

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

-----X
:

In re : **Chapter 11**

:

SOUTHERN AIR : **Case No. 12-12690 (CSS)**

HOLDINGS, INC., et al., :

:

Debtors.¹ : **Jointly Administered**

:

: **Hearing Date: March 14, 2013 at 2:00 p.m. (Eastern Time)**

: **(requested)**

: **Objection Deadline: March 11, 2013 at 4:00 p.m. (Eastern Time)**

: **(requested)**

-----X

**MOTION OF DEBTORS FOR AUTHORITY TO
FILE UNDER SEAL FORM OF MANAGEMENT AGREEMENT
IN SECOND AMENDMENT TO PLAN SUPPLEMENT**

Southern Air Holdings, Inc. (“Holdings”) and its affiliated debtor entities, as debtors and debtors in possession (collectively, the “Debtors”), by and through their undersigned counsel, having contemporaneously filed the *Second Amendment to Plan Supplement in Support of Second Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code* (the “Second Amendment”) pursuant to Section 27.1 of that certain *Second Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code*, dated January 18, 2013 [Docket No. 470] (as further amended, modified, or supplemented from time to time, the “Plan”),² hereby move (the “Motion”) for entry of an order, substantially in the form attached hereto as Exhibit A (the “Proposed Order”), pursuant to section

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 herein but not otherwise defined shall have the meanings ascribed to them in the Plan.



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 Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing the Debtors to file under seal the form of Management Agreement contained in the Second Amendment (the “Management Agreement”), and, in support thereof, respectfully state as follows:

Jurisdiction

1. This Court has jurisdiction to consider this matter 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. 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 September 28, 2012 (the “Petition Date”), each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b).

3. On November 21, 2012, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) filed a notice [Docket No. 293] appointing a statutory committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Creditors’ Committee”). No trustee or examiner has been appointed in these chapter 11 cases.

4. On January 18, 2013, the Debtors filed the Plan and the *Disclosure Statement for the Second Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 472] (the “Disclosure Statement”). On January 29, 2013, the Court entered an order approving the Disclosure Statement [Docket No. 518].

5. On February 19, 2013, the Debtors filed that certain *Plan Supplement in Support of Second Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code*, dated February 19, 2013 [Docket No. 573] (as may be amended, modified, or supplemented from time to time, the “Plan Supplement”). On February 26, 2013, the Debtors filed the first amendment to the Plan Supplement [Docket No. 598].

6. A hearing to consider confirmation of the Plan is scheduled for March 14, 2013.

Relief Requested

7. The Debtors respectfully request that the Court enter an order authorizing the Debtors to file the Management Agreement under seal and directing that such document remain under seal, confidential, and not be made available to anyone; provided, however, that copies shall be provided to the Court, the U.S. Trustee, pursuant to section 107(c)(3) of the Bankruptcy Code, and, in accordance with the DIP Credit Agreement³ and the Final DIP Order,⁴ the DIP Lenders (as defined in the Final DIP Order), Oak Hill Capital Management (“Oak Hill”),

³ That certain *Senior Secured Super-Priority Debtor-in-Possession Credit Agreement*, dated as of September 28, 2012, among Cargo 360, Inc., as borrower, various financial institutions and other persons from time to time parties thereto, as lenders, and Canadian Imperial Bank of Commerce, New York Agency, as administrative agent (the “DIP Credit Agreement”).

⁴ On October 25, 2012, the Court entered the *Final Order (I) Authorizing Debtors (A) To Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, and 364, (B) to Use Case Collateral Pursuant to 11 U.S.C. § 363, and (II) Granting Certain Protections to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364* [Docket No. 223] (the “Final DIP Order”).

the Creditors' Committee, and the Prepetition Lenders, as well as their respective legal and financial advisors (collectively, the "Confidential Parties"), all on a confidential basis.

Basis for Relief Requested

8. Section 107(b) of the Bankruptcy Code grants bankruptcy courts the authority to issue orders protecting entities from potential harm resulting 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).

9. 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).

10. 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.*

11. The Debtors submit that the Management Agreement 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 Ctrs., Inc.*, 199 B.R. 376, 382 (Bankr. N.D. Ill. 1996).

