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

In re:

AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-11133 (MG)

(Jointly Administered)

**ROLLS-ROYCE PLC'S OBJECTION TO PROPOSED  
CURE AMOUNTS FOR EXECUTORY CONTRACTS**

Rolls-Royce plc ("Rolls-Royce") files this objection (the "Objection") to the Debtors' *Notice of Filing of Plan Supplement* [ECF No. 2276] (the "Notice of Assumption") filed by Avianca Holdings S.A., and its jointly administered debtors in possession (collectively with

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<sup>1</sup> 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). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



Avianca Holdings S.A., the “Debtors”), because the Notice of Assumption does not include the accurate cure amount for the executory contracts between Rolls-Royce and the Debtors. In support of its Objection, Rolls-Royce states as follows:

**I. BACKGROUND**

1. On May 10, 2020 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, et seq. (the “Bankruptcy Code”), in this Court. Pursuant to the *Order (i) Directing Joint Administration of Chapter 11 Cases and (ii) Granting Related Relief* [ECF No. 34], the Debtors’ cases are being jointly administered in the above captioned case.

2. Prior to the Petition Date, Aerovias del Continente Americano S.A. Avianca (the “ACA”) and Rolls-Royce entered into that certain General Terms Agreement (the “First Airbus GTA”), dated June 15, 2007, with a reference number of DEG 5104, whereby Rolls-Royce agreed to provide certain products and services to ACA related to ACA’s passenger fleet of Airbus A330 aircrafts and ACA agreed to pay Rolls-Royce for such products and services. The First Airbus GTA was amended pursuant to that certain: (i) Side Letter Number One, dated June 15, 2007; (ii) Amendment Number One, dated February 28, 2008; (iii) Amendment Number Two, dated February 28, 2009; (iv) Amendment Number Three, dated September 1, 2009; (v) Amendment Number Four, dated March 18, 2011; (vi) Amendment Agreement Number Five; (vii) Amendment Agreement Number Six, dated February 25, 2013; (viii) Amendment Agreement Number Seven; and (ix) Amendment Agreement Number Eight (collectively, with the First Airbus GTA, along with all amendments and modifications thereto, the “First Airbus Contract”).

3. ACA and Rolls-Royce entered into that certain General Terms Agreement (the “Boeing GTA”), with an effective date of June 29, 2007, whereby Rolls-Royce agreed to provide

certain products and services to ACA related to ACA's passenger fleet of Boeing 787 aircrafts and ACA agreed to pay Rolls-Royce for such products and services. The Boeing GTA was amended pursuant to that certain: (i) Amendment Agreement Number One; and (ii) Amendment Agreement Number Two (collectively, with the Boeing GTA, along with all amendments and modifications thereto, the "Boeing Contract").

4. Prior to the Petition Date, ACA, Tampa Cargo S.A.S. ("Tampa"), and Rolls-Royce entered into that certain General Terms Agreement (the "Second Airbus GTA"), dated June 29, 2012, with a reference number of DEG 7308, whereby Rolls-Royce agreed to provide certain products and services to ACA and Tampa related to ACA's and Tampa's freight fleet of Airbus A330 aircrafts, and ACA and Tampa agreed to pay Rolls-Royce for such products and services. The Second Airbus GTA was amended pursuant to that certain: (i) Amendment Agreement Number One; (ii) Amendment Agreement Number Two,; (iii) Amendment Agreement Number Three, dated December 30, 2014; and (iv) Amendment Agreement Number Four (collectively, with the Second Airbus GTA, along with all amendments and modifications thereto, the "Second Airbus Contract").

5. On January 20, 2021, Rolls-Royce filed that certain proof of claim [Claim No. 2215] (the "ACA Proof of Claim"), evidencing that as of the Petition Date, ACA owed Rolls-Royce no less than \$23,196,805.39 under the First Airbus Contract, the Boeing Contract, and the Second Airbus Contract.

6. On January 20, 2021, Rolls-Royce filed that certain proof of claim [Claim No. 2222] (the "Tampa Proof of Claim," and together with the ACA Proof of Claim, the "Proofs of Claim"), evidencing that as of the Petition Date, Tampa owed Rolls-Royce no less than \$1,514,767.68 for outstanding invoices under the Second Airbus Contract.

7. None of the Debtors has paid Rolls-Royce for the amounts set forth in the Proofs of Claim, which remain outstanding.

8. On October 25, 2021, the Debtors filed the Notice of Assumption, wherein the Debtors identified six (6) new contracts to assume with Rolls-Royce and listed the proposed cure amounts for such six (6) contracts as \$0.00. These six (6) contracts are described as follows (the “Assumed Contracts”):

<b>Contract #</b>	<b>Name of Counterparty</b>	<b>Description of Contract</b>	<b>Cure Amount</b>
2643	Rolls-Royce plc	Trent 700 QT GTA No DEG 7308— Amendment No 1 – Date: 2013	\$0.00
2644	Rolls-Royce plc	Trent 700 QT GTA No DEG 7308— Amendment No 2 – Date: 23-Oct-2014	\$0.00
2645	Rolls-Royce plc	Trent 700 QT GTA No DEG 7308— Amendment No 3 – Date: 30-Dec-2014	\$0.00
2646	Rolls-Royce plc	Trent 700 QT GTA No DEG 7308— Amendment No 4 – Date: 28-Nov-2019	\$0.00
2647	Rolls-Royce plc	Trent 700 QT GTA No DEG 7308—Side Letter No 1 – Date: 30-June-2012	\$0.00
2648	Rolls-Royce plc	Trent 700 QT GTA (General Terms) and TotalCare Agreement—No DEG 7308 – Date: 30-June-2012	\$0.00

9. Rolls-Royce believes that the Assumed Contracts may in fact be one contract, with amendments and addenda thereto: the Second Airbus GTA.

10. The correct amount to assume the Second Airbus GTA is no less than the amounts set forth in the Proofs of Claim.

## **II. OBJECTION**

11. In order to assume an executory contract or unexpired lease, a debtor must at the time of assumption cure all existing defaults, compensate the non-debtor party for any actual pecuniary loss resulting from such defaults, and provide adequate assurance of future performance under the contract or lease. 11 U.S.C. § 365(b)(1). A debtor’s assumption of a contract or lease

must be *cum onere*—including all of the conditions, liabilities, and obligations as well as the benefits of such contract or lease. *See N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984) (indicating that a debtor is required to assume a contract “*cum onere*”). The proper cure amount should include all liabilities and obligations that have arisen or accrued under a contract both before and after the petition date and up to the effective date of assumption and assignment. *See* 11 U.S.C. § 365(b)(1)(A) (“[i]f there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of the assumption of such contract or lease, the trustee—cures, or provides adequate assurance that the trustee will promptly cure, such default...” (emphasis added)).

12. Rolls-Royce objects to the Debtors’ proposed assumption of the Assumed Contracts because a cure payment of at least \$24,711,573.07, plus further fees and costs due under the Assumed Contracts (collectively with \$24,711,573.07, the “Cure Amount”), is required to cure the outstanding defaults under the Assumed Contracts prior to assumption by the Debtors. Rolls-Royce further objects to the Debtors’ proposed assumption of the Assumed Contracts because it is not entirely clear what this contract is and whether further amounts are due and owing thereunder in order to cure the same.

13. As of the time and date this Objection is filed, Rolls-Royce has not received payment for the amounts set forth in the Proofs of Claim. Accordingly, ACA and Tampa currently owe Rolls-Royce no less than the Cure Amount to cure all outstanding defaults under the Assumed Contracts. The Cure Amount represents the known amounts due and owing to Rolls-Royce under the Assumed Contracts, exclusive of any sums which have become due, or are discovered after the date of this Objection. The Cure Amount may increase prior to any actual date of assumption of the Assumed Contracts if the Debtors do not pay all amounts that accrue after the date of this

Objection, pursuant to the terms of the Assumed Contracts and regardless of when those amounts accrued.

14. Accordingly, Rolls-Royce expressly reserves its rights to amend or supplement this Objection and the Cure Amount from time to time and at any time, and requests that the Debtors remain liable for, among other things, certain amounts accruing under the Assumed Contracts which may be unbilled as of the date hereof. Consistent with the foregoing, Rolls-Royce respectfully requests that any order approving the assumption of the Assumed Contracts provide, among other things, that the Debtors promptly pay to Rolls-Royce all amounts due and owing under the Assumed Contracts through the effective date of assumption, or assumption and assignment, of the Assumed Contracts, as the same may increase to any other amounts that become due or are determined after the date of this Objection.

15. Nothing in this Objection is intended to be, or should be construed as, a waiver by Rolls-Royce of any of its rights under the Assumed Contracts, the Bankruptcy Code, or applicable law. Rolls-Royce expressly reserves all such rights, including, without limitation, the right to: (a) supplement and/or amend this Objection and to assert any additional objections with respect to Cure Amount and the potential assumption and assignment of the Assumed Contracts, including the ability of any party to satisfy the adequate assurance of future performance requirements of the Bankruptcy Code; (b) amend the Cure Amount; (c) assert any nonmonetary defaults under the Assumed Contracts; (d) assert any rights for indemnification or contribution against the Debtors arising under the Assumed Contracts; and (e) assert any further objections as it deems necessary or appropriate.

WHEREFORE, Rolls-Royce respectfully requests that the Court enter an Order: (i) sustaining Rolls-Royce's objection and denying the assumption and/or assumption and assignment

of the Assumed Contracts to the extent payment to Rolls-Royce by the Debtors is in an amount less than the Cure Amount, plus all post-petition obligations owed by the Debtors to Rolls-Royce in furtherance of Rolls-Royce's ongoing obligations to the Debtors under the Assumed Contracts; (ii) sustaining Rolls-Royce's objection and denying the assumption of the Assumed Contracts based on the Debtors' failure to adequately describe the Assumed Contracts in order to provide Rolls-Royce with adequate notice of potential cure obligations; and (iii) for all other and further relief that is just and proper.

Dated: October 26, 2021

BARNES & THORNBURG LLP

/s/ Mark R. Owens

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 26th day of October, 2021, he caused a copy of the foregoing to be filed electronically via the Court's ECF system. Notice of this filing will be sent to all parties registered to receive filings in this adversary proceeding by operation of the Court's ECF system. Parties may access this filing through the Court's ECF system. Additionally, a copy of the foregoing was served via email on the following parties:

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*/s/ Mark R. Owens*

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