

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

)	
In re:)	Chapter 11
)	
SOUTHERN AIR HOLDINGS, INC. et al.,)	Case No. 12-12690 (CSS)
)	
Debtors.¹)	(Jointly Administered)
)	
)	Hrg. Date: March 14, 2013 at 10:00 a.m. (ET)
)	Obj. Deadline: March 6, 2013 at 12:00 p.m. (ET)²
)	Related Doc. No. 470

**UNITED STATES' OBJECTIONS TO SECOND AMENDED
JOINT PLAN OF AFFILIATED DEBTORS PURSUANT TO
CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

The United States of America (“United States” or “Government”) hereby objects pursuant to 11 U.S.C. § 1128(b) to confirmation of the Second Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (the “Plan”). In support of its objection, the United States states as follows:

1. On September 28, 2012, Southern Air Holdings, Inc. and its affiliated debtor entities (collectively “the Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. On or about January 18, 2013, the Debtors filed the Plan. The confirmation hearing is scheduled for March 14, 2013.

3. The United States is a creditor and party in interest in this case. The Debtors have

¹ The Debtors in these cases are: (i) Southern Air Holdings, Inc.; (ii) Cargo 360, Inc.; (iii) Southern Air, Inc.; (iv) Air Mobility, Inc.; (v) 21110 LLC; (vi) 21111 LLC; (vii) 21221 LLC; (viii) 21550 LLC; (ix) 21576 LLC; (x) 21590 LLC; (xi) 21787 LLC; (xii) 21832, LLC; (xiii) 23138 LLC; (xiv) 24067 LLC; (xv) 46914 LLC; (xvi) Aircraft 21255, LLC; (xvii) Aircraft 21380, LLC; and (xviii) CF6-50, LLC.

² The Debtors extended the deadline for the United States to file its objections.



contracts with various entities within the Department of Defense (“DOD”). As of the petition date, DOD had fuel related claims against the Debtors exceeding \$9,000,000, and DOD owed the Debtors over \$7,000,000 for transportation services and fuel adjustments. The Debtors and the United States executed and the Court approved a stipulation which provides for, among other things, payment of the DOD claims. In addition, Customs and Border Protection filed a claim for penalties and liquidated damages in the amount of \$9,000 which has since been reduced to \$4,000. The Department of Labor also has filed a claim in this case relating to its ongoing investigation of equal employment and compensation practices of the Debtor. The Federal Aviation Administration will have penalty claims against the Debtors; the United States Department of Agriculture will have a claim for aircraft inspection fees; and the Army and Air Force Exchange Service will have claims for catering services provided to the Debtors.

The government bar date for filing claims against the Debtors is March 27, 2013, and undersigned counsel for the United States is still determining the nature and amount of claims which government agencies will have against the Debtors.

OBJECTIONS

4. The definition of “Allowed Claim” set forth in Section 1.6 and the discharge provision contained in Section 31.1(a) of the Plan provide that no post-petition interest shall accrue or be paid on claims. To the extent that the Plan seeks to preclude recovery of interest on administrative claims, the United States objects. The Bankruptcy Code does not preclude an award of interest on post-petition administrative claims.

5. The definition of “Subordinated Claim” includes any “Claim against the Debtors or the Debtors’ estates, proof of which was filed on or after the date designated by the Bankruptcy Court or established by the Bankruptcy Code as the last date for filing such proof of claim. . . .”

Plan, Article I, § 1.154. A Subordinated Claim receives no distribution under Section 11.1 of the Plan. The United States objects to the Plan to the extent it seeks to automatically subordinate claims filed after the applicable bar date. If the United States fails to timely file a claim or discovers a claim after the bar date, the bankruptcy rules provide the United States with an opportunity to file the claim after the bar date if the failure to file “was the result of excusable neglect.” Fed. R. Bankr. P. 9006(b). Under such circumstances, the claim should not be subordinated and receive no Plan distribution.

6. The United States objects to Article XXVI of the Plan to the extent it provides for the retention of exclusive jurisdiction over matters involving the United States and its agencies.

7. As a result of negotiations, the Debtors provided the United States with “carveout” language in Article XXXI, Section 31.6(a) of the Plan relating to, among other things, releases and injunctions. Specifically, Section 31.6(a) begins with “Notwithstanding anything contained in the Plan or Confirmation Order to the contrary. . .” and states that, among other things, the United States is not barred from, “subsequent to the Effective Date, pursuing any police or regulatory action,” and also that “Nothing in the Plan or Confirmation Order shall provide to any Person or Entity (other than a Debtor) any exculpation, release, discharge, preclusion of, or injunction against (i) any liability or other obligation owed by such Person or Entity to the United States, its agencies or departments (ii) or any Claim, cause of action, or other right held by the United States, its agencies or departments.” Plan, Article XXXI, §31.6(a).

Article XXXI contains a number of sections relating to discharge of claims, injunction on claims, voluntary releases by holders of claims, and injunction related to releases. All of these sections begin with the phrase “Except as otherwise expressly provided in the Plan or Confirmation Order. . . .” In that same Article, the Plan also contains a supplemental injunction

provision in Section 31.11 for Released Parties (as defined in the Plan) and begins with the phrase “Notwithstanding anything contained herein to the contrary. . . .”

The United States is concerned that the language set forth in the supplemental injunction provision in Section 31.11 of the Plan may create an ambiguity with regard to the rights of the United States, as set forth in Section 31.6(a). On February 26, 2013, undersigned counsel for the United States reached out to Debtors’ counsel and requested that the “Notwithstanding anything contained herein to the contrary” language in Section 31.11 be changed to “Except as otherwise expressly provided in the Plan or the Confirmation Order,” in order to eliminate any ambiguity with regard to the scope of the language provided to the Government in Section 31.6(a) of the Plan. At the time of the filing of this objection, Debtors’ counsel has not yet informed the United States whether the language will be changed. Accordingly, to protect the rights of the United States and eliminate any ambiguity regarding those rights, the United States objects to the supplemental injunction provision contained in Section 31.11 and respectfully requests that the language in Section 31.11 be modified in the beginning to read as follows: “Except as otherwise expressly provided in the Plan or the Confirmation Order. . . .”³

WHEREFORE, the United States respectfully requests that the Court deny confirmation of the Plan.

³ To the extent that the Debtors are unwilling to modify the language in Section 31.11, the United States hereby incorporates by reference the objection to this plan provision filed by the Internal Revenue Service (Docket No. 613).

March 6, 2013

Respectfully submitted,

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Certificate of Service

I hereby certify that on this 6th day of March 2013, I caused copies of the foregoing document to be served by electronic mail on the following parties:

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and by electronic mail on all parties on the Court's ECF system.

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