12. The Management Agreement sets forth the employment terms for certain members of Reorganized Holdings’ management team, including, without limitation, such individuals’ respective duties, salaries, bonus structure, and perquisites. Disclosing the Management Agreement would not only impact the employees’ privacy interests, it could also adversely affect the Debtors’ competitive position in the marketplace. Specifically, publicizing the terms contained in the Management Agreement may aid the Debtors’ competitors by providing information that could be used to lure away employees that are critical to the Reorganized Debtors’ successful operations. Additionally, dissemination of the material in the Management Agreements may compromise the Reorganized Debtors’ ability to negotiate other employee agreements in the future. Courts in this and other jurisdictions have previously determined that agreements containing employee incentive bonus structures and salary terms, like the Management Agreement, qualify as containing “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 JER/Jameson Mezz Borrower I LLC*, Case No. 11-13392 (MFW) (Bankr. D. Del. Dec. 13, 2012) (authorizing debtors to file redacted versions of the new management agreement); *In re WP Steel Venture LLC.*, Case No. 12-11661 (KJC) (Bankr. D. Del. Jul. 9, 2012) (authorizing debtors to file management agreement under seal); *In re Great Atlantic & Pacific Tea Company, Inc.*, Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Aug. 17, 2011) (authorizing debtors to file employment agreement and severance agreement under seal); *In re Capmark Financial Group Inc.*, Case No.09-13684 (CSS) (Bankr. D. Del. Apr. 9, 2010) (directing portions of the postpetition performance incentive plan for insider employees to be filed under seal).

13. If disclosed, the contents of the Management Agreement would divulge confidential and commercially sensitive information relating to, among other things, salary and bonus structure for certain key management employees. Moreover, the Debtors submit that the Confidential Parties include those parties with an interest in the terms of the Management Agreement, and, therefore, limiting disclosure to the Confidential Parties will subject the Management Agreement to sufficient scrutiny while minimizing the potential adverse impact of disclosure. As a result, the Debtors submit that the factual and legal predicates for filing the Management Agreement under seal have been satisfied.

Notice

14. Notice of this Motion has been provided to (a) the U.S. Trustee; (b) counsel to the Creditors' Committee; (c) Canadian Imperial Bank of Commerce, New York Agency ("CIBC"); (d) counsel to CIBC; (e) Oak Hill; (f) counsel to Oak Hill; and (g) all parties who have filed a notice of appearance and request for service of documents in these chapter 11 cases. The Debtors respectfully submit that such notice is sufficient under the circumstances.

No Previous Request

15. 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 Order granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: March 1, 2013
Wilmington, Delaware

/s/ Travis G. Buchanan
M. Blake Cleary (No. 3614)
Maris J. Kandestin (No. 5294)
Travis G. Buchanan (No. 5595)
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

*Attorneys for the Debtors and
Debtors in Possession*

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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

**ORDER GRANTING MOTION OF DEBTORS FOR
AUTHORITY TO FILE UNDER SEAL FORM OF MANAGEMENT
AGREEMENT IN SECOND AMENDMENT TO PLAN SUPPLEMENT**

Upon the motion, dated March 1, 2013 (the “Motion”),² of Southern Air Holdings, Inc. and its affiliated debtor entities, 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 the form of Management Agreement contained in the Second Amendment (the “Management 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,

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

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

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, as set forth herein.
2. The Debtors are hereby authorized to file the Management Agreement under seal pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b).
3. The Management Agreement is confidential and shall remain under seal, and shall not be made available to anyone, except that copies shall be provided to the Court, the U.S. Trustee, the DIP Lenders, Oak Hill, the Creditors' Committee, and the Prepetition Lenders, as well as their respective legal and financial advisors, all on a confidential basis, and to any other parties as otherwise ordered or required by the Court.
4. The U.S. Trustee, the DIP Lenders, Oak Hill, the Creditors' Committee, and the Prepetition Lenders, as well as their respective legal and financial advisors, shall keep the Management Agreement confidential.
5. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: _____, 2013
Wilmington, Delaware

CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE