

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

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

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**ORDER PURSUANT TO 11 U.S.C. §§ 363(b), 363(m) AND 365(a) OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULES 6004, 6006 AND 9019 FOR
AUTHORIZATION TO (I) ASSUME CODESHARE AND RELATED AGREEMENTS,
AS AMENDED, WITH DELTA AIR LINES, INC., (II) LEASE CERTAIN PROPERTY
OF THE ESTATE AND (III) SETTLE CERTAIN CLAIMS BETWEEN
DELTA AIR LINES, INC. AND THE DEBTORS**

A hearing having been held on April 21, 2016 (the "Hearing"), to consider the motion, dated March 24, 2016 (the "Motion"),² of Republic Airways Holdings Inc. ("RAH"), and certain of its wholly-owned direct and indirect subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively with RAH, "Republic" or the "Debtors"), pursuant to sections 363(b), 363(m) and 365(a) of the Bankruptcy Code and rules 6004, 6006 and 9019 of the Federal Rules of Bankruptcy Procedure, for authorization to (i) assume codeshare and related agreements, as amended, with Delta Air Lines, Inc., (ii) lease certain property of the estate and (iii) settle certain claims between Delta Air Lines, Inc. and the Debtor, each as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska,

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1. The Debtors in these chapter 11 cases are the following entities: Republic Airways Holdings Inc.; Republic Airways Services, Inc.; Republic Airline Inc.; Shuttle America Corporation; Midwest Air Group, Inc.; Midwest Airlines, Inc.; and Skyway Airlines, Inc. The Debtors' employer tax identification numbers and addresses are set forth in their respective chapter 11 petitions.
 2. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

C.J.); and a hearing having been held on April 29, 2016, at which the Court issued a bench ruling (the “Bench Ruling”); and the Bench Ruling having set forth the Court’s findings of fact and conclusions of law, all of which are incorporated into this Order as if fully set forth at length; and upon the record of the hearings and these proceedings; and after due deliberation, this Court having found good and sufficient cause appearing therefor for all of the reasons stated on the record of the Bench Ruling

IT IS HEREBY FOUND AND CONCLUDED that:

A. The statutory predicates for the relief requested in the Motion are sections 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 6004, 6006 and 9019.

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

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

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

E. Delta is a good faith lessee, as that term is used in section 363(m) of the Bankruptcy Code with respect to the Leased Slots. The A&R Slot Lease was negotiated, proposed and entered into by the parties in good faith, from arms’-length bargaining positions and without collusion or fraud, and Delta is entitled to the protections of section 363(m) of the Bankruptcy Code with respect to the Leased Slots.

F. Sound business reasons have been articulated for performing the obligations

set forth in the A&R Slot Lease and leasing the Leased Slots as set forth in the Motion, and it is a sound exercise of business judgment to enter into and perform under the A&R Slot Lease and consummate the transactions contemplated thereby.

G. The Amended Flying Agreements and the Amended Ground Handling Agreement have been negotiated in good faith and at arm's length among Delta and the Debtors.

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

I. There is no uncured default by Republic under the Assumed Agreements, and thus, no adequate assurance of future performance by Republic is required under section 365(b) of the Bankruptcy Code.

J. Entry of this Order is in the best interests of the Debtors' estates and creditors.

K. As set forth in the Motion, both Delta and Republic will, upon entry of and in reliance on this Order, *inter alia*, take numerous steps and actions with respect to their flying schedules, aircraft, products, and agreements with other parties.

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

IT IS HEREBY ORDERED that:

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

2. The Debtors are authorized to amend the Single Class Agreement via entry

into Single Class Amendment 14 and the Dual Class Agreement via entry into Dual Class DCA Amendment 8 and assume, and hereby do assume, the Amended Flying Agreements pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006.

3. The Debtors are authorized to assume, and hereby do assume, the LGA 2 Slot Lease pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006.

4. The Debtors are authorized to amend the Ground Handling Agreement via entry into the Ground Handling Amendment and to assume, and hereby do assume, the Amended Ground Handling Agreement pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006.

5. Pursuant to section 363(b) of the Bankruptcy Code, Republic is authorized to enter into the A&R Slot Lease, lease the Leased Slots to Delta and perform all obligations thereunder.

6. Within three business days of this Order becoming a Final Order (as defined below), each of Delta, on the one hand, and RAH and Shuttle, on the other hand, shall dismiss, with prejudice, and without costs and attorneys' fees, all of their respective claims in the Delta Litigation. Concurrent with such dismissal, the parties shall release, and shall be deemed hereunder to have released, one another from any and all claims arising prior to the date hereof asserted by any party in the Delta Litigation consisting of (1) Engine Maintenance Expense (as defined in the Dual Class Agreement), (2) fixed payment for Aircraft (as defined in the Dual Class Agreement) that were not operated in Delta Connection Service (as defined in the Dual Class Agreement) and (3) incentive payments. For purposes of this paragraph 6, "Final Order"

shall mean, with respect to this Order, that (i) this Order is unstayed, has not been reversed or vacated, or amended or modified (without the written consent of each of RAH, Shuttle America and Delta), and (ii) the time to appeal or seek certiorari with respect to this Order has expired and (x) no appeal or petition for certiorari thereof has been timely taken, or (y) in the event that any appeal has been taken or any petition for certiorari has been filed with respect to this Order, such appeal or petition for certiorari has been dismissed or has been resolved by the highest court to which this Order was appealed or from which certiorari was sought.

7. In the event that this Order is hereafter reversed, modified, vacated or stayed by a subsequent order of this Court or of any other court of competent jurisdiction, such reversal, stay, modification or vacation shall not affect the validity of any rights granted Delta hereunder or of any transaction, including the lease of the Leased Slots, completed pursuant to and in reliance on this Order prior to the effective date of such reversal, stay, modification or vacation, the Court specifically finding that the terms and provisions of the A&R Slots Lease and the Assumed Agreements and the transactions authorized thereunder and hereunder were negotiated and made without collusion and in good faith, and that, accordingly, in the event the parties elect to consummate the transactions contemplated in the A&R Slots Lease and the Assumed Agreements while an appeal of this Order is pending, Delta is entitled to rely on the protections of section 363(m) of the Bankruptcy Code.

8. Delta is hereby granted an allowed prepetition general unsecured claim in the amount of \$170,000,000 against each of RAH and Shuttle America, not subject to offset, subordination, attack or other challenge (the "Delta Claim").

9. If any of the Debtors' other codeshare partners (American Airlines Group,

Inc. or United Continental Holdings or any affiliates of either of the foregoing) agree to (or otherwise receive) an allowed claim against any of the Debtors other than a Litigated Claim (as defined below) (such claim, a "Codeshare Claim") that (x) is in a greater proportion to such codeshare partners' maximum reasonable damages or in a greater proportion of the economic concessions to the Debtors, than the Delta Claim is to Delta's maximum reasonable damages or economic concessions, or (y) has priority higher than that of a general unsecured prepetition claim (such codeshare partners' proportion and priority, the "Codeshare Claim Proportion" and Delta's proportion and priority, the "Delta Claim Proportion") then the Debtors shall, prior to filing the motion for approval of such Codeshare Claim, provide notice (the "Delta Claim Notice") to counsel to Delta and counsel to the Committee of the Debtors' proposed increase (as agreed between Delta and the Debtors) to the amount or priority of the Delta Claim, as applicable, such that the adjusted Delta Claim's Delta Claim Proportion equals the Codeshare Claim Proportion. If the Debtors and Delta do not receive a written objection from the Committee within seven (7) days of delivery of the Delta Claim Notice (or if the Debtors receive and thereafter consensually resolve any such objection), then the amount or priority, as applicable, of the Delta Claim shall be increased as set forth in the Delta Claim Notice (or, if in connection with the consensual resolution of any such objection, as otherwise agreed in writing among the Debtors, the Committee and Delta) without further order of the Court or notice to any party. If a timely objection by the Committee is received and not resolved prior to the hearing with respect to the allowance of the applicable Codeshare Claim, then the Debtors shall, concurrently with the approval of such Codeshare Claim, obtain entry of an order of this Court to increase the Delta Claim in amount or priority, as applicable such that the

