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Proposed Co-Counsel for Debtor
and Debtor in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII**

In re

HAWAIIAN AIRLINES, INC.
a Hawaii corporation,

Debtor.

Case No. 03 - _____
(Chapter 11)

**MOTION FOR ENTRY OF AN ORDER (A)
ESTABLISHING A PROCEDURE FOR
TREATMENT OF RECLAMATION
CLAIMS AND (B) PROHIBITING THIRD**

**PARTIES FROM INTERFERING WITH
DELIVERY OF THE DEBTOR'S GOODS;
PROPOSED ORDER**

Date: March 21, 2003

Time:

Judge: Hon. Robert J. Faris

Hawaiian Airlines, Inc., as debtor and debtor in possession (the "Debtor"), by and through its undersigned proposed co-counsel, hereby moves this Court for entry of an order (A) establishing a procedure for treatment of reclamation claims (the "Reclamation Claims") and (B) prohibiting third parties from interfering with delivery of the Debtor's goods (the "Motion"). In support of the Motion, the Debtor respectfully states as follows:

I. JURISDICTION

1. This Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The bases for the relief requested herein are sections 105(a), 362, 503(b), 546(c) and 546(g) of title 11 of the United States Code (the "Bankruptcy Code").

II. BACKGROUND

3. On March 21, 2003 (the "Petition Date"), the Debtor filed a petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy

Code”) in the United States Bankruptcy Court for the District of Hawaii (the “Bankruptcy Court”). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is operating its businesses and managing its properties as a debtor in possession. No trustee, examiner or committee of creditors has been appointed in the Debtor’s chapter 11 case.

4. The Debtor was incorporated in January of 1929 under the laws of the Territory of Hawaii and is currently a subsidiary of Hawaiian Holdings, Inc. (“Hawaiian Holdings”),¹ a Delaware corporation whose common stock is traded on the American Stock Exchange and Pacific Exchange under the ticker symbol “HA.” As part of the regular Securities and Exchange Commission filings of Hawaiian Holdings, Hawaiian Holdings reports its financial and operating results with those of the Debtor on a consolidated basis.

The Debtor’s Business

5. The Debtor is engaged primarily in the scheduled transportation of passengers, cargo and mail. The Debtor’s passenger airline business is its chief source of revenue. Principally all of the Debtor’s flights either originate or end in the state of Hawaii. The Debtor provides passenger and cargo service from Hawaii, predominately Honolulu, to the cities of Los Angeles, Ontario,

¹ Hawaiian Holdings holds 49.1% of the outstanding common stock of the Debtor directly. The remaining 50.9% of the outstanding common stock of the Debtor is held by AIP, Inc. (“AIP”), a wholly-owned subsidiary of Hawaiian Holdings.

Sacramento, San Diego and San Francisco, California; Seattle, Washington; Portland, Oregon; Phoenix, Arizona; and Las Vegas, Nevada (the “Transpacific Routes”). The Debtor also provides non-stop service between and among the six major islands of the state of Hawaii (the “Interisland Routes”) and weekly service to each of Pago Pago, American Samoa and Pepeeete, Tahiti in the South Pacific (the “South Pacific Routes”). Charter service is provided from Honolulu to Anchorage, Alaska (the “Charter Routes”). Based upon the Debtor’s operating revenues, the Debtor is the largest airline headquartered in Hawaii.

6. Based on its unaudited results, the Debtor had a net loss of approximately \$58 million for the twelve months ended December 31, 2002 (“Year 2002”) on operating revenue of approximately \$632 million for the same period. In comparison, for the twelve months ended December 31, 2001 (“Year 2001”), the Debtor reported net income of approximately \$5 million on operating revenue of approximately \$612 million for the same period. The Debtor’s assets and liabilities, as of December 31, 2002, were approximately \$256 million and \$399 million, respectively. The Debtor’s reported assets and liabilities, as of December 31, 2001, were approximately \$305 million and \$327 million, respectively.

7. The Debtor is party to a network of agreements among airlines. Because of the interdependent nature of airline operations, coordination among airlines, provision of airline services, and efficient service by the airline industry to

the traveling public, in general, would be virtually impossible without such agreements. Among other things, these agreements facilitate cooperation among airlines with respect to such critical activities as making reservations and transferring passengers, packages, baggage and mail among airlines.

