

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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

**MOTION OF DEBTORS FOR AUTHORITY TO FILE UNDER SEAL
FEE LETTER RELATED TO DEBTOR IN POSSESSION CREDIT FACILITY**

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”), by and through their undersigned proposed counsel, having contemporaneously filed the *Motion of Debtors for an Order (I) Authorizing Postpetition Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Priority, (III) Authorizing Use of Cash Collateral and Approving Adequate Protection, and (IV) Modifying the Automatic Stay Pursuant to Sections 105, 361, 362, 363, and 364 of the Bankruptcy Code and Bankruptcy Rule 4001* (the “DIP Motion”),² hereby move this Court for entry of an order substantially in the form attached hereto as Exhibit A (the “Order”), pursuant to section 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9018-1(b) of the Local Rules of Bankruptcy Practice and

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 defined herein shall have the meanings ascribed to them in the DIP Credit Agreement.



Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing the Debtors to file under seal that certain Fee Letter (the “Fee Letter”), dated September 28, 2012, by and between Cargo 360, Inc. (the “Borrower”) and Canadian Imperial Bank of Commerce, New York Agency (“CIBC”), as the Administrative Agent to that certain Senior Secured Super-Priority Debtor-in-Possession Credit Agreement, among the Borrower, the various financial institutions and other Persons from time to time parties thereto and CIBC, dated September 28, 2012 (the “DIP Credit Agreement”). In support of this Motion, the Debtors respectfully represent and state as follows:

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) 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.

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 Bankruptcy Rule 1015(b).

The Debtors' Businesses and the DIP Credit Agreement

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.

7. Pursuant to the Fee Letter, the Borrower must pay CIBC, as the Administrative Agent for the DIP Credit Agreement, both an arrangement fee and agency fee as consideration for the Administrative Agent's assistance in organizing the lender commitments under the DIP Credit Agreement. By its terms, the Fee Letter and its contents are subject to the confidentiality provisions of the DIP Credit Agreement.

Relief Requested

8. The Debtors respectfully request that the Court enter an order authorizing the Debtors to file the Fee Letter under seal and directing that it remain under seal, confidential, and not be made available to anyone; *provided, however*, that copies shall be provided to the Court, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) and any Creditors’ Committee appointed in these cases, as well as their legal and financial advisors, all on a confidential basis, in addition to other parties as otherwise ordered or required by the Court.

Basis for Relief Requested

9. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the authority to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. This section provides, in part, that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may –

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or
- (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b).

10. Bankruptcy Rule 9018 sets forth the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code, and provides, in part, that “[o]n motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information” FED. R. BANKR. P. 9018.

Local Rule 9018-1(b) additionally provides, in relevant part, that “[a]ny party who seeks to file documents under seal must file a motion to that effect.” DEL. BANKR. L.R. 9018-1(b).

11. Unlike its counterpart in Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to demonstrate “good cause.” *See, e.g., Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994). Rather, if the material sought to be protected satisfies one of the categories identified in section 107(b), then “the court is *required* to protect a requesting party and has no discretion to deny the application.” *In re Orion Pictures Corp.*, 21 F.3d at 27 (emphasis added). Courts are *required* to provide such protections “generally where open inspection may be used as a vehicle for improper purposes.” *Id.*

12. The Debtors submit that the Fee Letter contains confidential commercial information and is, thus, entitled to protection pursuant to section 107(b) of the Bankruptcy Code. “Commercial information is information which would give a competitor an unfair advantage.” *In re Handy Andy Home Improvement Centers, Inc.*, 199 B.R. 376, 382 (Bankr. N.D. Ill. 1996). Courts in this jurisdiction have previously determined that certain documents entered into in connection with postpetition and/or exit financing, such as fee letters, can qualify as “confidential commercial information” within the meaning of section 107(b) of the Bankruptcy Code and have authorized the filing of such documents under seal. *See, e.g., In re NewPage Corp.*, Case No. 11-12804 (KG) (Bank. D. Del. Sept. 8, 2011) (same); *In re Neenah Enters., Inc.*, Case No. 10-10360 (MFW) (Bankr. D. Del. Jul. 6, 2010) (authorizing debtors to file under seal exit financing fee letter); *In re Xerium Techs., Inc.*, Case No. 10-11031 (KJC)

(Bankr. D. Del. Mar. 31, 2010) (authorizing debtors to file under seal DIP financing fee letter); *In re Rath Gibson, Inc.*, Case No. 09-12452 (CSS) (Bankr. D. Del. Aug. 11, 2009) (same).

13. If disclosed, the material contained in the Fee Letter may divulge confidential and commercially-sensitive information relating to, among other things, the Administrative Agent's fee structure associated with the arranging of debtor-in-possession financing. The incorporation of the confidentiality provisions of DIP Credit Agreement in the Fee Letter further supports the notion that the contents of the Fee Letter constitute commercially sensitive information. As a result, the Debtors submit that the factual and legal predicates for filing the Fee Letter under seal have been satisfied. *See* 11 U.S.C. § 107(b).

14. To ensure that the key constituencies in these cases receive adequate disclosure, however, the Debtors intend to provide copies of the Fee Letter to the Court, the U.S. Trustee, and any Creditors' Committee appointed in these cases (once formed) and their legal and financial advisors; *provided, however*, that the U.S. Trustee, Creditors' Committee, and their respective legal and financial advisors shall maintain the Fee Letter as confidential. The Debtors submit that such disclosure will provide sufficient safeguards to ensure that the relief requested in this Motion will not adversely affect the interests of parties to these chapter 11 proceedings.

Notice

15. No trustee, examiner, or Creditors' Committee has been appointed in these chapter 11 cases. Notice of this Motion has been provided to (a) the U.S. Trustee; (b) each of 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 of the District of Delaware; (f) the United States Transportation Command; (g) the Defense Logistics Agency - Energy; (h) 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.

WHEREFORE, the Debtors respectfully request that this Court enter an order substantially in the form annexed hereto authorizing the Debtors to file the Fee Letter under seal and grant such other and further relief as is just and proper.

Dated: September 28, 2012
Wilmington, Delaware

/s/ M. Blake Cleary
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*Proposed Attorneys for the
Debtors and Debtors in Possession*

Exhibit A
Proposed Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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

**ORDER GRANTING MOTION OF DEBTORS FOR AUTHORITY TO FILE UNDER
SEAL FEE LETTER RELATED TO DEBTOR IN POSSESSION CREDIT FACILITY**

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”), requesting entry of an order pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018 and Local Rule 9018-1(b) authorizing the Debtors to file, under seal, that certain Fee Letter entered into in connection with the Debtors’ DIP Credit Agreement; 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

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

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 interest 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, ADJUDGED, and DECREED that:

1. The Debtors are hereby authorized to file the Fee Letter under seal pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018 and Local Rule 9018-1(b).

2. The Fee Letter and its terms are confidential and shall remain under seal, and shall not be made available to anyone, except that copies shall be provided to the U.S. Trustee and any Creditors' Committee appointed in these cases (once appointed) and their legal and financial advisors, all on a confidential basis, and to other parties as otherwise ordered or required by the Court.

3. The U.S. Trustee and any Creditors' Committee appointed in these cases (once appointed) and their legal and financial advisors shall keep the Fee Letter confidential.

4. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: _____, 2012
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Fee Letter

