

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

In re

EXPRESSJET AIRLINES LLC,

Reorganized Debtor.¹

Chapter 11

Case No. 22-10787 (MFW)

Re: D.I. 501

**DECLARATION OF SUBODH KARNIK, FORMER EXECUTIVE CHAIRMAN,
IN SUPPORT OF THE EXPRESSJET LIQUIDATING TRUST'S MOTION FOR
ENTRY OF AN ORDER (I) AUTHORIZING HONORING CERTAIN
RETENTION PAYMENTS MADE TO FORMER NON-INSIDER EMPLOYEES
PRIOR TO THE EFFECTIVE DATE, AND (II) GRANTING RELATED RELIEF**

I, Subodh Karnik, formerly the Executive Chairman of ExpressJet Airlines LLC, the Reorganized Debtor, declare the following under penalty of perjury:

1. I was the senior-most executive of ExpressJet Airlines LLC, the Reorganized Debtor, and I am a resident of Atlanta Georgia, where the Reorganized Debtor was located.

2. I served as Chairman and CEO of the Reorganized Debtor until January 31, 2023, and am also the Managing Member of the holding company (ManaAir LLC) that owned the Reorganized Debtor. I have more than 40 years of work experience of which more than 30 years have been in the aviation and travel industry and more than 15 years as chief executive or chief operating officer.

3. Prior to joining the Reorganized Debtor as Chief Executive, I was the CEO

¹ This chapter 11 case is now being administered by the ExpressJet Liquidating Trust, pursuant to the terms of the Reorganized Debtor's *First Amended Combined Disclosure Statement and Chapter 11 Plan of Reorganization or Liquidation Proposed by the Debtor* (D.I. 371) (the "Plan"). The last four digits of the ExpressJet Liquidating Trust's federal EIN are 6248. The ExpressJet Liquidating Trust's mailing address is 600 Galleria Parkway SE, Suite 600, Atlanta, GA 30339.

of another regional airline (CommutAir LLC). I have worked for ICF International, Delta Airlines, Continental Airlines, and other airlines and companies, during my career.

4. I submit this declaration (the “Declaration”) in support of the ExpressJet Liquidating Trust’s Motion for An Order (I) Authorizing Honoring Certain Retention Payments Made to Former Non-Insider Employees Prior to the Effective Date, and (II) Granting Related Relief, filed contemporaneously herewith. Except as otherwise noted, all facts in this Declaration are based on my personal knowledge of the matters set forth herein, information gathered from my review of relevant documents, and information supplied to me by former employees and members of the Debtor’s management and the Liquidating Trust’s advisors. If called as a witness, I could and would competently testify to the matters set forth herein.

5. As Executive Chairman until January 31, 2023, and Chief Executive Officer prior to that, I actively participated in the design of the plan to terminate and rehire the 11 remaining employees, as contractors of the Reorganized Debtor, beginning January 01, 2023. The establishment of the rates for the former employees was under my governance.

6. In December 2022, as the Reorganized Debtor was preparing for the December 20, 2022, hearing to seek the Court’s approval for the Plan of Reorganization, we began planning for the filing of the Effective Date on January 7, 2023. Therefore, with the expectation that all employees would be terminated after January 7, 2023 (with potential agreements with the Liquidating Trust – post that period) we considered ways to reduce the administrative burden for carrying 11 employees on the payroll for seven days – including not entering into revised benefits plans for the new year, maintaining payroll systems and associated manpower, filing state reports and payroll taxes, and other requirements of a company with full time employees.

7. The cost-benefits tradeoffs of converting all employees to contractors was

abundantly clear as being beneficial to the Estate and we designed a pay model that based on (a) terminating the 11 employees and rehiring them as independent contractors beginning on January 1, 2023. Accordingly, we prepared a schedule of payments for the 11 employees that sought to keep the employees “whole” for those few days of January until the Liquidating Trust reestablished Agreements with those individuals after the Effective Date. To help the incoming Liquidating Trust in establish new contracts with those individuals that they wished to retain as contractors, we provided daily rates in a model for use (a) first for the expected seven-day bridge period in January and (b) for use as appropriate by the Liquidating Trust

8. The model was designed to retain the earnings value for the 11 individuals – including the Key Employee Retention Program amounts being paid. In addition, for three insiders (Karnik, Greenlee, and Randeria), the model included KERP amounts with that were not included the original KERP request because of their insider status – with a notation that such KERP amounts be taken into consideration by the Liquidating Trust after the three executives were no longer insiders

9. While executing the above-described schema, we erred in two ways (a) First, the Reorganized Debtor overshot the Effective Date by 3 weeks (from January 7, 2023, to February 1, 2023) and therefore exceeded the \$450,000 KERP limit and (b) Second, we included the KERP payments to the three former insiders for the January 2023 period.

10. Both of these items were brought to my attention by Christopher Tierney, the Liquidating Trustee, at our weekly status meeting with the Liquidating Trust on March 29, 2023.

11. The erroneous payments made to the three former insiders, Karnik, Greenlee, and Randeria, were quickly rectified and the three executives immediately repaid the

\$16,868.18 as soon as the circumstances and the amount of the error were established.

12. Regarding the excess payments over the \$450,000 approved by the court to the remaining 8 former employees, I was in complete agreement with the Liquidating Trustee's position and subsequent motion and declaration that the excess KERP payments of \$66,375.69 be "post-facto" approved by the Court. The Reorganized Debtor erred in not making this request for relief before the January 2023 period but the circumstances and reasoning for that request, in my opinion are clear and articulated below.

13. The time and cost-effective closure of this Chapter 11 case will depend heavily on the being able to continually tap the skills and institutional knowledge of each of the remaining independent contractors and their willingness to continue supporting the Chapter 11 case and the Liquidating Trust. Additionally, the \$66,375.69 cost of the retention payments incurred in January in excess of the cap would have been more than offset by the potential replacement costs of hiring new employees, as well as, the benefits obtained from the services of these independent contractors in recovering Debtor and Liquidating Trust property, working to secure over \$300,000 in unused insurance premiums, liquidating remaining hard to place assets, negotiating with various claimants and resolving other complicated disputes, removing all of the Debtor's property from the warehouse location in Houston, Texas and vacating the premises, all of which directly impact the distribution amounts available to creditors.

14. Finally, honoring the payments already made to the remaining rank-and-file independent contractors will ensure that these independent contractors do not prematurely cease service to the Liquidating Trust and will assure each independent contractor that his or her efforts during the wind down process have been valued. Honoring the pre-Effective Date payments to rank-and-file independent contractors will help ensure that these individuals remain dedicated and

committed to the success of the wind down process.

15. Therefore, I respectfully request that the Court affirmatively consider the Liquidating Trust's proposed motion to honor payments, of \$66,375.69 in excess of the cap, made to 15 former employees in January 2023 (a) because those individuals brought value to the Estate and (b) because the Reorganized Debtor would have made the request in December 2023 had we realized that we would exceed the cap - and erred in not doing so.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in the foregoing declaration are true and correct to the best of my knowledge, information and belief.

Dated: April 13, 2023

/s/ Subodh Karnik

Subodh Karnik
Former Executive Chairman
ExpressJet Airlines LLC