and directors,
18 including going forward officers and directors, were willing to
19 waive the requirement of such protection, saying that if the
20 funds disappear then they don't have to be replaced; we'll go
21 unprotected, again, that's something that our office could
22 consider as to whether or not that would serve. Otherwise the
23 situation is the concern that we have: if those funds
24 disappear, the money will have to -- another four million
25 dollars would have to come out of the debtor in order to

1 provide that protection. So from that perspective, although
2 even if it is correct that the funds are not property of the
3 estate, it seems the effect of its loss will have a similar
4 impact if in fact it were the assets.

5 THE COURT: All right. Thank you.

6 MR. MASUMOTO: Thank you.

7 THE COURT: Let me start with that last point that
8 occurred to you. Mr. Masumoto and I were discussing the issue:
9 given the setup of the trust, do the debtors even have the
10 ability to direct where the money goes at this point?

11 MS. RICHARDSON: No, Your Honor. The investments are
12 made, but first of all, there's no jurisdiction here, number
13 one. This is not property of the debtors' estate. It's not
14 owned by Republic. There's an owner trustee and Republic
15 deposited funds. It's out of the picture; it doesn't have an
16 interest in the trust. That's number one. So in that regard,
17 there is no jurisdiction here to direct how that trust invests
18 or anything else with respect to that trust.

19 I will say, Your Honor, that the underlying trust
20 document does not permit the trustee to invest in anything
21 other than AAA-rated money market mutual funds having more than
22 three billion dollars in assets. In fact, it wouldn't permit
23 the trustee to invest in treasuries.

24 With respect to Mr. Masumoto's point about liability,
25 he has it backwards. The tax liability is Republic's liability

1 in the first instance. It is for withholding taxes. It is for
2 other types of taxes that it incurs that could, if unpaid,
3 result in personal liability to officers and directors. That
4 trust was established as a fallback mechanism to protect those
5 officers and directors.

6 THE COURT: All right.

7 MS. RICHARDSON: I would also add, Your Honor, that
8 the Supreme Court's decision Begier v. IRS says that funds
9 representing withholding and other trust fund taxes are not the
10 debtors' property even prior to payment.

11 THE COURT: That's true. That's why this is such an
12 odd instrument, though, because it's not the -- theoretically,
13 although it never happens in practice, you have a segregated
14 account with segregated money and you can say that's the money
15 that was withheld; it's not the debtors' property. That almost
16 never happens. But even if it did, it would be the Bank of
17 America funds, the party that normally pays the account. This
18 is sort of an extra protection so it doesn't run into -- it's
19 trust fund tax money, so it doesn't -- that doesn't work. But
20 certainly it's something that's under the control of the
21 trustee of the fund.

22 MS. RICHARDSON: Your Honor, with respect to Mr.
23 Masumoto's request that the Court adhere to some Lehman
24 standard of safety, we don't live our lives with all our life
25 savings in our mattresses, and we don't do that because the

1 risk of an actual bank failure is so remote that it doesn't
2 make economic sense, and frankly, it doesn't make practical
3 sense either. So instead of doing the safest thing in our
4 lives, we try to do the prudent thing: we take our money, and
5 hopefully we're able to invest it, for example, with Goldman
6 Sachs or with JPMorgan, where we might even earn something on
7 it and add to our invested principle.

8 I would note, Your Honor, that Mr. Masumoto is arguing
9 in favor of the debtors losing 540,000 dollars in annual
10 interest, on the one hand, and then is arguing that it needs to
11 disassemble Republic's Canadian operation in order to protect
12 what was 143,000 dollars, give or take, on March 30th. His
13 arguments are inconsistent.

14 And by the way, Your Honor, the Canadian bank account,
15 it's money in, money out. There's a little bit of cushion
16 that's kept there just in case immediate availability is
17 needed. But it's used for a limited purpose just to fund those
18 Canadian expenses for crew and the Canadian equivalent of the
19 FAA.

