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Hearing Date & Time: April 21, 2016 at 9:00 am
Objection Deadline: April 14, 2016 at 4:00 pm

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of Equity Holders*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
	: :
Republic Airways Holdings Inc., <i>et al.</i> , ¹	: Case No. 16-10429 (SHL)
	: :
	: (Jointly Administered)
Debtors.	: :
	: :
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**OBJECTION OF AD HOC COMMITTEE OF EQUITY HOLDERS TO
DEBTORS' MOTION FOR ENTRY OF AN ORDER PURSUANT TO
11 U.S.C. §§ 105, 361, 362(d)(1), 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e),
503(b)(1) and 507(b) AND FED.R.BANKR.P. 4001 AND 6004 (I) AUTHORIZING
DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) GRANTING LIENS
AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III)
MODIFYING THE AUTOMATIC STAY AND (IV) GRANTING RELATED RELIEF**

TO THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE:

The Ad Hoc Committee of Equity Holders (the "Ad Hoc Committee"),² hereby objects to
the *Debtors' Motion For Entry Of An Order Pursuant To 11 U.S.C. §§ 105, 105, 361, 362(d)(1)*,

¹ The Debtors (the "Debtors" or "Republic") 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 The members of the Ad Hoc Committee and their respective holdings are set forth in the Verified Statement Pursuant to Bankruptcy Rule 2019, filed on March 7, 2016 [Dkt. No. 107], as supplemented by the Verified Supplemental Statement Pursuant to Bankruptcy Rule 2019, filed on March 31, 2016 [Dkt. No. 286] and

363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), 503(b)(1) and 507(b) And Fed.R.Bankr.P. 4001 and 6004 (I) Authorizing Debtors To Obtain Postpetition Financing, (II) Granting Liens And Providing Superpriority Administrative Expense Status, (III) Modifying The Automatic Stay And (IV) Granting Related Relief, dated March 24, 2016 [Dkt. No. 246] (the "DIP Motion")³ and respectfully represents as follows:⁴

BACKGROUND

1. By the Delta DIP Motion, the Debtors seek authority to obtain debtor in possession financing from, and grant liens and superpriority administrative expense claims to, Delta Air Lines, Inc. ("Delta"), one of its three codeshare partners. When viewed in light of the Delta Settlement Motion, granting Delta the rights contemplated by the DIP Motion and the DIP Credit Agreement will result in Delta – a party whose interests are clearly adverse to the Debtors and their estates, and go far beyond those of a traditional lender – having enormous power in these Chapter 11 cases. Granting that power to Delta should not be considered lightly.

2. In proposing the DIP Motion, the Debtors argue that, together with the Delta Settlement Motion, the Debtors and Delta are entering into a series of transactions that "represents a comprehensive change in the circumstances, transactions and business relationships between the parties." DIP Motion, ¶ 3. While that may be true, the DIP Motion fails to provide any rationale as to why Delta *must be the debtor in possession lender in order to proceed with*

the Second Verified Supplemental Statement Pursuant to Bankruptcy Rule 2019, filed on April 11, 2016 [Dkt. No. 327].

³ Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the DIP Motion.

⁴ The Ad Hoc Committee hereby incorporates by reference their Objection to the Debtors' Motion Approving Pursuant to Sections 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 Claims Between Delta Air Lines, Inc. and the Debtors, dated April 14, 2016, filed simultaneously herewith.

the balance of the transactions. This question is particularly relevant given that the Debtors were provided with a debtor-in-possession financing proposal from a subset of the Ad Hoc Committee having economic terms more favorable to the Debtors.⁵ The only plausible explanation is that Delta perceives there to be a benefit in being the DIP Lender by virtue of the rights afforded under the terms of the DIP Credit Agreement and the DIP Order, particularly if the Chapter 11 cases do not proceed in the manner anticipated by the Debtors. As a result, this Court must closely scrutinize the terms of the DIP Credit Agreement and DIP Order to protect the Debtors' estates from the adverse consequences that might result should an Event of Default occur.

OBJECTIONS

3. The Ad Hoc Committee has the following objections to the DIP Credit Agreement and DIP Order:

a. The terms of the proposed DIP Loan Facility do not reflect the best terms available to the Debtors. The DIP proposal submitted to the Debtors by certain members of the Ad Hoc Committee provided for a lower cost of borrowing and more flexibility in borrowing and repayment. The interests of the Ad Hoc Committee and the Debtors are also completely aligned (unlike the interests of Delta, which are purely parochial and adverse to both the Debtors and their other codeshare partners). Despite these facts, the Debtors made no effort to finalize the terms of the Ad Hoc Committee members'

⁵ The Debtors simply ceased negotiations with the Ad Hoc Committee members regarding a proposed debtor in possession financing facility and never sought to negotiate any modifications to the proposal in order to obtain better terms from the standpoint of the Debtors.

proposal. Rather, the Debtors simply succumbed to Delta's demand that, as part of their "global settlement," Delta has to be the DIP Lender.⁶

b. The terms of proposed DIP Facility give Delta rights that are particularly troublesome when dealing with a codeshare partner with a history of litigation against the Debtors (and others). Among these troublesome provisions are:

- i. Delta's right to approve the Budget (Annex D, Section D)⁷ and the occurrence of an Event of Default if at any time after the initial thirteen week period a Delta-approved Budget is not in effect (Section 8.01 (i)). Since Delta has its own parochial interests to protect, its willingness to approve a Budget that includes expenditures for the benefit of other codeshare partners is not assured.
- ii. Delta's right to call an Event of Default in the event of the occurrence any default or breach under any Delta Connection Agreement that gives Delta the right to terminate (Section 8.01(f)) (regardless of whether Delta actually determines to terminate). The termination rights under the Single Class Agreement and Dual Class Agreement, even as proposed to be amended pursuant to the Delta Settlement, are extensive. Further, neither the Amended Single Class Agreement nor the Amended Dual Class Agreement, nor any term or provision of the Delta Settlement, provides

⁶ Delta's insistence on being the DIP Lender as part and parcel of their overall settlement is belied by the inclusion of provisions in the DIP Credit Agreement that permit Delta to assign and/or participate all or any portion of the DIP Loans. *See* DIP Credit Agreement, Sections 11.01(a) and (c).

⁷To the best of our knowledge no Budget has yet been approved, and if it has been approved it has not been filed with the Court.

for a waiver of any prior default or an acknowledgment that no default exists as of the date hereof that would allow Delta to terminate.

- iii. Delta's right to call an Event of Default in the event the Assumption Motion is reversed on appeal (Section 8.01(v)). This provision is clear evidence that Delta is not acting as a traditional lender, but rather in its own interests that are adverse to the Debtors.
- iv. Upon the occurrence of an Event of Default, Delta may exercise the rights and remedies provided under the DIP Loan Documents (including terminating the commitments, declaring all Obligations to be immediately due and payable, and charging default rate interest) and, upon the expiration of five days' written notice, exercise all other rights and remedies, including foreclosing on the Debtors' cash and valuable take-off and landing slots at LaGuardia.

4. The foregoing provisions highlight the very real risk presented here of allowing Delta – which holds an adverse interest to the Debtors and the other codeshare partners on whom the Debtors rely for their very survival – to potentially control the Debtors' purse strings and ability to survive. As recently as January, 2016, Delta had a "request for proposal" in the market and was arguably preparing to move its business away from the Debtors. There is clearly no love lost between the companies. Putting the Debtors' very existence into the hands of Delta – who will not only be in a position to cut off funding and access to sorely needed cash, but also to abscond with valuable and irreplaceable assets – makes little sense, and puts all other stakeholders in this reorganization at material risk.

CONCLUSION

For the reasons set forth herein the Ad Hoc Committee respectfully requests that the Court deny the relief requested in the DIP Motion, and grant such other and further relief as may be just.

Dated: April 14, 2016
New York, New York

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