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-and-

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Hawker Beechcraft, Inc., *et al.*,

Debtors.

Chapter 11

Case No. 12-11873 (SMB)

(Jointly Administered)

**OBJECTION OF INTERNATIONAL ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO TO DEBTORS' MOTION FOR THE ENTRY OF
AN ORDER AUTHORIZING THE DEBTORS TO ENTER INTO AN EXCLUSIVE
NEGOTIATIONS AGREEMENT AND A REFUND AGREEMENT**

The International Associations of Machinists and Aerospace Workers, AFL-CIO (“**IAM**”) submits this objection to the Debtors’ Motion for the Entry of an Order Authorizing the Debtors to Enter into an Exclusive Negotiations Agreement and a Refund Agreement (the “**Motion**”) and in support thereof states as follows:

The Motion

1. Through the Motion the Debtors seek an order approving an Exclusivity Agreement¹ and a related Refund Agreement with Superior Aviation Beijing, Co. Ltd. (“**Superior**”).² Although the Motion does not provide any information whatsoever regarding Superior, it appears to be an entity primarily backed and financed by the Chinese government.

2. In particular, paragraphs 2 and 9 of the Superior Proposal represent that (a) Superior is incorporated in the People’s Republic of China, (b) 40% of the equity of Superior is owned by the Beijing municipal government, (c) Shenzong Cheng, the chairman of Superior, together with his wife, purportedly own 100% of Beijing Superior Aviation Technology Corporation Ltd., the entity that owns 60% of Superior, and (d) the City of Beijing intends to finance the proposed transaction. *See* Superior Proposal attached as exhibit C to the Motion.

3. Under the terms of the Exclusivity Agreement, Superior will be given the exclusive right for a period of up to 45 days (the “**Access Period**”) to conduct due diligence and negotiate with the Debtors for the purpose of entering into a binding stalking horse agreement to purchase certain of the Debtors’ assets consistent with the terms of the Superior Proposal. During the Access Period, Debtors are prohibited from negotiating, soliciting or even encouraging an alternative transaction with any other prospective bidder.

4. As part of the Exclusivity Agreement, Superior has agreed to make two payments of \$25 million each (the “**Payments**”) which will be deposited into an account maintained by the Debtors. The Payments are intended to compensate the Debtors for the costs and expenses of preserving and keeping the “Hawker jets business open and operational,” but only to “levels as the Company and Prospective Buyer shall agree.” *See* paragraph 3 of the

¹ Capitalized terms used herein that are not defined herein shall have the meanings ascribed to them in either the Motion, Exclusivity Agreement or Superior Proposal.

² Although a copy of the Exclusivity Agreement is attached to the Motion as exhibit B, the Debtors have not attached a copy of the Refund Agreement on the grounds that it is confidential. *See* Motion, fn. 2.

Exclusivity Agreement attached as Exhibit B to the Motion. Significantly, although the Debtors rely heavily on the Payments and temporary preservation of the jets business as the basis to approve the Motion, neither the Debtors nor Superior have described the degree to which the jets business will be maintained or the factors that the Debtors and/or Superior will analyze to determine whether and to what extent the jets business will be preserved. Given that Superior must agree to the level of preservation, it effectively would be granted the unilateral right to cause the Debtors to shut down the jets business, thereby making the potential benefits of the Payments and Exclusivity Agreement illusory. Moreover, all or a portion of the Payments are subject to refund in the event the Exclusivity Agreement is terminated.

5. Furthermore, pursuant to paragraph 4 of the Exclusivity Agreement, Superior will be given exclusive access to the Debtors' "books, records, management personnel, facilities, properties and assets" throughout the term of the Access Period. Although Superior has the broad and unfettered right to terminate the Exclusivity Agreement "if it determines in its sole and absolute discretion that the Proposed Transaction is not likely to be consummated," the Debtors' right to terminate is triggered primarily by Superior's failure to make the Payments. *See* paragraphs 3 and 7 of Exclusivity Agreement.

6. With respect to the Superior Proposal, the Motion summarily describes it as including a \$1.79 billion cash purchase price that "contemplates a long-term investment in the Debtors' jet-related product lines." Motion, ¶ 15. The Debtors also state that the proposed transaction with Superior, or any higher bidder at an auction, would be effectuated through a plan of reorganization. *Id.* In fact, paragraph 1 of the Superior Proposal (attached as exhibit C to the Motion) indicates that the Target Assets that Superior seeks to acquire would be placed in the reorganized Debtors ("**r-HBC**") and that Superior would acquire 100% of the equity of r-HBC.

7. The Motion also claims, and the Superior Proposal states, that the Debtors' "defense-related businesses" (the "**Defense Businesses**") would be excluded from the

proposed transaction but that Superior would be entitled to a refund of up to \$400 million depending upon the amount of the sale proceeds generated by the Defense Businesses. *See* Motion, ¶ 15; Superior Proposal, ¶¶ 1 and 3. Neither the Motion nor the Superior Proposal, however, explain why Superior would be entitled to such a substantial refund upon the sale of the Defense Businesses.

8. While the Superior Proposal purports to exclude the Defense Businesses from the Target Assets, the refund provision (the terms of which are not disclosed) strongly suggests that Superior, a Chinese controlled and financed entity, is obtaining at least an equitable interest in those key and sensitive businesses which possess valuable information and technology that are important to national security.

9. Moreover, in addition to its entitlement to a refund from the sale of the Defense Businesses, paragraph 5 of the Superior Proposal expressly states that “Superior expects that after the Closing there will be ongoing relationships between r-HBC and the Defense Business.” These provisions, which the Debtors barely address, demonstrate that notwithstanding the Debtors’ efforts to portray the proposed transaction as one which will shield Superior from the Defense Businesses, the Defense Businesses are, in fact, significantly intertwined with the Target Assets and important to Superior. Not surprisingly, in light of Superior’s Chinese ownership and organizational structure and the national security and labor concerns associated therewith, the Superior Proposal is subject to numerous governmental approvals in China and the United States including, but not limited to, approval by the Committee on Foreign Investment in the United States. *See* Superior Proposal, ¶¶ 10 and 13.

10. Significantly, as part of the Superior Proposal, Superior would not assume any obligations relating to the Debtors’ defined benefit pension plans, including the pension plan covering IAM employees (the “**IAM Pension Plan**”), nor would it assume any obligations for post-employment benefits (other than COBRA benefits which are paid for by employees). *See*

Superior Proposal, ¶ 1. Upon termination of the pension plans, which are underfunded by approximately \$500 million, responsibility for the underfunding will pass to the Pension Benefit Guaranty Corporation.

11. Finally, although the Debtors' attempt to support the Motion by suggesting that the Superior Proposal "could preserve thousands of American jobs," *See* Motion, ¶ 15, there is nothing in the record to support such a belief. In fact, since last year the Debtors have laid off approximately 600 IAM-represented employees and have issued WARN notices to additional employees, and the Superior Proposal does not contain any commitment to preserve any jobs for any period of time. Indeed, paragraph 5 of the Superior Proposal acknowledges that Superior's goal is to "to take advantage of the growing Chinese market for business jets and the to-be-developed market for other aircraft." Although paragraph 5 of its proposal states generally that it "has no plan to relocate or terminate any manufacturing facilities or product lines," the fact remains that Superior has not made any commitment to American workers or the Wichita community, and there is no reason to believe that Superior, an entity owned and financed by the Chinese government and the Beijing municipal development corporations, would preserve jobs in the United States rather than eventually transporting the work to China.

The IAM Objection

12. The Motion, which the Debtors attempt to rush through on one week's notice, should be denied for a number of significant reasons.

13. First, the Debtors and the IAM have been, and are currently, in the process of collective bargaining negotiations in an effort to avoid litigation under section 1113 of the Bankruptcy Code. The negotiations revolve exclusively around the Debtors' proposed termination of their single employer defined benefit plans.

14. As noted earlier, under the Superior Proposal, the Debtors would effectively be required to terminate its Pension Plan for Hourly Paid Employees (the “**Hourly Plan**”) that covers Debtors’ employees represented by the IAM (as well as the Debtors’ two other pension plans), thereby significantly limiting the Debtors’ negotiating ability. The IAM, however, has proposed meaningful alternatives to the termination of the Debtors’ Hourly Plan during negotiations with the Debtors, including freezing the Hourly Plan and/or moving the IAM-represented employees to the multi-employer IAM National Pension Plan. If the Motion is approved, the Debtors (and the IAM) would be locked into the Superior Proposal for a period of up to 45 days, even though the Superior Proposal may never materialize into a binding agreement.

15. During this lengthy and crucial time period, the Debtors would, in effect, be precluded from engaging in true and meaningful collective bargaining negotiations because the Debtors’ options would be dictated by the terms of the speculative and non-binding Superior Proposal. In order to avoid this unfair and inequitable result, the Motion should be denied. Rather than approving the Exclusivity Agreement which relates to a non-binding proposal that is terminable at Superior’s unfettered discretion, the Debtors can both continue negotiations with all prospective bidders and engage in good faith and unrestrained negotiations with the IAM.

16. The Motion should also be denied because there are serious issues that should be fully investigated **before** the Debtors cease negotiations with other prospective purchasers and Superior is provided with the exclusive right for up to 45 days to negotiate the purchase of the Debtors in the manner envisioned by the Superior Proposal.

17. Perhaps most important, parties in interest should have an opportunity to a fully investigate the proposed purchaser and its financial backers and ascertain exactly what assets Superior proposes to purchase.

18. As noted above, the Motion does not contain any information whatsoever regarding Superior, its management or capital structure. The only information regarding Superior and its capital structure is contained in the Superior Proposal and that information is cursory at best.

19. Furthermore, although the Motion and Superior Proposal state that the Defense Businesses will be excluded from the Target Assets, the Debtors and Superior both acknowledge that Superior would be entitled to receive up to \$400 million upon the sale of the Defense Businesses. Moreover, the Superior Proposal makes clear that Superior, through r-HBC, intends to have undisclosed “ongoing relationships” with the Defense Business. *See* Superior Proposal, ¶ 5.

20. Given the potential national security concerns associated with the transfer to China of highly sensitive technology related to the aerospace industry and the fact that the proposed transaction would be subject to numerous regulatory approvals, it is critically important to fully assess the likelihood of whether those approvals can be obtained before the Debtors lock themselves (and their stakeholders) into an exclusive negotiating period with Superior and potentially chill the interest of other less risky bidders. The scant record before the Court precludes anyone from making an informed decision with respect to these important issues.

21. In addition, the Debtors’ request for approval of the Motion is based, in part, on their belief that the Superior Proposal “could” save thousands of American jobs. *See* Motion, ¶ 15. This assertion, however, is not supported by any concrete factual basis.

22. In fact, the Superior Proposal does not contain any commitment to keep any jobs in the United States for any period of time. Rather, paragraph 5 of the proposal states only that “Superior has no plan to relocate or terminate any manufacturing facilities or product line.” That is far from a promise or commitment to preserve the jobs of the Debtors’ employees in the United States.

