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# Hughes Hubbard & Reed

## Firm's Republic Team Obtains Summary Judgment in Aircraft Lease Dispute

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**April 19, 2019** — Hughes Hubbard won summary judgment for Republic Airways Holdings Inc. in a lengthy dispute with a creditor over contractual damages arising from seven amended aircraft leases following the regional air carrier's Chapter 11 reorganization.

On Feb. 14, U.S. Bankruptcy Judge Sean Lane granted HHR's motion for summary judgment against unsecured creditor Residco, a transportation-equipment leasing company comprising Wells Fargo Bank Northwest NA and ALF VI Inc. The victory propelled final resolution of all remaining claims, and the estate is expected to close in mid-May.

HHR advised Republic through its complex Chapter 11 restructuring after the Indianapolis-based company filed for bankruptcy protection in February 2016 due to labor costs. Republic emerged from bankruptcy protection as a privately held company in April 2017.

Before Republic's bankruptcy, Residco leased seven airplanes to Republic's operating subsidiary Shuttle America Corp. Republic, in turn, guaranteed Shuttle America's obligations under the lease. During the course of Republic's bankruptcy, Shuttle America rejected the seven leases, and Residco filed claims against Shuttle America for rejection damages and against Republic as guarantor.

According to Residco, Republic had agreed to bear the risk for the devaluation of the residual value of the Residco aircrafts from any breaches, and should therefore be required to pay liquidated damages for the early termination and rejection of the seven Residco leases, which would equal a four percent return on the aircraft purchase. Residco opposed the \$6.4 million that Republic calculated for actual damages.

In his ruling, Judge Lane found that the liquidated damages provisions in the amended leases were unenforceable because they violated public policy under New York law, which requires the provisions to be reasonable. "At the

center of the parties' dispute is the fact that the liquidated damages provisions here allow for the unconditional transfer of residual value risk, or market risk, only upon default, without a cognizable connection to any anticipated harm caused by the default itself," wrote Judge Lane, who reached the same conclusion for the guarantees.

Chris Kiplok, Greg Farrell and Erin Diers worked on this case. John Hoyns advised on leasing matters.

## **Related People**



**Christopher K. Kiplok**



**Gregory Farrell**



**Erin Diers**



**John Hoyns**

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