Delta Claim's Delta Claim Proportion equals the Codeshare Claim Proportion; provided that the Committee (and no other party) may object to any increase in the amount or priority of the Delta Claim under this paragraph 9 solely on grounds that the Codeshare Claim Proportion with respect to the Codeshare Claim is not greater or higher than the Delta Claim Proportion. "Litigated Claim" means a claim determined exclusively by a (x) final order of a court of competent jurisdiction or (y) final decision by one or more arbitrators pursuant to mandatory arbitration, which the Debtors have in good faith and to conclusion litigated and contested the priority, amount and allowance of such Codeshare Claim and not agreed to, or settled, the amount of such Codeshare Claim, provided that the portion of any such Codeshare Claim to which the Debtors have agreed, settled or not contested shall not be a Litigated Claim.

10. Solely in the event that Republic liquidates in, and does not emerge from, this bankruptcy proceeding, then the administrative claims of Delta arising out of the rejection or termination of the Amended Flying Agreements shall be capped at the sum of (x) all incremental dollars paid under the Amended Flying Agreements (as compared to the amounts that would have been paid under the Single Class Agreement without giving effect to the Single Class Amendment 14 and the Dual Class Agreement without giving effect to the Dual Class DCA Amendment 8, together the "Pre-Amendment Flying Agreements") plus (y) the actual costs and damages suffered by Delta from the Petition Date through termination or rejection of said Agreements from Republic not flying the schedules or otherwise not performing the obligations that were or would have been required under the Pre-Amendment Flying Agreements. The foregoing cap on administrative claims shall not apply, and this paragraph shall be of no further force and effect, if either (i) American

Airlines Group, Inc. and United Continental Holdings (or any affiliates of either of the foregoing) each enter into (including the assumption or assumption and amendment by Republic of) at least one flying agreement with one or more Debtors or (ii) the order approving the entry into, or assumption of, any flying agreement with either of American Airlines Group, Inc. or United Continental Holdings (or any affiliates of either of the foregoing) does not contain this provision and cap. Moreover, except as expressly set forth herein, nothing in this paragraph shall otherwise limit Delta's claims, rights or remedies under applicable law, contract or otherwise, or any other party's defenses thereto.

11. Republic is authorized to enter into any agreements contemplated by and on the terms set forth in the Assumed Agreements and the A&R Slot Lease, and to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions that may be reasonably necessary or appropriate to implement the Assumed Agreements and the A&R Slot Lease and perform all obligations contemplated thereunder.

12. For the avoidance of doubt, to the extent the automatic stay provisions of section 362 of the Bankruptcy Code would otherwise apply, such provisions are vacated and modified to effectuate all of the terms and provisions of the Assumed Agreements and the A&R Slot Lease and this Order, including to permit the parties thereto to send any notices contemplated thereunder, or to exercise any right or perform any obligation in accordance with the terms thereof.

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

14. The provisions and effect of this Order, any actions taken pursuant to this

Order and Delta's and the Debtors' respective rights, obligations, remedies and protections provided for herein and in the A&R Slot Lease and the Assumed Agreements shall survive the conversion, dismissal and/or closing of these chapter 11 cases, appointment of a trustee herein, confirmation of a plan or plans of reorganization, and/or the substantive consolidation of these chapter 11 cases with any other case or cases, and the terms and provision of this Order as well as any protections granted to Delta pursuant to this Order shall continue in full force and effect notwithstanding the entry of any such order.

15. Notwithstanding any Bankruptcy Rule, including Bankruptcy Rules 6004 and 6006, this Order shall be automatically effective and enforceable at 12:01 a.m. on May 6, 2016.

16. The Motion satisfies rules 2002, 6004, 6006 and 9019 of the Federal Rules of Bankruptcy Procedure.

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

Dated: New York, New York

May 3, 2016

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