20 THE COURT: All right. Anything else?

21 MS. RICHARDSON: Nothing else. Thank you, Your Honor.

22 THE COURT: All right. Mr. Masumoto, anything else?

23 MR. MASUMOTO: Yes --

24 THE COURT: Briefly.

25 MS. RICHARDSON: I'm sorry. There was one more point.

1 I apologize.

2 THE COURT: That's all right.

3 MS. RICHARDSON: I would just like to say Mr. Secore
4 can speak to this because this is in the realm of his
5 employment, but a large public company such as Republic can't
6 just go out and shop for a bank account and move its money
7 around. It has to vet these banks, and that takes a long --
8 that's a long, involved, expensive, cumbersome process. So I
9 just wanted to give the Court a little perspective on that, and
10 certainly Mr. Secore is available to answer any questions.

11 THE COURT: All right. Thank you.

12 MS. RICHARDSON: Thank you.

13 THE COURT: You can stay there, Mr. Masumoto, and save
14 yourself -- just as long as you're --

15 MR. MASUMOTO: Yes, Your Honor, I'm -- no it's --

16 THE COURT: -- near a microphone, you're good.

17 MR. MASUMOTO: It's really just a minor point. With
18 respect to the Canadian bank account, again, I believe the
19 footnote in the original motion indicated that the account
20 could hold up to 500,000 dollars. It doesn't appear to be a
21 zero bank account as I think I've heard the term. I think the
22 several reports that we received seemed to indicate amounts in
23 the account that seemed to approach 200,000 dollars on a
24 regular basis. If it were truly a zero bank account, I think
25 that might give certain individuals a little more comfort, but

1 again, it wouldn't satisfy our collateralization requirement,
2 but I would assume a zero balance account system would create a
3 little bit more safety.

4 Finally, again, I guess I won't belabor the point
5 about the trust fund taxes or not trust fund. The potential
6 individual liability is what is at risk with respect to that
7 irrevocable trust which would arise, presumably, if Republic
8 failed and there were outstanding trust funds amounts,
9 regardless of whether it's the debtors' liability or not; if
10 Republic failed and weren't able to cover those trust fund
11 taxes, this account, this trust fund account would presumably
12 step in and provide some cushion or prevent the personal
13 liability of individuals. And that's what's at issue, and that
14 protection is being provided by, again, Republic, and
15 presumably, if the institution failed, presumably, Republic
16 would have to supplement -- or not supplement, would have to
17 recreate that protection.

18 Finally, I didn't mention earlier, and again, I don't
19 know the status. Your Honor has seen involvement of the
20 equity -- ad hoc equity committee. I note that those
21 representatives didn't file any comments regarding 345, but
22 unlike certain other cases where in fact the fulcrum security
23 is the unsecured creditor, here if in fact there is equity, the
24 people getting hurt are the equity holders who are not yet
25 represented as an official group.

1 THE COURT: Yeah, I've seen them here. I have no way
2 of knowing, one way or the other, where the money ends in the
3 case. And we'll get to it.

4 MR. MASUMOTO: I agree. I just wanted to point out
5 that, unlike in some cases where equity's out of their money
6 clearly at the outset, here there's an open issue.

7 THE COURT: Well, I think whether equity's in the
8 money or out of the money doesn't really change the analysis in
9 that --

10 MR. MASUMOTO: I agr --

11 THE COURT: -- you're always concerned with preserving
12 the value of the estate.

13 All right. Thank you.

14 MR. MASUMOTO: Thank you, Your Honor.

15 THE COURT: Anything from the committee?

16 MR. MILLER: No, Your Honor.

17 THE COURT: All right. So here's my ruling in what is
18 a very fact-intensive discussion.

19 As to the Canadian account, there's only 143,000
20 dollars in there, as of the most recent update, and it's
21 represented there's generally not more than 500,000 dollars.
22 And it's represented and not disputed that the account offers
23 flexibility necessary for operations outside the United States
24 and that the alternatives are cumbersome and restrictive. And
25 those are all laid out in the debtors' papers.

1 I appreciate Mr. Masumoto's sort of update as to what
2 your office can look into and not look into, and it sounds like
3 it just doesn't have information and reporting about the
4 overseas entities, branches of U.S. Banks, but I believe, based
5 on the factual record I have in front of me, the debtors have
6 demonstrated good cause for a waiver of the statutory
7 requirements as to this account, particularly given its size
8 and all of the debtors' overall operations, as well as the role
9 that it play in the need for liquidity in that role as to
10 operations.

11 So as to the investment account, this is quite large.
12 I don't remember where I saw the 238-million-dollar number, but
13 I saw one at one point, but certainly it's the same analysis
14 with the 146-million-dollar number that is represented as being
15 the most current estimate of that account's value. It's an
16 interesting argument that I have not, believe it or not, heard
17 before, in terms of relying on Section 345(a) which
18 contemplates prudent investment, maximizing the yield to the
19 estate, taking into account the safety of the deposit or
20 investment. And here the debtors explain, and I don't think
21 anyone disputes, that they have an investment policy to ensure
22 the conservative nature of the short-term investments, in
23 compliance with 345, and that providing ample cause for a
24 345(b) waiver, as the alternatives are commercially
25 unreasonable, that is either directly purchase government

1 securities or move funds to collateralized bank accounts, and
2 that those are problems from both daily liquidity needs and as
3 to rates of return and foregoing interest.

4 There was an offer that we discussed to transfer money
5 into funds that invest in U.S. treasuries, arguing that it
6 provides, essentially, the same security as a direct investment
7 in U.S. treasuries without the unwanted burdens of liquidity,
8 although keeping in mind that it does cost money to the debtor.
9 And there's a note that other courts have invested -- I'm
10 sorry, authorized such investments as evidenced by orders
11 entered in the Eastman Kodak case and the General Growth
12 Properties case. And there's even a cite to a Local Rule
13 4001-3 of the United States Bankruptcy Court for the District
14 of Delaware authorizing investment in treasury funds in this
15 manner, provided they meet certain requirements.

16 In this instance, given the size of the fund, I'm
17 going to borrow from my learned colleagues in Delaware, and I
18 will approve investment in such treasury funds here as a way of
19 satisfying the requirements of 345(a) and (b). As I said, I'm
20 going to look into whether this Local Rule is something that
21 would be appropriate for adoption here, and we'll take that up
22 at the appropriate time and vehicle that the Court looks at
23 these things.

24 But I think it's particularly appropriate here, given
25 that 345(b) has become, sort of, an ongoing conundrum. The

1 U.S. Trustee's office, I think, has done the best that it can
2 to try to honor statutory mandate, which doesn't provide a
3 whole lot of guidance as to case and treats all cases the same.
4 And certainly one has to be mindful of events in the recent
5 past as to the economic collapse. But at the same time,
6 dealing with a very sophisticated debtor in a very large case
7 is very different than dealing with somebody who has a
8 single-asset real estate case or an operating business that is
9 a restaurant or even a more sophisticated business that's not
10 nearly the size of a case such as this or American Airlines.

11 And to add to all that is Mr. Masumoto's explanation,
12 which I've heard before, about the difficulties of getting
13 banks to offer these kinds of services going forward. It's
14 really difficult for small debtors to comply with the
15 requirements, and it adds a level of uncertainty because some
16 of the options that people thought were available in fact
17 aren't available in all cases. So I think that's an
18 interesting topic for the U.S. Trustee's office to look at, and
19 I'm sure you are looking at it, in terms of how to honor the
20 requirements in 345(b) in the world that we live in, which has
21 proven to be increasingly challenging.

22 So in this circumstance, for the investment account,
23 though, I will borrow from my colleagues in Delaware and take
24 the debtors up on their offer to take those steps, given the
25 size of the account. It isn't perfect in terms of an

1 investment, but I think it tries to honor the spirit of 345(a)
2 and (b).

3 Finally, as to the Deutsche Bank account, which is
4 used as a secondary source of payment for trust fund taxes, if
5 trustee so directed, it's important to note these actually
6 aren't used to pay the trust fund taxes, so they're not outside
7 the property of the estate that way, but they are because there
8 the debtor has relinquished control; it's now with the trustee;
9 there's no reversionary interest. All of these facts are
10 undisputed. And so no matter what happens, the debtors are not
11 getting any money back.

12 So the concern here is a failure of the debtors and a
13 need to pay trust fund taxes and to seek alternative sources of
14 recovery for those. However, the debtors have filed
15 bankruptcy, and that is a process where the debtors'
16 reorganization is going supervised by the Court with the able
17 assistance of all of the counsel here in the room. And so
18 that's not a contingency that is somewhere remote and
19 unknowable. We are -- obviously, people are monitoring the
20 case and actively involved in the case. And certainly there's
21 no evidence that raises this as a realistic concern at this
22 point. And so I'm not willing to read that kind of a concern
23 as part of the 345 analysis in this case based on the record I
24 have in front of me, given the kind of account it is and what
25 it does.

1 So in light of all that, I'm going to give a waiver as
2 to the Deutsche Bank account as to this serving as a secondary
3 source for payment and trust fund taxes if in fact so directed.
4 It's not clear that I have authority to do so, given that it's
5 operated by a trustee and it was not the debtor, and given the
6 debtors' involvement in the account. But I think that just
7 adds an additional level of concern, but I think there are
8 others. So that's my ruling as to each of the three accounts,
9 and so you can revise the cash-management order to reflect the
10 rulings, and I'll wait to get that revised order.

11 MS. RICHARDSON: Thank you, Your Honor.

12 MR. MASUMOTO: Thank you, Your Honor.

13 THE COURT: Thank you. All right. Is there anything
14 else that we need to address here today?

15 MS. RICHARDSON: I think we're done.

16 THE COURT: All right. Going once, going twice.
17 Thank you very much. Have a good day.

18 MR. MASUMOTO: Thank you, Your Honor.

19 (Whereupon these proceedings were concluded at 1:30 p.m.)
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I N D E X

E X H I B I T S

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RULINGS

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Debtors' wages motion granted.	18	16
Debtors' motion (i) authorizing debtors (a) to assume clearinghouse agreements nunc pro tunc to the commencement date and (b) immediately satisfy certain related pre-petition settlement obligations, (ii) modifying the automatic stay, and (iii) authorizing and directing financial institutions to honor and process related checks and transfers, granted.	20	5
Debtors' utilities motion granted.	21	9
Debtors' insurance motion granted.	21	20
Debtors' taxes motion granted.	21	20

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RULINGS (cont'd.)

	Page	Line
Debtors' application for authority to Retain and employ Zirinsky Law Partners PLLC as lead bankruptcy attorneys for the debtors nunc pro tunc to the commencement date, granted.	22	9
Debtors' application for authority to retain and employ Hughes Hubbard & Reed LLP as attorneys for the debtors nunc pro tunc to the commencement date, granted.	22	25
Debtors' application to employ and retain Prime Clerk LLC as administrative advisor nunc pro tunc to the commencement date, granted.	23	17
Debtors' application for authority to employ and retain KPMG LLP as tax consultant to the debtors nunc pro tunc to the commencement date, granted.	25	9
Debtors' motion for authority to employ professionals used in the ordinary course of business, nunc pro tunc to the commencement date, granted.	28	20

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C E R T I F I C A T I O N

I, David Rutt, certify that the foregoing transcript is a true and accurate record of the proceedings.



DAVID RUTT

AAERT Certified Electronic Transcriber CET**D 635

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Date: March 23, 2016