

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

-----X
:
In re : Chapter 11
:
SOUTHERN AIR : Case No. 12-12690 ()
HOLDINGS, INC., et al., :
:
Debtors.1 : Joint Administration Requested
:
-----X

MOTION OF DEBTORS FOR INTERIM AND FINAL
AUTHORITY TO PAY PREPETITION OBLIGATIONS OF CERTAIN
(I) CRITICAL VENDORS, (II) FOREIGN CREDITORS, (III) POSSESSORY
LIEN HOLDERS, AND (IV) PRIORITY VENDORS PURSUANT TO SECTIONS
105(a), 361, 363(b), 503(b)(9), 507(a)(2), AND 542 OF THE BANKRUPTCY CODE

Southern Air Holdings, Inc. ("Holdings") and its affiliated debtors in the above-
referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "Debtors"),
submit this motion (the "Motion") and, in support thereof, respectfully represent as follows:

Jurisdiction

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C.
§§ 1334 and 157, and the Amended Standing Order of Reference from the United States District
Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding
pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408
and 1409.

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.



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 creditors’ committee (the “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 (“FAA”) 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 private sector 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. 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' Critical Vendors

7. The Debtors and their advisors have completed a thorough analysis of the Debtors' vendors to identify those critical to the Debtors' ongoing operations. The Debtors reviewed their master vendor files and open accounts payable systems to ascertain those vendors that provide goods or services essential to the Debtors' operations and that may decline or be unable to supply or service the Debtors without payment of all or a portion of such vendor's prepetition claims. The Debtors also analyzed the potential disruptions to their operations resulting from a vendor's refusal to supply goods and services, including the likelihood that the Debtors could replace or resource the vendor in a timely manner without significant disruption to their operations.

8. From this analysis, the Debtors concluded that certain vendors provide essential goods and services, the loss of which would lead to a disruption in the Debtors' businesses (the "Critical Vendors"). Moreover, without payment, it is likely that many of the Critical Vendors will either refuse or be unable to continue providing essential goods and services to the Debtors. In many instances, the Critical Vendors are the sole source of essential goods or services. Impairment or delay in the supply of the essential goods and/or services would seriously hinder the Debtors' ability to meet customer requirements on a timely basis and would cause immediate and irreparable harm to the Debtors' businesses. The Debtors'

reorganization process should not be jeopardized by increased strain on customer relationships, loss of customers, and damage to the Debtors' reputation in the industry.

9. The Debtors provide specialized air cargo transportation services in the highly technical and regulated civil aviation industry. Moreover, the Debtors frequently operate in remote locations throughout the world where there are generally few, if any, alternative vendors. As a result, finding replacement vendors for essential goods and services would be a lengthy process, potentially compromising the Debtors' businesses and resulting in significant expense to the Debtors' estates. The Debtors would be unfamiliar with their new vendors and, thus, the quality of the goods and services provided may suffer. In some cases, the delay in finding replacement vendors may have irreversible consequences. In addition, the Debtors could be forced to pay a premium for replacement goods and services if the Debtors' existing terms with Critical Vendors are more favorable than those offered by other suppliers.

10. The Critical Vendors generally fall into (but are not limited to) four categories, each as more fully described below: (a) aircraft parts suppliers and maintenance service providers; (b) flight training providers; (c) airport fees and ground handling service providers; and (d) flight navigation systems providers.

(a) Aircraft Parts Suppliers and Maintenance Service Providers. To meet FAA and original equipment manufacturer ("OEM") requirements, and to maintain safety standards, flight schedules, and on-time performance, the Debtors must be able to replace or repair aircraft parts and make on-the-spot repairs to aircraft on little or no notice. Any disruption in the flow of parts or services would result in immediate and substantial economic harm to the Debtors. Additionally, the Debtors' relationship with their parts suppliers and maintenance service providers is subject to many mandatory layers of oversight and control by the FAA,

OEMs, and the Debtors' engineers. Thus, the Debtors' options for parts suppliers and maintenance service providers are limited. The Debtors have developed their relationships with these maintenance service providers and aircraft parts suppliers in locations throughout the world. They have come to rely on the high quality and priority service they receive, all on competitive terms. Consequently, it is essential to the Debtors' operations to maintain their relationships with these maintenance service providers and aircraft parts suppliers.

(b) Flight Training Providers. Continuous and rigorous training of pilots is essential to maintaining safe ongoing operations. To comply with FAA regulations, the Debtors' pilots must obtain initial qualifications and receive continuous proficiency training. The Debtors use specialized products, devices, and facilities to meet federal requirements and assure that all pilots perform at the highest level of competency. If the Debtors are unable to procure the appropriate training services, more and more pilots would lose their FAA authorization to fly, which would have a severe impact on the Debtors' businesses.

(c) Airport Fees and Ground Handling Services. The Debtors ability to access airports in the United States is dependent upon their payment of certain fees to the airport's owner and/or operator. In addition, after the Debtors' aircraft have landed at an airport, they require a wide range of services known as "ground handling services." These services include, among other things, maneuvering the aircraft once it has landed, placing "chocks" when the aircraft has reached its parking location, providing power to the aircraft while it is parked, as well as the supply of ramps, stairways, and any other equipment necessary to service the aircraft. Notably, ground handling services also include the loading and unloading of cargo from the Debtors' aircraft. At most domestic airports used by the Debtors, ground handling services are provided by one or a limited number of vendors. Failure to pay airport fees and ground handling

service providers would significantly impede the Debtors' ability to gain necessary access to airports, which would result in substantial injury to the Debtors' businesses.

(d) Flight Navigation Systems Providers. The Debtors use several systems, services, or products central to flight operations. Each provider of these services or products is, by and large, a monopoly vendor. For example, virtually all domestic airlines rely on a single provider of frequencies for ground-to-ground and ground-to-plane voice and data communications. The communication capabilities are essential to the provision of weather updates and facilitating communication between the cockpit and ground services, forming an essential link between pilots and central dispatch. The loss of this communication capability would violate FAA regulations and cripple the Debtors' businesses and their restructuring efforts. The Debtors cannot afford to risk such a loss of service. Similarly critical to the Debtors' flight operations are flight charts detailing approach routes and other essential information regarding flight plans that are updated regularly. The FAA requires flight manuals, which include updated flight charts, aboard every flight. As aircraft communications and up-to-date flight charts are indispensable components of flight operations, the Debtors need assurance that the flow of these services and products will be unaffected by the commencement of these chapter 11 cases.

11. The foregoing generally describes the major categories of goods and services the Critical Vendors have provided, but is not intended to be an exclusive list. Authorizing the Debtors to pay the Critical Vendors will help to maintain the ongoing critical relationships between the Debtors and their Critical Vendors and protect the quality of the Debtors' services. Based on their substantial experience in the air cargo industry, the Debtors believe that the goods and services supplied by the Critical Vendors are at competitive rates and

terms, and continuation of business on the same or better terms will further ensure the preservation of the Debtors' businesses during the reorganization.

Proposed Payment of Critical Vendors

12. Although the Debtors hope and expect to be able to assure a continuing postpetition supply of goods and services by consensual negotiation with the Critical Vendors, the Debtors recognize that their fiduciary duties bind them to consider and plan for those vendors that may refuse to provide future goods or services unless their prepetition claims are paid. The Critical Vendors are so essential to the Debtors' businesses that the lack of any of their particular goods and services, even for a short time, will outweigh the cost of payment of the prepetition claims of the Critical Vendors.

13. The Debtors, therefore, seek the authority to pay, in their sole discretion and business judgment, some or all of the prepetition obligations of certain Critical Vendors (the "Critical Vendor Claims"). Without this authority, the Critical Vendors may refuse to continue to supply goods and services to the Debtors postpetition. The Debtors estimate the maximum amount needed to pay the prepetition claims of Critical Vendors is approximately \$2.2 million (the "Critical Vendor Claims Cap"). The Critical Vendor Claims Cap derives from the analysis set forth above and reflects the amount the Debtors estimate they would be required to pay to ensure the continued supply of critical goods and services. The proposed postpetition debtor in possession credit facility (the "DIP Credit Agreement")² accounts for the Debtors' estimation of Critical Vendor Claims. The Critical Vendor Claims Cap represents approximately 7% of the Debtors' approximately \$31.1 million in trade claims and represents the Debtors' best estimate

² 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.

as to how much must be paid to such creditors to ensure the continued provision of critical goods and services. The Debtors will endeavor to pay less than the requested amount.

14. To minimize the total amount of payments to Critical Vendors, the Debtors request authority to identify Critical Vendors in the ordinary course of their business. Identifying the Critical Vendors now may result in a significant portion of the Debtors' vendors demanding payment in full. Thus, the Debtors propose to pay, in the Debtors' sole discretion, the Critical Vendor Claims of each Critical Vendor that agrees to continue to supply goods or services to the Debtors on such Critical Vendor's customary trade terms and on other such terms and conditions as are acceptable to the Debtors. As used herein, "customary trade terms" means, with respect to a Critical Vendor, (a) the normal and customary trade terms, practices, and programs (including, without limitation, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability, and other applicable terms and programs) that were most favorable to the Debtors and in effect between such Critical Vendor and the Debtors prior to the Petition Date or (b) such other trade terms as agreed by the Debtors and such Critical Vendor so long as the Critical Vendor extends trade credit to the Debtors (the "Customary Trade Terms"). As noted above, however, in determining the Critical Vendor Claims Cap, the Debtors were careful to include only such payments the Debtors, in their best estimate, determined would be required to continue the supply of critical goods and services. Accordingly, in some cases it may be necessary to pay a Critical Vendor only a portion of such vendor's claim in return for the continued supply of critical goods and services even if not on the Critical Vendor's Customary Trade Terms.

15. To ensure Critical Vendors transact business with the Debtors on Customary Trade Terms, the Debtors propose the following procedures as a condition to paying

any Critical Vendor: (a) a letter or contract including provisions substantially in the form of the letter attached as Exhibit 1 to the Interim Proposed Order (“Vendor Agreement”) be delivered to, and executed by, the Critical Vendor, together with a copy of the order granting the relief sought herein; and (b) payment of Critical Vendor Claims include a communication of the following statement:

By accepting this payment, the payee agrees to the terms of the Order of the United States Bankruptcy Court for the District of Delaware, dated September [___], 2012, in the chapter 11 cases of Southern Air Holdings, Inc., *et al.* (Case Nos. 12-12690 through 12-12707), entitled “Interim Order Authorizing Debtors to Pay Prepetition Obligations of Certain (I) Critical Vendors, (II) Foreign Creditors, (III) Possessory Lien Holders, and (IV) Priority Vendors Pursuant to Sections 105(a), 361, 363(b), 503(b)(9), 507(a)(2), and 542 of the Bankruptcy Code” and submits to the jurisdiction of that Court for enforcement thereof.

16. As a further condition of receiving payment on a Critical Vendor Claim, the Debtors propose that a Critical Vendor must agree to take whatever action required to remove any existing trade liens against any of the property of any Debtor or affiliate thereof at such Critical Vendor’s sole cost and expense and waive any right to assert a trade lien on account of the satisfied Critical Vendor Claim.

17. The Debtors seek only the authority to enter into Vendor Agreements and not a mandate that they do so. The Debtors submit that there may be limited circumstances in which payment to a Critical Vendor, prior to or in lieu of the Debtors and such Critical Vendor having entered into a Vendor Agreement, is necessary to avoid causing irreparable harm to the Debtors’ business operations. In those cases, the Debtors seek authority to make payments on account of such Critical Vendor’s claims, notwithstanding the fact that following diligent efforts to enter into a Vendor Agreement with a Critical Vendor, no Vendor Agreement has been executed.

18. For those Critical Vendors that have agreed to ship goods or render services on trade terms other than their Customary Trade Terms, the Debtors reserve the right to obtain written acknowledgment of such terms on a case-by-case basis. Nothing in this Motion or any order of this Court approving this Motion should be construed as a waiver by any of the Debtors of their rights to contest any invoice of a Critical Vendor under applicable nonbankruptcy law.

19. The Debtors shall maintain a matrix summarizing the following: (a) the name of each Critical Vendor paid on account of Critical Vendor Claims; (b) the amount paid to each Critical Vendor on account of its Critical Vendor Claim; and (c) a brief description of the goods or services provided by such Critical Vendor. This matrix will periodically be provided to (i) the United States Trustee for the District of Delaware (the "U.S. Trustee"), (ii) once retained, counsel for the Creditors' Committee, (iii) counsel to the Debtors' proposed postpetition lender(s) ("DIP Agents"), (iv) Oak Hill Capital Management ("Oak Hill"), and (v) counsel to Oak Hill; *provided*, that counsel to the Creditors' Committee, the DIP Agents, and the U.S. Trustee must keep the matrix confidential.

20. The Debtors further propose that, if a Critical Vendor later refuses to continue to supply goods or services to the Debtors on the Customary Trade Terms for the applicable period, or on such other credit terms agreed upon by the Debtors and such Critical Vendor, then the Debtors may, in their sole discretion, and without further order of the Court: (a) declare any Vendor Agreement between the Debtors and such Critical Vendor to be terminated; (b) declare the payment of the applicable Critical Vendor Claim a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover from such Critical Vendor in cash or in goods; and (c) demand that such Critical Vendor

immediately return any payments with respect to its Critical Vendor Claim to the extent the aggregate amount of such payments exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, or adjustments of any type whatsoever, and such Critical Vendor Claim shall be reinstated in an amount as to restore the Debtors and the Critical Vendor to their original positions, as if the agreement had never been entered into and the payment of the Critical Vendor Claim had not been made. In sum, the Debtors will return the parties to the positions they were in immediately prior to approval of the relief sought herein.

