

# Milbank

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October 28, 2022

## **VIA ECF**

The Honorable Vernon S. Broderick  
United States District Court  
Southern District of New York  
40 Foley Square  
New York, NY 10007

Re: *In re Avianca Holdings S.A. et al.*, Case No. 1:21-cv-10118

Dear Judge Broderick:

We write on behalf of Appellees in the above-captioned proceeding pursuant to Federal Rule of Bankruptcy Procedure 8014(f) to advise the Court of a recent pertinent and significant summary order from the United States Court of Appeals for the Second Circuit, *In Re:*

*Windstream Holdings, Inc.*, No. 21-1754 [Dkt No. 122], DC No. 7:20-cv-05440-VB (2d Cir. Oct. 25, 2022) (“Windstream Order”). A copy of the decision is attached to this letter as

## **Exhibit A.**

In the order, the Second Circuit affirmed dismissal of an appeal as equitably moot where the appellant waited “two months before requesting a stay,” noting that “[b]ecause the presumption of equitable mootness can be overcome only if an appellant meets all five of the *Chateaugay* factors,” the failure to diligently seek a stay as required by the fifth *Chateaugay*

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Honorable Vernon S. Broderick  
October 28, 2022

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factor “is a sufficient ground to affirm the order of the district court.” *See* Windstream Order at 4-5.

This summary order confirms that the present appeal is equitably moot. As detailed in Appellees’ memorandum of law in support of the motion to dismiss [Dkt. No. 14 at 17-20] and reply briefing [Dkt. No. 22 at 8-9], Appellants *never* sought a stay, and thus—like the appellant in *Windstream*—cannot meet the fifth *Chateaugay* factor. For this reason alone, Appellants’ appeal is equitably moot.

Appellees’ reorganization plan (the “Plan”) was confirmed by the Bankruptcy Court on November 2, 2021 and became effective on December 1, 2021. The Plan was substantially consummated at the time Appellees sent their last letter to the Court on May 31, 2022 [Dkt No. 30], and remains so today, as the Reorganized Debtors have issued the first round of cash distributions to general unsecured creditors in Class 11 of the Plan and have closed thirty-seven of the forty-one jointly administered chapter 11 cases. *See Avianca Holdings S.A., et al.*, No. 20-11133 [Dkt Nos. 2618, 2626] (Bankr. S.D.N.Y.) (attached as **Exhibits B, C**).

We thank Your Honor for your time and attention to this matter.

Respectfully submitted,

/s/ Aaron L. Renenger

Aaron L. Renenger

cc: Counsel of Record (via ECF)

**Exhibit A**

21-1754

*In Re: Windstream Holdings, Inc.*

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**SUMMARY ORDER**

**RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25<sup>th</sup> day of October, two thousand twenty-two.

Present:

PIERRE N. LEVAL,  
DENNY CHIN,  
EUNICE C. LEE,  
*Circuit Judges.*

IN RE: WINDSTREAM HOLDINGS, INC.

U.S. BANK NATIONAL ASSOCIATION,  
*Appellant,*

v.

21-1754

WINDSTREAM HOLDINGS, INC.,  
*Debtor-Appellee,*  
ELLIOTT INVESTMENT MANAGEMENT L.P.,  
FIRST LIEN AD HOC GROUP,  
*Intervenors-Appellees.*

For Appellant: THOMAS E. LAURIA, White & Case LLP, Miami, Florida  
(Raoul G. Cantero III, David P. Draigh, Cecilia E. Walker, J. Christopher Shore, Harrison Denman, and Charles Koster, *on the brief*).

For Debtor-Appellee: C. HARKER RHODES IV, Kirkland & Ellis LLP, Washington, District of Columbia (Evelyn Blacklock, *on the brief*).

For Intervenor-Appellee Gregg M. Galardi, Ropes & Gray LLP, New York, New York, and William L. Roberts, Ropes & Gray LLP, Elliott Investment Management L.P.: Boston, Massachusetts.

Appeal from the United States District Court for the Southern District of New York (Vincent L. Briccetti, *Judge*).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the order of the district court is **AFFIRMED**.

U.S. Bank National Association (“U.S. Bank”) appeals an order of the district court (Briccetti, *J.*) dismissing as equitably moot U.S. Bank’s appeals of two orders of the bankruptcy court (Drain, *Bankr. J.*), one approving a settlement between debtor Windstream Holdings, Inc. (together with its debtor subsidiaries) (“Windstream”) and Uniti Group, Inc. (the “Settlement Order”), and another confirming Windstream’s Chapter 11 plan of reorganization (the “Confirmation Order”). U.S. Bank argues primarily that the equitable mootness doctrine must be limited because the doctrine’s overbroad application has no basis in either the Constitution or Bankruptcy Code and contravenes the federal courts’ strong obligation to exercise jurisdiction. U.S. Bank also argues that, even on the doctrine’s own terms, the district court misapplied the test for equitable mootness.

We assume the parties’ familiarity with the underlying facts, procedural history, and issues and arguments on appeal.

## DISCUSSION

This Court reviews a district court’s equitable mootness determination for abuse of discretion. *See In re Charter Commc’ns, Inc.*, 691 F.3d 476, 483 (2d Cir. 2012). The prudential doctrine of equitable mootness allows a court to dismiss a bankruptcy appeal “when, even though effective relief could conceivably be fashioned, implementation of that relief would be inequitable.” *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 143 (2d Cir. 2005) (internal quotation marks omitted). Its purpose is “to avoid disturbing a reorganization plan once implemented,” *id.* at 144, and accordingly, “a bankruptcy appeal is presumed equitably moot when the debtor’s reorganization plan has been substantially consummated,” *In re BGI, Inc.*, 772 F.3d 102, 108 (2d Cir. 2014).

To overcome that presumption, an appellant must show all five of the so-called *Chateaugay* factors. *See Frito-Lay, Inc. v. LTV Steel Co. (In re Chateaugay Corp.)*, 10 F.3d 944, 952–53 (2d Cir. 1993) (“*Chateaugay II*”). These factors are whether: “(i) effective relief can be ordered; (ii) relief will not affect the debtor’s re-emergence; (iii) relief will not unravel intricate transactions; (iv) affected third-parties are notified and able to participate in the appeal; and (v) [the] appellant diligently sought a stay of the reorganization plan.” *In re MPM Silicones, L.L.C.*, 874 F.3d 787, 804 (2d Cir. 2017) (internal quotation marks omitted). “Although we require satisfaction of each *Chateaugay II* factor to overcome a mootness presumption, we have placed significant reliance on the fifth factor, concluding that a chief consideration under *Chateaugay II* is whether the appellant sought a stay of confirmation.” *Id.*

U.S. Bank’s first argument—that the doctrine’s application must be limited because it lacks a basis in the Constitution or Bankruptcy Code and contravenes federal courts’ obligation to exercise jurisdiction—is foreclosed by this Court’s precedent. As an initial matter, U.S. Bank has

1 not suggested any principled rule by which we should limit the doctrine or determine when its  
2 application is overbroad. U.S. Bank appears instead to invite us to carve out the facts of this case  
3 ad hoc. We must decline this invitation. While we have acknowledged the doctrine’s “enigmatic  
4 origins,” *In re Motors Liquidation Co.*, 829 F.3d 135, 167 (2d Cir. 2016), equitable mootness is  
5 now firmly established by this Court’s caselaw, *see, e.g., MPM Silicones*, 874 F.3d at 804–05;  
6 *BGI*, 772 F.3d at 107–09; *Charter*, 691 F.3d at 481–82; *Metromedia*, 416 F.3d at 143–44.  
7 Whatever merit there may be to U.S. Bank’s criticisms of the doctrine and of the bankruptcy  
8 process in general, a panel of this Court “is bound by the decisions of prior panels until such time  
9 as they are overruled either by an en banc panel of our Court or by the Supreme Court.” *Springfield*  
10 *Hosp., Inc. v. Guzman*, 28 F.4th 403, 421 (2d Cir. 2022) (internal quotation marks omitted).

11 Of course, the doctrine’s application requires a court “to carefully balance the importance  
12 of finality in bankruptcy proceedings against the appellant’s right to review and relief.” *Charter*,  
13 691 F.3d at 481. The *Chateaugay* factors serve to guide that balancing act and, contrary to U.S.  
14 Bank’s second argument, the district court did not abuse its discretion in applying them.

15 U.S. Bank filed the notice of appeal to the district court approximately a week after the  
16 bankruptcy court entered its Confirmation Order but waited two months before requesting a stay.  
17 Even then, U.S. Bank’s request was awkwardly appended to an unrelated motion and demonstrated  
18 little serious effort to show that the requirements for issuing a stay were met. The request’s timing  
19 and presentation caused the bankruptcy judge to describe it as “a sham and procedural gambit,”  
20 App’x at 918, noting also that U.S. Bank “made such a half-hearted attempt to prosecute [the stay  
21 request],” App’x at 925. U.S. Bank nevertheless argues that dismissal for equitable mootness is  
22 “only appropriate” if an appellant makes “*no effort*” at all to obtain a stay. Appellant’s Br. at 44.

1 That is incorrect. To avoid dismissal for equitable mootness, an appellant must have sought a stay  
2 “with diligence.” *Chateaugay II*, 10 F.3d at 953.

3 U.S. Bank further argues that a stay was initially unnecessary because Windstream had to  
4 complete time-consuming regulatory requirements before the plan could be consummated. This  
5 argument was not raised below and is forfeited. *See Browe v. CTC Corp.*, 15 F.4th 175, 190–91  
6 (2d Cir. 2021). It also fails because Windstream stated during the confirmation hearing that it  
7 intended to consummate the plan in late August or early September of 2020, including sufficient  
8 time for regulatory approvals, and U.S. Bank in fact relied on that timeline in its motion to expedite  
9 the appeal in the district court. Nevertheless, U.S. Bank neglected to request a stay until September  
10 1, 2020—well into the period in which the plan was expected to be consummated. Accordingly,  
11 we agree with the district court that U.S. Bank failed to diligently seek a stay of the plan as the  
12 fifth *Chateaugay* factor requires. Because the presumption of equitable mootness can be overcome  
13 only if an appellant meets all five of the *Chateaugay* factors, *see Charter*, 691 F.3d at 482, U.S.  
14 Bank’s failure to meet the fifth factor is a sufficient ground to affirm the order of the district court.

15 Finally, U.S. Bank also challenges the district court’s findings on the second and third  
16 *Chateaugay* factors that the relief requested would jeopardize Windstream’s emergence from  
17 bankruptcy and require unraveling numerous complex transactions related to the plan. Given our  
18 conclusion above as to U.S. Bank’s failure to diligently pursue a stay, we do not need to address  
19 this challenge. We note, however, that we discern no error in the district court’s analysis or  
20 conclusions concerning the second and third *Chateaugay* factors.

21 The district court therefore did not abuse its discretion in dismissing the appeals as  
22 equitably moot.

1 **CONCLUSION**

2 We have considered U.S. Bank's remaining arguments and find them to be without merit.

3 Accordingly, we **AFFIRM** the order of the district court.

4 FOR THE COURT:  
5 Catherine O'Hagan Wolfe, Clerk

**Exhibit B**

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*Counsel for Debtors and Reorganized Debtors*

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

-----X	:	
	:	
In re:	:	Chapter 11
	:	
AVIANCA HOLDINGS S.A., <i>et al.</i> , <sup>1</sup>	:	Case No. 20-11133 (MG)
	:	
Debtors and Reorganized Debtors.	:	(Confirmed)
	:	
-----X	:	

**NOTICE REGARDING FIRST INTERIM DISTRIBUTIONS TO HOLDERS  
OF ALLOWED CLASS 11 GENERAL UNSECURED AVIANCA CLAIMS**

PLEASE TAKE NOTICE that on October 24, 2021, the Debtors filed their *Further Modified Joint Chapter 11 Plan of Avianca Holdings S.A. and its Affiliated Debtors* [Docket No. 2259] (the “Plan”).<sup>2</sup>

<sup>1</sup> The Debtors and Reorganized Debtors in these chapter 11 cases, and each Debtor’s and Reorganized Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A) n/k/a HVA Associated Corp.; 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 Loyalty Bermuda Ltd. (N/A); AV Taca International Holdco S.A. (N/A); Aviacorp Enterprises 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); Nicaragüense de Aviación, Sociedad Anónima (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aéreo 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’ and Reorganized Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.



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**PLEASE TAKE FURTHER NOTICE** that, on November 2, 2021, the Court entered the *Order (I) Confirming Further Modified Joint Chapter 11 Plan of Avianca Holdings S.A. and Its Affiliated Debtors and (II) Granting Related Relief* [Docket No. 2300], approving, among other things, distributions of the Unsecured Claimholder Cash Pool and the Unsecured Claimholder Equity Pool to holders of Allowed General Unsecured Avianca Claims.

**PLEASE TAKE FURTHER NOTICE** that, on August 8, 2022, the Reorganized Debtors commenced a partial interim distribution (the “First Interim Cash Distribution”) to those holders of Allowed General Unsecured Avianca Claims who did not elect to receive the Unsecured Claimholder Equity Package (the “First Interim Cash Distribution Date”). A complete list of such holders, their Allowed General Unsecured Avianca Claims, and their corresponding First Interim Cash Distributions is set forth on **Exhibit 1** hereto.

**PLEASE TAKE FURTHER NOTICE** that the Reorganized Debtors intend to make a partial interim distribution (the “First Interim Securities Distribution”) to those holders of Allowed General Unsecured Avianca Claims who elected to receive the Unsecured Claimholder Equity Package following the closing of a forthcoming transaction with Abra Group Limited, which is described in the May 11, 2022 press release attached as **Exhibit 2** to this notice. The amount and character of the consideration that each such holder receives will be announced at the time of the First Interim Securities Distribution and will be consistent with the Plan, the Shareholders Agreement, and the Warrant Agreement.

**PLEASE TAKE FURTHER NOTICE** that all distributions will be subject to the receipt of adequate tax, KYC, noticing and/or other information that may be requested by the Reorganized Debtors or their Disbursing Agents.

**PLEASE TAKE FURTHER NOTICE** that questions and requests for documentation related to all distributions should be directed to Kurtzman Carson Consultants, LLC ([Aviancainfo@kccllc.com](mailto:Aviancainfo@kccllc.com)).

Dated: New York, New York  
August 31, 2022

/s/ Evan R. Fleck  
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*Counsel for Debtors and Reorganized  
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**Exhibit 1**

**First Interim Cash Distributions**

CASH DISTRIBUTIONS				
Claim/Schedule No.	Creditor Name	Claim Class	Allowed Amount (Undisputed)	Cash Distribution <sup>1</sup>
1326	Accenture Ltda.	11	\$1,110,982.13	\$8,151.50
1331	Accenture Ltda.	11	\$714,000.00	\$5,238.76
3784	Aero Miami II, LLC	11	\$2,574,860.64	\$18,892.27
2824	ATR Americas Inc.	11	\$799,934.75	\$5,869.28
949	Citibank, N.A.	11	\$32,307,442.50	\$237,046.15
1134	Citibank, N.A.	11	\$1,848,467.00	\$13,562.57
1137	Citibank, N.A.	11	\$47,373,385.96	\$347,587.98
923	Decision Consultancy Represented by Hernan Rincon	11	\$1,144,754.38	\$8,399.29
766	Delaware Trust Company, as Indenture Trustee for the 8.375 Senior Notes due 2020	11	\$46,662,455.63 <sup>2</sup>	\$342,371.75 <sup>3</sup>
4093	DEUTSCHE BANK AG, NEW YORK BRANCH	11	\$6,749,402.00	\$49,521.71
2327	Engine Lease Finance Corporation	11	\$6,118,908.00	\$44,895.65
2328	Engine Lease Finance Corporation	11	\$7,971,959.00	\$58,491.85
2329	Engine Lease Finance Corporation	11	\$5,335,158.00	\$39,145.12
2395	Engine Lease Finance Corporation	11	\$1,158,542.00	\$8,500.45
2392	Engine Lease Finance Corporation	11	\$3,953,653.00	\$29,008.74
2579	FGL Aircraft Ireland Limited	11	\$17,200,000.00	\$126,199.83
2581	FGL Aircraft Ireland Limited	11	\$16,000,000.00	\$117,395.19
719	GE Aviation	11	\$13,682,546.65	\$100,391.57
3255886	GENERAL ELECTRIC COMPANY	11	\$7,294,523.01	\$53,521.37
118	Hazens Investments LLC dba Sheraton Gateway Hotel	11	\$619,292.36	\$4,543.87
848	Israel Aerospace Industries Ltd.	11	\$518,257.00	\$3,802.56
2210	JP Lease Products and Services Co., Ltd.	11	\$19,285,183.00	\$141,499.24
2507	JPA No. 151 Co., Ltd.	11	\$5,112,534.00	\$37,511.68

<sup>1</sup> Approximately \$0.73371994 per \$100.00 of Allowed Claims.

<sup>2</sup> Equivalent to \$44,787,000 principal.

<sup>3</sup> Actual amounts received by beneficial noteholders may differ due to indenture trustee's retention of fees and expenses.

2568	JPA No. 152 Co., Ltd.	11	\$4,411,905.00	\$32,371.03
2591	JPA No. 159 Co., Ltd.	11	\$19,152,291.00	\$140,524.18
2613	JPA No. 160 Co., Ltd.	11	\$18,872,828.00	\$138,473.70
4040	JPMorgan Chase Bank, N.A.	11	\$1,542,919.23	\$11,320.71
2782	Los Katios Leasing Co., Ltd.	11	\$14,100,000.00	\$103,454.51
2019	Lufthansa Technik AG	11	\$509,881.08	\$3,741.10
3904	Lufthansa Technik AG	11	\$1,629,242.45	\$11,954.08
2178	Microsoft Corporation and its Subsidiary Microsoft Licensing GP	11	\$2,517,770.49	\$18,473.38
1136	NAVBLUE SAS	11	\$2,136,210.04	\$15,673.80
3255801	PRATT & WHITNEY CANADA CORP	11	\$1,483,107.06	\$10,881.85
794	Puma El Salvador S.A. de C.V.	11	\$2,406,933.31	\$17,660.15
803	Puma Energy Colombia Combustibles S.A.S.	11	\$60,311.50	\$442.52
801	Puma Energy Colombia Combustibles S.A.S.	11	\$218,768.40	\$1,605.15
805	Puma Energy Colombia Combustibles S.A.S.	11	\$300,980.58	\$2,208.35
2232	Safran Passenger Innovations LLC	11	\$1,487,939.00	\$10,917.31
2626	San Agustin Leasing Co., Ltd.	11	\$14,000,000.00	\$102,720.79
308	Unisys de Colombia S.A.	11	\$920,764.94	\$6,755.84
2749	Wells Fargo Trust Company, National Association, Not in its Individual Capacity but Solely as Owner Trustee	11	\$24,304,965.00	\$178,330.38
4007	Wells Fargo Trust Company, National Association, Not in its Individual Capacity but Solely as Owner Trustee	11	\$34,150,528.00	\$250,569.24
4017	Wells Fargo Trust Company, National Association, Not in its Individual Capacity but Solely as Owner Trustee	11	\$40,069,251.00	\$293,996.09
3998	Wells Fargo Trust Company, National Association, Not in its Individual Capacity but Solely as Owner Trustee	11	\$35,573,178.00	\$261,007.50
2427	Wells Fargo Trust Company, National Association, Not in its Individual Capacity but Solely as Owner Trustee	11	\$34,938,264.00	\$256,349.01
4043	Wells Fargo Trust Company, National Association, Not in its Individual Capacity but Solely as Owner Trustee	11	\$20,572,911.00	\$150,947.55

4117	Wells Fargo Trust Company, National Association, Not in its Individual Capacity but Solely as Owner Trustee	11	\$25,978,156.00	\$190,606.91
3950	Wells Fargo Trust Company, National Association, Not in its Individual Capacity but Solely as Owner Trustee of MSN 6411	11	\$21,483,222.00	\$157,626.69
3981	Wells Fargo Trust Company, National Association, Not in Its Individual Capacity but Solely as Owner Trustee of MSN 7437	11	\$20,788,062.00	\$152,526.16
2783	Wells Fargo Trust Company, National Association, Not in its Individual Capacity but Solely as Security Trustee	11	\$15,000,000.00	\$110,057.99
2783	Wells Fargo Trust Company, National Association, Not in its Individual Capacity but Solely as Security Trustee	11	\$17,300,000.00	\$126,933.55
2853	Wells Fargo Trust Company, National Association, Not in its Individual Capacity, but Solely as Owner Trustee of MSN 39406	11	\$49,679,757.00	\$364,510.29
3254283	WHITE & CASE LLP	11	\$1,188,380.13	\$8,719.38
1246	Wilmington Savings Fund Society, FSB, in its Capacity as Trustee and Collateral Trustee	11	\$88,042,824.78 <sup>4</sup>	\$645,987.77
3940	Wilmington Trust Company, as Security Trustee in Respect of MSN 7284	11	\$7,800,000.00	\$57,230.16
3942	Wilmington Trust Company, as Security Trustee in Respect of MSN 7318	11	\$8,200,000.00	\$60,165.04
2593	Woori Bank, Tokyo Branch	11	\$8,021,114.00	\$58,852.51
2627	Woori Bank, Tokyo Branch	11	\$6,921,459.00	\$50,784.13
1476	Worldwide Flight Services, Inc.	11	\$1,139,311.18	\$8,359.35
2353	Zephyrus Capital Aviation Partners 1C Limited	11	\$6,522,853.00	\$47,859.47

<sup>4</sup> Equivalent to \$85,271,501 principal.

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**Exhibit 2**

**Press Release**

## LATIN AMERICA WILL FLY HIGHER WITH ABRA GROUP

### Principal Shareholders of Avianca and Controlling Shareholder of GOL to Create Abra Group, a Leading Air Transportation Group Across Latin America

- » *Subject to customary regulatory approvals and closing conditions, Abra will control Avianca and GOL and bring together their iconic brands under a single group.*
- » *Through recent investments made by Avianca's and Viva's shareholders, Abra Group will also own a non-controlling 100% economic interest in Viva's operations in Colombia and Peru as well as convertible debt representing a minority interest investment in Chile's Sky Airline.*
- » *Airlines will maintain independent brands, talent, teams, and culture while benefiting from greater efficiencies and investments under common aligned ownership.*
- » *Customers to benefit from the best fares, access to more destinations, more frequent flights and seamless connections, and the ability to earn and use points across LifeMiles and Smiles, the brands' market-leading loyalty programs.*

**London, May 11, 2022:** The principal shareholders of Colombia's Avianca and the controlling shareholder of Brazil's GOL have signed a landmark agreement to create a leading air transportation group across Latin America under a holding company structure named Abra Group Limited. Subject to customary regulatory approvals and closing conditions, the Abra Group will control Avianca and GOL and bring together their iconic brands under a single holding.

Through recent investments made by Avianca's and Viva's shareholders, the Group will also own a non-controlling 100% economic interest in Viva's operations in Colombia and Peru as well as convertible debt representing a minority interest investment in Chile's Sky Airline.

Together, Avianca and GOL will anchor a pan-Latin American network of airlines that will have the lowest unit costs in their respective markets, the leading loyalty programs across the region, and other synergistic businesses. A



Abra will provide a platform for the operating airlines to further reduce costs, achieve greater economies of scale, continue to operate a state-of-the-art fleet of aircraft, and expand their routes, services, product offerings, and loyalty programs.

In the aggregate, the airlines under the Abra Group ownership will offer customers the largest network of complementary routes, with minimal overlap, across their markets.

Abra's financial strength will provide long-term stability and agility to the participating airlines that will allow consistent and sustained investment in innovations and synergies.

Abra Group will be co-controlled by the principal shareholders of Avianca and the majority shareholder of GOL and be led by management with significant airline experience across the region, a long history of entrepreneurship, and a proven track record of growth and successful airline transformations.

- » Roberto Kriete, who will serve as the group's Chairman, grew TACA in the 1980s into the leading Central American airline before merging it with Colombia's Avianca Airlines in 2009. He also founded the leading Mexican carrier Volaris in 2006.
- » Constantino de Oliveira Junior, who will serve as the group's CEO, pioneered Latin America's low-cost carrier revolution when he founded GOL Airlines in 2001. Together with the acquisition of VRG in 2007 and Webjet in 2011, he led the company's growth to a market-leading position.
- » Adrian Neuhauser, current President and CEO of Avianca, and Richard Lark, current CFO of GOL, will serve as the group's Co-Presidents, in addition to maintaining their current roles at the airlines; further details on the Abra management team will be provided at closing.

Abra Group's management will focus on achieving synergies to ensure the lowest cost structure in each carrier's relevant market; expanding routes, services, product offerings, and loyalty programs; and developing innovative new products and services that will meet the evolving needs of passengers and air cargo customers in the highly competitive Latin American air transportation market and beyond.

Abra will also ensure that its operating airlines are ESG market leaders by providing enhanced governance as well as the financial strength to continue to invest in a lower carbon footprint fleet, which will significantly accelerate the airline industry's path towards meeting carbon neutrality targets.

Roberto Kriete, Abra Group's Chairman, said: "Our vision is to create an airline group that tackles 21<sup>st</sup> century issues and improves air travel for our customers, employees, and partners as well as the communities in which we operate. Our customers will benefit from access to even better fares, more destinations, more frequent flights and seamless connections, and the ability to earn and use points across the brands' loyalty programs. They will also be able to enjoy enhanced travel benefits and access to superior products and services."

Constantino de Oliveira Junior, Abra Group's CEO, said: "This agreement places Abra's airlines in a position to lead air travel within the region – serving a population of over one billion and GDP of nearly three trillion US dollars – providing significant opportunities for capacity and revenue growth. Our unique enterprise structure will allow each airline to drive results by maintaining their independent brands, talent, teams, and culture and will provide employees more opportunities for personal and professional growth at every stage of their careers."

## WEBCAST AND ADDITIONAL INFORMATION

Group management will participate in a webcast at 2:00 PM BST (8:00 AM BOG, 9:00AM EST, 10:00 AM BRA) today May 11, to discuss this announcement. To register and listen to the webcast visit the following site: <https://event.on24.com/wcc/r/3769845/C4DE87F9FF37AEAF60AC786EB9AE15BC>. The playback will be available at the same link following the completion of the webcast.



**Exhibit C**

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

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:  
In re: : Chapter 11  
:  
AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup> : Case No. 20-11133 (MG)  
:  
Debtors and Reorganized Debtors. : (Confirmed)  
:  
-----X

**ORDER OF FINAL DECREE CLOSING CERTAIN CHAPTER 11 CASES**

Upon the Motion<sup>2</sup> of the Reorganized Debtors (“Motion,” ECF Doc. # 2621), pursuant to section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022, for entry of an order of final decree (this “Final Decree”) closing the Affiliate Cases and granting related relief, as more fully set forth in the Motion; and this Bankruptcy Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Bankruptcy Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Bankruptcy Court may enter a final order consistent with Article III of the United States

<sup>1</sup> The Debtors and Reorganized Debtors in these chapter 11 cases, and each Debtor’s and Reorganized Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A) n/k/a HVA Associated Corp.; 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 Loyalty Bermuda Ltd. (N/A); AV Taca International Holdco S.A. (N/A); Aviacorp Enterprises 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); Nicaragüense de Aviación, Sociedad Anónima (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aéreo 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’ and Reorganized Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.



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Constitution; and this Bankruptcy Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Bankruptcy Court having found that the relief requested in the Motion is in the best interests of the Reorganized Debtors, their estate and creditors, and other parties in interest; and this Bankruptcy Court having reviewed the Motion; and this Bankruptcy Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Bankruptcy Court; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. The Affiliate Cases, as identified on **Schedule 1** attached to this Final Decree, are hereby closed effective immediately.
3. The following cases shall remain open pending further order of the Court: (a) the Lead Case, *In re Avianca Holdings S.A.*, Case No. 20-11133; (b) *Servicios Aeroportuarios Integrados SAI S.A.S.*, Case No. 20-11138; (c) *Avifreight Holding Mexico, S.A.P.I. de C.V.*, Case No. 20-11155; (d) *Aero Transporte de Carga Unión, S.A. de C.V.*, Case No. 20-11140.
4. For the avoidance of doubt, no fees of the Office of the United States Trustee (the “U.S. Trustee”) shall accrue after the date of this Final Decree, and no disbursements made by the Affiliate Debtors after the date of entry of this Final Decree will be included in any calculation of such fees; *provided* that any disbursements by the Affiliate Debtors for distributions on account of claims pursuant to the Debtors’ chapter 11 plan shall be treated as disbursements by Avianca Holdings S.A. for purposes of calculating the U.S. Trustee’s fees.
5. The Debtors shall reserve sufficient funds to pay the Office of the United States Trustee the amount of any quarterly fees due pursuant to 28 U.S.C. § 1930 and any applicable

interest due pursuant to 31 U.S.C. § 3717, which fees and interest, if any, shall be paid within twenty-five (25) days of the entry of this Final Decree. Within twenty (20) days after the entry of the Final Decree, the Debtors shall provide to the United States Trustee an affidavit indicating cash disbursements for the period from July 1, 2022 to the date that the Final Decree has been entered by the Bankruptcy Court.

6. The Reorganized Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Decree in accordance with the Motion.

7. Entry of this Final Decree is without prejudice to the rights of the Debtor, Reorganized Debtors or any party in interest to seek to reopen the Affiliate Cases for cause pursuant to section 350(b) of the Bankruptcy Code.

8. This Court will retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Final Decree. Further, the Court will retain jurisdiction over any matter pending in the chapter 11 cases.

Dated: September 16, 2022

New York, New York

/s/ Martin Glenn

The Honorable Martin Glenn  
CHIEF UNITED STATES BANKRUPTCY JUDGE

**Schedule 1**

**Affiliate Cases To Be Closed**

*[Remainder of page intentionally left blank]*

**Affiliate Cases**

<b><u>Debtor Name</u></b>	<b><u>Case Number</u></b>
Aeroinversiones de Honduras, S.A.	20-11141
Aerovías del Continente Americano S.A. Avianca	20-11134
Airlease Holdings One Ltd.	20-11142
America Central (Canada) Corp.	20-11143
America Central Corp.	20-11144
AV International Holdco S.A.	20-11145
AV International Holdings S.A.	20-11146
AV International Investments S.A.	20-11147
AV International Ventures S.A.	20-11148
AV Investments One Colombia S.A.S.	20-11135
AV Investments Two Colombia S.A.S.	20-11136
AV Loyalty Bermuda Ltd.	20-12255
AV Taca International Holdco S.A.	20-11149
Aviacorp Enterprises S.A.	20-12256
Avianca Costa Rica S.A.	20-11150
Avianca Leasing, LLC	20-11151
Avianca, Inc.	20-11132
Avianca-Ecuador S.A.	20-11152
Aviaservicios, S.A.	20-11153
Aviateca, S.A.	20-11154
C.R. Int'l Enterprises, Inc.	20-11156
Grupo Taca Holdings Limited	20-11157
International Trade Marks Agency Inc.	20-11158
Inversiones del Caribe, S.A.	20-11159
Isleña de Inversiones, S.A. de C.V.	20-11160
Latin Airways Corp.	20-11161
Latin Logistics, LLC	20-11162
Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.)	20-11163
Regional Express Américas S.A.S.	20-11137
Ronair N.V.	20-11164
Servicio Terrestre, Aereo y Rampa S.A.	20-11165
Taca de Honduras, S.A. de C.V.	20-11166
Taca de México, S.A.	20-11167
Taca International Airlines S.A.	20-11168
Taca S.A.	20-11169
Tampa Cargo S.A.S.	20-11139
Technical and Training Services, S.A. de C.V.	20-11170