

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

 UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 SIGNATURE FLIGHT SUPPORT)
 CORPORATION, et al.,)
)
 Defendants.)
 _____)

Civil Action No. 1:08-cv-01164 (RWR)
Judge Richard W. Roberts

**DEFENDANT SIGNATURE FLIGHT SUPPORT CORPORATION'S
EMERGENCY MOTION TO STAY PENDING DISPOSITION OF
MOTION FOR PARTIAL RELIEF FROM AND MODIFICATION OF JUDGMENT**

**(Includes Request for Expedited Filing of Any Opposing Points and Authorities
and Expedited Decision)**

Defendant Signature Flight Support Corporation (“Signature”) respectfully moves under Fed. R. Civ. P. 62(b) to stay the execution of those portions of the Final Judgment and the Hold Separate and Preservation of Assets Stipulation and Order that would require Signature to divest a Fixed Based Operations facility (“FBO”) at Indianapolis International Airport by December 10, 2008, pending disposition of Signature’s concurrent Motion for Partial Relief from and Modification of Judgment and ten days thereafter. The Motion for Partial Relief and Modification requests that the divestiture date be extended through December 10, 2009, and is necessary to avoid Signature’s incurring a loss of nearly \$20 million on the sale when compared to the price allocated to the Hawker Beechcraft FBO at Indianapolis under the Asset Purchase Agreement. The stay sought here is necessary to avoid the risk of Signature being held in

violation of the Final Judgment while the Court determines the Motion for Partial Relief from and Modification of Judgment.

As set forth more fully in the attached memorandum, a stay should be granted because Signature is likely to succeed on the merits of its Motion for Partial Relief and Modification, Signature will suffer irreparable harm absent a stay, there is no prospect that others will be harmed if the Court grants the stay, and the public interest is advanced by a stay.

Additionally, Signature respectfully requests that the Court shorten the response time pursuant to Fed. R. Civ. P. 6(c)(1)(C) and LCvR 7(b) on this Emergency Motion so that it may be decided in advance of the current December 10, 2008 deadline. Accordingly, Signature respectfully requests that Plaintiff be required to file any opposing points and authorities by December 5, 2008. Signature would file a reply, if necessary, by December 8, 2008. Unless the response time is shortened, this motion may not be briefed for decision until after the December 10, 2008 divestiture deadline has passed, exposing Signature to the choice of risking being held in contempt for non-compliance with the Final Judgment, or proceeding with the sale and incurring a \$20 million loss relative to the price allocated to the Hawker Beechcraft FBO at Indianapolis under the parties' Asset Purchase Agreement.

WHEREFORE, Defendant Signature Flight Support Corporation respectfully requests that this Court direct that any opposing points and authorities to this motion be filed by December 5, 2008, direct that any reply to opposing points and authorities be filed by December 8, 2008, and stay the execution and enforcement of Section IV.A of the Final Judgment pending the determination of Defendant Signature Flight Support Corporation's Motion for Partial Relief From and Modification of Judgment, and if that motion is denied, for ten days after the notice of

entry of the Court's decision on the motion; and that this Court order such other and further relief as justice may provide.

Dated: December 2, 2008

Respectfully submitted,

/s/ Gordon L. Lang
Gordon L. Lang, Esq. (DC Bar # 932731)
Nixon Peabody LLP
401 9th St., NW
Suite 900
Washington, DC 20004-2128
Tel: (202) 585-8319
Fax: (866) 947-3542
Email: glang@nixonpeabody.com

*Attorneys for Defendant Signature Flight
Support Corporation*

CERTIFICATION PURSUANT TO LCvR 7(m)

Undersigned counsel for Defendant hereby certifies, pursuant to LCvR 7(m), that a good faith effort was made to discuss the subject of this motion, and the relief requested herein, with counsel for the Plaintiff and counsel for Defendant Hawker Beechcraft Services, Inc. The upshot of those discussions with the Plaintiff is that the government has represented that it will not seek to hold Signature in contempt for failure to comply with the December 10, 2008 divestiture deadline while Signature's concurrent Motion for Partial Relief From and Modification Of Judgment is pending, and for a reasonable period after the Court's decision. The United States has advised, however, that it does not consent to this motion. Plaintiff is aware that this motion is being filed.

Defendant Hawker Beechcraft Services, Inc. is also aware that this motion is being filed. Counsel for Signature has not yet obtained Defendant Hawker Beechcraft Services, Inc. response to the request to consent to this motion.

/s/ Gordon L. Lang
Gordon L. Lang, Esq. (DC Bar # 932731)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

 UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 SIGNATURE FLIGHT SUPPORT)
 CORPORATION, et al.,)
)
 Defendants.)
 _____)

Civil Action No. 1:08-cv-01164 (RWR)
Judge Richard W. Roberts

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANT SIGNATURE FLIGHT SUPPORT CORPORATION'S
EMERGENCY MOTION FOR STAY PENDING DISPOSITION OF
MOTION FOR PARTIAL RELIEF FROM AND MODIFICATION OF JUDGMENT**

**(Includes Request for Expedited Filing of Any Opposing Points and Authorities
and Expedited Decision)**

Defendant Signature Flight Support Corporation (“Signature”) respectfully moves under Fed. R. Civ. P. 62(b) to stay the execution of those portions of the Final Judgment and the Hold Separate and Preservation of Assets Stipulation and Order that would require Signature to divest a Fixed Based Operations facility (“FBO”) at Indianapolis International Airport by December 10, 2008, pending disposition of Signature’s concurrent Motion for Partial Relief from and Modification of Judgment and ten days thereafter. The Motion for Partial Relief and Modification requests that the divestiture date be extended through December 10, 2009, and is necessary to avoid Signature’s incurring a loss of nearly \$20 million on the sale when compared to the price allocated to the Hawker Beechcraft FBO at Indianapolis under the Asset Purchase Agreement. The stay sought here is necessary to avoid the risk of Signature being held in

violation of the Final Judgment while the Court determines the Motion for Partial Relief From and Modification of Judgment.

Signature also respectfully requests that the Court shorten the response time pursuant to Fed. R. Civ. P. 6(c)(1)(C) and LCvR 7(b) on this Emergency Motion so that it may be decided in advance of the current December 10, 2008 deadline. Accordingly, Signature respectfully requests that Plaintiff be required to file any opposing points and authorities by December 5, 2008. Signature would file a reply, if necessary, by December 8, 2008. Unless the response time is shortened, this motion may not be briefed for decision until after the December 10, 2008 divestiture deadline has passed, exposing Signature to the choice of risking being held in contempt for non-compliance with the Final Judgment, or proceeding with the sale and incurring a large loss.

ARGUMENT

The plain language of Fed. R. Civ. P. 62(b)(4) grants the Court authority to stay a judgment while it considers and disposes of Signature's concurrent Rule 60 Motion for Partial Relief from and Modification of Judgment: "[T]he court may stay the execution of a judgment—or any proceedings to enforce it—pending disposition of . . . [a motion] under Rule 60, for relief from a judgment or order." *See also Fleming, Zulack & Williamson, LLP v. Info. Super Station, LLC*, 215 F.R.D. 5, 8 (D.D.C. 2002) (granting motion to stay in light of a party's challenge to the validity of a final judgment pursuant to Rule 60). Although to Signature's knowledge no reported decision in the District of Columbia Circuit has expressly considered what factors should be used to determine whether or not a stay would be appropriate under Rule 62(b), courts in other jurisdictions utilize the same factors used to decide a Rule 62(c) motion to stay. *See, e.g., Combustion Sys. Servs. Inc. v. Schuylkill Energy Resources, Inc.*, 153 F.R.D. 73, 74 (E.D.

Pa. 1994) (employing Rule 62(c) factors to decide a Rule 62(b) motion to stay); *United States v. Moyer*, No. C 07-00510 SBA, 2008 U.S. Dist. LEXIS 63995, at *15 (N.D. Cal. Aug. 12, 2008) (same).

Those factors are (1) the likelihood that the party seeking the stay will prevail on the merits of the underlying matter; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay. *See Cuomo v. U.S. Nuclear Regulatory Comm'n*, 772 F.2d 972, 974 (D.C. Cir. 1985); *Apotex Inc. v. United States FDA*, 508 F. Supp. 2d 78, 88 (D.D.C. 2007). Each of these factors supports granting Signature's motion to stay.

Signature Will Prevail On The Merits

As set forth more fully in Signature's Memorandum in Support of its Motion for Partial Relief from and Modification of Judgment (filed concurrently with this motion and incorporated herein), Signature will succeed on the merits. Under the express terms of the Final Judgment, this Court retains jurisdiction to enable any party to modify any provisions of the Final Judgment. (*See* Final Judgment, Docket Number 14, p. 15, at Section XII.) And under Fed R. Civ. P. Rule 60(b)(5) and (6), "on motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding . . . [if] it is no longer equitable that the judgment should have prospective application . . ." or for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(5) and (6). As recognized by the Supreme Court, "[m]odification of a consent decree may be warranted when changed factual conditions make compliance with the decree substantially more onerous." *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367, 384 (1992); *System Fed'n No. 92, Ry v. Wright*, 364 U.S. 642, 647 (1961). The D.C. Circuit has followed this Supreme Court precedent and granted modification

of a consent decree pursuant to Fed. R. Civ. P. 60(b)(5) when it was “no longer equitable that the judgment should have prospective application.” *See, e.g., United States v. Western Elec. Co.*, 46 F.3d 1198, 1204 (D.C. Cir. 1995). Moreover, modification is particularly appropriate when the parties did not anticipate the change in facts: “The focus of Rule 60(b)(5) is not on what was possible, but on what the parties and the court reasonably anticipated.” *United States v. Western Elec. Co.*, 46 F.3d at 1205.

The undisputed facts establish that it is no longer equitable here to apply the Final Judgment’s December 10, 2008 deadline for divestiture. When Signature agreed to the proposed Final Judgment in July 2008, Signature and Hawker Beechcraft assigned a value of \$25.9 million to the Hawker Beechcraft Indianapolis FBO. Since then, the United States, if not the world, has fallen into the worst financial crisis since the Great Depression. As the President, the Department of the Treasury, the Federal Reserve Board, and Congress have all recognized, credit markets have ground to a standstill; banks are not lending to each other, let alone to businesses. Business values have plummeted. Major stock indices have fallen over 35% in just three months, and many lending corporations have fared worse. On Thursday, November 20, 2008, the S&P index was lower than any point since 1997. (*See generally* Declaration of M. Johnstone, dated November 24, 2008, at ¶¶ 6, 7 (filed with Signature’s Memorandum in Support of its Motion for Partial Relief from and Modification of Judgment); Signature’s Memorandum in Support of its Motion for Partial Relief from and Modification of Judgment, Parts I, III.)

As a direct result of the financial crisis, the market for the sale of FBO’s has collapsed. In September 2008, even after the crisis had begun, Signature received several preliminary bids for the former Hawker facility ranging up to \$20 million. By November 2008, however, several potential bidders had dropped out and only two bidders submitted final bids to Signature, with

the highest being \$6 million. If Signature were forced to sell now, it would suffer a more than 75% loss, nearly \$20 million, from the value attributed in the asset purchase agreement. (*See generally* Signature's Memorandum in Support of its Motion for Partial Relief from and Modification of Judgment.)

That loss, a product of an unforeseen once in 70-year financial tsunami, establishes that it would no longer be equitable to apply the December 10, 2008 divestiture deadline.

Signature Would Suffer Irreparable Harm

The same facts establish that, absent the grant of a stay, Signature would suffer irreparable harm. If Signature were forced to sell by December 10, 2008, it would incur a loss of nearly \$20 million, over the value attributed in the asset purchase agreement. That damage is plainly irreparable: there would be no do-over if the Court determined, after the sale, that Signature's motion for relief and modification should be granted, and the government would not be liable for monetary damages for failing to agree to the proposed modification. (*See generally* Signature's Memorandum in Support of its Motion for Partial Relief from and Modification of Judgment, Part III.)

Others Will Not Be Harmed

It is also plain that granting the relief will not harm others. The stay would only be in place for a limited time period while the Court considers Signature's Rule 60 Motion for Partial Relief from and Modification of Judgment. During that time, the Hold Separate Order and the Final Judgment would still be in effect, except for the December 10, 2008 deadline for divestiture, to guarantee robust competition. Signature's Rule 60 motion explains that the former Hawker FBO has operated as a separate business since the Hold Separate and Preservation of Assets Stipulation and Order was issued and recently succeeded in winning, over Signature's

legacy FBO facility, an important four year military into-plane fueling contract at the Indianapolis International Airport. (*See generally* Declaration of M. Johnstone, dated November 24, 2008, at ¶ 8 (filed with Signature's Memorandum in Support of its Motion for Partial Relief from and Modification of Judgment); Signature's Memorandum in Support of its Motion for Partial Relief from and Modification of Judgment, Part III.B.) Furthermore, the Director of the Indianapolis International Airport, Mr. Robert Duncan, has expressed confidence in the operation of the Hold Separate Order and does not object to an extension of the divestiture deadline to December 10, 2009. (*See* Declaration of Stephen W. Lee, dated November 30, 2008, at ¶¶ 4, 5 (filed with Signature's Memorandum in Support of its Motion for Partial Relief from and Modification of Judgment).) Thus, the public is protected by the existing Hold Separate Order which has been shown to be working effectively. (*See* Signature's Memorandum in Support of its Motion for Partial Relief from and Modification of Judgment, Part III.B.)

Granting The Stay Is In The Public Interest

In addition, the public's interest is advanced by a stay here since it would be punitive to expose Signature to the risk of a civil contempt fine when it has used its best efforts to expeditiously divest the former FBO Hawker facility but has been thwarted by an unanticipated, financial meltdown for which it bears no responsibility. Punishing Signature by exposing it to the risk of a civil contempt fine while it seeks relief from the Court from the consequences of the financial meltdown is inconsistent with the other governmental action designed to protect the public and businesses across the country from the effects of the financial crisis. (*See* Signature's Memorandum in Support of its Motion for Partial Relief from and Modification of Judgment, Part III.B.)

The United States Has Represented That It Will Not Seek Contempt

Finally, a stay is consistent with the United States position in this action. Although the United States opposes a stay, it has requested that it would not seek to hold Signature in contempt for failing to meet the December 10, 2008 divestiture deadline while Signature's Motion for Partial Relief from and Modification of Judgment is pending.

This Motion Should Be Expedited

Fed. R. Civ. P. 6(c)(1)(C) permits Signature to apply for a court order to shorten the response time to this motion for good cause. *See In re Bart*, 304 F.2d 631, 637 (D.C. Cir. 1962) (stating that for good cause shown, the court may shorten the period of notice or vary its form); *see also Anderson v. Davila*, 125 F.3d 148, 156-57 (3d Cir. 1997) (good cause shown to shorten period for hearing on injunction). LCvR 7(b) permits the Court to set the response time for motions.

Signature respectfully submits that there is good cause here. As set forth above, the divestiture date under the Final Judgment is December 10, 2008. The stay is necessary so that Signature is not in violation of the Final Judgment after December 10, 2008 and before its Motion for Partial Relief From and Modification of Judgment is decided.

CONCLUSION

Defendant Signature Flight Support Corporation respectfully requests that this Court direct that any opposing points and authorities to this motion be filed by December 5, 2008; direct that any reply to opposing points and authorities be filed by December 8, 2008; and order that the execution and enforcement of the first sentence of Section IV.A of the Final Judgment is stayed pending the determination of Signature's Motion for Partial Relief from and Modification of Judgment and if that motion is denied, for ten days after notice of the decision on the motion.

Dated: December 2, 2008

Respectfully submitted,

/s/ Gordon L. Lang

Gordon L. Lang, Esq. (DC Bar # 932731)

Nixon Peabody LLP

401 9th St., NW

Suite 900

Washington, DC 20004-2128

Tel: (202) 585-8319

Fax: (866) 947-3542

Email: glang@nixonpeabody.com

*Attorneys for Defendant Signature Flight
Support Corporation*