21. The Debtors further propose that any Vendor Agreement terminated as a result of a Critical Vendor's refusal to comply with the terms thereof may be reinstated if:

- (a) such determination is subsequently reversed by this Court, after notice and a hearing following a motion by the Critical Vendor, for good cause shown that the determination was materially incorrect;
- (b) the underlying default under the Vendor Agreement was fully cured by the Critical Vendor not later than five (5) business days following the Debtors' notification to the Critical Vendor that a default had occurred; or
- (c) the Debtors, in their sole discretion, reach a favorable alternative agreement with the Critical Vendor.

22. The Debtors believe that payment of some or all Critical Vendor Claims will be necessary to preserve operations and successfully reorganize. The need for flexibility to pay such claims is particularly important in the period immediately following the Petition Date, during which, the Debtors, their attorneys and financial advisors, and their other professionals will be focusing on stabilizing operations and executing a long-term business plan. At the same time, while the Debtors are distracted with stabilization of the business and long-term planning, Critical Vendors may attempt to assert their substantial leverage and deny the continued

provision of necessary goods and services, suddenly and without notice, in an attempt to coerce payment of prepetition amounts.

23. The continued availability of trade credit, in amounts and on terms consistent with those the Debtors previously obtained through great effort, is extremely beneficial to the Debtors. It provides the Debtors with necessary liquidity and allows the Debtors to focus on returning to profitability. The Debtors believe that preserving working capital through the retention or reinstatement of their normally advantageous trade credit terms will enable them to stabilize business operations at this critical time, maintain their competitiveness, and maximize the value of their businesses for the benefit of all interested parties. Conversely, any deterioration of trade credit, or disruption or cancellation of deliveries of goods or provision of essential services, could cripple the Debtors' restructuring efforts.

24. The Debtors believe the Critical Vendor Claims Cap should provide the flexibility necessary for the Debtors to receive the vital goods and services that they require from the Critical Vendors to continue being successful as reorganized entities and request that a fund of \$1.0 million be made available to the Debtors immediately (the "Interim Critical Vendor Claims Cap") to prevent a disruption in operations before a final hearing is held on the relief requested in this Motion. The Debtors have not included amounts payable to Critical Vendors as Foreign Creditors, Possessory Lien Holders, or Priority Vendors in the Critical Vendor Claims Cap or the Interim Critical Vendor Claims Cap set forth above and reserve the right to request an increase to such caps to the extent that the Debtors are not authorized to pay Critical Vendors as Foreign Creditors, Possessory Lien Holders, or Priority Vendors.

The Debtors' Foreign Creditors

25. The Debtors' conduct the majority of their operations in foreign airspace and, as a result, incur obligations to numerous foreign creditors who, among other things, provide various goods, services, permits, licenses, and rights to the Debtors, including, without limitation, the following (together, the "Foreign Creditors"):

(a) Access to Foreign Airspace and Airports. The Debtors' international operations rely upon their ability to access foreign airspace and foreign airports. Before each flight, the Debtors apply for and obtain permits from foreign governmental or quasi-governmental agencies to operate within a particular country's foreign airspace. The Debtors are charged a fee based upon the rate set by the applicable foreign government for the type of aircraft and amount of time spent in its airspace. In addition, the Debtors must pay airport fees to a variety of foreign governmental agencies. The Debtors are required to remain current on their payment obligations to these foreign governmental authorities and other Foreign Creditors to, among other things, obtain the permits necessary to access foreign airspace and operate within foreign air traffic control systems. Without this ability, the Debtors would be forced to suspend all international operations, which would significantly hamper the Debtors' reorganization efforts.

(b) Maintenance Services and Parts Suppliers. The Debtors rely on Foreign Creditors to service their aircraft at various international airports because it is impractical and uneconomical to staff maintenance facilities and/or store parts at all of the international airports at which the Debtors operate. For example, as part of the maintenance of their aircraft throughout the world, the Debtors regularly borrow or purchase parts from foreign third parties and employ foreign individuals to perform both routine "line maintenance" and scheduled

“heavy maintenance.” Without continued access to these maintenance services and parts suppliers at various locations throughout the world, the Debtors would be forced to cease a substantial portion of their international operations. Additionally, the Debtors’ failure to pay these foreign maintenance and parts providers could result in the seizure of the Debtors’ aircraft and/or related equipment.

(c) Ground Handling Services. Similar to domestic services, certain Foreign Creditors provide a range of services known as “ground handling services.” These services include, among other things, maneuvering the aircraft once it has landed, placing “chocks” when the aircraft has reached its parking location, providing power to the aircraft while it is parked, as well as the supply of ramps, stairways, and any other equipment necessary to service the aircraft. Notably, ground handling services also include the loading and unloading of cargo from the Debtors’ aircraft. At the majority of international airports used by the Debtors, ground handling services are provided by one or a limited number of vendors. Failure to pay ground handling service providers would significantly impede the Debtors ability to operate in airports throughout the world, which would result in substantial injury to the Debtors businesses.

(d) Flight Communications and Data. To sustain their complex international flight operations, the Debtors require timely communication with their aircraft and access to critical data, including air traffic, weather patterns, and other information affecting the ability to safely and effectively navigate and communicate with their aircraft. These services are often provided by foreign third parties, which, if not paid, may refuse to provide these critical services going forward.

(e) Foreign Taxes and Fees. The Debtors withhold and incur, on behalf of foreign governmental authorities, an assortment of foreign taxes, fees, and other charges. The

Debtors are obligated to timely collect, withhold, incur, and remit foreign taxes to the applicable foreign authorities. Failure to pay certain foreign taxes may result in foreign taxing authorities taking actions that could severely disrupt the Debtors' operations and potentially impose significant additional and unnecessary costs on the Debtors' estates.

Proposed Payment of the Foreign Creditors

26. The Debtors make payments to the Foreign Creditors on a regular basis to maintain both their domestic and foreign operations. In the event of nonpayment, certain Foreign Creditors may stop providing goods and services to the Debtors, cease performance under supply contracts, or otherwise disrupt the Debtors' operations. An interruption in the flow of goods and/or services could have disastrous consequences on the operations of the Debtors' businesses due to the lack of alternative suppliers or the amount of time needed to locate and convert to alternative supply sources. Without the continuance of necessary supplies and services, the Debtors will be unable to operate their businesses efficiently and effectively, which will substantially diminish the value of the Debtors' assets.

27. Many of the Foreign Creditors lack minimum contacts with the United States and, therefore, are not likely to be subject to the jurisdiction of this Court or provisions of the Bankruptcy Code that otherwise protect the Debtors' assets and business operations. Based on the substantial experience of the Debtors' personnel in the air cargo industry, and their knowledge of the Foreign Creditors, the Debtors believe there is a risk that Foreign Creditors holding claims against the Debtors may consider themselves to be beyond the jurisdiction of this Court, disregard the automatic stay, and/or engage in conduct that disrupts the Debtors' operations. Most importantly, foreign entities that believe the automatic stay does not govern

their actions may exercise self-help (if permitted under local law), which could include grounding or seizing aircraft or terminating the Debtors' access to essential airspace and airports.

