



This Report and Recommendation is submitted to the District Court with respect to the Motion for Withdrawal of Reference of Adversary Proceeding, and Brief in Support [AP<sup>1</sup> No. 23] (the “**Motion to Withdraw Reference**”) filed by Airbus Helicopters, S.A.S. (“**Airbus**”).

Concurrently with this Report and Recommendation, the Court has submitted to the District Court Proposed Findings of Fact and Conclusions of Law (the “**Proposed Findings and Conclusions**”) regarding Airbus’s Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction, and on the Grounds of Forum Non Conveniens [AP No. 24] (the “**Motion to Dismiss**”). In the Proposed Findings and Conclusions, this Court respectfully recommends that the District Court: (i) grant the Motion to Dismiss for lack of personal jurisdiction over Airbus; (ii) in the alternative, if personal jurisdiction exists over Airbus, dismiss the Adversary Proceeding on grounds of forum non conveniens; or (iii) further in the alternative, if personal jurisdiction over Airbus exists and the Adversary Proceeding is not dismissed on grounds of forum non conveniens, permissively abstain from hearing the Adversary Proceeding. If the District Court adopts any of this Court’s recommendations set forth in the Proposed Findings and Conclusions, the Motion to Withdraw Reference is moot. If the District Court chooses not to adopt any of this Court’s recommendations set forth in the Proposed Findings and Conclusions, it must decide the Motion to Withdraw Reference. In that regard, this Court recommends that the District Court immediately withdraw the reference of the Adversary Proceeding for the reasons explained below.

## **I. Factual and Procedural Background**

Plaintiff ECN Capital (Aviation) Corp. (“**ECN**”), an Ontario corporation, is a commercial financing business with its headquarters located in Toronto, Canada. Complaint ¶ 5. It provides

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<sup>1</sup> Citations to “AP No.” refer to the docket number in the Adversary Proceeding (16-3151), while citations to “BC No.” refer to the docket number in the Bankruptcy Case (16-31854).

commercial aviation financing to customers in the transportation and energy sectors, among others, throughout Canada and the United States. *Id.*

Defendant Airbus is a French company organized and existing under the laws of France with its principal place of business in France. *Id.* ¶ 6. It designs, manufactures, markets, and sells aircraft, including two models of helicopters sold under the name “Super Puma”—the Eurocopter EC225 (the “**EC225**”) and the Eurocopter AS332 L2 (the “**AS332 L2**”). *Id.* ¶ 1.

ECN currently owns five Super Puma helicopters manufactured by Airbus—one EC225 and four AS332 L2s (collectively, the “**Helicopters**”). *Id.* ¶ 4. ECN purchased the Helicopters from CHC Helicopters (Barbados) SRL (“**CHC (Barbados)**”) pursuant to a sale-leaseback transaction whereby it purchased the helicopters and then leased them back to CHC (Barbados) for operation and sublease (the “**ECN Leases**”). *Id.* ¶ 12. The ECN Leases were guaranteed by CHC Helicopter S.A., CHC Helicopter Holding S.A.R.L., 6922767 Holding SARL, and Heli-One Leasing, ULC (the “**ECN Lease Guarantors**”). *Id.* ¶ 42; *see* Proofs of Claim Nos. 543, 545, 549, 556, and 575.<sup>2</sup>

On April 29, 2016, an Airbus-manufactured Super Puma EC225 leased by CHC (Barbados) crashed near Turøy, Norway, killing all 13 individuals on board the aircraft. *Id.* ¶ 2. As a result of the crash and subsequent investigation, civil aviation authorities in the United States, Europe, Norway, and the United Kingdom prohibited the flight and/or commercial use of any EC225 or AS332 L2, including the Helicopters. *Id.* ECN, however, did not own the EC225 that crashed in Norway. Tr. 24:19-23 (Katz).<sup>3</sup>

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<sup>2</sup> Kurtzman Carson Consultants, the Bankruptcy Court-approved claims agent, maintains the Proofs of Claim filed in the Bankruptcy Case. The claims register may be viewed at <http://www.kccllc.net/chc/register>.

<sup>3</sup> Pursuant to Local Bankruptcy Rule (“**LBR**”) 5011-1(b), the Court held a status conference on the Motion to Withdraw Reference on February 6, 2017 (the “**Status Conference**”). Citations to the transcript of the Status Conference shall take the form of “Tr. pg:line-line (speaker).” A copy of the transcript may be found at AP No. 73.

On May 5, 2015 (the “**Petition Date**”), CHC Group, Ltd. and 42 of its direct and indirect subsidiaries (collectively, the “**Debtors**”) filed for protection under Chapter 11 of the Bankruptcy Code. Complaint ¶ 37. The 43 cases are jointly administered under the lead case of *In re CHC Group, Ltd.*, 16-31854-11 (collectively, the “**Bankruptcy Case**”). Among the Debtor entities are CHC (Barbados) and the ECN Lease Guarantors. In addition to the Helicopters, as of the Petition Date, the Debtors leased Super Puma helicopters from various other third parties and owned six Super Puma helicopters outright. Declaration of David W. Fowkes in Support of Third Amended Joint Chapter 11 Plan of CHC Group Ltd. and its Affiliated Debtors [BC No. 1643] ¶¶ 10, 12.<sup>4</sup>

During the Bankruptcy Case, CHC (Barbados) rejected the ECN Leases in accordance with § 365 of the Bankruptcy Code. *Id.* ¶ 12. ECN then filed the various Proofs of Claim in the Bankruptcy Case based on CHC (Barbados)’s rejection of the ECN Leases and the related guarantees of performance, each for “[n]o less than [\$] 94,070,389.” *See* Proofs of Claim Nos. 543, 545, 549, 556, and 575.

ECN filed the Complaint against Airbus on November 17, 2016, which contains the following counts: (i) Negligence, (ii) Strict Products Liability–Manufacturing Defect, (iii) Strict Products Liability–Design Defect, (iv) Strict Products Liability–Inadequate Warning, (v) Breach of Implied Warranty of Merchantability, (vi) Negligent Misrepresentation, and (vii) Fraud. Complaint ¶¶ 19-111. The Complaint also requests punitive and exemplary damages, an award of attorneys’ fees and costs, and pre- and post-judgment interest. *Id.* at 30 (Prayer for Relief).<sup>5</sup>

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<sup>4</sup> At the Status Conference, the Court asked the Debtors’ counsel for information regarding (i) the number of EC225s and AS332 L2s that were in the Debtors’ fleet as of the Petition Date and that remain in the Debtors’ fleet today, and (ii) the ownership of those helicopters. This and additional information was provided in Mr. Fowkes’ declaration. The information provided in the declaration did not influence this Court’s recommendation, but was helpful to the Court in understanding the relationship between the parties, the claims, and certain of the Debtors.

<sup>5</sup> These claims are not set forth in numbered counts, but appear in the Prayer.

Airbus filed the Motion to Withdraw Reference on January 3, 2016, requesting an immediate withdrawal of the reference of the Adversary Proceeding. In accordance with local procedure, the Court initially set the Status Conference on the Motion to Withdraw Reference for January 30, 2017, but continued it to February 6, 2017 at the parties' request.<sup>6</sup> ECN then filed its response in opposition to the Motion to Withdraw Reference on February 2, 2016 [AP No. 65] (the "**Opposition**").<sup>7</sup> The Court held the Status Conference on February 6, 2017, and now issues this Report and Recommendation to the District Court in accordance with LBR 5011-1(b).

## **II. Report and Recommendation**

In the Motion to Withdraw Reference, Airbus argues that the District Court should immediately withdraw the reference of the Adversary Proceeding because:

This adversary proceeding brought by non-debtor ECN Capital (Aviation) Corp. ("ECN") against non-debtor [Airbus] is a complex aviation product liability and tort lawsuit that has no connection with the above-captioned main bankruptcy proceedings (the "CHC Bankruptcy Proceedings") of the CHC Group debtor entities (the "CHC Debtors" or "Debtors"). It is a standalone lawsuit over ECN's dissatisfaction with five helicopters it owns that were designed and manufactured by [Airbus]. The outcome of the adversary proceeding will have no effect on the CHC Bankruptcy Proceedings, does not involve the Debtors' property, and ECN concedes that it is noncore. Resolution of this matter outside of the Bankruptcy Court furthers the interests of judicial economy, as ECN and [Airbus] have requested a jury trial and neither consents to the orders or final judgment of this Court, making the District Court's substantive involvement inevitable. These factors weigh strongly in favor of withdrawal of the reference as to this adversary proceeding.

Motion to Withdraw Reference at 2.

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<sup>6</sup> See Agreed Order Granting Plaintiff ECN Capital (Aviation) Corp.'s and Defendant Airbus Helicopters, S.A.S.'s Joint Motion for Status Conference [AP No. 49].

<sup>7</sup> Although styled as an Opposition, ECN recognized at the Status Conference that this Court cannot conduct a jury trial without the parties' consent. While ECN coyly stated in the Opposition that it would consent if Airbus consented, neither party has done so. Thus, ECN's opposition to a withdrawal of reference evolved into an opposition to an immediate withdrawal of the reference, with ECN arguing that this Court should hear all pre-trial matters. At a minimum, ECN wanted this Court to consider the Motion to Dismiss, which it has and for which it has submitted the Proposed Findings and Conclusions to the District Court.

In turn, ECN argues that:

Airbus's mischaracterizations begin in the very first sentence of the Withdrawal Motion, where Airbus falsely states that this adversary proceeding "has no connection with the above-captioned main bankruptcy proceedings." (Withdrawal Mot. 2.) The truth is that this adversary proceeding is brought by one creditor in the bankruptcy cases against another creditor in the bankruptcy cases, it concerns property of the Debtors, it will involve representatives of the Debtors as witnesses and documents of the Debtors as evidence, and its outcome will impact the Debtors' estates—all as described in ECN Capital's Opposition to Defendant's Motion to Dismiss [Docket No. 63] (the "MTD Opposition"). The adversary proceeding thus is closely connected to the Bankruptcy Cases. The very premise of Airbus's Withdrawal Motion is a fabrication, and the motion therefore should be denied.

Further, the Bankruptcy Court is better positioned than any other forum to efficiently and expeditiously adjudicate ECN Capital's claims. Both ECN Capital and Airbus have appeared frequently before the Bankruptcy Court in these proceedings—indeed, Airbus even serves on the Creditors' Committee in the Bankruptcy Cases—and have engaged in discovery motion practice with respect to the "Super Puma" helicopters involved in and impacted by the April 2016 crash and subsequent grounding. Moreover, the Bankruptcy Court is already familiar with the facts and circumstances surrounding the accident and grounding, which precipitated the Debtors' chapter 11 filing and are inextricably linked to both the Bankruptcy Cases and ECN Capital's Complaint. ECN Capital's claims in this adversary proceeding are "non-core," but that carries little weight in the analysis here given how closely related those claims are to the Bankruptcy Cases and given the impact the outcome of the claims could have on the Debtors' estates.

Opposition at 1-2. The Court analyzes both Airbus's and ECN's arguments below.

#### **A. Permissive Withdrawal of Reference<sup>8</sup>**

Permissive withdrawal of the reference is governed by 28 U.S.C. § 157(d), which states, in relevant part, that a district court may withdraw "in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown." In *Holland America Ins. Co. v. Succession of Roy*, 777 F.2d 992, 998-99 (5th Cir. 1985), the Fifth Circuit stated that, in ruling on a motion to withdraw the reference, a court should consider multiple factors: (1) whether the matter involves core, non-core, or mixed issues, (2) whether or not there

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<sup>8</sup> ECN does not argue that mandatory withdrawal of the reference is appropriate.

has been a jury demand, (3) the effect of withdrawal on judicial economy, (4) the effect of withdrawal on the goal of reducing forum shopping, (5) uniformity in bankruptcy administration, (6) the effect of withdrawal on fostering the economical use of the parties' resources, and (7) the effect of withdrawal on the goal of expediting the bankruptcy process. Further, pursuant to LBR 5011-1, the Court must consider the following additional factors relevant to the Adversary Proceeding: (1) whether any response to the motion to withdraw the reference was filed, (2) whether a motion to stay the proceeding pending the district court's decision on the motion to withdraw the reference has been filed, (3) with regard to the noncore and mixed issues, whether the parties consent to entry of a final order by the bankruptcy judge, (4) whether a scheduling order has been entered in the proceeding, and (5) whether the parties are ready for trial.

Before turning to its analysis, the Court notes that because of the non-core nature of ECN's claims, coupled with the parties' respective jury demands, this Court cannot conduct the trial of the Adversary Proceeding. Thus, if the District Court does not adopt the Proposed Findings and Conclusions and the Adversary Proceeding proceeds to trial, the only role this Court may play in the Adversary Proceeding is to hear pre-trial matters. However, as explained below, this Court does not believe that it is the appropriate court to hear those pre-trial matters since the Adversary Proceeding is a complex products liability case between two foreign, non-debtor parties that in no way implicates bankruptcy law or will affect administration of the Bankruptcy Case.

### **1. Whether the Matter Involves Core, Non-Core, or Mixed Issues.**

The parties agree that ECN's claims are non-core. *See* Motion to Withdraw Reference at 6 ("ECN concedes, and [Airbus] agrees, that the adversary proceeding against [Airbus] is a non-core proceeding...."); Complaint ¶ 13 ("This adversary proceeding is a non-core proceeding."). This Court agrees. Clearly, ECN's prepetition claims for alleged negligence and products liability

against Airbus do not arise under the Bankruptcy Code or arise in the Bankruptcy Case. Thus, this factor weighs in favor of withdrawing the reference.

## **2. Whether or Not there has been a Jury Demand.**

The second factor, whether or not there has been a jury demand, also weighs in favor of withdrawing the reference. Notably, both parties have demanded a jury trial and neither consents to this Court conducting that trial. *See* Motion to Withdraw Reference at 7 (“ECN and [Airbus] have demanded a jury trial, and [Airbus] does not consent to a jury trial before the Bankruptcy Court.”); Compliant ¶ 31 (“Plaintiff ECN Capital hereby demands a trial by jury on all issues and claims so triable.”).

## **3. The Effect of Withdrawal on Judicial Economy.**

ECN argues that, although this Court cannot hear the Adversary Proceeding or enter a final judgment, judicial economy is served by this Court hearing all pre-trial matters. According to ECN: (i) this Court is already familiar with the facts and circumstances surrounding the helicopter crash and subsequent grounding that underlies the Complaint, (ii) the Debtors’ estates could benefit from a ruling in ECN’s favor because they hold claims against Airbus substantially similar to those alleged by ECN in the Complaint, and (iii) various witnesses and/or evidence are located in the United States. The Court disagrees, as explained below.

First, the Adversary Proceeding and the Bankruptcy Case are, at most, only tenuously related. *See* Proposed Findings and Conclusions at 4-12.<sup>9</sup> In addition, despite ECN’s allegations

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<sup>9</sup> Although the hearing on the Motion to Dismiss occurred after the Status Conference on the Motion to Withdraw Reference, the parties’ arguments on certain aspects of the two motions substantially overlapped. *See* Motion to Withdraw Reference at 2 (“Many of the arguments supporting [Airbus’s] Motion to Dismiss also support the withdrawal of reference, and are incorporated by reference herein.”); Opposition at 1 (“The truth is that this adversary proceeding is brought by one creditor in the bankruptcy cases against another creditor in the bankruptcy cases, it concerns property of the Debtors, it will involve representatives of the Debtors as witnesses and documents of the Debtors as evidence, and its outcome will impact the Debtors’ estates—all as described in ECN Capital’s Opposition to Defendant’s Motion to Dismiss). As such, the Court will cite to the Proposed Findings and Conclusions in its

that the Court is familiar with the parties and their claims, that is simply not true in any material respect. While the Court learned, at the outset of the Bankruptcy Case, of (i) the April 29, 2016 helicopter crash near Turøy, Norway, (ii) the investigation of the crash by certain civil aviation authorities in the United States, Europe, Norway, and the United Kingdom, and (iii) the civil aviation authorities subsequent grounding of any EC225 or AS332 L2 helicopter, that is the extent of the Court's familiarity with the parties and the claims asserted in the Complaint, other than what it has learned from reading the Complaint's allegations. Overall, this Court does not believe that it has any special knowledge of, or familiarity with, the facts, parties, or allegations in the Complaint such that it would serve judicial economy by hearing all pre-trial matters.

Moreover, with the limited exception of the jurisdictional issues addressed in the Proposed Findings and Conclusions, the Adversary Proceeding does not implicate any bankruptcy law or issue. To the contrary, the lawsuit is a complex products liability suit between two non-debtor, foreign entities that will likely involve the application of foreign law. *See* Proposed Findings of Fact and Conclusions of Law at 31-37. Thus, it appears that the District Court, which deals with these types of claims far more frequently, is in a better position to hear and determine all matters leading up to the jury trial.

Second, as previously explained, certain Debtor entities own Super Puma helicopters also grounded because of the 2016 crash. Thus, it is likely that those Debtors hold the same types of negligence and products liability claims that ECN alleges in the Complaint. If ECN receives a ruling in the Adversary Proceeding (or otherwise) that a specific part was defective, that Airbus knew of the defect, or similar rulings encompassed in negligence and/or products liability claims,

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those Debtors could likely rely on issue preclusion in a subsequent lawsuit brought against Airbus. *See id.* at 10-12. That potential scenario, however, has no relevance to judicial economy.

Notably, ECN bases its argument on the unsupported assumptions that the relevant Debtor will sue Airbus on substantially similar grounds in this Court. The Debtors' counsel, however, has stated on the record that the Debtors do not intend to sue Airbus in this Court,<sup>10</sup> if they sue Airbus at all. Further, the Court confirmed the Debtors' plan of reorganization (the "**Plan**") on March 3, 2017 [BC No. 1794], and the Plan went effective on March 24, 2017 [BC No. 1851]. Accordingly, if a reorganized Debtor does sue Airbus, it will file that lawsuit after substantial consummation of the Plan, making it questionable whether this Court would retain jurisdiction to hear any such suit. *See Bank of Louisiana v. Craig's Stores of Tex., Inc. (In re Craig's Stores of Tex., Inc.)*, 266 F.3d 388, 390 (5th Cir. 2001) ("After a debtor's reorganization plan has been confirmed, the debtor's estate, and thus bankruptcy jurisdiction, ceases to exist, other than for matters pertaining to the implementation or execution of the plan.") (citing *In re Fairfield Communities, Inc.*, 142 F.3d 1093, 1095 (8th Cir.1998); *In re Johns-Manville Corp.*, 7 F.3d 32, 34 (2d Cir.1993)).

Further, as ECN acknowledges, the largest role this Court can permissibly play in the Adversary Proceeding is to hear and determine pre-trial matters. Thus, under any scenario, another court will try the Adversary Proceeding and be the court that gains the knowledge that would allegedly result in the judicial efficiency argued for by ECN.

Third, the location of witnesses and evidence may be a consideration in determining a convenient forum for the Adversary Proceeding, but it does not tip the third factor in ECN's favor. This is especially so because, based on the allegations in the Complaint, it appears that the majority

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<sup>10</sup> At the Status Conference, the Court questioned the Debtors' counsel with respect to their intentions regarding such a lawsuit. Without waiving any rights, counsel responded that he did not anticipate bringing these types of claims in the Bankruptcy Court. Tr. 29:2-8 (Youngman).

of evidence and witnesses will be located in France or elsewhere in Europe. *See Proposed Findings and Conclusions at 31-33.*

Overall, this Court does not believe that it has any special knowledge or familiarity with the facts, the legal issues, or the parties such that it hearing all pre-trial matters would further judicial economy or foster an economical use of the parties' resources. Thus, the third factor also weighs in favor of the District Court withdrawing the reference now.

#### **4. The Effect of Withdrawal on the Goal of Reducing Forum Shopping.**

Although ECN argues that Airbus is forum shopping by attempting to avoid this Court's "lawful jurisdiction,"<sup>11</sup> the opposite appears true. The Adversary Proceeding has little direct relevance to the Bankruptcy Case. Indeed, it is undisputed that the claims asserted in the Adversary Proceeding involve foreign companies (ECN, a Canadian company, and Airbus, a French company); Helicopters that were designed, manufactured, and sold in France initially and outside the United States later; and a crash that occurred in Norway. But for the Bankruptcy Case and the broad scope of "related to" jurisdiction, there is absolutely no reason why this suit would have been brought in the Northern District of Texas. Indeed, ECN's pleadings make its motive abundantly clear—it is concerned that it may not receive fair treatment in a French court because Airbus is "primarily owned" by Airbus Group, S.E., a company in which France holds a 10% stake. *See Opposition at 3.* There is nothing in the record, however, indicating that ECN would not receive fair treatment in a French forum. *See Proposed Findings and Conclusions at 28-31.* Thus, this factor also weighs in favor of withdrawal of the reference.

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<sup>11</sup> *Opposition at 14.*

### **5. Uniformity in Bankruptcy Administration.**

This factor also weighs in favor of withdrawing the reference. As previously explained, the Complaint involves non-core claims between non-debtor parties that in no way implicate bankruptcy law. Moreover, the Court recently confirmed the Plan, which has now been substantially consummated. Simply put, there is nothing in the record indicating that the outcome of the Adversary Proceeding will have any effect on the uniformity of bankruptcy administration generally or on the administration of the Bankruptcy Case specifically. The Bankruptcy Case is essentially concluded.

### **6. The Effect of Withdrawal on Fostering the Economical Use of the Parties' Resources.**

This factor also weighs in favor of withdrawing the reference. When dealing with a proceeding involving a bankruptcy estate, a significant goal is the efficient use of the parties' resources in administering the estate and resolving any related litigation. *See EbaseOne Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. (In re EbaseOne Corp.)*, 2006 WL 2405732, at \*5 (Bankr. S.D. Tex. 2006) (citing *Plan Admin'r v. Lone Star RV Sales, Inc. (In re Conseco Fin. Corp.)*, 324 B.R. 50, 55 (N.D. Ill. 2005)). In this regard, ECN argues that:

Further, withdrawing the reference could result in inefficient use of estate resources. The Debtors' have not publicly disclosed their intentions with respect to claims against Airbus relating to the 2016 Crash and the 2016 Grounding. However, in the Debtors' motion to enter into and perform under a restructuring agreement with Airbus, the Debtors expressly reserved the right to pursue such claims. The reorganized Debtors would likely bring such claims in the Bankruptcy Court following emergence since their proposed restructuring plan includes a broad retention of jurisdiction provision that would cover the Debtors' product liability claims against Airbus concerning the Super Puma helicopters that the Debtors owned, leased and/or operated. Such claims by the Debtors against Airbus would arise from the same set of facts underlying ECN Capital's claims against Airbus in this adversary proceeding. In fact, the Debtors could even intervene or otherwise participate in ECN Capital's adversary proceeding given the estates' interest in the outcome. Retaining the reference with respect to ECN Capital's claims thus would prevent inconsistent rulings if the Debtors file claims against Airbus in the

Bankruptcy Court, and it would reduce the administrative burden on the estates if the Debtors participate in ECN Capital's litigation.

Objection at 10-11 (footnotes omitted). As explained below, the Court finds this argument unpersuasive.

Notably, ECN bases its argument on numerous unsupported assumptions. First, it assumes that a Debtor or reorganized Debtor will sue Airbus and assert claims that are substantially similar to those alleged in the Complaint. As explained above, however, that has yet to occur. *See* p. 10, *supra*. Next, ECN assumes that, if a reorganized Debtor files a lawsuit against ECN, it will file the lawsuit in this Court. The Debtors' bankruptcy counsel, however, has stated that the Debtors have no intention of suing Airbus in this Court, if it sues Airbus at all. *See id.* Finally, ECN assumes that, should a reorganized Debtor sue Airbus in this Court, this Court will have sufficient post-confirmation jurisdiction to hear the proceeding. As explained above, though, the Plan has been confirmed and substantially consummated. *See id.* Thus, it is questionable whether this Court would have sufficient post-confirmation jurisdiction to hear any such lawsuit, even assuming it was filed in this Court. *In re Craig's Stores of Tex., Inc.*, 266 F.3d at 390. Finally, ECN argues that the Debtors may choose to intervene in the Adversary Proceeding, although they have not done so and have stated no desire to do so. Overall, ECN's chain of what-if scenarios are no basis for this Court to find that it would further judicial economy by hearing all pre-trial matters in the Adversary Proceeding.

Further, as previously explained, this Court lacks the authority to hold the requested jury trial or enter a final judgment. Thus, under any scenario, the District Court must withdraw the reference prior to trial. Because of this, any argument that this Court should hear the Adversary Proceeding to avoid inconsistent rulings or to gain knowledge associated with holding a similar trial fails.

**7. The Effect of Withdrawal on the Goal of Expediting the Bankruptcy Process.**

As previously explained, the Court confirmed the Plan on March 3, 2017, and the Plan has been substantially consummated. Moreover, although certain of the Debtors have retained their claims against Airbus under the Plan, their counsel has stated on the record that they have no intention of bringing those claims in this Court, if they bring the claims at all. Overall, there is nothing in the record indicating that a withdrawal of the reference would slow the bankruptcy process, which is nearing its completion. Thus, this factor also weighs in favor of the District Court withdrawing the reference.

**8. Additional Considerations under LBR 5011-1.**

Responsive Pleadings: The pleadings before this Court are the Motion to Withdraw Reference and the Opposition.<sup>12</sup> This factor appears neutral.

Lack of Stay: The Court has not stayed the Adversary Proceeding pending a determination of the Motion to Withdraw Reference, nor has any party requested such a stay. However, as explained immediately below, the Court has abated all trial-related deadlines in the Adversary Proceeding pending the disposition of the Motion to Dismiss. Thus, this factor weighs in favor of withdrawing the reference since withdrawal will not delay the yet-to-be-scheduled trial.

Scheduling Order: ECN filed its Complaint on November 17, 2016, and the Court issued its standard Scheduling Order on November 18, 2016, which set Trial Docket Call for April 4, 2017. On January 20, 2017, however, Airbus filed the Motion for Continuance of Trial, Stay of Deadlines and Brief in Support [AP No. 56] (the “**Motion to Continue Trial**”), which requested

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<sup>12</sup> On February 2, 2017, Airbus filed the Notice of Filing Motion for Leave to File Reply Brief [AP No. 67] (the “**Motion for Leave**”). Airbus, however, neither requested a hearing on the Motion for Leave nor did it bring the motion to the Court’s attention at the Status Conference. Despite Airbus’s failure, the Court reviewed the reply brief attached to the Motion for Leave and does not believe that it added anything material to Airbus’s arguments.

that the Court abate the Adversary Proceeding and all related discovery and deadlines pending a ruling on the Motion to Dismiss. The Court held an expedited hearing on the Motion to Continue Trial on February 6, 2017 (the same day as the Status Conference), at which time it granted the Motion to Continue in part and (i) continued trial docket call to a to-be-determined date, (ii) abated all deadlines in the Scheduling Order, and (iii) abated all discovery with the exception of discovery related to Airbus's challenges to this Court's personal jurisdiction set forth in the Motion to Dismiss. Accordingly, this factor also weighs in favor of withdrawing the reference because (i) there is no scheduling order currently in place, and (ii) either this Court or the District Court will need to issue a new scheduling order should the Adversary Proceeding survive the Motion to Dismiss.

Trial Readiness: As previously explained, the Adversary Proceeding is in its infancy and the only substantive activity that has occurred is in relation to the Motion to Dismiss and the Motion to Withdraw Reference. Thus, this factor also weighs in favor of withdrawing the reference because no trial-related discovery has occurred and withdrawal of the reference will not postpone the final trial date, which has yet to be set.

#### **B. Recommendation.**

As explained above, the Adversary Proceeding is a complex products liability lawsuit between two foreign, non-debtor parties. Other than the jurisdictional issues raised in the Motion to Dismiss, the Adversary Proceeding does not implicate bankruptcy law and it will not affect the administration of the Bankruptcy Case, which is essentially concluded. Additionally, (i) this Court lacks the constitutional authority to hear and enter a final judgment on the claims pled in the Adversary Proceeding, (ii) both parties have demanded a jury trial and neither has consented to this Court conducting that trial, and (iii) this Court has no special knowledge regarding the facts, the parties, or the issues that would make it a more efficient forum to consider pre-trial matters.

Based upon the foregoing analysis, this Court respectfully recommends that, should the District Court not adopt any of its recommendations in the Proposed Findings and Conclusions, it enter an order immediately withdrawing its reference of the Adversary Proceeding to this Court.

**### END OF REPORT AND RECOMMENDATION ###**