Hearing Date: April 21, 2016 at 9:00 a.m. (Eastern)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DEBTORS' OMNIBUS RESPONSE TO OBJECTIONS TO THE DEBTORS' MOTION 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

1. The Debtors in these chapter 11 cases are the following entities: Republic Airways Services, Inc.; Shuttle America Corporation; Republic Airline Inc.; Republic Airways Holdings Inc.; 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.

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

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"), submit this omnibus response (the "Response") to (i) the objection of the Ad Hoc Committee of Equity Holders [ECF No. 360] (the "Ad Hoc Group Objection"), and (ii) the limited objection of the Official Committee of Unsecured Creditors [ECF No. 364] (the "UCC Limited Objection"). In support of this Response and in further support of the Delta Settlement Motion, the Debtors respectfully represent as follows:[1]

Preliminary Statement

1. The comprehensive settlements and amended agreements sought to be approved by the Delta Settlement Motion and the contemporaneously filed DIP Motion (the "Delta Transaction") are the first major steps toward achieving the Debtors' goals in these chapter 11 cases and a successful reorganization. Among other things, Delta has agreed to pay higher rates to compensate the Debtors for the increased costs of their new pilot labor agreement, which will improve substantially the Debtors' revenues, allow them to attract and retain employees, and permit an orderly restoration of service. In addition, the modifications to which Delta has agreed will enable the Debtors to wind down their costly small jet flying and rebuild their scheduled flying of larger jets. Approval of the Delta Transaction will immediately enhance the Debtors' revenue and profitability.

1. On March 24, 2016, the Debtors filed the Motion 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 Debtor [ECF No. 244] (the "Delta Settlement Motion"). Capitalized terms used but not defined herein shall have the meaning set forth in the Delta Settlement Motion.

2. No one—not even the Ad Hoc Group—disputes the need to restructure the Delta agreements. (*See* Ad Hoc Group Objection ¶ 1.) Moreover, the substantial benefits to the Debtors are indisputable. Among other things:

- The Amended Single Class Agreements will generate [redacted] improvement over current base rates for Republic and Delta will pay a substantial increase in rates to cover Republic's cost of flying during the wind-down.
- The increased revenues related to the Amended Dual Class Agreement is an improvement of approximately [redacted] per annum over current rates, which is an over [redacted] revenue improvement through the remaining term of the agreement. In addition, the amended rate reset provision in the agreement decreases Republic's exposure to risk that it will be unable to meet costs over the next five years by advancing the reset by one year and removing the previous [redacted] on changes to base rate costs. [redacted]
- The A&R Slot Lease—combined with Delta's agreement to continue leasing the 4 DCA Slots under the Amended Dual Class Agreement—will provide enhanced revenues for Republic of [redacted] or approximately [redacted] over the term of the lease.[2]

3. The negotiations with Delta were difficult and, as is always the case in arms' length negotiations, neither party received everything it sought. As consideration for the economic concessions it made, for the resolution of the Delta Litigation, and other asserted damages, Delta sought an allowed unsecured claim in the amount of approximately $1.7 billion. Following difficult negotiations over a two-day period, the Debtors and Delta agreed on an allowed general unsecured claim in the amount of $170 million, a discount of almost 90% over Delta's original demand. By any measure, this is a great result for the Debtors and their estates. It is an even greater deal given the huge economic concessions that Delta has afforded the Debtors through the new agreements. Nonetheless, the Ad Hoc Group objects to the Delta Claim, contending that the Debtors are "print[ing] . . . currency . . . which has no impact on its

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2. The Delta Settlement Motion in paragraphs 32 and 43 mistakenly attributes the [redacted] solely to the A&R Slot Lease.

cash flow or debt capacity." (Ad Hoc Group Objection ¶ 2.) The Ad Hoc Group's contention is simply wrong. The Debtors are properly exercising their fiduciary duty in bankruptcy to maximize the going concern value of the enterprise, taking into account the availability of alternative transactions, and the potential risks of proceeding or not proceeding with the transaction. The allowance of an unsecured claim is anything but "printing currency." It is the compensation a creditor or a party to an executory contract receives after its claims or rights are impaired. There is no question that Delta's rights are being impaired, albeit consensually through a comprehensive settlement. They are entitled to be compensated. It also should be noted that there is a substantial likelihood that unsecured creditors will receive far less than a one hundred percent recovery on their claims and, as a result Delta's recovery on its claim will be further discounted.[3]

4. Through the settlement Delta has agreed to accept the uncertainty of what its actual compensation will be. In weighing their alternatives, the Debtors considered that they could not afford to assume the Delta agreements without amendments and that rejection of the Delta agreements would generate rejection damage claims substantially larger than the $170 million Delta Claim and very substantial third-party claims, all without providing the Debtors any of the economic or other benefits of the Delta Transaction, and with serious harm to the Debtors' business and prospects.

5. Unlike the Debtors, the members of the Ad Hoc Group are not acting in the interests of the Debtors' estates. They are focused single-mindedly on the elimination of the

3. The Ad Hoc Group Objection assumes, without any basis, a distribution rate to general unsecured creditors of one hundred cents on the dollar. (*See* Ad Hoc Group Objection 5 n.8.) That, in all likelihood, will not occur. (*See* Ad Hoc Group Objection, Ex. A (Debtors' UST Letter), at 3 ("[U]nsecured creditors are faced with the prospect of recovering potentially well less than 50 cents on every $1.00 of claims, and equity holders will therefore receive no distributions.").)

Delta Claim, because it is senior in right of payment to equity. They ignore the fact that, in reality, it is a highly beneficial settlement that enhances the enterprise value of the Debtors' estates. Acting solely in their own parochial interest, the members of the Ad Hoc Group are unconcerned about the risks and costs to the enterprise if the Delta Transaction is not approved. The Debtors cannot, however, and will not, gamble the enterprise as a whole and the interests of creditors, employees, and all other parties in interest and take undue risk for the benefit of equity holders who likely have no economic interest in the Debtors' estates.

6. For its part, the UCC does not question the substantial economic benefits of the Delta Transaction and the UCC agrees with the Debtors that the $170 million allowed general unsecured Delta Claim is reasonable. Instead, citing concerns with the effect of the "most favored nations" clause (the "MFN Clause") on the Delta Claim, the UCC asks the Court for a further adjournment of the hearing. The Debtors hope that the UCC will withdraw its limited objection and request for adjournment prior to the hearing on this matter, but if not, the UCC Limited Objection should be overruled because the Debtors and Delta have made revisions to the MFN Clause and otherwise have addressed all of the concerns raised by the UCC Limited Objection:

- The Debtors and Delta have agreed that the MFN Clause will apply only in the event of a settlement of another Codeshare Partner's claim, and will *not* apply in the event another Codeshare Partner obtains a claim through litigation.
- The Debtors and Delta have established in writing an agreed methodology upon which the parties will determine whether the MFN Clause is triggered and the amount of increase in the Delta Claim should that occur.
- The Debtors and Delta have clarified that (i) any adjustment of the Delta Claim pursuant to the MFN Clause will be subject to a further review and approval process, and (ii) the Delta Claim will be allowed only against RAH and Shuttle, who are the parties to the existing agreements.

7. Since filing the Delta Settlement Motion, the Debtors have cooperated with both the UCC and the Ad Hoc Group, providing all of the information they have requested, answering their questions, participating in conference calls, meeting in person when needed, and agreeing to a one-week adjournment of the hearing. The Debtors also have complied with the Ad Hoc Group's request for document discovery and two witness depositions. It is now time to move forward. The benefits to the Debtors and their estates will begin to flow immediately upon Court approval, and any further delay will be a costly and unnecessary detriment to the Debtors and all parties in interest. Following approval by the Court, Delta will, among other things, (i) pay the Debtors more than [redacted] in reconciliation of past due engine maintenance within [redacted] days of an order becoming final, (ii) immediately begin leasing 4 DCA Slots at [redacted], and (iii) immediately and retroactively increase base rate payments under the Amended Single Class and Dual Class Agreements. The UCC and other parties in interest have all the information they need to assess the Delta Transactions. Adjournment of the hearing will be costly and will serve no valid purpose.

8. In addition, the Debtors firmly believe that prompt approval of the Delta Transactions will facilitate reaching agreements with its other Codeshare Partners. Approval of the Delta Transactions also will inspire confidence in the Debtors' employees and have an immediate positive effect on pilot recruitment and attrition. Prompt approval of the Delta Transaction also is important to the Debtors' fleet planning, in particular in advance of the busy summer flying season, which must be fixed months in advance, and already made difficult given the requirements of, and the April 25th deadline under, Bankruptcy Code section 1110. Delta also has the right to terminate the settlement and the DIP commitment if final orders are not entered on or before May 14, 2016.

9. For the reasons set forth above and described in more detail below and in the Delta Settlement Motion, the Debtors respectfully request that the Court overrule the Ad Hoc Group Objection and the UCC Limited Objection and approve the relief sought in Delta Settlement Motion.

Argument

I. THE COURT SHOULD APPROVE THE DELTA TRANSACTION BECAUSE IT IS HIGHLY BENEFICIAL TO, AND IN THE BEST INTERESTS OF, THE DEBTORS' ESTATES AND CONSTITUTES A PROPER EXERCISE OF THE DEBTORS' BUSINESS JUDGMENT

10. Courts approve settlements under Bankruptcy Rule 9019 that are fair, equitable, and in the best interests of the estate. *See In re Drexel Burnham Lambert Grp., Inc.*, 134 B.R. 493, 496 (Bankr. S.D.N.Y. 1991). In determining whether to approve a proposed settlement, the Court need not decide the numerous issues of law and fact raised by the settlement, but rather should "canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness." *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983) (internal quotations omitted); *see also Fjord v. AMR Corp. (In re AMR Corp.)*, 502 B.R. 23, 42 (Bankr. S.D.N.Y. 2013); *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993) ("The lenient standards concerning approval of settlement and a limited scope of review reflect the considered judgment that little would be saved by the settlement process if bankruptcy courts could approve settlements only after an exhaustive investigation and determination of the underlying claims. The applicable standards encourage courts to approve settlements in bankruptcy proceedings and related actions.").

11. The debtor's duty is to the enterprise and all of its stakeholders, not just to the shareholders. *See, e.g., In re Innkeepers USA Tr.*, 442 B.R. 227, 235 (Bankr. S.D.N.Y. 2010) ("[I]t is 'Bankruptcy 101' that a debtor and its board of directors owe fiduciary duties to the

debtor's creditors to maximize the value of the estate . . . ."); *In re Penick Pharm., Inc.*, 227 B.R. 229, 232 (Bankr. S.D.N.Y. 1998) ("Upon the filing of a voluntary chapter 11 petition, a debtor automatically becomes 'debtor in possession.' As such, it occupies the shoes of a bankruptcy trustee in every major way. As a *de jure* trustee, it holds its powers in trust for the benefit of creditors. Specifically, in the case of an inanimate debtor in possession such as a corporation, the fiduciary duties borne by a trustee for a debtor out of possession fall on the debtor's directors, officers and managing employees, who have a duty to maximize the value of the estate, and who are burdened to ensure that the resources that flow through the debtor in possession's hands are used to benefit the unsecured creditors and other parties in interest.") (citations omitted); *Wolf v. Weinstein*, 372 U.S. 633, 649 (1963) ("[S]o long as the Debtor remains in possession, it is clear that the corporation bears essentially the same fiduciary obligations to the creditors as does the trustee for the Debtor out of possession.").

12. In deciding to pursue a particular course of action or to proceed with a transaction, the debtor's legal duty is to exercise sound business judgment and determine whether the proposed course of action is in the best interests of the debtor's estate. *In re GSC, Inc.*, 453 B.R. 132, 169 (Bankr. S.D.N.Y. 2011) ("The Trustee's decision of what is best for the estate should be undertaken with the goal of maximizing the value of the estate."). In exercising its business judgment, the debtor should seek to maximize the going concern value of the enterprise, taking into account the availability of alternative transactions, and the potential risks of proceeding or not proceeding with the proposed transaction. *See, e.g.*, *In re Global Crossing Ltd.*, 295 B.R. 726, 744-45 (Bankr. S.D.N.Y. 2003) (finding that there was "risk and uncertainty in the decision the Board made, but there [was] likewise risk and uncertainty in the alternatives," and that "[d]eclining to take the associated risks of that was well within the bounds of reasonable

business judgment," and noting "the extensive process under which the Debtors made this decision. Faced with uncertainties no matter which option the Board might choose, the Debtors employed a process that maximized their ability to make a sound decision. They were mindful of their duties, employing the right standard; solicited the input of their professional advisors . . .; deliberated; and made their decision based on a lengthy consideration of the relevant facts and options.").

13. This is exactly what the Debtors have done here. The Debtors negotiated vigorously with Delta regarding the DIP financing terms, the terms of the new agreements, the terms of the slot leases, and the terms of the Delta Claim. (Luth Decl. ¶ 33-43; Allman Decl. ¶ 24-32.) The negotiations were at arms' length. (Luth Decl. ¶ 33-43; Allman Decl. ¶ 24-32.) The Debtors' management and board of directors solicited the input of their professional advisors, considered all of their options and, based on a lengthy consideration of the relevant facts and options, in their business judgment, determined that it is in the best interests of all stakeholders to agree to the holistic settlement that was negotiated between the parties. (Luth Decl. ¶ 43; Allman Decl. ¶ 32.) Contrary to the Ad Hoc Group's assertions and innuendo, the Debtors' board of directors was kept fully apprised of all negotiations with Delta and the Debtors' other Codeshare Partners and was fully informed of the Delta settlement and all of its terms, and unanimously approved it. (Luth Decl. ¶ 43; Allman Decl. ¶ 32.)

14. This includes: DIP financing that will ensure adequate and low-cost liquidity needed to support the Debtors' working capital needs and otherwise fund the reorganization (Luth Decl. ¶ 52, 66; Allman Decl. ¶ 49);[4] an exit from the unprofitable Single

4. The terms of the DIP financing under the Delta Transaction are far more favorable than the financing offered by the certain members of the Ad Hoc Group. [redacted]

Class Agreement on terms that are economically favorable to the Debtors and will reduce claims against the Debtors' estates of single class aircraft (ERJ-145) financiers (Luth Decl. ¶¶ 45, 47-49 55; Allman Decl. ¶¶ 33-43); resolution of the Delta Litigation (Luth Decl. ¶ 68; Allman Decl. ¶ 50); elimination of the risks of substantial post-petition administrative claims (Luth Decl. ¶ 56; Allman Decl. ¶ 42); gained certainty in the Debtors' ability to proceed with the restructuring of its dual class aircraft (E170/175) fleet on terms that are economically favorable to the Debtors (Luth Decl. ¶¶ 45, 47-51; Allman Decl. ¶¶ 33-43); and Delta's long-term commitment to its business relationship with the Debtors which is crucial to the Debtors' going-concern prospects (Luth Decl. ¶¶ 49-50, 62; Allman Decl. ¶¶ 37, 40).

15. The unsupported assertion underlying the Ad Hoc Group Objection—that Delta somehow took advantage of the Debtors' bankruptcy to wrest a $170 million claim in exchange for nothing—ignores the reality of the substantial economic concessions that Delta made in the new flying agreements, the inherent risk in litigation, and the fact that, as a practical matter, the Delta Claim cannot be extracted from the settlement. Taking all of these factors into consideration, the settlement falls well within the range of reasonableness.

16. In assessing whether a complex settlement with multiple interrelated components—such as this one—is reasonable under the circumstances, courts consider the settlement as a whole, including all of its attendant benefits to the estate. *See In re NII Holdings,*

Inc., 536 B.R. 61, 99 (Bankr. S.D.N.Y. 2015) ("In complex settlements, it is appropriate for the court to not only consider each settled claim individually, . . . but also to consider the reasonableness of the settlement agreement as a whole.")

17. Without the deal with Delta, the Debtors' prospects of successfully reorganizing are seriously diminished, if not extinguished. (Luth Decl. ¶ 56; Allman Decl. ¶ 42.) While the Ad Hoc Group clearly disagrees with the decision by the Debtors' management and board of directors that it is in the best interests of all stakeholders to agree to the comprehensive settlement that was negotiated with Delta, the management and the board of directors made that decision as a valid exercise of their business judgment. The Ad Hoc Group's disagreement with management and the board of directors' business judgment does not provide a basis to deny the assumption of the amended agreements, the approval of the new slot lease, or the allowance of the Delta Claim. *See In re Adelphia Commc'ns Corp.*, No. 02-41729 (REG), 2004 WL 1634538, at *2 (Bankr. S.D.N.Y. June 22, 2004).

A. The New Agreements Are Highly Beneficial To The Debtors' Estates.

18. As explained in the Delta Settlement Motion and the Luth and Allman Declarations, the new agreements are highly beneficial to the Debtors' estates. The new terms of the interrelated Amended Flying Agreements, Amended Ground Handling Agreement, and the A&R Lease and LGA 2 Slot Lease will immediately improve the Debtors' revenue, cash position, and prospect of returning to profitability.[5] Delta's concessions in the new agreements

5. The Ad Hoc Group's arguments about the Slot Leases ignore the reality of the interconnectedness of the Delta Transactions and the fact that the A&R Slot Lease is highly beneficial to the Debtors' estate because—combined with Delta's agreement to continue leasing the 4 DCA Slots under the Amended Dual Class Agreement—it will bring in [redacted], which will provide Republic with necessary liquidity. (Luth Decl. ¶ 51; Allman Decl. ¶¶ 38, 46.) The Ad Hoc Group's arguments that the entry of the A&R Slot Lease is not entitled to the full protections of Bankruptcy Code section 363(m) is baseless. Entry of the A&R Slot Lease requires approval under Bankruptcy Code section 363(b), and where, as here, the lease has been

bring all of the significant incremental economic benefits described in the Delta Settlement Motion and the Luth and Allman Declarations. (Luth Decl. ¶¶ 45-57; Allman Decl. ¶¶ 33-43; Delta Settlement Motion ¶¶ 27-32.) Delta's concessions in the new agreements also achieve an even greater economic impact when looked at in terms of the approximately [redacted] per annum in total revenues attributable to continued Delta flying. (Luth Decl. ¶ 55; Allman Decl. ¶ 41.)

19. The economic benefits of the Delta Transaction are necessary for the Debtors to successfully reorganize. [redacted]

20. [redacted]

21. [redacted]

negotiated at arms' length and in good faith, Delta is entitled to the full protections of section 363(m). There is absolutely no indication of fraud or improper insider dealing of any kind.

[redacted]

22. [redacted]

[redacted]

23. [redacted]

[redacted]

[redacted]

24. Moreover, as explained more fully in section II.B, below, and in the Delta Settlement Motion and Luth and Allman Declarations, timing is critical to the Debtors in benefiting from the new agreements. The new terms of the interrelated agreements will immediately improve the Debtors' revenue, cash position, and prospect of successfully reorganizing.

B. The $170 Million Delta Claim Is An Exceptional Result For The Debtors' Estates.

25. [redacted]

26. [redacted]

[redacted]

27. [redacted]

[redacted]

28. [redacted]

[redacted]

6. [redacted]

[redacted]

29. [redacted]

[redacted]

30. [redacted]

[redacted]

[redacted]

[redacted] The complaints of the Ad Hoc Group lack any merit. The $170 million general unsecured claim is a great result for the Debtors, their estates, and all parties in interest.

31. With no basis whatsoever, the Ad Hoc Group Objection also erroneously claims that there would be little or no likelihood of litigation if the Delta Transaction is not approved. To the contrary, absent the comprehensive settlement with Delta, complex and protracted litigation—with its attendant expense, inconvenience, and delay—is certain. In addition to the already pending Delta Litigation, the Debtors also would be faced with litigating Delta's claims against the estates in excess of a billion dollars for pre-petition and post-petition damages, would no longer have the huge benefits of the Delta business and contractual relationships, and might be faced with huge obstacles to emergence from chapter 11.[7]

C. [redacted]

32. [redacted]

7. The Ad Hoc Group points to section 362 of the Bankruptcy Code (Ad Hoc Group Objection ¶ 39), but that section does not lessen the likelihood of protracted litigation; it merely stays the litigation. 11 U.S.C. § 362. [redacted]

[redacted]

33. [redacted]

[redacted]

8. [redacted]

9. [redacted]

34. [redacted] it is appropriate for Delta to have a general unsecured claim for damages on account of the cost to it of the economic concessions to which it agreed. *See, e.g.*, Order at 30, *In re Pinnacle Airlines Corp.*, No. 12-11343 (REG) (Bankr. S.D.N.Y. May 17, 2012), ECF No. 316 (allowing a "a general unsecured claim for damages as a result of the modifications to the 2007 DCA as set forth in the Amended 2007 DCA.").

II. THE UCC LIMITED OBJECTION SEEKING A SECOND ADJOURNMENT SHOULD BE OVERRULED TO ALLOW THE DEBTORS TO IMMEDIATELY REALIZE THE BENEFITS OF THE DELTA TRANSACTION.

35. Unlike the Ad Hoc Group, the UCC does not question the reasonableness of the Delta Claim; indeed, "[t]he Committee believes that a $170 million unsecured claim to settle the Delta litigation is reasonable." (UCC Limited Objection, ¶ 23.) Moreover, the UCC Limited Objection does not question *any* of the substantial economic benefits that the Delta Transaction will provide the Debtors' estates beginning immediately upon approval.

36. Instead, the UCC seeks a further adjournment to evaluate the impact (if any) of other potential Codeshare Partner claims on the Delta MFN Clause. The UCC Limited Objection should be overruled because the Debtors and Delta have agreed to significant revisions

to the MFN Clause and have made other substantial concessions that, together, meet all of the UCC's reasonable concerns.

37. Accordingly, any additional delay only would postpone the prospect of substantial economic benefits that otherwise would be potentially immediately available to the Debtors' estates. This would be a mistake. A second adjournment also would thwart the momentum that the Debtors have built post-petition in their already year-long negotiations to amend their codeshare agreements with United and American.

38. Forward progress with Codeshare Partners is the single most important aspect of swiftly concluding these chapter 11 cases, and is integral to the Debtors' ongoing efforts to reduce the pilot attrition that precipitated them and that created the need for new flying agreements. (Luth Decl. ¶ 53; Allman Decl. ¶ 39.) Delay for delay's sake cannot be countenanced. If not withdrawn before the hearing, the UCC Limited Objection should be overruled.

A. The Debtors and Delta Have Addressed the UCC's Concerns.

39. The UCC's principal concern is that it cannot have "certainty" on the reasonableness of the Delta Claim. (*See* UCC Limited Objection, ¶¶ 4, 23, 26.) It seeks delay in order to compare the Delta Claim, now, to a second or third Codeshare Partner claim due to an alleged lack of clarity as to how the Delta MFN Clause would be implemented. (*Id.*) As a threshold matter, "certainty" is not the standard for approval of a contract assumption or a settlement. It would be an absurd standard, far from an assessment of the reasonableness of the Debtors' business judgment. *See In re Glob. Crossing Ltd.*, 295 B.R. at 744-45 (finding that there was "risk and uncertainty in the decision the Board made, but there [was] likewise risk and uncertainty in the alternatives," and that "[d]eclining to take the associated risks of that was well

within the bounds of reasonable business judgment"); *Trenwick Am. Litig. Tr. v. Ernst & Young L.L.P.*, 906 A.2d 168, 205 (Del. Ch. 2006) ("If the board of an insolvent corporation, acting with due diligence and good faith, pursues a business strategy that it believes will increase the corporation's value, but that also involves the incurrence of additional debt, it does not become a guarantor of that strategy's success. . . . [T]he directors are protected by the business judgment rule.").

40. Nevertheless, the Debtors have worked cooperatively with the UCC at all points in these cases, including after the filing of the UCC Limited Objection. In that connection, the Debtors and Delta have agreed to the following substantial concessions that address all of the UCC's limited concerns:

- *First*, the Debtors and Delta have agreed that the Delta MFN Clause will apply only in the event of a settlement of another Codeshare Partner's claim, and will not apply in the event another Codeshare Partner obtains a claim through litigation. As the UCC has said: "Limiting the MFN clause to apply only in the case of settlements of other Code Share Partners' claims would go a long way to resolving this concern." (UCC Limited Objection ¶ 23.) The Debtors agree. In fact, the Debtors believe this substantial amendment to the Delta MFN Clause—in and of itself—moots the entire UCC Limited Objection;

- *Second*, the Debtors have provided the UCC on a Professionals' Eyes Only basis and have filed under seal herewith as [redacted], a letter agreement with Delta which confirms that if the methodology that the Debtors used as their working guidance in their negotiations with respect to the Delta Claim is applied to the claims of another Codeshare Partner, there will be an increase in Delta's claim. Moreover, the Debtors have committed to apply this same methodology to any other Codeshare Partner claim settlement. Having laid bare this most confidential—if not proprietary—detail before the UCC, *and* having committed to using it as part of ongoing negotiations with United and American, there is no credible basis for the UCC to claim that it cannot, right now, evaluate the reasonableness of the Delta Claim. The UCC has the metric of the MFN Clause and knows how it will be applied and, therefore, it has no need to see a second or third Codeshare Partner Claim.

41. Taken together, these concessions should remove any reasonable concern regarding the MFN Clause. Additionally, the Debtors and Delta have clarified that (i) "any

adjustment of the Delta Claim pursuant to the MFN Clause will be subject to a further review and approval process," and (ii) "the Delta Claim will only be allowed against RAH and Shuttle," who are the parties to the existing agreements. (UCC Limited Objection ¶¶ 22, 31.)

42. In sum, while the Debtors believe there was ample ability to assess, and evidence in the record to support, the reasonableness of the Delta Transaction as filed, the Debtors and Delta have worked with the UCC to resolve all of their reasonable concerns. This renders the UCC Limited Objection moot, and means it should be overruled if not withdrawn in advance of the hearing.

B. A Further Adjournment Would Serve No Purpose Other Than to Delay The Commencement of Substantial Economic Benefits to the Estates.

43. The importance of timing to the Delta Transaction cannot be overstated. Upon Court approval, the new terms of the interrelated agreements will immediately improve the Debtors' revenue, cash position, and prospect of returning to profitability. (Luth Decl. ¶ 47; Allman Decl. ¶ 35.) For example, and among the many other economic benefits set forth in the Delta Settlement Motion, Delta will (i) pay the Debtors more than [redacted] in reconciliation of past due engine maintenance within [redacted] days of an order becoming final, (ii) immediately begin leasing 4 DCA Slots at [redacted], and (iii) immediately and retroactively increase base rate payments under the Amended Single Class and Dual Class Agreements. (Luth Decl. ¶ 49; Allman Decl. ¶ 36.) There is no principled reason to delay these benefits; in fact, delaying them would be harmful to the Debtors' estates.[10]

10. Given these exigencies, waiver of the fourteen-day stay under Bankruptcy Rule 6004(h), to the extent that such rule applies, is appropriate. *In re Borders Grp., Inc.*, 453 B.R. 477, 485 (Bankr. S.D.N.Y. 2011) ("[T]he court should eliminate or reduce the 14-day stay period upon a showing that there is a sufficient business need to close the transaction within the 14-day period and the interests of the objecting party, taking into account the likelihood of success on appeal, are sufficiently protected.") (internal quotations omitted).

44. Second, it is without question beneficial to the Debtors' ongoing negotiations with United and American to have the Delta Transaction promptly approved and implemented. Republic had been negotiating with its Codeshare Partners for months prior to the Commencement Date. Each party's willingness to participate, however, has been conditioned on Republic's ability to achieve new agreements with all of the Codeshare Partners and other key stakeholders. (Luth Decl. ¶ 53; Allman Decl. ¶ 39.) The inability to reach such agreements without a first mover—like Delta—therefore was among the primary reasons these cases were commenced. (*Id*.) The UCC's suggestion to delay the hearing to allow for other deals to get done at the same time is a return to the "wait and see" approach that caused these cases to be filed in the first place. It is time to move forward, not backward. With the filing of the Delta Transaction, the Debtors have experienced a renewed interest from their other Codeshare Partners (*id.*), and that momentum should be continued with a prompt hearing.

45. This momentum flows not only to Codeshare Partners, but also to the Debtors' ability to attract and retain new pilots. The Delta Transaction provides for clarity on a long range future with Delta Connection routes, and increased flying on newer, larger E170 and E175 aircraft that pilots prefer to fly. (Luth Decl. ¶ 54; Allman Decl. ¶ 40.) The Debtors believe this will immediately help with pilot attrition. (*Id*.) Moreover, prompt approval of an agreement that will directly impact 1,300 employees—20% of the company—sends the right signal to the entire work force that Republic is heading in the right direction. (Luth Decl. ¶ 49; Allman Decl. ¶ 36.)

46. Finally, a prompt hearing is important to the Debtors and Delta's consideration of their fleet planning, especially in advance of the busy summer flying season. (Luth Decl. ¶ 55; Allman Decl. ¶ 41.) Key components of the transaction include Republic's

ramp-up of dual class flying by May 2016, and a targeted wind-down of Republic's ERJ-145 flying for Delta Connection by [redacted]. (*Id*.) Further delay past the April 21st hearing puts these target dates at risk—the time to implement the transaction is upon the Debtors and Delta. This is further compounded by the Debtors' obligations under Bankruptcy Code section 1110—decisions being made now will impact summer and future flying for the Debtors and for Delta. Delta also has the right to terminate the settlement and the DIP commitment if final orders are not entered on or before May 14, 2016.

47. The UCC's incantation of the dangers of a "standalone" deal ignores a fundamental reality: one of the Codeshare Partners had to go first. Delta has not only done so, Delta has agreed to a deal that will, if approved, immediately enhance the Debtors' revenue, cash position, and prospects of profitably. It would be a terrible mistake to delay these benefits with a second adjournment.

48. For all of the foregoing reasons, both the Ad Hoc Group Objection and the UCC Limited Objection should be overruled.

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/s/ Bruce R. Zirinisky

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