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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 and Reorganized Debtors. : (Confirmed)
: :
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**APPELLANT’S STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure, the Appellant, Avianca Holdings S.A. and its reorganized debtor affiliates in these proceedings (collectively, the “Reorganized Debtors”), by and through its undersigned counsel, hereby submits the following statement of issues, designation of items to be included on the record on appeal, and certification regarding transcripts with respect to the *Notice of Appeal* [Docket No. 2720]. As set forth in the Notice of Appeal, Appellant appeals from the *Decision Resolving (I) Burnham Sterling and Company LLC and Babcock & Brown Securities LLC’s Motion to Compel*

¹ A complete list of each of the Debtors and Reorganized Debtors in these chapter 11 cases may be obtained on the website of the claims and noticing agent at <http://www.kccllc.net/avianca>. The Debtors’ and Reorganized Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



Compliance with 11 U.S.C. §§ 365(d)(5) and 503(b) and (II) Reorganized Debtors' Twenty-Fourth and Twenty-Fifth Omnibus Objections to Proofs of Claim [Docket No. 2707] entered January 26, 2023 and *Order Granting in Part Burnham Sterling and Company LLCs and Babcock & Brown Securities LLC's Motion to Compel Compliance with 11 U.S.C. §§ 365(d)(5) and 503(b) and Overruling in Part Reorganized Debtors' Twenty-Fourth and Twenty-Fifth Omnibus Objections to Proofs of Claim* [Docket No. 2714] entered January 31, 2023.

STATEMENT OF ISSUE ON APPEAL

Whether the bankruptcy court erred in holding that brokerage fees owed by the Reorganized Debtors in connection with pre-petition lease transactions, which fees became unconditional obligations upon execution of the leases, but were scheduled to be paid in installments over the term of the leases—including during the post-petition period—are entitled to priority under section 365(d)(5) of the Bankruptcy Code as obligations “arising . . . after the bankruptcy filing.”

DESIGNATION OF RECORD ON APPEAL

The Reorganized Debtors respectfully designate the following items for the appellate record pursuant to Rule 8009(a) of the Federal Rules of Bankruptcy Procedure. Each designated item shall include all exhibits and/or attachments to such item, as set forth in the following tables²:

² The Reorganized Debtors have filed certain documents under seal pursuant to *Standing Order Authorizing and Approving Procedures for Sealing and Redacting Confidential Information* [Docket No. 1475]. As such, certain materials designated herein were previously filed under seal or otherwise submitted to the Bankruptcy Court in a confidential manner. The Reorganized debtors will promptly file a motion with the District Court to accept all confidential, redacted, and sealed documents noted herein pursuant to Rule 8009(f) of the Federal Rules of Bankruptcy Procedure.

Bankr. ECF Dkt. No.	Date	Document Description	Under Seal
401	July 7, 2020	Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (governing aircraft leases for MSNs 37507, 37508, 6511, 6767, 6692, 6739, 6746, and 6617)	Exhibits B, C, and D
402	July 7, 2020	Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (governing aircraft leases for MSNs 7284 and 7318)	Exhibits B, C, and D
405	July 7, 2020	Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (governing aircraft lease for MSN 39407)	Exhibits B, C, and D
410	July 7, 2020	Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (governing aircraft lease for MSN 3992)	Exhibits B, C, and D
411	July 7, 2020	Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (governing aircraft lease for MSN 4281)	Exhibits B, C, and D
412	July 7, 2020	Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (governing aircraft lease for MSN 4284)	Exhibits B, C, and D
413	July 7, 2020	Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (governing aircraft lease for MSN 8300)	Exhibits B, C, and D
414	July 7, 2020	Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (governing aircraft lease for MSN 7887)	Exhibits B, C, and D
415	July 7, 2020	Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (governing aircraft lease for MSN 7928)	Exhibits B, C, and D
416	July 7, 2020	Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (governing aircraft lease for MSN 3988)	Exhibits B, C, and D

Bankr. ECF Dkt. No.	Date	Document Description	Under Seal
423	July 7, 2020	Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (governing aircraft lease for MSN 37511)	Exhibits B, C, and D
1070	October 8, 2020	Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (governing aircraft lease for MSN 65315)	Exhibits B and C
1864	July 6, 2021	Debtors' Motion for an Order Authorizing Them to (I) Enter Into New Aircraft Lease and Letter of Intent and (II) Reject Pre-Petition Aircraft Lease with Wilmington Trust Company (MSN 7887) and Certain Related Agreements	Motion (partially redacted), Exhibit B, and Exhibit 2
1865	July 6, 2021	Debtors' Motion for an Order Authorizing Them to (I) Enter Into New Aircraft Lease and Letter of Intent and (II) Reject Pre-Petition Aircraft Lease with Wilmington Trust Company (MSN 7928) and Certain Related Agreements	Motion (partially redacted), Exhibit B, and Exhibit 2
1929	July 23, 2021	Order Authorizing the Debtors to (I) Enter Into New Aircraft Lease and Letter of Intent and (II) Reject Pre-Petition Aircraft Lease with Wilmington Trust Company (MSN 7928) and Certain Related Agreements	
1930	July 7, 2021	Order Authorizing the Debtors to (I) Enter Into New Aircraft Lease and Letter of Intent and (II) Reject Pre-Petition Aircraft Lease with Wilmington Trust Company (MSN 7887) and Certain Related Agreements	
1942	July 28, 2021	Motion for an Order Authorizing Them to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIV 2016 (MSNs 7284 and 7318) and Certain Related Agreements	Motion (partially redacted) and Exhibit 2
1943	July 29, 2021	Debtors' Motion for an Order Authorizing Them to (I) Enter Into New Aircraft Lease and (II) Reject Pre-Petition Aircraft Lease (MSN 8300) and Certain Related Agreements	Motion (partially redacted) and Exhibit 2

Bankr. ECF Dkt. No.	Date	Document Description	Under Seal
1948	July 29, 2021	Debtors' Motion for an Order Authorizing Them to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 3988 and 3992) and Certain Related Agreements	Motion (partially redacted) and Exhibit 2
1949	July 29, 2021	Debtors' Motion for an Order Authorizing Them to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 4281 and 4284) and Certain Related Agreements	Motion (partially redacted) and Exhibit 2
1950	July 29, 2021	Debtors' Motion for an Order Authorizing Them to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIV 2015 (MSNs 6511, 6617, 6692, 6739, 6746, and 6767) and Certain Related Agreements	Motion (partially redacted) and Exhibit 2
2002	August 16, 2021	Order Authorizing the Debtors to (I) Enter Into New Aircraft Lease and (II) Reject Pre-Petition Aircraft Lease (MSN 8300) and Certain Related Agreements	
2004	August 16, 2021	Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIV 2016 (MSNs 7284 and 7318) and Certain Related Agreements	
2015	August 17, 2021	Order Authorizing the Debtors to (I) Enter Into New Aircraft Lease and Letter of Intent and (II) Reject Pre-Petition Aircraft Leases with EAIV 2015 (MSNs 6511, 6617, 6692, 6739, 6746, and 6767) and Certain Related Agreements	
2016	Aug. 17, 2021	Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 4281 and 4284) and Certain Related Agreements	
2017	August 17, 2021	Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 3988 and 3992) and Certain Related Agreements	

Bankr. ECF Dkt. No.	Date	Document Description	Under Seal
2378	December 1, 2021	Schedule of Aircraft Leases to Be Assumed Subject to Entry into Definitive Documentation in Accordance with Previous Court-Approved Letters of Intent and Approval Orders (authorizing Debtors to reject aircraft lease for MSN 39407)	
2427	January 5, 2022	Notice of Rejection of Aircraft Leases (MSNs 6511 and 6767)	
2500	February 28, 2022	Notice of Rejection of Aircraft Leases (MSNs 7284 and 7318)	
2501	February 28, 2022	Notice of Rejection of Aircraft Lease (MSN 8300)	
2502	February 28, 2022	Notice of Rejection of Aircraft Leases (MSNs 3988 and 3992)	
2503	February 28, 2022	Notice of Rejection of Aircraft Leases (MSNs 4281 and 4284)	
2582	June 8, 2022	Notice of Rejection of Aircraft Leases (MSNs 6692, 6739, 6746, 7887, 7928, 37503, 37507, and 37508)	
2630	September 21, 2022	Stipulation and Order Regarding Certain Aircraft Lease Between the Reorganized Debtors and Aircraft Counterparties (MSN 65315) (changing effective date of rejection of lease for MSN 65316)	
2657	November 30, 2022	Burnham Sterling and Company LLC and Babcock & Brown Securities LLC's Motion to Compel Compliance with 11 U.S.C. §§ 365(d)(5) and 503(b)	
2661	December 2, 2022	Reorganized Debtors' Twenty-Fourth Omnibus Objection to Proofs of Claim	
2662	December 2, 2022	Declaration of John G. McCarthy in Support of the Reorganized Debtors' Twenty-Fourth Omnibus Objection to Proofs of Claim	
2663	December 2, 2022	Reorganized Debtors' Twenty-Fifth Omnibus Objection to Proofs of Claim	

Bankr. ECF Dkt. No.	Date	Document Description	Under Seal
2666	December 2, 2022	Declaration of John G. McCarthy in Support of the Reorganized Debtors' Twenty-Fifth Omnibus Objection to Proofs of Claim	Exhibit B (partially redacted)
2671	December 13, 2022	Order - Judge David S. Jones	
2685	January 5, 2023	Notice of Rejection of Aircraft Leases (MSNs 6617 and 3113)	
2689	January 9, 2023	Burnham Sterling and Company LLC and Babcock & Brown Securities LLC's Consolidated Reply (I) in Response to Reorganized Debtors' Twenty-Fourth and Twenty-Fifth Omnibus Objections to Proofs of Claim and (II) in Further Support of Motion to Compel	
2690	January 11, 2023	Letter from John G. McCarthy to Judge David S. Jones	
2699	January 18, 2023	Reply in Support of Reorganized Debtors' Twenty-Fourth and Twenty-Fifth Omnibus Objections to Proofs of Claim	Exhibit C
2707	January 26, 2023	Decision Resolving (I) Burnham Sterling and Company LLC and Babcock & Brown Securities LLC's Motion to Compel Compliance with 11 U.S.C. §§ 365(d)(5) and 503(b), and (II) Reorganized Debtors' Twenty-Fourth and Twenty-Fifth Omnibus Objections to Proofs of Claim	
2714	January 31, 2023	Order Granting in part Burnham Sterling and Company LLC and Babcock & Brown Securities LLC's Motion to Compel Compliance with 11 U.S.C. §§ 365(d)(5) and 503(b) and Overruling in Part Reorganized Debtors' Twenty-Fourth and Twenty-Fifth Omnibus Objections to Proofs of Claims	
2718	January 25, 2023	Court Hearing Transcript	
2720	February 9, 2023	Notice of Appeal, with Civil Cover Sheet	

PROOFS OF CLAIM

Claim No.	Date	Document Description
2055	January 20, 2021	Secured claim by Burnham Sterling and Company LLC against Avianca Holdings S.A., for \$12,511,109.69
2057	January 20, 2021	Secured claim by Babcock and Brown Securities LLC against Avianca Holdings S.A., for \$2,127,586.36
4022	August 13, 2021	Priority claim by Babcock and Brown Securities LLC against Aerovías del Continente Americano S.A. Avianca, for unliquidated amount
4026	August 13, 2021	Priority claim by Burnham Sterling and Company LLC against Aerovías del Continente Americano S.A. Avianca, for unliquidated amount
4027	August 13, 2021	Priority claim by Burnham Sterling and Company LLC against Taca International Airlines S.A., for unliquidated amount
4033	August 23, 2021	Administrative priority claim by Burnham Sterling and Company LLC against Avianca Holdings S.A., for \$1,906,075.03
4034	August 23, 2021	Administrative priority claim by Babcock and Brown Securities LLC f/k/a Burnham Sterling Securities LLC against Taca International Airlines S.A., for \$397,804.25
4035	August 23, 2021	Administrative priority claim by Burnham Sterling and Company LLC against Taca International Airlines S.A., for \$1,906,075.03
4036	August 23, 2021	Administrative priority claim by Babcock and Brown Securities LLC f/k/a Burnham Sterling Securities LLC against Aerovías del Continente Americano S.A. Avianca, for \$397,804.25
4037	August 23, 2021	Administrative priority claim by Burnham Sterling and Company LLC against Aerovías del Continente Americano S.A. Avianca, for \$1,906,075.03
4038	August 23, 2021	Administrative priority claim by Babcock and Brown Securities LLC f/k/a Burnham Sterling Securities LLC against Avianca Holdings S.A., for \$397,804.25

CERTIFICATION REGARDING TRANSCRIPTS

Pursuant to Rule 8009(b)(1) of the Federal Rules of Bankruptcy Procedure, Appellant hereby certifies that it is not ordering any transcripts. All transcripts have been prepared, are on the docket, and are designated in the foregoing designation of the record.

RESERVATION OF RIGHTS

The Reorganized Debtors expressly reserves the right to: (i) withdraw, supplement, amend or modify this Statement of Issues and Designation of Record on Appeal; and (ii) move to strike any items included by the Appellees in a designation of additional items. This filing is made expressly subject to, and without waiver of any and all rights, remedies, challenges, and objections.

Dated: New York, New York
February 23, 2023

SMITH, GAMBRELL & RUSSELL, LLP

By: /s/ John G. McCarthy
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