The Debtor's Fleet

8. Beginning in the fourth quarter of 1999, the Debtor initiated a plan to replace its entire fleet of McDonnell Douglas DC-9 aircraft used to service its Interisland Routes. This effort was completed in the first quarter of 2002, with the Debtor taking delivery of thirteen Boeing 717-200 aircraft (the "717 Aircraft").

9. Similarly, in the fourth quarter of 2001, the Debtor initiated a plan to replace, by June 2003, its entire fleet of McDonnell Douglas DC-10 aircraft (the "DC-10 Aircraft") used to service the Transpacific Routes, South Pacific Routes and Charter Routes (the "Overseas Routes") with sixteen Boeing 767-300ER aircraft (the "767 Aircraft"). To date, the Debtor has taken delivery of ten new and four used Boeing 767-300ER aircraft and has returned eleven DC-10 Aircraft leased from Continental Airlines, Inc. and a subsidiary of American Airlines, Inc ("American"). The Overseas Routes are currently serviced by fourteen Boeing 767-300ER aircraft.

10. All of the Debtor's aircraft are leased from various lessors under either financing or operating leases. Three of the Debtor's 767 Aircraft are leased

under fifteen-year operating leases with a subsidiary of Ansett Worldwide Aviation Services, Inc. (“Ansett”) and were delivered to the Debtor in the fourth quarter of 2001. Four 767 Aircraft were delivered in 2002 under seven-year operating leases with International Lease Finance Corporation. Seven of the Debtor’s 767 Aircraft are leased under eighteen-year operating leases from Ansett and a subsidiary of Boeing Capital Corporation (“Boeing”). Each of the 717 Aircraft is leased under an eighteen-year leveraged financing lease with Boeing. The Debtor’s four remaining DC-10 Aircraft are leased under operating leases with American and B.C.I. Leasing.

Employees

11. The Debtor has approximately 3,200 active employees, approximately 2,600 of which are employed on a full time basis. The majority of the Debtor’s employees are covered by labor agreements with the International Association of Machinists and Aerospace Workers (AFL-CIO) (“IAM”); the Airline Pilots Association, International (“ALPA”); the Association of Flight Attendants (“AFA”); the Transport Workers Union (“TWU”); or the Employees of the Communications Section (“Communications Section”). Each of these labor agreements, other than the contract with the seven-member Communications Section, was renegotiated in 2000 or 2001, and will be subject to renegotiation again in 2004 or 2005.

Previous Restructurings

12. On September 21, 1993, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court (the “1993 Bankruptcy”).² Following confirmation of the Debtor’s plan of reorganization in the 1993 Bankruptcy on August 30, 1994, the Debtor successfully emerged from the 1993 Bankruptcy. Thereafter, on August 29, 2002, the Debtor was restructured from a public company into a wholly-owned subsidiary of Hawaiian Holdings and AIP (the “Restructuring”). As part of the Restructuring, the stockholders of the Debtor became stockholders of Hawaiian Holdings and Hawaiian Holdings assumed sponsorship of the Debtor’s existing stock agreements. Prior to the Restructuring, the common stock of the Debtor was publicly traded on the American Stock Exchange and Pacific Exchange under Hawaiian Holdings’ ticker symbol of “HA.”

The Debtor’s Current Financial Crisis

13. The Debtor’s current financial crisis was precipitated by a confluence of factors relating, in large part, to the depressed economic conditions of both the United States and Japan. These factors include: (a) decreased fare revenue, (b) high aircraft lease costs, (c) high labor costs and (d) increased insurance, security and fuel costs. Although the terrorist attacks of September 11, 2001 are one of the

most obvious and publicized reasons for the Debtor's current financial crisis, it is the significant, though related, decline in the economies of the United States and Japan that has most contributed to the necessity of the Debtor's chapter 11 filing.

14. Following the events of September 11, 2001, the Debtor has seen a marked and dramatic reduction in the demand for travel to and within the islands of Hawaii. This reduced demand has been exacerbated by the flagging economies of the United States and Japan since that time. The demand for vacation travel, which historically has been the Debtor's greatest source of income, has been most affected by the economic decline. In order to attract passengers, airlines, including the Debtor, have been forced to lower their fares. The introduction of "low cost carriers," such as Jet Blue, has led to a further reduction in fare structure, as national airlines have been forced to reduce ticket prices to remain competitive. The combination of fewer ticket sales made at reduced fares continues to impact the Debtor's revenue and earnings negatively.

15. Beginning in late 1999, as discussed above, the Debtor began a refueling process under which its aging fleet of McDonnell Douglas DC-9 aircraft and DC-10 Aircraft would be completely replaced by the end of 2003. By July of 2001, the Debtor had entered into the last of its agreements with lessors that would provide the aircraft for this refueling. Although the terms of these agreements

² United States Bankruptcy Court, District of Hawaii, Case No. 93-01074.

were considered to be fair and at market rates when agreed to, the subsequent and unforeseen decline in economic conditions in the United States and abroad have caused the terms of such leases to be highly unfavorable. Because its aircraft lease costs are grounded in economic assumptions that have failed to materialize, the Debtor has been forced to shoulder the crippling costs of over-market leases. For the Year 2002, expenses associated with the Debtor's aircraft leases made up 12% of its total operating expenses.

16. Similarly, because the Debtor's union agreements were renegotiated in 2000 and 2001, the Debtor's labor costs have not been in line with current economic conditions. Based upon market assumptions made in 2000 and pre-September 11, 2001, the Debtor's labor costs have exceeded what the Debtor could realistically maintain based upon its revenues. This relative increase in labor costs, as compared to revenue, has negatively impacted the Debtor's ability to remain a viable enterprise. For the Year 2002, the Debtor's labor costs made up 30% of its total operating expenses.

17. As a direct result of the events of September 11, 2001 and the long-standing international crises in the Middle East, the Debtor has seen increases in several of its cost centers. For instance, insurance rates associated with airline operations have increased substantially as compared to pre-September 11, 2001 rates. Because of increased airline security requirements, the Debtor also has been

faced with increased security expenditures. Moreover, fuel costs, which made up approximately 14% of the Debtor's operating expenses for Year 2002, also have steadily increased during this period. These increased costs, in the face of declining revenues, have further weakened the Debtor's ability to succeed as a going-concern.

Prepetition Activities

18. The two largest controllable components of the Debtor's cost structure are labor and aircraft costs. These are, therefore, the two areas upon which the Debtor had focused prior to the Petition Date in trying to accomplish a successful out-of-court financial and operational restructuring. To that end, the Debtor has, particularly within the past year, been actively negotiating with both its aircraft lessors and labor unions to reduce its aircraft and labor costs, respectively. These negotiations have continued up until the Debtor's bankruptcy filing. On February 20, 2003, the Debtor's employees represented by IAM agreed to \$3.8 million in concessions. On March 6, 2003, the Debtor's employees represented by ALPA reached an agreement with the Debtor with respect to approximately \$8 million in concessions. Similarly, on March 11, 2003, the Debtor's employees represented by AFA agreed to approximately \$3.5 million in concessions. Although the Debtor and its labor unions have made great progress in these negotiations, it now appears that the only practicable way for the Debtor to reorganize is under the protection

afforded to it under the Bankruptcy Code, as the Debtor has not been successful in its attempts to negotiate significant concessions from its aircraft lessors.

III. RELIEF REQUESTED

19. By this Motion, the Debtor seeks entry of an order (a) providing administrative treatment for certain holders of valid Reclamation Claims and (b) establishing procedures for the resolution and payment of valid Reclamation Claims against the Debtor.

IV. PROCEDURES FOR RECLAMATION CLAIMS

20. The Debtor proposes that this Court establish the following procedures for processing and treating Reclamation Claims:

- (a) Any vendor asserting a Reclamation Claim must demonstrate that it has satisfied all requirements entitling it to a right of reclamation under applicable state law and section 546(c)(1) of the Bankruptcy Code.
- (b) The Debtor will file a report (the “Report”), on notice to each party in interest, setting forth the asserted Reclamation Claims, and whether the Debtor believes such claims are valid;
- (c) Absent further order of the Court, the Report shall be filed by the Debtor within ninety (90) days of the Court’s entry of an order on this Motion;
- (d) If the Debtor fails to file the Report within the required period of time, any holder of a Reclamation Claim (a “Reclamation Claimant”) may bring a motion for allowance of its Reclamation Claim;
- (e) All parties in interest shall have the right and opportunity to object to the treatment of any asserted Reclamation Claim in the

Report within twenty (20) days after such Report is filed (an “Objection”); and

- (f) The Reclamation Claims deemed invalid in the Report that are not properly the subject of a timely filed Objection, will be deemed invalid without further order of the Court.

21. The Debtor further requests that the Court authorize the Debtor, in its sole and absolute discretion, to make goods available for pickup by any Reclamation Claimant (a) who properly and timely makes a written demand for the reclamation of goods pursuant to section 546(c)(1) of the Bankruptcy Code and section 2-702 of the Uniform Commercial Code (or applicable state law), (b) whose goods the Debtor has accepted for delivery, and (c) who properly identifies the goods to be reclaimed.

22. Additionally, the Debtor requests that, pursuant to sections 105(a) and 362 of the Bankruptcy Code, the Court enjoin the Reclamation Claimants and others from seeking to reclaim any goods or interfering with the delivery of any such goods. Such relief will facilitate uninterrupted operation of the Debtor’s business.

V. BASIS FOR RELIEF

23. Section 546(c)(1) of the Bankruptcy Code authorizes vendors who have sold goods to a debtor in the ordinary course of business to reclaim such goods (subject to certain other limitations) if: (a) the debtor was insolvent when the goods were delivered; (b) the seller demands reclamation in writing; (c) such

demand is made within ten (10) days after the debtor received possession of the goods (or within twenty (20) days if the ten (10) day period would expire after such debtor's petition date); and (d) the seller is otherwise entitled to reclamation under applicable state law. In order for a supplier to reclaim goods, the debtor must have had actual possession of the goods at the time the debtor received the written reclamation demand. See In re Rozel Industries, Inc., 74 B.R. 643, 646 (Bankr. N.D. Ill. 1987); In re Braniff, Inc., 113 B.R. 745, 751 (Bankr. M.D. Fla. 1990).

24. The Debtor anticipates that a number of vendors may assert Reclamation Claims against the Debtor and otherwise attempt to interfere with the delivery of goods to the Debtor after receiving notice of the commencement of this chapter 11 case. Because of the size of the Debtor's business operations and the volume of inventory receipts, it may not be feasible for the Debtor to return inventory shipments to vendors in response to Reclamation Claims.

25. The Debtor's business will be severely disrupted if such vendors are allowed to exercise their right to reclaim goods without a uniform procedure that is fair to all parties. Furthermore, absent the establishment of an orderly process for dealing with Reclamation Claims, management's attention will be diverted from important operational issues to address Reclamation Claims. See In re Griffin Retreading Co., 795 F.2d 676, 679-80 (8th Cir. 1986) (affirming grant of

administrative claims because such claims provide flexibility to the bankruptcy estate by permitting use of property necessary for a successful reorganization and protecting the seller without placing the plan in jeopardy).

26. The relief requested herein will ensure the continuous supply of goods that are vital to the Debtor's continuous operations and integral to its successful reorganization. See In re Continental Airlines, 125 B.R. 415, 417-18 (Bankr. D. Del. 1991) (denying reclamation of equipment and granting administrative expense claim to creditor where equipment was necessary to debtors' reorganization).

27. Moreover, numerous courts in this Circuit and other Circuits have authorized debtors in possession to establish procedures regarding reclamation claims that are similar to those in this Motion. See In re US Airways Group, Inc., Case No. 02-83984 (SSM) (Bankr. E.D. Va. Sep. 12, 2002); In re Kmart Corporation, Case No. 02-02474 (SPS) (Bankr. N.D. Ill. Jan. 22, 2002); In re Trans World Airlines, Inc., Case No. 01-00056 (PJW) (Bankr. D. Del. Jan. 10, 2001); In re UAL Corporation, Case No. 02-48191 (ER) (Bankr. N.D. Ill. Dec. 11, 2002); In re Washington Group International, Inc., Case No. 01-31627 (GWZ) (Bankr. D. Nev. May 14, 2001); In re Crown Vantage, Inc., Case No. 00-41584 (RJN) (Bankr. N.D. Cal. Jul. 25, 2000); In re Lindemann Produce, L.L.C., Case No. 00-32672 (GWZ) (Bankr. D. Nev. Feb. 8, 2001).

28. In light of the foregoing, the Debtor believes that the relief requested in this Motion is appropriate and is in the best interest of the Debtor, its estate and its creditors.

VI. NOTICE

29. Notice of the Motion has been provided to (i) the Office of the United States Trustee for the District of Hawaii, (ii) the parties identified on the Debtor's list of twenty largest unsecured creditors, (iii) the Securities and Exchange Commission and (iv) the Internal Revenue Service.

VII. NO PRIOR REQUEST

30. No previous request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtor requests entry of an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief the Court deems just and proper.

Dated: Honolulu, Hawaii, March 21, 2003

By: Lisa Beckerman
NICHOLAS C. DREHER, ESQ.
THEODORE D.C. YOUNG, ESQ.
CADES SCHUTTE LLC

and
LISA G. BECKERMAN, ESQ.
DAVID SIMONDS, ESQ.
AKIN GUMP STRAUSS HAUER & FELD LLP
Proposed Counsel for Debtor and Debtor in
Possession

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re

HAWAIIAN AIRLINES, INC.
a Hawaii corporation,

Debtor.

Case No. 03 -
(Chapter 11)

**ORDER (A) ESTABLISHING A
PROCEDURE FOR TREATMENT OF
RECLAMATION CLAIMS AND (B)
PROHIBITING THIRD PARTIES FROM
INTERFERING WITH DELIVERY OF
THE DEBTOR'S GOODS**

This matter coming before the Court on the Motion for Order (A) Establishing a Procedure for Treatment of Reclamation Claims and (B) Prohibiting Third Parties from Interfering with Delivery of the Debtor's Goods (the "Motion"),¹ filed by the above-captioned debtor and debtor in possession (the "Debtor"); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409, and (d) proper and adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary; and the Court having considered the Declaration of Christine R. Deister in Support of First-Day Motions

¹ Capitalized terms not otherwise defined herein shall have the meaning given to them in the Motion.

and Applications; and the Court having considered all evidence and oral arguments of counsel in support of the Motion; and the Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein and the Court having determined that the relief sought in the Motion is in the best interest of the Debtor and its estate; and after due deliberation and sufficient cause appearing;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED in its entirety.
2. The following procedures, outlined in the Motion for the treatment and processing of reclamation claims, if any, are hereby approved:
 - (a) Any vendor asserting a Reclamation Claim must demonstrate that it has satisfied all requirements entitling it to a right of reclamation under applicable state law and section 546(c)(1) of the Bankruptcy Code;
 - (b) The Debtor will file a Report, on notice to each party in interest, setting forth the asserted Reclamation Claims, and whether the Debtor believes such Claims are valid;
 - (c) Absent further order of the Court, the Report shall be filed by the Debtor within ninety (90) days of the Court's entry of this Order;
 - (d) If the Debtor fails to file the Report within the required period of time, any Reclamation Claimant may bring a motion for allowance of its Reclamation Claim;

- (e) All parties in interest shall have the right and opportunity to file an Objection to the treatment of any asserted Reclamation Claim in the Report within twenty (20) days after such Report is filed; and
- (f) The Reclamation Claims deemed invalid in the Report that are not properly the subject of a timely filed Objection, will be deemed invalid without further order of this Court.

3. The Debtor is hereby authorized, but not directed, to refuse all demands for actual reclamation and return of goods; provided, however, that pursuant to section 546(g) of the Bankruptcy Code, the Debtor is authorized but not directed to return to vendors goods that were delivered in exchange for appropriate credit.

4. Any right of reclamation with respect to any and all Reclamation Claims is hereby denied under the terms set forth in the Motion, effective as of the Petition Date.

5. In accordance with section 362 of the Bankruptcy Code and the Motion, vendors and all other third parties are not permitted to, and are hereby prohibited from, interfering in any way with the postpetition shipment or delivery of goods to the Debtor.

6. Nothing contained herein or in the Motion shall constitute a finding, or be deemed or interpreted to be an admission of any kind, that the Debtor has been, or is currently, insolvent.

7. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

8. Notwithstanding the possible applicability of Bankruptcy Rules 6004(g), 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

10. Nothing contained herein or in the Motion shall limit the Debtor's ability to make payments to creditors in accordance with any other orders of this Court.

Dated: Honolulu, Hawaii, _____, 2003.

UNITED STATES BANKRUPTCY JUDGE

In re Hawaiian Airlines, Inc., Chapter 11, Case No. 03-_____;
**ORDER (A) ESTABLISHING A PROCEDURE FOR TREATMENT OF
RECLAMATION CLAIMS AND (B) PROHIBITING THIRD PARTIES
FROM INTERFERING WITH DELIVERY OF
THE DEBTOR'S GOODS**