28. Foreign Creditors may also sue one or all of the Debtors in a foreign court to recover prepetition amounts owed to them. If they are successful in obtaining a judgment against the Debtors, the Foreign Creditors may exercise post-judgment remedies, including withholding vital supplies and services from the Debtors, and, in turn, threatening the Debtors' ability to operate. In this scenario, the Debtors would have limited, if any, effective and timely recourse and no practical ability to remedy this situation (absent payment of amounts sought), their businesses would be irreparably harmed to the detriment of their estates and their creditors.

29. The satisfaction of prepetition obligations owed to the Foreign Creditors (the "Foreign Creditor Claims") is critical to the preservation and protection of the Debtors' estates, and ultimately, to a successful reorganization. Without the support of the Foreign Creditors, the interests of all creditors will suffer immeasurably as the value of the Debtors' estates is likely to suffer significant diminution in value. Accordingly, the Debtors submit that the relief requested is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects.

30. By this Motion, the Debtors request entry of an interim and a final order authorizing, but not directing, the Debtors, in the reasonable exercise of their business judgment, to pay and honor certain prepetition obligations due to Foreign Creditors in an aggregate amount not to exceed \$2.4 million on an interim basis (the "Interim Foreign Creditor Claims Cap") and another \$2.4 million on a final basis (the "Foreign Creditor Claims Cap"). Should there be any amounts owed to Foreign Creditors in excess of the Foreign Creditor Claims Cap, the Debtors reserve the right to move before this Court to request authority, after notice and a hearing, to

make any such additional payments. The Debtors have not included amounts payable to Foreign Creditors as Critical Vendors, Possessory Lien Holders, or Priority Vendors in the Interim Foreign Creditor Claims Cap or the Foreign Creditor Claims Caps set forth above and reserve the right to request an increase to such caps to the extent that the Debtors are not authorized to pay Foreign Creditors as Critical Vendors, Possessory Lien Holders, or Priority Vendors. As with Critical Vendors, the DIP Credit Agreement accounts for the Debtors' estimation of Foreign Creditor Claims.

31. The satisfaction of obligations owed to the Foreign Creditors in the ordinary course of business is critical to the preservation and protection of the Debtors' estates, and ultimately, to maximizing value. Without the support of the Foreign Creditors, the interests of all creditors will suffer immeasurably as the value of the Debtors' estates is likely to suffer significant diminution in value. Accordingly, the Debtors submit that the relief requested is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects.

The Debtors' Possessory Lien Holders

32. In the ordinary course of business, the Debtors engage a number of maintenance service providers to repair, maintain, and improve the Debtors' aircraft. While the Debtors employ a certain number of maintenance service providers, it is neither feasible nor practical to keep employees at every airport in each of the countries the Debtors service. Accordingly, the Debtors often utilize third-party maintenance service providers (the "Outside Maintenance Providers").

33. In the ordinary course of the Debtors' business, many of the Outside Maintenance Providers are in possession of aircraft, engines, and/or other equipment that are

vital to the Debtors' operations and may assert possessory liens and refuse to redeliver these items to the Debtors until they are paid prepetition amounts (the "Possessory Lien Holders").

Proposed Payment of the Possessory Lien Holders

34. The Outside Maintenance Providers are essential to the Debtors' ability to make on-the-spot repairs. Without the ability to make on-the-spot repairs in remote locations, aircraft would be stranded until the Debtors could transport their own maintenance service providers to repair the aircraft. The adverse impact of such a situation on the Debtors' business operations and revenues is self-evident. At this stage of the Debtors' restructuring efforts, switching Outside Maintenance Providers will risk the uninterrupted operation of the Debtors' businesses. In addition, the options for switching Outside Maintenance Providers is extremely limited and, in some instances, nonexistent. The relief requested herein is essential to the maintenance of the Debtors' safe, uninterrupted, and efficient operations.

35. The payment of the claims held by any Possessory Lien Holder (the "Possessory Lien Claims") is also necessary to the extent the Debtors require access to the aircraft, engines, and other equipment currently in the possession of the Possessory Lien Holders to operate, as they likely cannot readily recover such items absent payment. Furthermore, the maintenance services provided by Outside Maintenance Providers are not easily replaced.

36. The Debtors use the aircraft, engines, and other equipment currently in the possession of the Possessory Lien Holders in the ordinary course of their business. Pursuant to applicable law, however, to the extent such items are property of the Debtors' estates, the Possessory Lien Holders may hold possessory liens in the Debtors' property. In some circumstances, these liens can be perfected notwithstanding the automatic stay established by section 362(a) of the Bankruptcy Code. Indeed, pursuant to section 362(b)(3) of the Bankruptcy

Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay. Accordingly, the Possessory Lien Holders may refuse to surrender such property until the Debtors satisfy outstanding obligations owed to them. As a result, the Debtors' operations could suffer immediate and irreparable harm due to the Debtors' inability to use the aircraft, engines, and other equipment in their daily operations. Prompt and continued payment of the amounts owed to Possessory Lien Holders will provide for the uninterrupted provision of services and, in turn, the seamless continuation of the Debtors' operations.

37. The estimated value of the Debtors' property in the possession of Possessory Lien Holders is approximately \$1.7 million. By this Motion, the Debtors request authority to pay the outstanding prepetition Possessory Lien Holders in an amount not to exceed \$400,000 on an interim basis (the "Interim Possessory Lien Claims Cap") and an additional \$400,000 on a final basis (the "Possessory Lien Claims Cap"). The Debtors have not included amounts payable to the Possessory Lien Holders as Critical Vendors, Foreign Creditors, or Priority Vendors in the Interim Possessory Lien Claims Cap and the Possessory Line Claims Cap set forth above and reserve the right to request an increase to such caps to the extent that the Debtors are not authorized to pay Possessory Lien Claims as Critical Vendors, Foreign Creditors, or Priority Vendors. Similarly to Critical Vendors and Foreign Creditors, the DIP Credit Agreement takes into account the Debtors' estimation of Possessory Lien Claims.

The Debtors' Priority Vendors

38. Certain of the Debtors' vendors have delivered goods to the Debtors in the ordinary course of business within 20 days before the Petition Date and are thus entitled to administrative expense priority under sections 503(b)(9) and 507(a)(2) of the Bankruptcy Code

(the “Priority Vendors”). As administrative claims incurred in the ordinary course of the Debtors’ business, the Debtors believe they are authorized, but not required, to pay the Priority Vendors pursuant to section 363(c)(1) of the Bankruptcy Code.

Proposed Payment of Priority Vendors

39. The Debtors wish to pay the administrative expense claims of Priority Vendors (the “Priority Vendor Claims”) that agree to continue offering normal trade terms to the Debtors because normalized trade terms will improve the Debtors’ liquidity during these cases and will facilitate the Debtors’ access to needed goods and services. The Debtors believe paying the Priority Vendors in an amount not to exceed \$400,000 in the aggregate (the “Priority Vendor Claims Cap”) will enable them to maintain their positive trade terms with their vendors and continue receiving the vital goods that they require from the Priority Vendors to continue being successful as reorganized entities and request that \$200,000 be made available to the Debtors immediately (the “Interim Priority Vendor Claims Cap”) to prevent a disruption in operations before a final hearing is held on the relief requested in this Motion. The Debtors have not included amounts payable to the Priority Vendors as Critical Vendors, Foreign Creditors, or Possessory Lien Holders in the Interim Priority Vendor Claims Cap and Priority Vendor Claims Cap set forth above and reserve the right to request an increase to such caps to the extent that the Debtors are not authorized to pay Priority Vendors as Critical Vendors, Foreign Creditors, or Possessory Lien Holders.

40. Accordingly, for the avoidance of doubt, the Debtors request that the Court enter an order stating that the Debtors are authorized, but not required, to pay the Priority Vendor Claims, or any portion thereof, of any claimant in the ordinary course of the Debtors’ business, and on such terms and conditions as the Debtors deem appropriate. Payments of

Priority Claims, even if made to Critical Vendors, Foreign Creditors, or Possessory Lien Holders, shall not count against the Critical Vendor Claims Cap, Foreign Creditor Claims Cap, or Possessory Lien Claims Cap, respectively.

Relief Requested

41. By this Motion, the Debtors request, pursuant to sections 105(a), 361, 363(b), 503(b)(9), 507(a)(2), and 542 of the Bankruptcy Code, entry of interim and final orders authorizing the Debtors to pay all or a portion of the (a) Critical Vendor Claims, (b) Foreign Creditor Claims, (c) Possessory Lien Claims, and (d) Priority Vendor Claims. A proposed interim order (the “Proposed Interim Order”) and a proposed final order are attached hereto as Exhibit A and Exhibit B, respectively (together, the “Proposed Orders”).

Basis for Relief Requested

42. The Debtors believe that the relief requested is reasonable and necessary under the circumstances. The payment of the Critical Vendor Claims, Foreign Creditor Claims, Possessory Lien Claims, and Priority Vendor Claims (collectively, the “Prepetition Obligations”) as provided above, would allow the Debtors to avoid a disastrous disruption in the Debtors’ ability to obtain the goods and services necessary to the operation of their businesses.

43. It is imperative to the Debtors’ ongoing operations and viability that the Debtors’ businesses be able to operate uninterrupted notwithstanding the commencement of these chapter 11 cases. The Debtors only seek to pay the Prepetition Obligations where nonpayment of such claims would seriously disrupt the Debtors’ operations. Moreover, the Prepetition Obligations were factored into the sizing of the postpetition debtor in possession credit facility and, therefore, the payment of the Prepetition Obligations will have little or no

impact on creditor recoveries. Thus, the Debtors submit that the relief requested is specifically targeted and narrowly tailored to facilitate the Debtors' chapter 11 reorganization.

44. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code further provides as follows:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

45. The Debtors submit that payment of the Prepetition Obligations is necessary and appropriate and may be authorized under sections 105(a) and 363(b) of the Bankruptcy Code pursuant to the “doctrine of necessity.” The “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. *See 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 the continued operation of the debtor’s business); *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (explaining that the doctrine “permit[s] immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid”); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (authorizing the payment of prepetition employee wages and benefits while noting the “judicial power to

authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that Bankruptcy Code section 105(a) “provides a statutory basis for the payment of pre-petition claims” under the doctrine of necessity and noting that the Supreme Court, the United States Court of Appeals for the Third Circuit, and the District Court of Delaware all accept the authority of the bankruptcy court “to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (acknowledging that the doctrine of necessity is the standard in the Third Circuit for enabling a court to authorize payment of prepetition claims prior to confirmation of a reorganization plan). The rationale for the “doctrine of necessity” is consistent with the paramount goal of chapter 11: “facilitating the continued operation and rehabilitation of the debtor.” *Ionosphere Clubs*, 98 B.R. at 176. Accordingly, pursuant to section 105(a) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

46. Courts have relied on section 363(b) to authorize a debtor in possession to pay prepetition claims where its estate will obtain value and where payment will avoid harm for the benefit of creditors. *See Ionosphere Clubs*, 98 B.R. at 175–76; *see also In re Tropical Sportswear Int’l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (“Bankruptcy courts recognize that section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks.”); *In re CoServ, LLC*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“There are occasions when [the duties of a debtor-in-possession] can only be fulfilled by the preplan satisfaction of a prepetition claim.”). The Debtors submit that without the ability to pay these Prepetition Obligations on an immediate-need basis, the Debtors could not preserve, let

alone increase, the value of their respective estates. As mentioned above, the relief requested herein is targeted to ensure that the Debtors maximize the value of their estates for the benefit of the reorganized entities as well as the creditors.

47. Based on the foregoing, courts in this District routinely approve the payment of prepetition claims of certain vendors critical to the debtor's operations. *See, e.g., In re Appleseed's Intermediate Holdings, LLC*, Case No. 11-10160 (KG) (Bankr. D. Del. Jan. 20, 2011) [Docket No. 43 and 314] (authorizing payment of approximately \$25 million of critical vendor claims on an interim basis and \$50 million on a final basis, which amounted to roughly 25% and 50% of the debtors' total trade payables, respectively); *In re OTC Holdings Corp.*, Case No. 10-12636 (BLS) (Bankr. D. Del. Sept. 17, 2010) [Docket No. 105] (authorizing payment of \$15 million in prepetition critical vendor claims, roughly 50% of the debtors' outstanding prepetition vendor claims); *In re Am. Safety Razor Co. LLC*, Case No. 10-12351 (MFW) (Bankr. D. Del. August 23, 2010) [Docket No. 136] (authorizing the payment of \$7.05 million of prepetition critical vendor claims, approximately 45% of the debtors' total trade debt); *In re Special Devices Inc.*, Case No. 08-13312 (MFW) (Bankr. D. Del. Jan. 14, 2009) [Docket No. 123] (court authorized critical, foreign, and 503(b)(9) vendor payments of up to \$4 million, accounting for up to 33% of the debtor's total trade debt).³

48. Similarly, courts in this, and other, jurisdictions regularly permit payment of prepetition amounts owed to foreign vendors and creditors. *See, e.g., In re Nortel Networks Inc.*, Case No. 09-10138 (KG) (Bankr. D. Del. Jan. 16, 2009) [Docket No. 71]; *In re Amtrol Holdings, Inc.*, Case No. 06-11446 (KG) (Bankr. D. Del. Jan. 11, 2007) [Docket No. 113]

³ Because of the voluminous nature of the unreported orders cited herein, they are not annexed to this Motion. Copies of these orders are available upon request of Debtors' counsel.

(authorizing payment of \$875,000 of prepetition obligations to foreign vendors); *In re Dura Auto. Sys., Inc.*, Case No. 06-11202 (KJC) (Bankr. D. Del. Nov. 20, 2006) [Docket No. 268] (authorizing payment of \$3.4 million of prepetition obligations to foreign vendors); *In re Lyondell Chem. Co.*, Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 23, 2009) [Docket No. 364] (authorizing payment of \$350,000,000 of prepetition obligations to foreign creditors).

49. In addition to the doctrine of necessity discussed above, the Court has discretion to authorize the payment of the Possessory Lien Claims pursuant to section 361 and 542 of the Bankruptcy Code. Although section 542(a) of the Bankruptcy Code requires an entity in possession of property of the estate as of the Petition Date to turn such property of the estate over to the debtor in possession; as a holder of a lien, such entity is entitled, pursuant to section 361 of the Bankruptcy Code, to adequate protection of such entity's interest in the property of the estate. If property subject to possessory liens is turned over to the Debtors, the holders of such liens will lose their lien and will not be adequately protected. Payment of the Possessory Lien Claims, therefore, is consistent with the requirements of sections 361 and 542 of the Bankruptcy Code.

50. Courts in this District and other jurisdictions have granted similar relief with respect to prepetition claims secured by possessory liens. *See, e.g., In re Buffets Restaurants Holdings, Inc.*, Case No. 12-10237 (MFW) (Bankr. D. Del. Jan. 19, 2012) [Docket No. 55]; *In re AES E. Energy, L.P.*, Case No. 11-14138 (KJC) (Bankr. D. Del. Jan. 4, 2012) [Docket No. 46]; *In re Nortel Networks, Inc.*, Case No. 09-10138 (KG) (Bankr. D. Del. Jan. 15, 2009) [Docket No. 50]; *In re Lillian Vernon Corp.*, Case No. 08-10323 (BLS) (Bankr. D. Del. Feb. 21, 2008) [Docket No. 28]; *In re Sharper Image Corp.*, Case No. 08-10322 (KG) (Bankr. D. Del. Feb. 20, 2008) [Docket No. 49]; *In re Wickes Holdings, LLC*, Case No. 08-10212 (KJC)

(Bankr. D. Del. Feb. 5, 2008) [Docket No. 38]; *In re Global Motorsport Group, Inc.*, Case No. 08-10192 (KJC) (Bankr. D. Del. Feb. 1, 2008) [Docket No. 46]; *In re Global Aviation Holdings, Inc.*, Case No. 12-40783 (CEC) (Bankr. E.D.N.Y. Feb. 7, 2012) [Docket No. 33]; *In re AMR Corp.*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Nov. 30, 2011) [Docket No. 60].

51. The Debtors also believe that payment of the Priority Vendor Claims is reasonable and will enhance the value of the Debtors' estates, particularly considering they would ultimately be paid in full as priority claims. By paying vendors that agree to continue supplying the Debtors on customary trade terms at the outset of these cases, the Debtors are assured of vendor cooperation as they reorganize. Furthermore, if vendors agree to continue supplying the Debtors postpetition under customary trade terms, the Debtors' liquidity will be dramatically improved, facilitating their ability to maintain operations while reorganizing.

52. The Court has discretion to grant the Debtors authority to pay the Priority Vendor Claims at the outset of these cases under section 503(b)(9) of the Bankruptcy Code, which provides, in relevant part, that "[a]fter notice and a hearing, there shall be allowed, administrative expenses . . . including . . . the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(9). In unpublished decisions, two courts have held that the decision of whether to allow payment of section 503(b)(9) claims before confirmation of a debtor's chapter 11 plan is within the court's discretion. *In re Global Home Prods., LLC*, Case No. 06-10340, 2006 WL 3791955, at *3 (Bankr. D. Del. Dec. 21, 2006); *In re Bookbinders' Restaurant, Inc.*, Case No. 06-12302, 2006 WL 3858020, at *4 (Bankr. E.D. Pa. Dec. 28, 2006). In both cases, the courts weighed the prejudice to the debtors of paying early in the case, the hardships to the 503(b)(9) claimant if the

debtor did not pay, and the potential detriment to other creditors. *See Global Home Prods.*, 2006 WL 3791955, at *4 (citing *In re Garden Ridge Corp.*, 323 B.R. 136, 143 (Bankr. D.N.J. 2005); *In re Bookbinders' Restaurant, Inc.*, 2006 WL 3858020, at *4 (citing *Garden Ridge*, 323 B.R. at 143).

53. Here, these factors, in addition to the “doctrine of necessity” set forth above, support allowing the immediate payment of the Priority Vendor Claims. The Debtors will not be prejudiced by paying the Priority Vendors at the outset of these cases because they need the Priority Vendors to continue providing goods and services reliably and on viable trade terms. Furthermore, the administrative expense status of these claimants entitles them to be paid in full upon, at the latest, the effective date of a chapter 11 plan. Therefore, the payment of the Priority Vendor Claims would only affect the timing, and not the amount of payment, of the Priority Vendor Claims. The Debtors and the wider community of creditors in these cases would be prejudiced if the Debtors were not able to pay these claims and the Debtors were forced to accept onerous trade terms or find alternate suppliers at a higher cost.

54. Similar priority vendor relief has been granted in other chapter 11 cases in this District. *See, e.g., In re Buffets Restaurants Holdings, Inc.*, Case No. 12-10237 (MFW) (Bankr. D. Del. Jan. 19, 2012) [Docket No. 53]; *In re AES E. Energy, L.P.*, Case No. 11-14138 (KJC) (Bankr. D. Del. Jan. 4, 2012) [Docket No. 46]; *In re Aleris Int'l, Inc.*, Case No. 09-10478 (BLS) (Bankr. D. Del. Feb. 13, 2009) [Docket No. 44]; *In re Special Devices Inc.*, Case No. 08-13312 (MFW) (Bankr. D. Del. Jan. 14, 2009) [Docket No. 123]; *In re Buffets Holdings, Inc.*, Case No. 08-10141 (MFW) (Bankr. D. Del. Feb. 13, 2008) [Docket Nos. 284].

55. Nothing in this Motion should be construed as an assumption of any executory contract between the Debtors and any Critical Vendor, Foreign Creditor, Possessory

Lien Holder, or Priority Vendor, if any, nor should it be construed as a rejection of any such executory contract or unexpired lease. The Debtors reserve all of their rights with respect to the assumption or rejection of executory contracts, if any. Furthermore, the Debtors reserve the right to contest the amount claimed to be due by any Critical Vendor, Foreign Creditor, Possessory Lien Holder, or Priority Vendor on all applicable grounds.

Payments to Vendors for Postpetition Delivery of Prepetition Orders

56. The Debtors take the position that obligations arising from postpetition delivery of prepetition orders are postpetition obligations that may be paid in the ordinary course of business without notice and a hearing. Nevertheless, out of an abundance of caution, the Debtors request authority to pay such obligations as they arise in the ordinary course pursuant to section 503(b) of the Bankruptcy Code.

The Debtors Satisfy Bankruptcy Rule 6003(b)

57. Bankruptcy Rule 6003(b) 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(b). As described above, the Debtors’ business operations rely heavily on the continued provision of goods and services by the Critical Vendors, Foreign Creditors, Possessory Lien Holders, and Priority Vendors. The Debtors submit that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors, as described herein, and that Bankruptcy Rule 6003(b) has been satisfied.

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

58. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Notice

59. 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 United States Transportation Command; (g) the Defense Logistics Agency – Energy; (h) Canadian Imperial Bank of Commerce, New York Agency ("CIBC"); (i) counsel to CIBC; (j) 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

60. 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 DEBTORS
TO PAY PREPETITION OBLIGATIONS OF CERTAIN
(I) CRITICAL VENDORS, (II) FOREIGN CREDITORS, (III) POSSESSORY
LIEN HOLDERS, AND (IV) PRIORITY VENDORS PURSUANT TO SECTIONS
105(a), 361, 363(b), 503(b)(9), 507(a)(2), AND 542 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 authority to pay all or a portion of the Prepetition Obligations pursuant to sections 105(a), 361, 363(b), 503(b)(9), 507(a)(2), and 542 of the Bankruptcy Code, 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. §§ 1334 and 157, 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

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 Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

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 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 on an interim basis, as set forth herein.
2. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment and to the extent consistent with the DIP Credit Agreement, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to pay, in an aggregate interim amount not to exceed \$1.0 million, some or all of the prepetition claims of Critical Vendors who agree to continue to supply goods and services to the Debtors on Customary Trade Terms for a period following the date of the agreement and on other such terms and conditions as are acceptable to the Debtors. As used herein, "Customary Trade Terms" means, with respect to a Critical Vendor: (a) the normal and customary trade terms, practices, and programs (including, without limitation, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability, and other applicable terms and programs) that were most favorable to the Debtors and in effect between such Critical Vendor and the Debtors prior to the Petition Date; or (b) such other trade terms as agreed by the Debtors and a Critical Vendor so long as the Critical Vendor extends trade credit to the Debtors.

3. After the date hereof, the Debtors shall determine, in the ordinary course of business, who is a Critical Vendor by considering, among other things: (a) which suppliers were sole source or limited source suppliers, without whom the Debtors could not continue to operate without disruption; (b) which suppliers would be prohibitively expensive to replace; and (c) which suppliers present an unacceptable risk of business disruption should they cease the provision of truly essential goods or services.

4. The Debtors may, in their sole discretion, declare a Vendor Agreement with an individual Critical Vendor to be terminated (together with the other benefits to the Critical Vendor as contained in this Order) on the date that the Debtors deliver notice to the Critical Vendor that such Critical Vendor has not complied with the terms and provisions of the Vendor Agreement; *provided, however*, that the Vendor Agreement may be reinstated if:

- a. Such termination is subsequently reversed by this Court, after notice and a hearing following a motion by the Critical Vendor, for good cause shown that the determination was materially incorrect;
- b. The underlying default under the Vendor Agreement was fully cured by the Critical Vendor not later than five (5) business days following the Debtors' notification to the Critical Vendor that a default had occurred; or
- c. The Debtors, in their sole discretion, reach a favorable alternative agreement with the Critical Vendor.

5. The Debtors are authorized, but not required, in the reasonable exercise of their business judgment and to the extent consistent with the DIP Credit Agreement, to pay Foreign Creditor Claims in the ordinary course of the Debtors' business in an aggregate interim amount not to exceed \$2.4 million, on such terms as the Debtors deem appropriate.

6. The Debtors are authorized, but not required, in the reasonable exercise of their business judgment and to the extent consistent with the DIP Credit Agreement, to pay

Possessory Lien Claims in the ordinary course of the Debtors' business in an aggregate interim amount not to exceed \$400,000, on such terms as the Debtors deem appropriate.

7. The Debtors, are authorized, but not required, in the reasonable exercise of their business judgment and to the extent consistent with the DIP Credit Agreement, to pay Priority Vendor Claims in the ordinary course of the Debtors' business in an aggregate interim amount not to exceed \$200,000, on such terms as the Debtors deem appropriate.

8. The Vendor Agreement, substantially in the form attached hereto as Exhibit 1, is approved.

9. Any Critical Vendor, Foreign Creditor, Possessory Lien Holder, or Priority Vendor that accepts payment from the Debtors on account of a Critical Vendor Claim, Foreign Creditor Claim, Possessory Lien Claim, or Priority Vendor Claim shall be deemed to have agreed to the terms and provisions of this Order.

10. As a condition to receiving any payment pursuant to this Order, the Possessory Lien Holders shall waive and release any previously asserted possessory lien on the assets of the Debtors.

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

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

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

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

15. 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.

16. A final hearing to consider the relief requested in the Motion 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 Rule 9006-1(c)(ii) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

Dated: _____, 2012
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1
Form of Vendor Agreement

[LETTERHEAD OF DEBTOR]

_____, 2012

To: [Critical Vendor]
[Name]
[Address]

Dear Valued Supplier:

As you are aware, Southern Air Inc., and certain of its affiliates (collectively, the “Debtors”)¹ commenced cases under chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Cases”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on September 28, 2012 (the “Petition Date”). On the Petition Date, the Debtors requested authority from the Bankruptcy Court to pay pre-bankruptcy claims of certain suppliers in recognition of the importance of the Debtors’ relationships with such suppliers and their desire that the Bankruptcy Cases have as little effect on the Debtors’ ongoing business operations as possible. On September [___], 2012, the Bankruptcy Court entered an order (the “Interim Order”) authorizing the Debtors, under certain conditions, to pay the prepetition claims of certain trade creditors that agree to the terms set forth below and to be bound by the terms of the Interim Order. A copy of the Interim Order is enclosed. The Debtors anticipate entry of a final order shortly (the “Final Order”).

To receive payment on account of prepetition claims, you must agree to continue to supply goods and services to the Debtors based on “Customary Trade Terms.” In the Interim Order, Customary Trade Terms are defined as the normal and customary trade terms, practices and programs (including, without limitation, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability, and other applicable terms and programs), that were most favorable to the Debtors and in effect between you and the Debtors prior to the Petition Date, or such other trade terms as you and the Debtors agree.

For purposes of administration of this trade program as authorized by the Bankruptcy Court, you and the Debtors both agree that:

1. The estimated balance of the prepetition claim (net of any setoffs, credits or discounts) (the “Critical Vendor Claim”) that you will receive from the Debtors is \$_____.

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. You waive any general unsecured claim against the Debtors.
3. You will provide an open trade balance or credit line to the Debtors for shipment of postpetition goods in the amount of \$_____ (which shall not be less than the greater of the open trade balance outstanding on: (a) _____, or (b) normal and customary terms on a historical basis before and up to the Petition Date).
4. The terms of such open trade balance or credit line are as follows (if more space is required, attach continuation pages):

5. During the pendency of the Bankruptcy Cases you will continue to extend to the Debtors all Customary Trade Terms (as defined in the Interim Order).
6. You will not demand a lump sum payment upon consummation of a plan of reorganization in these chapter 11 cases on account of any administrative expense priority claim you assert, but instead agree that such claims will be paid in the ordinary course of business after consummation of a plan under applicable Customary Trade Terms, if the plan provides for the ongoing operations of the Debtors.
7. The undersigned, a duly authorized representative of [Critical Vendor], has reviewed the terms and provisions of the Interim Order and agrees that [Critical Vendor] is bound by such terms.
8. You will not separately seek payment for reclamation and similar claims outside of the terms of the Interim Order unless your participation in the Critical Vendor payment program authorized by the Interim Order (the "Critical Vendor Payment Program") is terminated.
9. You will not file or otherwise assert against the Debtors, the estates or any other person or entity or any of their respective assets or property (real or personal) any lien (regardless of the statute or other legal authority upon which such lien is asserted)

related in any way to any remaining prepetition amounts allegedly owed to you by the Debtors arising from agreements entered into prior to the Petition Date. Furthermore, you agree to take (at your own expense) all necessary steps to remove any such lien as soon as possible.

10. If either the Critical Vendor Payment Program or your participation therein terminates as provided in the Interim Order, or you later refuse to continue to supply goods to the Debtors on Customary Trade Terms during the pendency of the Bankruptcy Cases, any payments you receive on account of your Critical Vendor Claim will be deemed voidable postpetition transfers pursuant to section 549(a) of title 11 of the United States Code. You will immediately repay to the Debtors any payments made to you on account of your Critical Vendor Claim to the extent that the aggregate amount of such payments exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever. Your Critical Vendor Claim shall be reinstated in such an amount so as to restore the Debtors and you to the same positions as would have existed if payment of the Critical Vendor Claim had not been made.
11. Any dispute with respect to, or arising from, this letter agreement, the Interim Order and/or your participation in the Critical Vendor Payment Program shall be determined by the Bankruptcy Court.

If you have any questions about this Agreement or our financial restructuring, please do not hesitate to call.

Sincerely,

Southern Air Inc.

By: _____

Name:

Title:

ACCEPTED AND AGREED BY:
[NAME OF CRITICAL VENDOR]

By: _____

Its: _____

Dated: _____, 2012

Exhibit B
Proposed Final Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

-----X
: **Chapter 11**
: **Case No. 12-12690 ()**
: **Jointly Administered**
: **Re: Docket Nos.**
-----X

In re

**SOUTHERN AIR
HOLDINGS, INC., et al.,**

Debtors.¹

**FINAL ORDER AUTHORIZING DEBTORS
TO PAY PREPETITION OBLIGATIONS OF CERTAIN
(I) CRITICAL VENDORS, (II) FOREIGN CREDITORS, (III) POSSESSORY
LIEN HOLDERS, AND (IV) PRIORITY VENDORS PURSUANT TO SECTIONS
105(a), 361, 363(b), 503(b)(9), 507(a)(2), AND 542 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 authority to pay all or a portion of the Prepetition Obligations pursuant to sections 105(a), 361, 363(b), 503(b)(9), 507(a)(2), and 542 of the Bankruptcy Code 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. §§ 1334 and 157, 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

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 Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

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 on September [___], 2012; 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, in the reasonable exercise of their business judgment and to the extent consistent with the DIP Credit Agreement, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to pay, in an amount not to exceed \$1.2 million (in addition to amounts authorized under the Interim Critical Vendor Claims Cap), some or all of the prepetition claims of Critical Vendors who agree to continue to supply goods and services to the Debtors on Customary Trade Terms for a period following the date of the agreement and on other such terms and conditions as are acceptable to the Debtors. As used herein, "Customary Trade Terms" means, with respect to a Critical Vendor: (a) the normal and customary trade terms, practices, and programs (including, without limitation, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability, and other applicable terms and programs) that were most favorable

to the Debtors and in effect between such Critical Vendor and the Debtors prior to the Petition Date; or (b) such other trade terms as agreed by the Debtors and a Critical Vendor so long as the Critical Vendor extends trade credit to the Debtors.

3. After the date hereof, the Debtors shall determine, in the ordinary course of business, who is a Critical Vendor by considering, among other things: (a) which suppliers were sole source or limited source suppliers, without whom the Debtors could not continue to operate without disruption; (b) which suppliers would be prohibitively expensive to replace; and (c) which suppliers present an unacceptable risk of business disruption should they cease the provision of truly essential services or supplies.

4. The Debtors may, in their sole discretion, declare a Vendor Agreement with an individual Critical Vendor to be terminated (together with the other benefits to the Critical Vendor as contained in this Order) on the date that the Debtors deliver notice to the Critical Vendor that such Critical Vendor has not complied with the terms and provisions of the Vendor Agreement; *provided, however*, that the Vendor Agreement may be reinstated if:

- a. Such termination is subsequently reversed by this Court, after notice and a hearing following a motion by the Critical Vendor, for good cause shown that the determination was materially incorrect;
- b. The underlying default under the Vendor Agreement was fully cured by the Critical Vendor not later than five (5) business days following the Debtors' notification to the Critical Vendor that a default had occurred; or
- c. The Debtors, in their sole discretion, reach a favorable alternative agreement with the Critical Vendor.

5. The Debtors are authorized, but not required, in the reasonable exercise of their business judgment and to the extent consistent with the DIP Credit Agreement, to pay Foreign Creditor Claims in the ordinary course of the Debtors' business in an amount not to

exceed \$2.4 million (in addition to amounts authorized under the Interim Foreign Creditor Claims Cap) and on such terms as the Debtors deem appropriate

6. The Debtors are authorized, but not required, in the reasonable exercise of their business judgment and to the extent consistent with the DIP Credit Agreement, to pay Possessory Lien Claims in the ordinary course of the Debtors' business in an amount not to exceed \$400,000 (in addition to amounts authorized under the Interim Possessory Lien Claims Cap) and on such terms as the Debtors deem appropriate.

7. The Debtors, are authorized, but not required, in the reasonable exercise of their business judgment and to the extent consistent with the DIP Credit Agreement, to pay Priority Vendor Claims in the ordinary course of the Debtors' business in an amount not to exceed \$400,000 (in addition to amounts authorized under the Interim Priority Vendor Claims Cap) and on such terms as the Debtors deem appropriate

8. Any Critical Vendor, Foreign Creditor, Possessory Lien Holder, or Priority Vendor that accepts payment from the Debtors on account of a Critical Vendor Claim, Foreign Creditor Claim, Possessory Lien Claim, or Priority Vendor Claim shall be deemed to have agreed to the terms and provisions of this Order.

9. As a condition to receiving any payment pursuant to this Order, the Possessory Lien Holders shall waive and release any previously asserted possessory lien on the assets of the Debtors.

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

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

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

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

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