

pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On the date hereof (the "Petition Date"), each of the Debtors commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors ("Creditors' Committee") has been appointed in these chapter 11 cases.

3. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of the chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

The Debtors' Businesses

4. Southern Air Inc. ("Southern Air"), the Federal Aviation Administration certificated, indirect subsidiary of Holdings, is an experienced provider of long-haul, wide-body air cargo transportation services. Southern Air operates a fleet of eleven aircraft, including four Boeing 777s, four Boeing 747-400s, and three Boeing 747-200s. Southern Air's staff and flight operations are positioned around the world to facilitate global operations for both governmental and commercial customers. Holdings is the direct or indirect parent company of the other Debtors.

5. As of the Petition Date, the Debtors employed approximately 611 full-time employees. For the twelve months ended July 31, 2012, the Debtors' unaudited and consolidated financial statements reflected revenues of approximately \$428.2 million and a net loss of \$159.8 million. As of July 31, 2012, the Debtors' unaudited and consolidated financial

statements reflected assets totaling approximately \$206.9 million and liabilities totaling approximately \$486.5 million.

6. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to this chapter 11 filing is contained in the *Declaration of Daniel J. McHugh in Support of the Debtors' Chapter 11 Petitions and First Day Relief*, filed contemporaneously herewith.

The Debtors' Fuel Relationships

7. Fuel is a necessity in the Debtors' businesses. The Debtors purchase virtually all of their fuel from two primary suppliers and, based on purchases in the last year, the Debtors' average monthly fuel expense is approximately \$11.1 million. Pursuant to the terms of the Debtors' governmental and commercial contracts, the majority of the Debtors' fuel-related costs are ultimately borne, directly or indirectly, by their customers.

A. Government-Related Fuel Expenses

8. The Debtors provide the United States government with international air cargo transportation services through participation in the Civil Reserve Air Fleet ("CRAF") program. The Debtors' governmental services are governed by their arrangement with the United States Transportation Command ("USTC"). Specifically, Southern Air is a member of the CRAF program "Patriot Team," which is party to a contract with the USTC (the "USTC Contract") pursuant to which Southern Air provides governmental services at the direction of the air component of the USTC, Air Mobility Command ("AMC").

9. For all government missions directed by AMC under the USTC Contract, the Debtors are obligated to use a government-approved fuel provider. Accordingly, the Debtors obtain the majority of their fuel for governmental services from the Defense Logistics Agency – Energy ("DLA-Energy"). The terms of the Debtors' fuel purchases from DLA-Energy are

governed by that certain Fuel Purchase Agreement, dated July 21, 2011, between Southern Air and DLA-Energy (the “DLA-Energy Agreement”). Pursuant to the terms of the DLA-Energy Agreement, the Debtors are obligated to pay fuel costs incurred within thirty (30) days of receipt of an invoice issued on behalf of DLA-Energy by the Defense Finance and Accounting Service (“DFAS” and, together with the USTC and DLA-Energy, the “Government Fuel Suppliers”). In turn, the Debtors seek reimbursement from the USTC for actual fuel costs incurred in accordance with the terms of the USTC Contract. As of the Petition Date, the Debtors have an outstanding payable to DFAS for approximately \$7.3 million of fuel and fuel-related expenses. DFAS has advised the Debtors that the DLA-Energy Agreement will not be renewed on October 1, 2012 and DLA-Energy will not provide the Debtors with fuel after that date, unless the Debtors’ outstanding fuel bill has been paid and the Debtors’ account brought current on or before September 30, 2012.

10. The Debtors reconcile actual and contractual fuel costs with the USTC on a monthly basis with an approximately two-month lag time (the “USTC Reconciliation”). The Debtors’ actual fuel costs are included in the calculation of the applicable USTC contract rate in effect at the time, and each month, the USTC compares the actual fuel prices the Debtors paid for AMC-directed missions during the previous month with the fuel rate assigned under the USTC Contract for such period. The USTC Reconciliation procedure is designed to protect the Debtors and the government from significant market fluctuations in the price of fuel. To the extent the average price per gallon paid by the Debtors exceeds the rate assigned under the USTC Contract, the USTC reimburses the difference to the Debtors, and, in instances where the Debtors paid less than the rate assigned under the USTC Contract, the Debtors compensate the

USTC. As of the Petition Date, the Debtors owe the USTC approximately \$40,000 in prepetition amounts.

11. In the event that AMC requests that the Debtors provide services in a location where DLA-Energy is unable to provide fuel, the Debtors are permitted to use an approved non-governmental third-party supplier. In such instances, and if practicable, the Debtors utilize the same third-party supplier that provides fuel for the Debtors' commercial services.

12. On or about September 19, 2012, the USTC advised the Debtors that because of their fuel debt and outstanding monthly fuel report submissions, the USTC would, unless paid, begin to withhold the Debtors' revenues from missions flown under the USTC Contract, up to the full amount owed to the Government Fuel Suppliers. Governmental services accounted for approximately 43.5% of the Debtors' revenue for the twelve months ended July 31, 2012, and missions awarded to Southern Air as a result of its participation in the CRAF program accounted for approximately 98.1% of such revenues. Any disruption to the Debtors' ability to obtain revenue from government missions under the USTC Contract would be detrimental to the Debtors' continued operation as a going concern and would jeopardize the Debtors' ability to successfully reorganize.

13. The Debtors seek authority to continue to comply with the USTC Contract, to pay any prepetition amounts outstanding under the DLA-Energy Agreement, and to continue making payments under the DLA-Energy Agreement as they arise during the course of these chapter 11 cases.

B. Commercial-Related Fuel Payments

14. The Debtors provide the bulk of their commercial services pursuant to aircraft, crew, maintenance, and insurance contracts (“ACMI Contracts”), in which the customer typically pays all fuel-related costs directly. Under on-demand charter contracts, and in some circumstances under ACMI Contracts, the Debtors must purchase fuel and incur fuel-related expenses directly. The Debtors obtain virtually all of their fuel for commercial services from World Fuel Service (“WFS” and, together with the Government Fuel Suppliers, the “Fuel Suppliers”). The terms and conditions governing the Debtors’ purchase of commercial fuel supply are set forth in that certain Agreement for Fuel Management Services, dated June 1, 1999, between Hudson General LLC and Southern Air, and ultimately assigned to WFS (as amended, the “WFS Fuel Supply Agreement and, together with the DLA-Energy Agreement and the USTC Contract, the “Fuel Supply Arrangements”). Pursuant to the WFS Fuel Supply Agreement, the Debtors have agreed to provide WFS with advance notice of any fuel purchase requests and pay in advance. In the ordinary course, the Debtors typically provide WFS with at least two days’ notice of any fuel purchase requests. The WFS Fuel Supply Agreement further provides that WFS will, in turn, serve as an intermediary, negotiating on the Debtors’ behalf with pre-approved reputable suppliers for the purchase of fuel at destinations designated by the Debtors.

15. In accordance with the WFS Fuel Supply Agreement, the Debtors pay WFS in advance for into-plane fueling services and the fuel purchased at cost, as well as, an additional fixed service fee corresponding to the volume of fuel purchased (collectively, the “WFS Fuel Costs”). WFS provides the Debtors with a weekly accounting of the gallons of fuel delivered and the cost thereof. The Debtors’ weekly prepayments to WFS on account of the WFS Fuel Costs average approximately \$880,000. In the event that the Debtors re-route a

scheduled trip, the Debtors' advance payments to WFS are reconciled against the Debtors' actual fuel usage and WFS is compensated for the overage. If, after reconciliation, the Debtors are owed a credit, WFS retains the credit and applies it to the Debtors' subsequent fuel purchases. Although the reconciliations fluctuate significantly, on average, the Debtors usually expend an additional \$50,000 as a result of flight re-routing. As of the Petition Date, the Debtors believe that they do not owe any prepetition amounts to WFS. Out of an abundance of caution, however, the Debtors seek authority to pay prepetition amounts up to \$100,000 that may be owed to WFS due to contingencies in the Debtors' scheduled operations.

16. Fuel supplied through the Debtors' arrangement with WFS may not be readily replaced on similar terms and conditions. In addition, different fuel suppliers may impose a higher service charge per gallon of fuel, thus subjecting the Debtors to greater and more volatile fuel costs. Even if the Debtors decreased fuel purchases as a result of these chapter 11 cases, the Debtors' ready access to fuel is paramount to servicing their customers and preserving their going concern value.

17. The Debtors seek authority to continue their existing relationship with WFS and to honor their fuel-related obligations to WFS, including continuing to prepay for fuel needed to perform the Debtors' commercial services, as amounts become due in the ordinary course of business. The Debtors also request authority to pay any prepetition amounts owed to WFS related to the supply of fuel.

Relief Requested

18. By this Motion, the Debtors request, pursuant to sections 105(a), 362, 363, and 553 of the Bankruptcy Code, entry of an order authorizing (a) modification of the automatic stay imposed by section 362 of the Bankruptcy Code (the "Automatic Stay"), to the extent required, to permit the Fuel Suppliers to apply prepetition prepayments and credits to the

Debtors' prepetition and postpetition obligations under the Fuel Supply Arrangements; (b) the Debtors to pay any prepetition outstanding fuel-related obligations owed to the Fuel Suppliers; and (c) the Debtors to continue honoring, performing, and exercising their rights and obligations (whether prepetition or postpetition) under the Fuel Supply Arrangements; *provided, however*, that the honoring, performing, or exercising of those rights and obligations shall not give rise to administrative expense or assumption of any executory contract solely as a result of the entry of an order granting the Motion.

19. As part of their cash management system, the Debtors maintain accounts at certain banks and other financial institutions (the "Banks"). The Debtors pay for fuel with funds drawn or transferred from these accounts. Accordingly, the Debtors also seek entry of an order authorizing and directing Banks to receive, process, honor and pay any check or electronic fund transfer from the Debtors' accounts to the extent that such checks or transfers relate to the Debtors' fuel-related obligations owed to the Fuel Suppliers, whether such checks were presented before or after the Petition Date. The Debtors further seek authority to issue new postpetition checks or effect new electronic fund transfer requests on account of such obligations to replace any prepetition checks or electronic fund transfer requests that may have been dishonored or rejected as a result of the commencement of these chapter 11 cases. Finally, the Debtors request that the Banks and any third party receiving payment from the Debtors be authorized and directed to rely on the representations of the Debtors as to which payments are authorized by the requested relief. Proposed interim and final orders are attached hereto as Exhibit A and Exhibit B, respectively (the "Proposed Orders").

Basis for Relief Requested

20. An uninterrupted fuel supply for the Debtors' fleet of aircraft is critical to the preservation and protection of the Debtors' estates, and ultimately, to furthering the Debtors'

reorganization efforts. Any loss of or risk to flights will result in loss of business. It is fundamental to the Debtors' operations that they are able to continue performing under the Fuel Supply Arrangements. Failure to perform under the Fuel Supply Arrangements may result in reputational harm in the industry and diminish the probability of the Debtors' businesses successfully continuing as a going concern. The Debtors risk losing approximately 44% of their revenue if they are unable to honor obligations and pay the outstanding amounts owed to the Government Fuel Suppliers. Loss of the revenue stream generated through government missions under the USTC Contract could be fatal to the Debtors' businesses. Moreover, the Government Fuel Suppliers cannot be replaced, and WFS cannot be replaced quickly. Thus, satisfaction of the approximately \$7.4 million in prepetition obligations under the Fuel Supply Arrangements is necessary for maintaining an uninterrupted fuel supply. Furthermore, the proposed postpetition debtor in possession credit facility accounts for the Debtors' payment of all prepetition and postpetition fuel-related costs.

The Court Should Authorize, but Not Direct, (i) Fuel Supply Parties to Apply Prepetition Prepayments and Credits to Prepetition and Postpetition Obligations Under the Fuel Supply Arrangements; (ii) the Debtors to Pay Prepetition Amounts Owed to Fuel Supply Parties; and (iii) the Debtors to Honor, Perform, and Exercise Their Rights and Obligations Under the Fuel Supply Arrangements

21. The relief requested is essential for the Debtors to maintain their business operations uninterrupted and to successfully reorganize under chapter 11 of the Bankruptcy Code. A continuous supply of fuel and fuel-related services is critical to the Debtors' businesses. Even a slight disruption in the fuel supply may create a severe disruption of the Debtors' operations, which would damage key customer relationships and significantly decrease revenues. Consequently, it is of paramount concern to the Debtors that all necessary action is taken to assure that their fuel supply remains intact and fully operative.

22. The Debtors submit that the relief requested herein is reasonable and necessary under the circumstances and justified by applicable law. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the fiduciary duties of any debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” *Id.* Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty “only . . . by the . . . satisfaction of a prepetition claim.” *Id.* In *CoServ*, the court specifically noted that the satisfaction of prepetition claims prior to confirmation of a chapter 11 plan would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate” *Id.*

23. Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part, that a debtor “may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts have held that section 363(b)(1) of the Bankruptcy Code is applicable if the debtor in possession can show that a sound business purpose justifies the debtor’s contemplated actions. *In re Montgomery Ward Holding Corp.*, 242 B.R. 142, 143 (D. Del. 1999). Further, Courts generally acknowledge that, under appropriate circumstances, they may authorize a debtor to pay for certain prepetition obligations. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the Debtor’s business).

24. The Debtors further submit that section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to

carry out the provisions of this title.” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept. *In re Allegheny Health, Educ. & Research Found.*, 313 B.R. 673, 678 (Bankr. W. D. Pa. 2004) (holding that section 105(a) of the Bankruptcy Code “provides the sole potential statutory support for a court, on the basis of necessity, to allow the post-petition payment of a pre-petition debt.”); *see In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting authority to pay prepetition wages). Section 105(a) has been utilized by courts to “permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 117); *see also In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to a debtor’s continued).

25. Federal courts have consistently permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport, C & S.W.R. Co.*, 106 U.S. 286, 312 (1882) (permitting payment by railroad company of pre-receivership claim prior to reorganization because negative consequences of non-payment “may well place such payments in the category of payments to preserve the mortgaged property in a large sense, by maintaining the good-will and integrity of the enterprise”). The doctrine was expanded to non-railroad debtors and has long been recognized as precedent within the Third Circuit. *See In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 (3d Cir. 1972) (citing to *Miltenberger*, 106 U.S. at 312 (explaining that the doctrine of necessity of payment enables a court to authorize the payment of prepetition claims prior to confirmation of a reorganization plan)); *In re Columbia Gas Sys., Inc.*,

171 B.R. 189, 191—92 (Bankr. D. Del. 1994) (explaining that the doctrine of necessity is the standard in the Third Circuit for enabling a court to authorize the payment of prepetition claims prior to confirmation of a chapter 11 plan).

26. The “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable powers to facilitate a restructuring by allowing payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re Friedman’s Inc.*, 2011 Bankr. Lexis 4500 at *7 (Bankr. D. Del. 2011) (recognizing that postpetition payment of prepetition unsecured claims is allowed “if the debtor establishes that in its business judgment making such payments is critical to the survival of the debtor’s business”); *Just for Feet*, 242 B.R. 824 (recognizing that “[c]ertain prepetition claims by employees and trade creditors . . . may need to be paid to facilitate a successful reorganization”).

27. Similar relief to the relief sought herein has been granted by other courts administrating cases where fuel supply was a critical component of a debtor’s business operations. *See, e.g., In re Global Aviation Holdings Inc.*, Case No 12-40783 (CEC) (Bankr. E.D.N.Y. Mar. 8, 2012) [Docket No. 197]; *In re AMR Corp.*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Nov. 29, 2011) [Docket No. 431]; *In re Mesa Air Group, Inc.*, Case 10-10018 (MG) (Bankr. S.D.N.Y. Jan. 26, 2010) [Docket No. 177]; *In re PCAA Parent, LLC*, Case No. 10-10250 (MFW) (Bankr. D. Del. 2010) [Docket No. 31]; *In re Frontier Airlines Holdings, Inc.*, Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. Apr. 11, 2008) [Docket No. 240]; *In re Delta Air Lines, Inc.*, Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 16, 2005) [Docket No. 157]; *In re Northwest Airlines Corp.*, Case No. 05-17930 (ALG) (Bankr. S.D.N.Y. Sept. 15, 2005) [Docket No. 74].²

² Because of the voluminous nature of the unreported orders cited in this Motion, they are not attached hereto; however, copies of these orders are available upon request of the Debtors’ counsel.

28. The relief requested is appropriate and warranted under each of the above described standards. An uninterrupted fuel supply for the Debtors' fleet of aircraft is critical to their continue operations and successful reorganization. For the reasons stated herein, failure to satisfy the obligations of certain Fuel Suppliers could have a ruinous effect up the Debtors' efforts to reorganize. Accordingly, the Court should grant the relief requested herein.

DLA-Energy and the USTC Will Likely Be Treated as One Party for Setoff Purposes

29. Section 553 of the Bankruptcy Code permits set off of any claim or interest of a governmental unit against any claim against such governmental unit that is property of the estate. In addition, a governmental unit is not required to file a proof of claim prior to asserting setoff rights. *Cnty. Hosp. of Rockland County v. United States (In re Cnty. Hosp. of Rockland County)*, 5 B.R. 11 (Bankr. S.D.N.Y. 1980).

30. Courts have held that, for mutuality purposes of setoff, the United States is one party, even if claims are held by or against different agencies. *See, e.g., Cherry Cotton Mills v. United States*, 327 U.S. 536, 539 (1946) ("That the Congress chose to call it a corporation does not alter its characteristics so as to make it something other than what it actually is, an agency selected by Government to accomplish purely governmental purposes."); *United States v. Maxwell*, 157 F.3d 1099, 1102 (7th Cir. 1998) (federal government was one creditor for setoff purposes); *In re Hal, Inc.*, 122 F.3d 851, 852–53 (9th Cir. 1997) (same); *Turner v. Small Business Admin. (In re Turner)*, 84 F.3d 1294, 1296 (10th Cir. 1996) (en banc); ("We are convinced that the presence or absence of a bankruptcy proceeding does not affect the United States' status as a unitary creditor." Moreover, the definitional sections of the Code "in no way demonstrate[] an intent to erode the right of administrative offset that exists outside of bankruptcy . . ."); *Doe v. United States*, 58 F.3d 494, 498 (9th Cir. 1995) ("all agencies of the United States, except those acting in some distinctive private capacity, are a single governmental

unit” for setoff purposes against the United States). Consequently, if payments are not made to DLA-Energy and/or the USTC, the USTC would likely assert setoff rights against any amounts owed to the Debtors’ under the USTC Contract. The result of which would be a tremendous loss of revenue for the Debtors.

The Court Should Authorize and Direct Banks and Other Financial Institutions to Honor and Pay Checks Issued and Make Other Transfers to Pay the Fuel Suppliers

31. The Debtors request that the Court authorize and direct the Debtors’ Banks, at the Debtors’ direction, to receive, process, honor, and pay, to the extent of funds on deposit, any and all checks drawn or electronic fund transfers requested or to be requested by the Debtors relating to the Debtors’ obligations to the Fuel Suppliers or with respect to the Fuel Supply Arrangements. The Debtors also seek authority to issue new postpetition checks, or effect new electronic fund transfers, on account of such obligations to replace any prepetition checks or electronic fund transfer requests that may be lost, dishonored, or rejected as a result of the commencement of the Debtors’ chapter 11 cases. The Debtors submit that granting such authority is necessary to facilitate implementation of the relief requested herein.

Modification of the Automatic Stay, if Required, Is Appropriate

32. Although the Debtors believe that the Fuel Suppliers may have a right of recoupment with respect to certain prepetition payments and credits under the Fuel Supply Arrangements, out of an abundance of caution, the Debtors seek authority to modify the Automatic Stay to the extent it would prohibit the Fuel Suppliers from applying prepetition prepayments and credits to the Debtors’ prepetition and postpetition obligations under the Fuel Supply Arrangements.

33. Section 362(a) of the Bankruptcy Code, commonly known as the “automatic stay,” operates to stay “any act to obtain possession of property of the estate or of

property from the estate or to exercise control over property of the estate. 11 U.S.C. § 362(a)(3). Section 362, however, permits a debtor or other parties in interest, to request a modification or termination of the automatic stay for “cause.” 11 U.S.C. § 362(d)(1).

34. To the extent providing for payment or applying credits under the Fuel Supply Arrangements calls for an act to obtain possession of or to exercise control over property of the Debtors’ estates, the Debtors seek authority, under section 362(d) of the Bankruptcy Code, to allow for the payments received by the Fuel Suppliers or credits existing before the Petition Date to be applied to fuel supply purchases occurring prepetition or postpetition. The Debtors believe cause exists to modify the Automatic Stay because staying the Debtors’ payment and fulfillment of their prepetition obligations under the Fuel Supply Arrangements could have a detrimental effect on the Debtors’ relationship with the Fuel Suppliers. As discussed above, it is imperative to the Debtors’ businesses that the fuel supply remains uninterrupted.

Reservation of Rights

35. Nothing in this Motion shall be construed as a request for authority to assume any executory contract or unexpired lease under section 365 of the Bankruptcy Code. As such, the Debtors reserve their rights to assume or reject any contract with Fuel Suppliers in accordance with the applicable provisions of the Bankruptcy Code.

36. Furthermore, nothing in this Motion shall be construed as impairing the Debtors’ rights to contest the validity or amount of any claim of a Fuel Supplier, and the Debtors reserve the right to contest, on nonbankruptcy grounds or otherwise, any amount claimed to be due by any of the Fuel Suppliers.

Waiver of Bankruptcy Rule 4001(a)(3) and Local Rule 4001-1

37. To implement the foregoing successfully, the Debtors request a waiver of any stay of the effectiveness of the order approving this Motion under Bankruptcy Rule 4001(a)(3). The Debtors also request a waiver of the procedures required pursuant to Rule 4001-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”). Pursuant to Bankruptcy Rule 4001(a)(3), “[a]n order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” FED. R. BANKR. P. 4001(a)(3). Local Rule 4001-1 sets forth certain procedures for movants seeking to modify the Automatic Stay. Modification of the Automatic Stay to permit the Fuel Suppliers to apply prepetition prepayments and credits to the Debtors’ prepetition and postpetition obligations under the Fuel Supply Arrangements will preserve the Debtors’ relationship with the Fuel Suppliers and, by extension, will preserve the Debtors’ businesses. Accordingly, the Debtors submit that ample cause exists to justify the waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 4001(a)(3), to the extent such stay applies, and of the procedures set forth in Local Rule 4001-1, to the extent such procedures apply.

The Debtors Satisfy Bankruptcy Rule 6003

38. Bankruptcy Rule 6003 provides that, to the extent “relief is necessary to avoid immediate and irreparable harm,” a bankruptcy court may approve a motion to “pay all or part of a claim that arose before the filing of the petition” prior to twenty-one (21) days after the Petition Date. FED. R. BANKR. P. 6003. As described herein, the Debtors’ business operations are entirely dependent on the continued and regular supply of fuel, and it is fundamental to the Debtors’ continued operations that their fuel purchases continue uninterrupted. Accordingly, the

Debtors submit that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors, and, therefore, Bankruptcy Rule 6003 has been satisfied.

Waiver of Bankruptcy Rule 6004 (a) and (h)

39. To implement the foregoing immediately, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Notice

40. No trustee, examiner, or Creditors' Committee has been appointed in these chapter 11 cases. Notice of this Motion has been provided to (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis; (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the District of Delaware; (f) the USTC; (g) the Defense Logistics Agency – Energy; (h) Canadian Imperial Bank of Commerce, New York Agency ("CIBC"); (i) counsel to CIBC; (j) Oak Hill Capital Management ("Oak Hill"); (k) counsel to Oak Hill; (l) all lessors under aircraft operating leases with Southern Air; and (m) any other party directly affected by this Motion. The Debtors respectfully submit that such notice is sufficient under the circumstances.

No Previous Request

41. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: September 28, 2012
Wilmington, Delaware

/s/ M. Blake Cleary
M. Blake Cleary (No. 3614)
YOUNG CONAWAY
STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

-and-

Brian S. Rosen, Esq.
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

*Proposed Attorneys for the
Debtors and Debtors in Possession*

Exhibit A
Proposed Interim Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X		
	:		
<i>In re</i>	:		Chapter 11
	:		
SOUTHERN AIR	:		Case No. 12-12690 ()
HOLDINGS, INC., et al.,	:		
	:		Jointly Administered
Debtors.¹	:		Re: Docket No. ____
	:		
	X		

INTERIM ORDER AUTHORIZING (I) FUEL SUPPLIERS TO APPLY PREPETITION PREPAYMENTS AND CREDITS TO PREPETITION AND POSTPETITION OBLIGATIONS UNDER FUEL SUPPLY ARRANGEMENTS, (II) THE DEBTORS TO PAY PREPETITION AMOUNTS OWED TO FUEL SUPPLIERS, (III) THE DEBTORS TO HONOR, PERFORM, AND EXERCISE THEIR RIGHTS AND OBLIGATIONS UNDER FUEL SUPPLY ARRANGEMENTS, AND (IV) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS PURSUANT TO SECTIONS 105(a), 362, 363, AND 553 OF THE BANKRUPTCY CODE

Upon the motion, dated September 28, 2012 (the “Motion”),² of Southern Air Holdings, Inc. and its affiliated debtors, as debtors and debtors in possession (collectively, the “Debtors”), for entry of an interim order pursuant to sections 105(a), 362, 363(b), and 553 of the Bankruptcy Code entry of an order authorizing (a) modification of the Automatic Stay, to the extent required, to permit the Fuel Suppliers to apply prepetition prepayments and credits to the Debtors’ prepetition and postpetition obligations under the Fuel Supply Arrangements, (b) the Debtors to pay any prepetition outstanding fuel-related obligations owed to the Fuel Suppliers; (c) the Debtors to continue honoring, performing, and exercising their rights and obligations

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: (i) Southern Air Holdings, Inc., 6605; (ii) Cargo 360, Inc., 4233; (iii) Southern Air Inc., 2187; (iv) Air Mobility Inc., 3824; (v) 21110 LLC, 3761; (vi) 21111 LLC, 8100; (vii) 21221 LLC, 1567; (viii) 21550 LLC, 8103; (ix) 21576 LLC, 6341; (x) 21590 LLC, 8105; (xi) 21787 LLC, 0617; (xii) 21832 LLC, 7893; (xiii) 23138 LLC, 7192; (xiv) 24067 LLC, 6360; (xv) 46914 LLC, 0322; (xvi) Aircraft 21255, LLC, 5500; (xvii) Aircraft 21380, LLC, 1753; and (xviii) CF6-50, LLC, 9733. The address for all Debtors is 117 Glover Avenue, Norwalk, Connecticut 06850.

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

(whether prepetition or postpetition) under the Fuel Supply Arrangements, and (d) financial institutions to honor and process related checks and transfers, all as more fully set forth in the Motion; and upon consideration of the *Declaration of Daniel J. McHugh in Support of the Debtors' Chapter 11 Petitions and First Day Relief*; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. The Debtors are authorized, but not directed, to the extent consistent with the terms and conditions of the DIP Credit Agreement,³ to pay any prepetition outstanding obligations to the Government Fuel Suppliers, in an interim amount not to exceed \$5.6 million.

³ DIP Credit Agreement shall mean that certain Senior Secured Super-Priority Debtor-in-Possession Credit Agreement, by and among Cargo 360, CIBC, and various financial institutions and other persons from time to time parties thereto, dated as of September 28, 2012.

3. The Debtors are authorized, but not directed, to the extent consistent with the terms and conditions of the DIP Credit Agreement, to pay prepetition outstanding obligations to WFS, if any, in an interim amount not to exceed \$50,000.

4. The Debtors are authorized, but not directed, to the extent consistent with the terms and conditions of the DIP Credit Agreement, to continue to honor, perform and exercise their rights and obligations (whether prepetition or postpetition) under the Fuel Supply Arrangements; *provided, however*, that such honoring, performing, or exercising of such rights and obligations shall not give rise to administrative claims solely as a result of the entry of this Order and shall not constitute the assumption of any contract, nor preclude the Debtors from contesting or objecting to the claim of any party.

5. The Fuel Suppliers are authorized to exercise any recoupment rights and apply prepetition payments and credits held for the benefit of the Debtors to the Debtors' fuel supply purchases occurring before or after the Petition Date.

6. To the extent required, the Automatic Stay is hereby modified and the requirements of Bankruptcy Rule 4001(a)(3) and Local Rule 4001-1 are waived solely to allow the Fuel Suppliers, subject to the prior written consent of the Debtors, and upon three (3) business days' written notice to the agent under the DIP Credit Agreement, to exercise any setoff rights pursuant to section 553 of the Bankruptcy Code as may be necessary to ensure the application of fuel payments or credits.

7. The Banks on which checks were drawn or electronic transfer requests were made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when

presented for payment, and all such Banks are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Order.

8. Within three (3) business days after the date of this Order, the Debtors shall serve a copy of this Order on the Banks.

9. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

10. The requirements of Bankruptcy Rule 6004(a) are waived.

11. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all steps necessary to carry out this Order.

13. A final hearing to consider the relief requested in the Motion (the "Final Hearing") shall be held on _____, at _____ (Eastern Time) and any objections or responses to the Motion shall be filed on or before seven (7) days before the Final Hearing date set forth herein and served on the parties as required by Local Rule 9006-1(c)(ii).

14. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: _____, 2012
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X		
	:		
<i>In re</i>	:		Chapter 11
	:		
SOUTHERN AIR	:		Case No. 12-12690 ()
HOLDINGS, INC., et al.,	:		
	:		Jointly Administered
Debtors.¹	:		Re: Docket Nos. ____
	:		
	X		

FINAL ORDER AUTHORIZING (I) FUEL SUPPLIERS TO APPLY PREPETITION PREPAYMENTS AND CREDITS TO PREPETITION AND POSTPETITION OBLIGATIONS UNDER FUEL SUPPLY ARRANGEMENTS, (II) THE DEBTORS TO PAY PREPETITION AMOUNTS OWED TO FUEL SUPPLIERS, (III) THE DEBTORS TO HONOR, PERFORM, AND EXERCISE THEIR RIGHTS AND OBLIGATIONS UNDER FUEL SUPPLY ARRANGEMENTS, AND (IV) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS, PURSUANT TO SECTIONS 105(a), 362, 363, AND 553 OF THE BANKRUPTCY CODE

Upon the motion, dated September 28, 2012 (the “Motion”),² of Southern Air Holdings, Inc. and its affiliated debtors, as debtors and debtors in possession (collectively, the “Debtors”), for entry of an order pursuant to sections 105(a), 362, 363(b), and 553 of the Bankruptcy Code entry of an order authorizing (a) modification of the Automatic Stay, to the extent required, to permit the Fuel Suppliers to apply prepetition prepayments and credits to the Debtors’ prepetition and postpetition obligations under the Fuel Supply Arrangements, (b) the Debtors to pay any prepetition outstanding fuel-related obligations owed to the Fuel Suppliers; (c) the Debtors to continue honoring, performing, and exercising their rights and obligations

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: (i) Southern Air Holdings, Inc., 6605; (ii) Cargo 360, Inc., 4233; (iii) Southern Air Inc., 2187; (iv) Air Mobility Inc., 3824; (v) 21110 LLC, 3761; (vi) 21111 LLC, 8100; (vii) 21221 LLC, 1567; (viii) 21550 LLC, 8103; (ix) 21576 LLC, 6341; (x) 21590 LLC, 8105; (xi) 21787 LLC, 0617; (xii) 21832 LLC, 7893; (xiii) 23138 LLC, 7192; (xiv) 24067 LLC, 6360; (xv) 46914 LLC, 0322; (xvi) Aircraft 21255, LLC, 5500; (xvii) Aircraft 21380, LLC, 1753; and (xviii) CF6-50, LLC, 9733. The address for all Debtors is 117 Glover Avenue, Norwalk, Connecticut 06850.

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

(whether prepetition or postpetition) under the Fuel Supply Arrangements, and (d) financial institutions to honor and process related checks and transfers, all as more fully set forth in the Motion; and upon consideration of the *Declaration of Daniel J. McHugh in Support of the Debtors' Chapter 11 Petitions and First Day Relief*; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having entered an interim order granting the relief requested in the Motion on September [___], 2012 (the "Interim Order"); and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their respective estates and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Debtors are authorized, but not directed, to the extent consistent with the terms and conditions of the DIP Credit Agreement,³ to pay any prepetition outstanding

³ DIP Credit Agreement shall mean that certain Senior Secured Super-Priority Debtor-in-Possession Credit Agreement, by and among Cargo 360, CIBC, and various financial institutions and other persons from time to time parties thereto, dated as of September 28, 2012.

obligations to the Government Fuel Suppliers, in an amount not to exceed \$1.8 million (in addition to amounts authorized under the Interim Order).

3. The Debtors are authorized, but not directed, to the extent consistent with the terms and conditions of the DIP Credit Agreement, to pay prepetition outstanding obligations to WFS, if any, in an amount not to exceed \$50,000 (in addition to amounts authorized under the Interim Order).

4. The Debtors are authorized, but not directed, to the extent consistent with the terms and conditions of the DIP Credit Agreement, to continue to honor, perform and exercise their rights and obligations (whether prepetition or postpetition) under the Fuel Supply Arrangements; *provided, however*, that such honoring, performing, or exercising of such rights and obligations shall not give rise to administrative claims solely as a result of the entry of this Order and shall not constitute the assumption of any contract, nor preclude the Debtors from contesting or objecting to the claim of any party.

5. The Fuel Suppliers are authorized to exercise any recoupment rights and apply prepetition payments and credits held for the benefit of the Debtors to the Debtors' fuel supply purchases occurring before or after the Petition Date.

6. To the extent required, the Automatic Stay is hereby modified and the requirements of Bankruptcy Rule 4001(a)(3) and Local Rule 4001-1 are waived to allow the Fuel Suppliers, subject to the prior written consent of the Debtors, and upon three (3) business days' written notice to the agent under the DIP Credit Agreement, to exercise any setoff rights pursuant to section 553 of the Bankruptcy Code as may be necessary to ensure the application of fuel payments or credits.

7. The Banks on which checks were drawn or electronic transfer requests were made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, and all such Banks are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Order.

8. Within three (3) business days after the date of this Order, the Debtors shall serve a copy of this Order on the Banks.

9. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

10. The requirements of Bankruptcy Rule 6004(a) are waived.

11. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all steps necessary to carry out this Order.

13. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: _____, 2012
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE