

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

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In re: : Chapter 11
:
AVIANCA HOLDINGS S.A., *et al.*,¹ : Case No. 20-11133 (MG)
:
Debtors. : (Jointly Administered)
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**STIPULATED NON-WAIVER AGREEMENT AND AGREED ORDER
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9017
AND FEDERAL RULE OF EVIDENCE 502(d) REGARDING
INFORMATION CONCERNING AIRBUS INVESTIGATION AND ANALYSIS**

Pursuant to Rule 9017 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 502(d) of the Federal Rules of Evidence, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) and the Official Committee of Unsecured Creditors (the “UCC”), by and through their respective attorneys and subject to Court approval, have agreed to this order (the “Order”) regarding the disclosure of certain factual information obtained and legal

¹ The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int’l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A); AV Loyalty Bermuda Ltd. (N/A); Aviacorp Enterprises S.A. (N/A). The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



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analyses conducted related to the business relationship and contractual obligations between the Debtors and Airbus SE (the “Airbus Matter”).

WHEREAS, the Debtors retained Ropes & Gray LLP (“Ropes & Gray”) to, *inter alia*, provide assistance regarding the Airbus Matter;

WHEREAS, on May 10, 2020, the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”);

WHEREAS, the Debtors obtained Court approval to retain Milbank LLP (“Milbank,” and, together with Ropes & Gray and all other legal counsel to the Debtors, “Debtors’ Counsel”) as counsel on June 9, 2020 (*see* Dkt. No. 259);

WHEREAS, the UCC obtained Court approval to retain Morrison & Foerster LLP (“MoFo”) as counsel on July 14, 2020 (*see* Dkt. No. 460);

WHEREAS, the Debtors obtained Court approval to retain Ropes & Gray as special government investigations counsel on July 15, 2020 (*see* Dkt. No. 476);

WHEREAS, in connection with their representation of the Debtors, Debtors’ Counsel has conducted interviews with relevant officers and employees of the Debtors, reviewed documents and records of the Debtors, and analyzed potential claims and defenses in connection with the Airbus Matter;

WHEREAS, the UCC has requested, among other things, information regarding the Airbus Matter; and

WHEREAS, the Debtors and the UCC (together, the “Parties”) wish to establish reasonable and appropriate procedures and protocols with respect to the provision and treatment of information regarding the Airbus Matter;

NOW, THEREFORE, it is hereby AGREED AND ORDERED that:

1. All Confidential Airbus Matter Information (as defined herein) that is disclosed or delivered in any manner, including through email correspondence, document productions, teleconferences, and/or memoranda, from Debtors' Counsel to MoFo and/or any other attorneys, financial advisors, and accountants retained by the UCC pursuant to sections 328 and 1103 of the Bankruptcy Code (collectively, the "UCC Professionals") shall be considered confidential and shall be delivered to and maintained by the UCC Professionals on a Professionals' Eyes Only basis unless otherwise agreed by Debtors' Counsel. Such Confidential Airbus Matter Information shall not be given, shown, made available to, disclosed, or communicated in any way to any persons, except to the UCC Professionals unless otherwise agreed by Debtors' Counsel. For the avoidance of doubt, Confidential Airbus Matter Information shall not be given, shown, made available to, disclosed, or communicated in any way to members of the UCC unless otherwise agreed by Debtors' Counsel.

2. "Confidential Airbus Matter Information" means all non-public documents, records, reports, analyses, memoranda, data, facts, impressions, communications, and other information, whether written, electronic, visual, or oral, related to or in connection with the Airbus Matter obtained solely from the Debtors or any of their representatives, provided that the term "Confidential Airbus Matter Information" shall not include information obtained (i) from a source other than the Debtors or their representatives, or (ii) pursuant to Rule 2004 of the Bankruptcy Rules. Any extracts, summaries, derivations, and/or analyses of Confidential Airbus Matter Information prepared by or on behalf of any UCC Professional shall also be considered Confidential Airbus Matter Information.

3. Confidential Airbus Matter Information shall be used by the UCC Professionals solely for the purposes of these chapter 11 cases and in any proceedings wherein a claim arises out of the same transaction(s) or occurrence(s) involved in these chapter 11 cases, and not for any other purpose, including any other litigation or judicial proceedings that are not related to these chapter 11 cases, or any business, competitive, governmental, commercial, or administrative purpose or function.

4. Unless otherwise agreed by Debtors' Counsel, if the UCC Professionals wish to file any Confidential Airbus Matter Information with the Court in these chapter 11 cases for any reason, such Confidential Airbus Matter Information shall be filed under seal in accordance with the Federal Rules of Civil Procedure, the Bankruptcy Rules, and the Local Bankruptcy Rules for the Southern District of New York, such as by redacting the Confidential Airbus Matter Information in pleadings, briefs, declarations, and memoranda, and replacing exhibits containing Confidential Airbus Matter Information with a placeholder, and providing unredacted and complete copies of all such submissions to all Parties to this Order and to the Court.

5. Pursuant to Rule 502(d) of the Federal Rules of Evidence, the disclosure or delivery of any Confidential Airbus Matter Information from Debtors' Counsel to any UCC Professional as provided for herein shall not constitute or be deemed a waiver or forfeiture of any claim of attorney-client privilege, work product protection, or any other applicable privilege or protection, either in these chapter 11 cases or any other proceeding.

6. The Parties agree that disclosure or delivery of any Confidential Airbus Matter Information pursuant to this Order shall not be deemed a failure to take reasonable steps to prevent the disclosure of information that is protected by the attorney-client privilege, work product protection, or any other applicable privilege or protection under Federal Rule of Evidence

502(b)(2). The UCC agrees to make a good faith effort to defend against any argument made by any other person or entity that disclosure or delivery of Confidential Airbus Matter Information as provided for herein constitutes a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection on any basis.

7. The Parties acknowledge and agree that neither the Debtors nor any of their representatives, including Debtors' Counsel, (a) make any representation or warranty as to the accuracy or completeness of any Confidential Airbus Matter Information, (b) have any obligation to update or supplement Confidential Airbus Matter Information, nor (c) shall have any liability resulting from any use of Confidential Airbus Matter Information by the UCC Professionals.

8. The Parties shall make good faith efforts to resolve any disagreements arising from or related to this Order prior to seeking relief from the Court.

9. The Parties may enforce the provisions of this Order, including that disclosure or delivery of Confidential Airbus Matter Information as provided for herein shall not constitute or be deemed a waiver of forfeiture of any claim of attorney-client privilege, work product protection, or any other applicable privilege or protection.

10. The provisions of this Order shall survive the final termination of the chapter 11 cases and the Debtors' emergence from bankruptcy for any Confidential Airbus Matter Information. The final termination of the chapter 11 cases and the Debtors' emergence from bankruptcy shall not relieve counsel or other persons obligated hereunder from their responsibility to maintain the confidentiality of Confidential Airbus Matter Information pursuant to this Order.

11. The Court retains exclusive jurisdiction with respect to all matters arising from or related to implementation, interpretation, and enforcement of this Order.

Dated: February 24, 2021
New York, New York

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*Counsel for Official Committee
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SO ORDERED.

Dated: March 4, 2021
New York, New York

/s/ Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge