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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	**Bankr. Case No. 16-31854-BJH**
CHC GROUP LTD., *et al.*,	**(Chapter 11)**
Debtors,	
ECN CAPITAL (AVIATION) CORP.,	**Case No. 3:17-cv-00075-C**
Plaintiff,	**Adv. Proc. No. 16-03151-BJH**
v.	**Plaintiff's Objection To the Bankruptcy Court's Proposed Findings of Fact And Conclusions Of Law And Brief in Support**
AIRBUS HELICOPTERS (SAS),	
Defendant.	Related to ECF No. 94

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Plaintiff ECN Capital (Aviation) Corp. ("ECN Capital"), hereby objects, in part, to the Bankruptcy Court's *Proposed Findings of Fact and Conclusions of Law Regarding Defendant Airbus Helicopters, S.A.S.'s Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction, and on the Grounds of Forum Non Conveniens* (the "Proposed Determination"), filed on March 28, 2017 [Docket No. 94].

I. PRELIMINARY STATEMENT

1. Airbus sells Super Puma helicopters directly to U.S.-based customers, including in Texas, and delivers those helicopters from France into the U.S. Airbus sends its top executives from France to Texas to participate in industry events and meets with U.S.-based clients to drive further sales of Super Pumas. Airbus sold Super Pumas to Texas-based CHC, and is vulnerable to suit in this jurisdiction by CHC for product liability claims that CHC holds regarding the Super Pumas. Airbus affirmatively sought the benefits of Texas courts by filing proofs of claim on Super Pumas against CHC in the Bankruptcy Court, becoming a member of the Creditors' Committee, and objecting to ECN Capital's discovery motions in the Bankruptcy Cases. And Airbus already has consented to the personal jurisdiction of Texas courts for product liability claims on Super Pumas purchased through an intermediary. These facts demonstrate that the Bankruptcy Court has personal jurisdiction over Airbus for purposes of this Adversary Proceeding and demand that the Bankruptcy Court properly exercise that jurisdiction, rather than permissively abstaining or dismissing on grounds of *forum non conveniens*.

2. ECN Capital's claims arise out of business decisions made in Texas by Texas-based CHC with regard to ECN Capital's Super Pumas, which decisions caused harm to ECN Capital in Texas. Airbus dealt directly with CHC affiliates whose business was operated in Texas by their Texas-based parent when it sold the Super Pumas that would be sold in turn to, and leased from,

ECN Capital by CHC. CHC declared bankruptcy in Texas in part due to the April 2016 crash of a Super Puma helicopter, and the resulting groundings of virtually all Super Puma AS332 L2 and EC225s, caused by Airbus's defective manufacture and design of these Super Pumas. That led to harm to CHC and to ECN Capital in Texas, and it gave rise to identical claims by CHC and ECN Capital with respect to the Super Pumas owned by each entity—and those owned by any other operators in the Oil and Gas industry that contributes significantly to the economy and citizens of the State of Texas. These facts, too, establish the Bankruptcy Court's personal jurisdiction over Airbus and weigh heavily in favor of the exercise of that jurisdiction in connection with this Adversary Proceeding.

3. Only by disregarding these salient facts does the Bankruptcy Court reach its conclusions in the Proposed Determination that it lacks personal jurisdiction over Airbus, or that it should refrain from exercising such jurisdiction on grounds of permissive abstention or *forum non conveniens*. This is improper. Any sound analysis of the jurisdictional issues presented here must take into account *both* Airbus's extensive presence in this jurisdiction—including its substantial participation in the Bankruptcy Cases and its active litigation of similar claims in Texas courts—*and* the inextricable connection that ECN Capital's claims have to this jurisdiction, as a result of the decisions made in Texas by Texas-based CHC causing harm to ECN Capital in Texas and implicating the interests of the State of Texas and its citizens.

4. The Bankruptcy Court ignores these key facts—in its Proposed Determination, the Bankruptcy Court overlooks the connection between ECN Capital's claims and its chosen forum; downplays the presence of Airbus in Texas and the consequences of Airbus's actions in this forum, including its active litigation in this Bankruptcy Court; and misapplies the relevant law regarding personal jurisdiction in this context.

5. The same errors lie at the root of the Bankruptcy Court's improper legal conclusions in the Proposed Determination relating to the issues of *forum non conveniens* and permissive abstention. Only by disregarding Airbus's presence in this district and the connection of ECN Capital's claims to this district does the Bankruptcy Court reach the conclusion that it should not exercise the jurisdiction it has over Airbus with regard to this Adversary Proceeding. A proper analysis of the key facts and their impact on the legal issues presented in this case leads to the conclusion that the Bankruptcy Court should exercise its jurisdiction over Airbus.

6. For these reasons, as explained below, Plaintiff ECN Capital files this Objection to the Proposed Determination.

II. STATEMENT OF FACTS

7. In its Proposed Determination, the Bankruptcy Court ignores or overlooks the salient facts below, which establish the close connection of Airbus and this Adversary Proceeding to the State of Texas and to the Bankruptcy Cases.

8. ECN Capital's claims relate to five helicopters—Airbus-manufactured AS332 L2 and EC225 Super Puma models (the "Helicopters")—that ECN Capital purchased from CHC (Barbados), a foreign subsidiary of Texas-based CHC Group Ltd. ("CHC," or together with its affiliated debtors, the "Debtors"). (*See* Ex. A.)[1] The business operations of CHC (Barbados) are managed out of Irving, Texas. (*See* Ex. C ¶ 10.) Prior to the sale to ECN Capital, the Debtors purchased the Helicopters directly from Airbus. (*See* Ex. D at 3.) As part of a sale leaseback agreement with ECN Capital, CHC (Barbados)—again, with its business operations managed out of Texas—leased the helicopters from ECN Capital for sublease and operation (the "ECN

[1] All references herein to "Exhibit" or "Ex." are to the exhibits accompanying the Appendix, unless otherwise noted. All references herein to "¶ __" are to the Complaint filed by ECN Capital against Airbus in this Adversary Proceeding on November 17, 2016 (the "Complaint" or "Ex. A"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in Ex. B.

Leases"). (*See id.*) The ECN Leases were guaranteed by certain of the Debtors—CHC Helicopter S.A., CHC Helicopter Holding S.A.R.L., 6922767 Holding SARL, and Heli-One Leasing, ULC—entities whose businesses are also managed out of Irving, Texas. (*See id.*)

9. On April 29, 2016, an Airbus-manufactured EC225 Super Puma helicopter operated by CHC crashed near Turøy, Norway, killing all 13 individuals on board (the "2016 Crash"). (¶ 2.) Preliminary investigative reports from the 2016 Crash identified unsafe conditions in the design of the main gear box of AS332 L2s and EC225s, which connects to the helicopter frame the main rotor head that is attached to the main rotor blades. (¶¶ 3, 17–21.) The 2016 Crash and related investigations led various civil aviation authorities to issue regulations and directives that caused a total grounding of all AS332 L2s and EC225s (the "2016 Grounding") (*see* ¶¶ 3, 17–25), including the United States Federal Aviation Authority, which is investigating the 2016 Crash and issued from Fort Worth, Texas an Emergency Airworthiness Directive requiring the grounding of all EC225s and AS332 L2s in response to the 2016 Crash (*see* Ex. E; *see also* Ex. F at 9). AS332 L2 and EC225 helicopters are used primarily in the Oil and Gas industry, including in and off the coast of Texas.

10. Approximately one week after the 2016 Crash, on May 5, 2016, the Debtors—including CHC (Barbados), CHC Helicopter S.A., CHC Helicopter Holding S.A.R.L., 6922767 Holding SARL, and Heli-One Leasing, ULC—filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, jointly administered in the Bankruptcy Court under the caption *In re CHC Group Ltd., et al.,* No. 16-31854 (BJH) (the "Bankruptcy Cases"). (¶ 37.)

11. As part of the Bankruptcy Cases in Texas, the Debtors rejected the ECN Leases and returned the Helicopters to ECN Capital. ECN Capital lost over $94 million in revenue on the rejected ECN Leases in Texas, and filed Proofs of Claim in the Bankruptcy Cases in Texas for

$94,070,389 against CHC (Barbados), CHC Helicopter S.A., CHC Helicopter Holding S.A.R.L., 6922767 Holding SARL, and Heli-One Leasing, ULC, for obligations in connection with the ECN Leases and their guarantees. (*See* Ex. D at 4–5). ECN Capital is unable to re-lease the Helicopters due to the 2016 Grounding.

12. The Debtors have also suffered harm from the 2016 Crash in Texas. At the February 13, 2017 Plan Confirmation Hearing ("Confirmation Hearing"), David W. Fowkes of Seabury Group, restructuring advisors to the Debtors, testified that the Debtors had 56 Super Pumas in their fleet at the time of the 2016 Grounding, nine of which were owned outright by the Debtors at the time and four of which remain owned outright by the Debtors. (*See* Ex. G at 197:21–198:7.) Mr. Fowkes also testified that CHC Helicopters (Barbados) SRL—the Debtor to which ECN Capital leased the five Super Pumas it owned—owned or leased a total of 22 helicopters affected by the 2016 Grounding, rejected its leases on all five of ECN Capital's Super Pumas, and continues to own one Super Puma. (*Id.* 200:14–205:8.) Robert A. Del Genio, CHC's Chief Restructuring Officer, also testified that CHC suffered injury to its business operations of approximately $34 million as a result of the 2016 Grounding (*id.* 108:5–109:17), and that CHC suffered injury to the value of the Super Pumas in its fleet as a result of the 2016 Grounding, but that CHC is unsure of the value of its claims against Airbus arising out of the 2016 Grounding (*id.* 104:11-13, 112:22–114:1).

13. Airbus actively participated in the Bankruptcy Cases in Texas. In May 2016, the U.S. Trustee appointed Airbus to the Official Committee of Unsecured Creditors (the "Creditors' Committee"), care of Kevin Cabaniss in Grand Prairie, TX. (¶ 11.) In June 2016, Airbus's U.S. counsel filed notices of appearance in the Bankruptcy Cases on behalf of Airbus. (¶ 40.) In August 2016, Airbus filed proofs of claim in the Bankruptcy Cases against certain of the Debtors

seeking a total of over $6.2 million for claims relating to the ownership, lease, and operation of the same models of Super Puma helicopters that ECN Capital owned and suffered losses on in Texas. (*Id.*) Further, jurisdictional discovery revealed that four of Airbus's executives—Laurent Tagarian, Alain Vigneau, Eric Chartier and Valerie Le-Gall—based in Marignane, France, worked with U.S. counsel to prepare Airbus's proofs of claim in the Bankruptcy Cases. (Ex. H.) Messrs. Tagarian and Vigneau were involved, together with Airbus's representative Kevin Cabaniss, an employee of AHI, in Airbus's efforts to become a member of the Creditors' Committee. Messrs. Tagarian and Vigneau traveled from Marignane, France to the U.S. for a hearing in the Bankruptcy Cases, and Mr. Tagarian met with Mr. Cabaniss in connection with Airbus's participation in the Bankruptcy Cases. (*Id.*) Airbus's discovery also revealed that Mr. Tagarian had responsibilities for Airbus "in connection with [Airbus's] participation in the [Creditors' Committee]." (*Id.*) Airbus noted that Messrs. Tagarian and Vigneau contributed to the preparation of key filings by Airbus in the Bankruptcy Cases, including Airbus's Objection to ECN Capital's Motion for Order Directing 2004 Examination of Debtors and the Debtors' 2017 Omnibus Restructure Agreement with Airbus. (*Id.*)

14. Airbus also produced documents and information concerning Airbus's presence in the U.S., including in Texas. This information revealed that French-based Airbus and its Texas-based affiliate AHI share the same ultimate corporate parent, Airbus Group S.E. (*See* Ex. I; *see also* Ex. J at 4–5.) Further, data produced by Airbus showed that from 2011 to 2016, Airbus directly sold 30 helicopters (each costing millions of dollars) to U.S.-based customers. (*See* Ex. K; *see also* Ex. J at 5.) The majority of this business was directed at Texas—Airbus sold 28 helicopters, including six Super Pumas, to customers headquartered in Texas. (*Id.*) In addition, Airbus indirectly sold 58 Airbus-manufactured helicopters to Texas-based customers through its

Texas-based affiliate distributor AHI. (*Id.*) Discovery regarding Airbus's maintenance operations revealed that Airbus ships Super Pumas owned by U.S. customers to France in order to perform any necessary main gearbox overhauls. (Ex. L.)

15. According to publicly available sources, Airbus frequently sends executives to the U.S. and Texas, where they meet with U.S.-based customers, make and announce deals for the sale of helicopters, and attend and present at industry events. (*See* Ex. J at 6–7; Ex. M.) For example, on March 8 and 9, 2017, Airbus's CEO Guillaume Faury attended Heli-Expo 2017, an industry event at the Kay Bailey Hutchison Convention Center in Dallas, Texas, where Airbus showcased helicopters and announced that 60 helicopter orders had been placed. (*See* Ex. M at 3.)

III. PLEADINGS AND MOTIONS

16. ECN Capital filed the Complaint against Airbus in this Adversary Proceeding on November 17, 2016. The Complaint asserts, among other things, claims against Airbus for defective design and breach of implied warranty of merchantability regarding Airbus's manufacturing, marketing, and sale of the EC225 and the AS332 L2 helicopters. (*See* ¶¶ 46–111.)

17. On January 3, 2017, Airbus filed its Motion to Dismiss and on January 4, 2017, an Amended Brief in Support of Motion to Dismiss (Ex. O), asking the Bankruptcy Court to find that it lacked subject matter jurisdiction over ECN Capital's claims or personal jurisdiction over Airbus. In the alternative, Airbus requested that the Court abstain from exercising its jurisdiction, or dismiss the Complaint on grounds of *forum non conveniens*.

18. On January 9, 2017, Airbus filed its Motion for Withdrawal of Reference of Adversary Proceeding, and Brief in Support. (Ex. P.)

19. On January 27, 2017, ECN Capital filed its MTD Opposition, demonstrating that this Court has subject matter jurisdiction to hear ECN Capital's claims against Airbus in the Adversary Proceeding, which are related to the Bankruptcy Cases. Among other things, ECN Capital argued in the MTD Opposition that Airbus should not be permitted to avoid this Court's jurisdiction and benefit from blatant forum-shopping merely on account of its refusal to consent to entry of final orders by the Bankruptcy Court. (*See* Ex. B pp. 15–16 & nn.26–27.)

20. On February 2, 2017, ECN Capital filed its Opposition to Defendant's Motion for Withdrawal of Reference. (Ex. F.)

21. On February 20, 2017, ECN Capital filed its Supplemental Memorandum of Law in Opposition to Airbus's Motion to Dismiss. (Ex. Q.)

22. On February 24, 2017, ECN Capital filed its Second Supplemental Memorandum of Law in Opposition to Airbus's Motion to Dismiss. (Ex. J.)

23. On February 28, 2017, the Court held a hearing on the Motion to Dismiss.

24. On March 20, 2017, ECN Capital filed its Memorandum on Post-Hearing Developments Related to Personal Jurisdiction and Abstention. (Ex. M.)

25. On March 28, 2017, the Court issued its *Proposed Findings of Fact and Conclusions of Law Regarding Defendant Airbus Helicopters, S.A.S.'s Motion To Dismiss for Lack of Subject Matter And Personal Jurisdiction, and on the Grounds of Forum Non Conveniens* (the "Proposed Determination"). (Ex. D.) The Proposed Determination (a) finds that this Court has subject matter jurisdiction over the Adversary Proceeding, but (b) finds that this Court lacks personal jurisdiction over Airbus, and (c) in the alternative, determines that (i) the Adversary Proceeding should be dismissed on grounds of *forum non conveniens* and (ii) the Court should permissively abstain from hearing the Adversary Proceeding.

26. The Proposed Determination is factually and legally incorrect in several regards, as discussed below.

IV. OBJECTIONS TO PROPOSED FINDINGS OF FACT

27. The proposed findings of fact in the Proposed Determination omit crucial facts in the record that are highly relevant to a proper analysis of the issues before the Bankruptcy Court concerning personal jurisdiction, *forum non conveniens*, and permissive abstention.

A. First, the Bankruptcy Court makes no mention in the Proposed Determination of Airbus's extensive presence in the U.S., including in Texas. The Bankruptcy Court additionally overlooks the relevance of Airbus's active participation in the Bankruptcy Cases. As ECN Capital demonstrated in its briefing and submissions to the Bankruptcy Court:

1) Airbus directly sells Super Pumas to U.S.-based customers and delivers the helicopters into the U.S., including in Texas (*see* Ex. J at 5);

2) Airbus distributes Super Pumas throughout the U.S., including in Texas, through its Texas-based affiliate, AHI (*id.*);

3) Airbus executives routinely attend industry events in the U.S., including in Texas, where they meet with U.S.-based customers and make and announce deals for the sale of helicopters (*id.* at 6);

4) Airbus and AHI share a corporate parent, Airbus Group S.E., and enjoy a close strategic relationship for purposes of marketing and selling Super Pumas to U.S.- and Texas-based customers (*see* Ex. M at 5 n.12);

5) Airbus has consented to jurisdiction in multiple actions in the U.S. regarding product liability claims, including in one action in Texas concerning the same Super Pumas at issue here (*id.* at 3); and

6) Several of Airbus's executives in France participated in the Bankruptcy Cases by working with U.S. counsel to prepare key filings, traveling to Texas for a hearing in the Bankruptcy Cases, and meeting with Kevin Cabaniss, Airbus's representative on the Creditors' Committee and an employee of AHI, in Texas (*see* Ex. J at 5–6).

These facts must be taken into consideration in any proper analysis of (a) the Bankruptcy Court's personal jurisdiction over Airbus, (b) the propriety of the Bankruptcy Court's exercise of

its personal jurisdiction over Airbus, and (c) the diminished cost or inconvenience to Airbus of litigating the Adversary Proceeding before the Bankruptcy Court. Yet, in the Proposed Determination the Bankruptcy Court reaches conclusions on personal jurisdiction, permissive abstention, and *forum non conveniens* issues without taking these salient facts into account. To that extent, the Proposed Determination is improper.

B. Second, the Bankruptcy Court fails to acknowledge in the Proposed Determination that CHC operates the business of its foreign subsidiaries out of Texas. The record establishes that it is in Texas that CHC runs the business of CHC (Barbados), which sold the Super Pumas in question to ECN Capital, leased the Super Pumas back from ECN Capital, and carried out the lease rejections regarding the Super Pumas, which caused ECN Capital harm in Texas. (Ex. M at 5.)

C. Third, the Bankruptcy Court omits any discussion of the impact of the 2016 Crash and 2016 Grounding on the Bankruptcy Cases, including the financial impact that the 2016 Crash and 2016 Grounding had on the Debtors. As ECN Capital demonstrated in its briefing before the Bankruptcy Court, these facts are critical to understanding the relatedness of ECN Capital's claims to the Bankruptcy Cases as part of a proper permissive abstention or *forum non conveniens* analysis. (Ex. B at 7–8.)

V. OBJECTIONS TO PROPOSED CONCLUSIONS REGARDING PERSONAL JURISDICTION

28. First, the Bankruptcy Court ignores the fact that Airbus's extensive participation in the Bankruptcy Cases was enough alone to establish that Airbus consented to the personal jurisdiction of this forum for purposes of the Adversary Proceeding by filing proofs of claim in the Bankruptcy Cases and substantially participating in the Bankruptcy Cases.

29. Second, the Bankruptcy Court ignores the fact that Airbus's participation in the Bankruptcy Cases, combined with its numerous contacts and activities in Texas, is enough to give rise to specific jurisdiction in this forum for purposes of the Adversary Proceeding.

30. Third, the Bankruptcy Court ignores the fact that Airbus's extensive contacts with Texas and the U.S.—including business conducted in Texas and the U.S. and the close strategic relationship between Airbus and its U.S.-based affiliate, AHI—give rise to general jurisdiction.

31. In particular, the Bankruptcy Court makes the following mistakes in assessing personal jurisdiction, and arrives at the incorrect conclusion that it does not have personal jurisdiction over Airbus. Once these mistakes are corrected, this Court should find that it has personal jurisdiction over Airbus because Airbus has consented to personal jurisdiction, because there is specific jurisdiction over the Adversary Proceeding, or because this Court has general jurisdiction over Airbus.

A. The Bankruptcy Court adopts Airbus's mischaracterization of ECN Capital's argument, suggesting that ECN Capital seeks a ruling that "by filing a notice of appearance and participating in a bankruptcy case, a creditor subjects itself to the personal jurisdiction of the bankruptcy court *for all times or for all issues*." (Ex. D at 19; *see also* Ex. O at 12.) To the contrary, as ECN Capital explained numerous times in its briefing and at argument, the Bankruptcy Court need only follow applicable case law to find that Airbus's substantial participation in the Bankruptcy Cases opens Airbus up to claims in an adversary proceeding if those claims are *related to* the subject matter of Airbus's proofs of claims. (*See* Ex. B at 17–18.)

B. The Bankruptcy Court incorrectly concludes that ECN Capital's claims in the Adversary Proceeding are "wholly unrelated" to Airbus's proofs of claim. (Ex. D at 19). Airbus's claims against CHC concern the same model of Super Puma helicopter that ECN

Capital owned, which was affected by the 2016 Crash and 2016 Grounding that gave rise to ECN Capital's claims. Similarly, the Bankruptcy Court concludes: "The mere fact that both ECN and Airbus filed claims in the same jointly-administered bankruptcy cases involving 43 affiliated debtors is insufficient for this Court to find that Airbus has consented to the Bankruptcy Court's personal jurisdiction over it for *unrelated claims* brought against it by ECN." (*Id.* at 21.) Again, ECN Capital's claims are not "unrelated"—they are inextricably linked to the facts underlying the Bankruptcy Cases. (*See* Ex. B at 17–18.)

C. The Bankruptcy Court ignores that the Debtors could have filed the same complaint that ECN Capital filed. The Bankruptcy Court conceded that the Debtors have the very same claims that ECN Capital brought in this Adversary Proceeding. (Ex. D at 11–12.) If the Debtors had asserted these claims, there is no doubt that the Bankruptcy Court would have personal jurisdiction over Airbus. ECN Capital's claims derive from claims the Debtors would have had, and over which the Bankruptcy Court would have had personal jurisdiction, if the Debtors did not reject ECN Capital's leases. Since the Debtors rejected the ECN Leases and returned the Helicopters to ECN Capital, a creditor in the Bankruptcy Cases, personal jurisdiction should exist over Airbus with respect to the claims as brought by ECN Capital.

D. Further, the Bankruptcy Court improperly disregards analogous district court cases that demonstrate the Bankruptcy Court's personal jurisdiction over Airbus. According to the Bankruptcy Court, these cases carry no weight simply because they did not arise in the context of bankruptcy proceedings. (Ex. D at 20.) ECN Capital established that, by voluntarily filing litigation in a forum, a party avails itself of the jurisdiction of the courts in that forum and thus consents to personal jurisdiction in that forum regarding related claims, even if brought in separate proceedings by entities that are not parties to the original litigation. (*See* Ex. J at 10–13

(citing *Int'l Transactions, Ltd.* v. *Embotelladora Agral Regionmontana SA de CV*, 277 F. Supp. 2d 654 (N.D. Tex. 2002) ("*Int'l Transactions*"), *Praetorian Specialty Ins. Co.* v. *Auguillard Const. Co.*, 829 F. Supp. 2d 456 (W.D. La. 2010) ("*Praetorian*"), and *Gen. Contracting & Trading Co., LLC* v. *Interpole, Inc.*, 940 F.2d 20 (1st Cir. 1991) ("*Interpole*")).) While these precedents arose in the district court context, ECN Capital provided authority explaining that filing a proof of claim in a bankruptcy court is the equivalent of filing a lawsuit in a district court. (*See* Ex. J at 12–13 & n.10 (citing *O'Neill* v. *Cont'l Airlines, Inc.* (*Matter of Cont'l Airlines*), 928 F.2d 127, 129 (5th Cir. 1991) and *Simmons* v. *Savell,* (*In re Simmons*), 765 F.2d 547, 552 (5th Cir. 1985)).) The Bankruptcy Court should have considered this applicable case law in considering personal jurisdiction and should not have disregarded it merely on the grounds that it did not arise in the bankruptcy context. Addressing *Int'l Transactions*, the Bankruptcy Court describes the case as "distinguishable from the facts here" because "the foreign defendant had previously filed two separate lawsuits in the forum that were directly related to proceedings the plaintiff filed in the same forum." (Ex. D at 20.) The Bankruptcy Court provides no explanation why those facts meaningfully distinguish *Int'l Transactions* from this case, where the foreign defendant previously filed proofs of claim in the forum that were directly related to the proceedings ECN Capital filed in the same forum. (*Id.*) Similarly, the Bankruptcy Court found *Praetorian* and *Interpole* to be "equally distinguishable, as each involved a situation where consent was found because the defendant had filed lawsuits in the same forum based on the same operative facts." (*Id.* at 21 n.20.) Again, that is the case here, where Airbus filed multiple proofs of claim in this forum based on the same operative facts as the Adversary Proceeding, given that filing a proof of claim in a bankruptcy court is the equivalent of filing a lawsuit in a district court. (*See* Ex. J at 12–13 & n.10.)

32. In addressing the issue of specific jurisdiction, the Bankruptcy Court finds that ECN Capital did not establish any connection between the harm it suffered and Airbus's business dealings, contacts, and presence in Texas. (Ex. D at 23.) Here, the Bankruptcy Court overlooks that ECN Capital suffered harm in Texas and as a result of decisions made in Texas (connected to Airbus's wrongdoing and its business activities in Texas and with Texas-based customers), all of which give rise to specific personal jurisdiction. (Ex. M at 5.) In addition, the Bankruptcy Court fails to recognize that ECN Capital served Kevin Cabaniss, Airbus's representative on the Creditors' Committee in the Bankruptcy Cases, in Texas, and that Airbus waived service. (*See* Ex. J at 4; Ex. R 40:10-13; 48:6-10, 67:10-16.)

33. Moreover, the Bankruptcy Court failed to make any proposed conclusions of law regarding ECN Capital's argument that, in light of its substantial contacts with the U.S. including its participation in the Bankruptcy Cases, Airbus is subject to the general jurisdiction of the court. The Bankruptcy Court only makes one mention of general jurisdiction, concluding that ECN Capital "does not argue that this Court has general personal jurisdiction over Airbus *independent of Airbus's alleged consent*." (Ex. D at 15 n.16.) In reaching this mistaken conclusion, the Bankruptcy Court takes a statement from the February 28, 2017 hearing out of context. ECN Capital stated: "I don't believe we would have general jurisdiction but for their coming into this Court," (Ex. R 45:21-22), in the context of arguing that Airbus's participation in the Bankruptcy Cases is part of what gives rise to personal jurisdiction over Airbus. ECN Capital argues that the Bankruptcy Court has general personal jurisdiction over Airbus because Airbus has maintained extensive contacts in the U.S., conducted business transactions in the U.S., and availed itself of the benefits of the courts of this jurisdiction, which ECN Capital argued moments later at this same hearing: "I think the activity, whether or not we've alleged

alter ego through AHI, they sold another 649 [helicopters] - - we're talking billions of dollars of sales to Texas . . . . [W]ith coming into this jurisdiction, and seeking the benefits from this jurisdiction, I submit that [Airbus] is at-home." (*Id.* 47:12–23.)

34. The Bankruptcy Court does not consider whether, given the totality of Airbus's business dealings, contacts, and presence in the U.S. and particularly in Texas—including its substantial participation in the Bankruptcy Cases, and its consent to jurisdiction in Texas courts for related claims—Airbus has subjected itself to the general jurisdiction of the Bankruptcy Court. (*See* Ex. M at 6.)

VI. OBJECTIONS TO PROPOSED CONCLUSIONS REGARDING *FORUM NON CONVENIENS*

35. The Bankruptcy Court incorrectly concludes that this is a proper case for dismissal on grounds of *forum non conveniens*, even though ECN Capital's claims and damages are closely tied to Texas and the Bankruptcy Cases, and Airbus would face minimal cost, inconvenience, or hardship in defending this Adversary Proceeding.

36. In its *forum non conveniens* analysis, the Bankruptcy Court fails to recognize the connection between ECN Capital's claims in the Adversary Proceeding and the harm ECN Capital suffered in Texas in the Bankruptcy Cases. The Bankruptcy Court wholly ignores the fact, which ECN Capital made clear on the record, that this harm occurred as a direct result of decisions *made in Texas* by the Debtors regarding the Super Pumas owned by ECN Capital.

A. *First*, the Bankruptcy Court ignores that the sale-leaseback agreements, by which ECN Capital bought and leased the Helicopters from and to CHC, is linked to Texas. CHC is based in Texas. Foreign subsidiaries of CHC, whose businesses are managed out of Irving, Texas (*see* Ex. C ¶ 10), purchased the Helicopters directly from Airbus, sold the Helicopters to ECN Capital, and re-leased the helicopters back from ECN Capital for sublease and operation

(*see* Ex. D at 3). These ECN Leases were guaranteed by certain of the Debtors—CHC Helicopter S.A., CHC Helicopter Holding S.A.R.L., 6922767 Holding SARL, and Heli-One Leasing, ULC—whose businesses are managed out of Irving, Texas. (*See id.*) *Second*, the Bankruptcy Court ignores that ECN Capital suffered harm connected with the Bankruptcy Cases in Texas. On May 5, 2016, CHC and 42 of its direct and indirect subsidiaries—including CHC (Barbados), CHC Helicopter S.A., CHC Helicopter Holding S.A.R.L., 6922767 Holding SARL, and Heli-One Leasing, ULC—filed for protection under Chapter 11 of the Bankruptcy Code, and subsequently rejected the ECN Leases in Dallas, Texas. (*See id.* at 4.) ECN Capital filed Proofs of Claim in the Bankruptcy Cases for $94,070,389 against CHC (Barbados), CHC Helicopter S.A., CHC Helicopter Holding S.A.R.L., 6922767 Holding SARL, and Heli-One Leasing, ULC, for obligations in connection with the ECN Leases and their guarantees. (*See id.* at 4–5.)

B. CHC rejected the ECN Leases in part because CHC could not utilize the Helicopters due to the 2016 Grounding. (*See* Ex. B at 7.) CHC stated in its public filings and testimony in the Bankruptcy Cases that it has suffered harm as a result of the 2016 Grounding. (*See id.*) For example, in its 2016 Form 10-K filing with the Securities and Exchange Commission, CHC stated: "We have also suffered costs due to . . . [the April 2016] accident," and that "a significant portion of our property and equipment, funded residual value guarantees and related assets is tied to the aircraft type H225." (Ex. S at 13, 67; *see also* Ex. B at 7.) Further, at a May 6, 2016 hearing in the Bankruptcy Cases, counsel for the Debtors stated: "[The EC225] has been temporarily grounded in certain jurisdictions and *that has had an impact on our fleet reconfiguration,* which is central to our restructuring." (Ex. T 17:25–18:2 (emphasis added).)

C. Third, the Bankruptcy Court ignores that its finding of "related to" subject matter jurisdiction weighs against dismissal on grounds of *forum non conveniens.* In addition to showing the connection of the sale-leaseback transaction to the State of Texas and its harm suffered in Texas, ECN Capital has shown that the Adversary Proceeding is "related to" the Bankruptcy because ECN Capital's negligence and products liability claims "are the same types of claims likely held by certain of the Debtors that also own Super Puma helicopters that were similarly grounded." (Ex. D at 11.) The Bankruptcy Court concludes in the Proposed Determination: "If ECN receives a ruling in the Adversary Proceeding that a specific part was defective, that Airbus knew of the defect, or similar rulings encompassed in negligence and/or products liability claims, the applicable Debtor could likely rely on issue preclusion in a subsequent lawsuit brought against Airbus." (*Id.*) The Bankruptcy Court should have considered this fact to conclude that it would be improper to dismiss this Adversary Proceeding on grounds of *forum non conveniens*.

D. The Bankruptcy Court erroneously stated that the Adversary Proceeding is "a matter having no connection with Texas or the United States," (*id.* at 32), that has "little direct relevance to the Bankruptcy Case," (*id.* at 42), —even after finding that ECN Capital's claims were related to the Bankruptcy Cases and recognizing that documents and witnesses (including CHC representatives) located in the United States may be relevant to the claims, (*see id.* at 12, 32). The Bankruptcy Court's proposed conclusion is based on the false assumption that this matter has no connection to the U.S. When that assumption is corrected, there is no basis for concluding that ECN Capital's choice of forum should be disturbed.

37. The Bankruptcy Court again improperly overlooks the critically important facts regarding Airbus's presence in this forum and its concurrent litigation of related lawsuits in Texas courts,

where Airbus has consented to jurisdiction for product liability claims regarding Super Puma helicopters that Airbus did not directly sell to the owner/operator plaintiffs, and improperly concludes that the Adversary Proceeding should be dismissed on grounds of *forum non conveniens*. Airbus recently conceded jurisdiction in Texas state court on nearly identical claims made by Era Group, Inc. against Airbus regarding Super Pumas that were not purchased directly from Airbus. (*See* Ex. M at 2–3.) In addition, Airbus is currently litigating a case in Texas state court, brought by Wells Fargo Bank Northwest, National Association, based on breach of warranty and contract claims regarding Super Pumas that were not purchased directly from Airbus. (*See id.* at 2.) Airbus thus is in this district for the purposes of defending nearly identical claims to those ECN Capital asserts in the Adversary Proceeding, in cases concerning the very same helicopter models as those at issue here. Airbus cannot credibly claim that defending this Adversary Proceeding would cause undue cost, inconvenience, or hardship, since Airbus is actively litigating and has even conceded jurisdiction in the same forum on the same claims. Yet, the Bankruptcy Court chooses to ignore these facts throughout its Proposed Determination.

38. In assessing *forum non conveniens*, the Bankruptcy Court also failed to recognize that Texas has an interest in resolving this controversy.

A. The Bankruptcy Court did not mention any interest the State of Texas has in resolving a dispute regarding helicopters that operate in the Oil and Gas industry which could be used in Texas, and which are identical to scores of helicopters currently located in Texas.

B. In addition, while the Bankruptcy Court stated that it "appreciates the fact that France is a minority owner of Airbus's ultimate parent," (Ex. D at 31), the Bankruptcy Court does not consider in its *forum non conveniens* analysis the likely possibility that Airbus is forum-

shopping in its attempt to avoid the jurisdiction of a United States federal court in favor of a court in its home forum of France. (*See* Ex. B at 24.)

39. This is not the proper case for dismissal on *forum non conveniens*. The relevant private interest and public interest factors—which are based in concepts of ease, cost, and availability—weigh against dismissal because: (a) deference is owed to ECN Capital's choice of forum; (b) ECN Capital's claims in the Adversary Proceeding are closely connected to Texas and the Bankruptcy Cases; (c) Airbus is actively litigating similar lawsuits in the same forum already; (d) Airbus voluntarily made itself present in this forum through its substantial participation in the Bankruptcy Cases, (*see* Ex. B at 6–7); (e) Airbus frequently sends executives to conduct business in Texas and sell helicopters in Texas, (*see* Ex. J at 6–7; Ex. M at 3); and (f) Texas has an interest in resolving this controversy.

VII. OBJECTIONS TO PROPOSED CONCLUSIONS REGARDING PERMISSIVE ABSTENTION

40. The Bankruptcy Court wrongly concludes that abstention would be appropriate in this Adversary Proceeding, even though there is no parallel state court proceeding and the fourteen factors used to consider permissive abstention weigh heavily against abstention.

41. The Bankruptcy Court has an obligation to view the facts in the light most favorable to ECN Capital. However, the Bankruptcy Court neglects this obligation by failing to assume the reference will be withdrawn in its assessment of permissive abstention. *In re Houston Regional Sports Network, L.P.*, 514 B.R. 211, 214 (Bankr. S.D. Tex. 2014) (in considering abstention, court assumed the reference would be withdrawn in order to "assume the facts in the light most favorable to the moving parties"). In its *Report and Recommendation to the District Court Regarding Case No. 3:17-cv-00075-C (Adv. Proc. No. 16-3151-BJH)*, the Bankruptcy Court 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." (Ex. U at 16). But the Bankruptcy Court fails to acknowledge that many of the factors for permissive abstention would be moot if the reference to the bankruptcy court is withdrawn. For example, the extent to which state law issues predominate over bankruptcy issues would be irrelevant if the bankruptcy reference is withdrawn, since this Court regularly addresses state law issues. *See, e.g.*, *In re McKenzie*, No. 1:11-CV-332, 2013 WL 4268622, at *4 (E.D. Tenn. Aug. 14, 2013). Additionally, the "degree of relatedness or remoteness of the proceeding to the main bankruptcy case," "the substance rather than the form of an asserted core proceeding," and "the feasibility of severing state law claims from core bankruptcy matters," would similarly be inapplicable if the reference is withdrawn. *See In re McKenzie*, 2013 WL 4268622, at *4.

42. In assessing the difficult or unsettled nature of applicable law, the Bankruptcy Court fails to assess the claims pleaded by ECN Capital, which include: negligence, defective design, defective manufacturing, failure to warn, violation of implied warranty of merchantability, negligent misrepresentation, and fraud. (*See* ¶ 45.) ECN Capital's claims do not involve difficult or unsettled areas of law, and the Bankruptcy Court acknowledges that if foreign law applies to the Adversary Proceeding, it "will be a novel issue but not one that is necessarily difficult or that this Court is incapable of handling." (*See* Ex. D at 40.) The Bankruptcy Court should have concluded that this factor weighs against permissive abstention.

43. The Bankruptcy Court acknowledges that there is no related proceeding pending in another forum involving ECN Capital and Airbus, but draws the incorrect conclusion from that fact. The Bankruptcy Court concludes that this renders the "related proceeding" factor for permissive abstention "inapplicable." (*See id.* at 40.) To the contrary, the absence of a pending

related proceeding involving the parties weighs heavily against permissive abstention, which is a concept premised in "the interest of justice, or in the interest of comity with State courts or respect for State law." 28 U.S.C. § 1334(c)(1). Where, as here, there is no underlying state proceeding to which comity is owed, permissive abstention should be disfavored. *See, e.g.*, *In re MontCrest Energy, Inc.*, No. 13-41129-DML-7, 2014 WL 6982643, at *7 (Bankr. N.D. Tex. Dec. 9, 2014) ("Factor 4 does not favor abstention . . . because it does not appear that a state court action 'is commenced' after the removal to federal court."); *In re McKenzie*, 2013 WL 4268622, at *5 (concluding that without any information about a relevant state proceeding, the factor regarding "the presence of a related proceeding" weighs against permissive abstention) (citing *In re Weldon F. Stump & Co.*, 373 B.R. 823, 827 (Bankr. N.D. Ohio 2007) ("[T]he presence of a related proceeding commenced and timely proceeding in a state-court forum is a prime consideration in any abstention analysis under § 1334(c)(1) as it underlies the purpose of the statute: respect for federalism."), and *McDaniel* v. *ABN Amro Mortg. Grp.*, 364 B.R. 644, 655 (S.D. Ohio 2007) ("[T]here are no related proceedings in state court. This factor favors non-abstention.")).

44. In assessing relatedness to the main bankruptcy case, the Bankruptcy Court discounts the fact that the Debtors hold similar claims against Airbus. (Ex. D at 40–41.)

A. The Debtors have reserved their claims against Airbus arising out of the 2016 Crash and 2016 Grounding. (*See* Ex. V at 2–3.) In addition, at the Confirmation Hearing, David W. Fowkes of Seabury Group, restructuring advisors to the Debtors, testified that the Debtors had 56 Super Pumas in their fleet at the time of the 2016 Grounding, nine of which were owned outright by the Debtors at the time and four of which remain owned outright by the Debtors. (*See* Ex. G 197:21–198:7). Mr. Fowkes also testified that CHC Helicopters (Barbados) SRL—

the Debtor to which ECN Capital leased the five Super Pumas it owned—owned or leased a total of 22 helicopters impacted by the 2016 Grounding, rejected its leases on all five of ECN Capital's Super Pumas, and continues to own one Super Puma. (*Id.* 200:14–205:8.) Robert A. Del Genio, CHC's Chief Restructuring Officer, also testified that CHC suffered injury to its business operations of approximately $34 million as a result of the 2016 Grounding, (*id.* 108:5–109:17), and that CHC suffered injury to the value of the Super Pumas in its fleet as a result of the 2016 Grounding, but that CHC is unsure of the value of its claims against Airbus arising out of the 2016 Grounding (*id.* 104:11-13, 112:22–114:1). The fact that the Debtors have not yet brought suit against Airbus does not diminish the relatedness of ECN Capital's claims to the Bankruptcy Cases.

B. Further, the Bankruptcy Court states that "the Debtors did not file bankruptcy to address claims related to the 2016 crash," (Ex. D at 41)—but, as ECN Capital points out in its briefing, the record shows that the Debtors acknowledged that the 2016 Crash and 2016 Grounding had a financial impact on their ability to operate their business, further demonstrating the connection between the facts underlying the Adversary Proceeding and the facts underlying the Bankruptcy Cases. (*See* Ex. B at 7; Ex. J at 7–9, 14–15.) In fact, the Debtors stated, in testimony at a hearing in the Bankruptcy Cases, that the Grounding "has had an impact on our fleet reconfiguration, which is central to our restructuring." (Ex. T 17:25–18:2.)

C. Relatedly, because ECN Capital's claims are derivative of claims the Debtors would have against Airbus if not for rejecting the ECN Leases—over which the Bankruptcy Court would have personal jurisdiction—ECN Capital should be permitted to pursue its claims in its chosen forum.

45. The Bankruptcy Court again ignores the interest to this forum of resolving ECN Capital's claims and erroneously describes the case as "an unnecessary burden, particularly given the very tenuous relationship between the Adversary Proceeding and the Bankruptcy Case." (Ex. D at 41.) There is no evidence suggesting that the District Court would not be able to handle the addition of this case to its docket. This is a straightforward case between two parties, claims with which the District Court is familiar, and subject matter—five helicopters used in the Oil and Gas industry—in which the State of Texas has an interest. The burden, which the Bankruptcy Court admits the District Court could handle, is not an "unnecessary" one—it is the result of ECN Capital's choice of forum, which warrants deference; it is appropriate, given the relatedness of ECN Capital's claims to the Bankruptcy Cases; and it is relevant to the interests of the forum and its citizens.

46. The Bankruptcy Court's forum shopping analysis disregards that various jurisdictions other than France could be proposed as alternatives—including Canada, ECN Capital's home forum where its documents and witnesses are located; Norway, where the 2016 Crash occurred and the primary investigation is being carried out; or the United Kingdom, where multiple of ECN Capital's Super Puma helicopters are located.

47. In assessing comity, the Bankruptcy Court improperly assumes that France "has the most vested interest in determining" ECN Capital's claims. (Ex. D at 42). In fact, Texas has the strongest connection to the Adversary Proceeding. First, it is in Texas that the CHC entities that purchased, sold, and leased the Helicopters operate their businesses and made decisions regarding the fate of Super Puma helicopters, including those owned by ECN Capital. Second, it is in Texas that ECN Capital suffered harm as a result of CHC's rejection of the ECN Leases at issue in the Bankruptcy Cases. Third, it is in Texas that decisions regarding helicopters used in

the Oil and Gas industry are most likely to have an impact. These considerations are not undermined by any issues of comity, as there is no pending case in France or any other jurisdiction. *See In re Lorax Corp.*, 295 B.R. 83, 96 (Bankr. N.D. Tex. 2003) ("Since there is no state action in favor of which this court could abstain should it so wish, comity is not a factor."). The Bankruptcy Court improperly ignores these considerations and incorrectly concludes that Texas does not have a vested interest in the determination of ECN Capital's claims.

VIII. CONCLUSION

For the foregoing reasons, Plaintiff ECN Capital objects in part to the Bankruptcy Court's *Proposed Findings of Fact and Conclusions of Law Regarding Defendant Airbus Helicopters, S.A.S.'s Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction, and on the Grounds of Forum Non Conveniens*.

Dated: April 11, 2017
New York, New York

Respectfully submitted,

By: /s/ *Martin Flumenbaum*
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CERTIFICATE OF SERVICE

I hereby certify that, on April 11, 2017, I caused the foregoing Objection to be filed with the Court via CM/ECF and served on all parties requesting electronic notification, including the following counsel of record for the Defendant:

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COUNSEL FOR PLAINTIFF ECN CAPITAL (AVIATION) CORP.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	**Bankr. Case No. 16-31854-BJH**
CHC GROUP LTD., *et al.*,	**(Chapter 11)**
Debtors,	
ECN CAPITAL (AVIATION) CORP.,	**Case No. 3:17-cv-00075-C**
Plaintiff,	A**dv. Proc. No. 16-03151-BJH**
v.	**Appendix in Support of Plaintiff's Objection to the Bankruptcy Court's Proposed Findings of Fact and Conclusions of Law**
AIRBUS HELICOPTERS (SAS),	
Defendant.	Related to ECF No. 94

APPENDIX

Exhibit	Description	Docket	Docket Entry
A	Plaintiff ECN Capital (Aviation) Corp.'s Complaint against Defendant Airbus Helicopters (SAS)	16-3151-BJH	1
B	Plaintiff's Opposition To Defendant's Motion To Dismiss	16-3151-BJH	63
C	Declaration of Robert A. Del Genio in Support of the Debtors' Chapter 11 Petitions and First Day Relief	16-31854 (BJH)	13
D	Proposed Findings of Fact and Conclusions of Law Regarding Defendant Airbus Helicopters, S.A.S.'s Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction, and on the Grounds of *Forum Non Conveniens*	16-3151-BJH	94
E	June 3, 2016 FAA Airworthiness Directive	3:17-cv-00075-C	18 (Ex. Q)
F	Plaintiff's Opposition to Defendant's Motion for Withdrawal of Reference	3:17-cv-00075-C	18
G	Transcript of Confirmation Hearing Re: Amended Chapter 11 Plan Filed by Debtor CHC Group Ltd.	16-31854 (BJH)	1695
H	E-mail from Eric Strain to Pietro Signoracci, which includes information regarding the participation in the Bankruptcy Cases of individuals affiliated with Airbus, dated February 16, 2017	16-3151-BJH	79 (Ex. D)
I	E-mail from Eric Strain to Pietro Signoracci, which includes information regarding Airbus's corporate structure, dated February 14, 2017	16-3151-BJH	79 (Ex. A)
J	Plaintiff's Second Supplemental Memorandum of Law in Opposition to Defendant's Motion to Dismiss	16-3151-BJH	78

Exhibit	Description	Docket	Docket Entry
K	Excel spreadsheet titled "Order Bookings - AH Group, From 01/01/2011 To 31/12/2016," sent via email from Eric Strain to Pietro Signoracci on February 14, 2017	16-3151-BJH	79 (Ex. B)
L	E-mail from Eric Strain to Pietro Signoracci, which includes information regarding Airbus's maintenance of U.S.-based Super Puma helicopters, dated February 10, 2017	16-3151-BJH	79 (Ex. C)
M	Plaintiff's Supplemental Memorandum on Post-Hearing Developments Related to Personal Jurisdiction and Abstention	16-3151-BJH	87
N	Press Release, Airbus, Airbus Helicopters wraps up a successful Heli-Expo 2017 in Dallas (Mar. 10, 2017).	16-3151-BJH	87 (Ex. G)
O	Defendant Airbus Helicopters, S.A.S.'s Amended Brief in Support of Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction, and *Forum Non Conveniens*	16-3151-BJH	32
P	Defendant Airbus Helicopters, S.A.S.'s Motion for Withdrawal of Reference of Adversary Proceeding, and Brief in Support	3:17-cv-00075-C	23
Q	Plaintiff's Supplemental Memorandum of Law in Opposition to Airbus's Motion to Dismiss	16-3151-BJH	74
R	Transcript from February 28, 2017 Hearing on Motion to Dismiss Adversary Proceeding For Lack of Subject Matter and Personal Jurisdiction and on the Grounds of *Forum Non Conveniens* Filed by Defendant Airbus Helicopters (SAS)	16-3151-BJH	86
S	CHC Group Ltd., Annual Report (Form 10-K) (July 15, 2016)	16-3151-BJH	64-9
T	Transcript from May 6, 2016 Hearing on Notice of Designation as Complex Chapter 11 Case, Filed by Debtor CHC Group Ltd.	16-31854 (BJH)	105

Exhibit	Description	Docket	Docket Entry
U	Report and Recommendation to the District Court Regarding Case No. 3:17-cv-00075-C (Adv. Proc. No. 16-3151-BJH)	16-3151-BJH	95
V	Debtors' Motion for an Order Pursuant to 11 U.S.C. §§ 105(a) and 107(b) and Fed. R. Bankr. P. 9018 Authorizing the Filing of Certain Information Under Seal in Connection with the Debtors' Motion for an Order Pursuant to Sections 105, 363, and 365 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 6004(h), 6006, and 9019 Authorizing the Debtors to Enter into and Perform Under the 2017 Omnibus Restructure Agreement with Airbus Helicopters (SAS) Regarding Certain of the Debtors' Executory Contracts	16-31854 (BJH)	1538

Dated: April 11, 2017
New York, New York

Respectfully submitted,

By: /s/ *Martin Flumenbaum*
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COUNSEL FOR ECN CAPITAL (AVIATION) CORP.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	**Chapter 11**
CHC GROUP LTD., *et al.*,	**Case No. 16-31854(BJH)**
Debtor,	**(Jointly Administered)**
ECN CAPITAL (AVIATION) CORP.,	**Adv. Proc Case No. _____**
Plaintiff,	**COMPLAINT**
v.	**(Jury Trial Demanded)**
AIRBUS HELICOPTERS (SAS),	
Defendants.	

Plaintiff ECN Capital (Aviation) Corp. (f/k/a Element Capital Corp.) ("ECN Capital" or "Plaintiff"), for its Complaint against Defendant Airbus Helicopters (SAS) ("Airbus" or

"Defendant"), respectfully alleges as follows:

NATURE OF THE ACTION

1. Defendant Airbus designs, manufactures, markets, and sells aircraft, including two models of utility helicopters sold under the name "Super Puma"—the Eurocopter EC225 ("EC225") and the Eurocopter AS332 L2 ("AS332 L2").[1]

2. On April 29, 2016, a Super Puma EC225 crashed near Turøy, Norway. All 13 individuals on board were killed. Footage of the accident recorded by a bystander showed that the main rotor blades of the helicopter detached in midair, causing the frame to fall.

3. As a result of the crash and its investigation by the Accident Investigation Board of Norway, 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 due to an unsafe condition caused by a design defect in the helicopters' main gear box, which connects to the helicopter frame the main rotor head that is attached to the main rotor blades. The Accident Investigation Board of Norway, the United Kingdom Civil Aviation Authority, and the United States Federal Aviation Authority specifically concluded that the Super Puma EC225s and the Super Puma AS332 L2s are not safe to fly in their current condition.

4. Plaintiff ECN Capital owns five Super Puma helicopters manufactured by Defendant Airbus—one Super Puma EC225 and four Super Puma AS332 L2s. ECN Capital has suffered damage that is the direct and proximate result of Airbus's negligence, defective

[1] Airbus Helicopters (formerly known as Eurocopter) has changed the names of some Super Puma models; the EC225 is now known as the H225. For purposes of the allegations in this Complaint, Plaintiff will refer to the helicopter models by their names when Plaintiff purchased them.

design, defective manufacturing, failure to warn, violation of implied warranty of merchantability, negligent misrepresentation, and/or fraud regarding the unsafe helicopters. ECN Capital thus brings this action against Airbus to recover ECN Capital's damages, which include, but are not limited to, economic loss, damage to property, lost profits, and costs of recovery, maintenance, storage and replacement of the unsafe and defective helicopters.

THE PARTIES

5. Plaintiff ECN (Aviation) Capital Corp., an Ontario corporation, is a commercial financing business with headquarters in Toronto, Canada. ECN Capital provides commercial aviation financing to customers in the transportation and energy sectors, among others, throughout Canada and the United States, including in Texas.

6. Defendant Airbus Helicopters (SAS) is a *société par actions simplifiée* organized under the laws of France with its principal place of business in Marignane, France. Airbus designs, manufacturers, markets, and sells aircraft, which it markets and services around the world and throughout the United States, including in Texas.

JURISDICTION AND VENUE

7. This is an action seeking damages for negligence, strict products liability, manufacturing defect, design defect, breach of implied warranty of merchantability, negligent misrepresentation and fraud.

8. This Court has jurisdiction under 28 U.S.C. § 1334(b) and (c) because this lawsuit is related to cases filed by CHC Group Ltd. ("CHC Group") and certain of its affiliates (together with CHC Group, collectively the "CHC Debtors") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), which are being jointly administered in this Court under the caption *In re CHC Group Ltd., et al.*, No. 16-31854

(BJH) (the "CHC Bankruptcy Cases"). The outcome of this lawsuit is likely to impact the CHC Debtors' estates in the pending CHC Bankruptcy Cases.

9. Pursuant to 28 U.S.C. §§ 157(a) and 157(b)(1) and the Order dated August 3, 1984 Referring to Bankruptcy Judges for this District any or all proceedings arising in or related to a case under the Bankruptcy Code, this Court may exercise subject matter jurisdiction over this action.

10. This Court also has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

11. This Court has personal jurisdiction over Defendant Airbus because Airbus has appeared in the CHC Bankruptcy Cases pending in this Court to which this action is related. Airbus has filed proofs of claim, filed briefing in connection with discovery motions, and participated as a member of the Official Committee of Unsecured Creditors in the CHC Bankruptcy Cases. Airbus thus has purposefully availed itself of the courts in this District. Additionally, Airbus directed its wrongful conduct toward this State and this District by placing into the stream of commerce defective products that Airbus knew would be reasonably likely to appear in this District or be owned and/or operated by entities doing business in this District. On information and belief, Airbus sold Super Puma EC225s through an Airbus entity that is headquartered in this District, has a substantial presence in Texas, and has accepted jurisdiction in Dallas County, Texas for contracts of sale on Super Puma EC225s.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1409(a) because the CHC Bankruptcy Cases to which this lawsuit is related are pending in this Court. In addition, venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because significant events

giving rise to the claims in this action occurred in this District and because certain property at issue is located in this judicial district. Specifically among other things, on information and belief, CHC Helicopters (Barbados) Limited ("CHC (Barbados)") originally purchased the helicopters at issue from Airbus entities affiliated with Airbus Group, Inc., which has a large presence—29 centers—in the United States and has a subsidiary, Airbus Helicopters, Inc., that is headquartered in Grand Prairie, Texas. Plaintiff purchased the helicopters at issue here from CHC (Barbados), which is one of the CHC Debtors in the CHC Bankruptcy Cases pending in this Court. CHC Group, which is the holding company for CHC (Barbados), bases its corporate officers and global operations center in Irving, Texas. Plaintiff entered into a sale leaseback agreement with CHC (Barbados), whereby Plaintiff would purchase the helicopters from CHC (Barbados) and lease them back to CHC (Barbados) for sublease and operation. These leases were recently rejected by the CHC Debtors in the CHC Bankruptcy Cases. In the alternative, venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because Defendant Airbus is subject to personal jurisdiction in this District.

13. Statement Pursuant to Fed. R. Bankr. P. 7008. This adversary proceeding is a non-core proceeding. The Plaintiff does not consent to entry of final orders or judgment by this Court at this time.

FACTUAL ALLEGATIONS

A. April 29, 2016 Crash

14. The fatal crash on April 29, 2016, involved a Super Puma EC225, registered LN-OJF on charter to Statoil, a Norwegian oil and gas production company. Eleven oil workers were on the flight to be transported from an oil platform in the North Sea to Bergen

Airport, Flesland. All of the eleven passengers and two crew members on board the helicopter died in the crash.

15. Witnesses to the crash reported that they saw that the main rotor blades of the helicopter had separated from the frame in midair. Footage of the accident recorded by a bystander confirmed those accounts, showing the main rotor blades of the helicopter detached from the frame and spinning through the air. The main rotor blades were found on an outcrop approximately 300 yards away from where the helicopter frame crashed into the water of the North Sea.

16. The helicopter that crashed was operated by CHC Helikopter Service AS, a Norway subsidiary of CHC Group and an affiliate of CHC Helicopter, a Canadian company with its headquarters in Richmond, British Columbia, and its corporate officers and global operations center in Irving, Texas. CHC Group, the parent company of both CHC Helikopter Service AS and CHC Helicopter, is a Cayman Islands-based company that has filed for chapter 11 relief in the CHC Bankruptcy Cases, which are currently pending in this Court.

B. Investigation and Groundings

17. On the day of the crash, the Civil Aviation Authority of Norway (the "CAAN") began investigating the wreckage and issued an operational directive banning public and commercial transport flight of EC225 helicopters. The United Kingdom Civil Aviation Authority ("UK CAA") instituted a similar operational directive regarding Super Puma EC225s the next day, on April 30, 2016.

18. The Accident Investigation Board Norway ("AIBN") commenced investigating the cause of the crash. In a preliminary report on the investigation released on May 13, 2016, the AIBN stated that it was "focussing on the examination of the [Main Rotor Head] suspension bar assembly, the main gearbox and the main rotor head." In an update to the

preliminary report issued on May 27, 2016, the AIBN stated that "[d]etailed examination work continues to focus on the MRH suspension bar assembly, the main gearbox and the main rotor head."

19. On June 1, 2016, the AIBN released a preliminary report stating that its examinations of a second stage planet gear of the main gearbox "revealed features strongly consistent with fatigue." The report continued:

> Although preliminary, the AIBN considers these findings to be of such significance that it has decided to issue the following safety recommendation to ensure the continuing airworthiness of the Main Gear Box (MGB).
>
> **Safety Recommendation**
>
> Recent metallurgical findings have revealed features strongly consistent with fatigue in the outer race of a second stage planet gear in the epicyclic module of the MGB. It cannot be ruled out that this signifies a possible safety issue that can affect other MGBs of the same type. The nature of the catastrophic failure of the LN-OJF main rotor system indicates that the current means to detect failure in advance are not effective.

20. The AIBN concluded its June 1, 2016 report with a recommendation that the European Aviation Safety Agency ("EASA") "take immediate action to ensure the safety of the [EC225] Main Gear Box" with respect to all Super Puma EC225s.

21. Widespread groundings of the Super Pumas followed. On June 2, 2016, CAAN expanded its ban on Super Puma EC225s to encompass Super Puma AS332 L2s, which have a similar main gear box design to the Super Puma EC225s, and to encompass all operations, including search and rescue. Also on June 2, 2016, the UK CAA and EASA each issued bans on the flight of Super Puma EC225s and Super Puma AS332 L2s. On June 3, 2016, the United States Federal Aviation Administration ("FAA") issued an Emergency Airworthiness Directive prohibiting all flights of Super Puma EC225s and Super Puma AS332 L2s and defining "the unsafe condition" of the helicopters to be "failure of the main

rotor system, which will result in loss of control of the helicopter." The FAA stated that its ban would remain in place until "the design approval holder develops a modification that addresses the ***unsafe condition*** identified" by the FAA as affecting all Super Puma EC225s and all Super Puma AS332 L2s.

22. In a subsequent preliminary report issued on June 28, 2016, the AIBN concluded that "the accident most likely was the result of a fatigue fracture in one of the second stage planet gears." The AIBN concluded that fatigue to the gears caused a crack in the surface area of the metal, which created debris that should have been detected by magnetic chip detectors housed in the gear box. By Airbus's design, however, there are not adequate means of detection within the main gearbox of the Super Puma EC225s and Super Puma AS332 L2s to effectively detect debris. Airbus utilized a system called HUMS (Health and Usage Monitoring System) to monitor the health and usage of components of the aircraft. The HUMS system is intended to detect abnormal vibrations in the main gearbox area, such as would be caused by the fatigue identified by the AIBN as affecting the gears of the Super Puma EC225s and Super Puma AS332 L2s. The AIBN concluded that the chip detectors and the HUMS system in the Super Puma EC225 involved in the fatal crash failed to identify the fatigue to the gear box, or debris or abnormal vibrations caused by that fatigue.

23. The AIBN's reports and the FAA's Emergency Airworthiness Directive concluded that all Super Pumas EC225s and all Super Puma AS332 L2s had design defects relating to their gear boxes, chip detectors, and/or HUMS systems. The AIBN and the FAA concluded that these helicopters are unsafe and not airworthy.

24. EASA, too, concluded that Super Puma EC225s and Super Puma AS332 L2s are not safe to fly. On October 7, 2016, EASA partially lifted its ban on flights of Super

Puma EC225s and Super Puma AS332 L2s, but only to permit flights of such helicopters that have had their defective parts replaced. EASA also imposed extra inspections and service life limits to the Super Puma EC225s and Super Puma AS332 L2s.

25. AIBN has not made any further updates since the EASA action, and the CAAN and the UK CAA reaffirmed their bans on flights of Super Puma EC225s and Super Puma AS332 L2s after EASA issued its announcement partially lifting its ban. The FAA also has not amended its Emergency Airworthiness Directive declaring all Super Puma EC225s and Super Puma AS332 L2s unsafe and banning their flight.

C. Dangers and Defects of the Super Pumas

26. The designs for the Super Puma EC225 and Super Puma AS332 L2 models were based on the designs for the preceding Airbus SA330 J Puma, a twin-engine Airbus helicopter with a four-blade main rotor that gained civil certification in 1976, and the Super Puma AS332 L, which was certified in 1978. The Super Puma AS332 L2 was certified in 1991, and the Super Puma EC225 was certified in 2004. As the Super Puma family evolved, Airbus increased the power of the engines, lengthened the rotor blades (and, for the EC225, added a fifth blade), and increased the overall weight of the Super Puma AS332 L2 and the Super Puma EC225 as compared to the Super Puma AS332 L and the SA330 J Puma:

	SA330 J	AS332 L	AS332 L2	EC225
Maximum All Up Weight[2] (kg)	7,400	8,600	9,300	11,000
Engine Power (hp)	3,150	3,175	3,690	4,764
Main Rotor Diameter (m)	15	15.6	16.2	16.2
Maximum Speed (km/h)	257	262	277	275.5

27. Airbus's designs for the Super Puma EC225 and the Super Puma AS332 L2 were defective in that, among other things, Airbus did not appropriately update the gear box, chip detectors, and/or HUMS system in order to withstand the increased weight and power of the newer helicopter models, and Airbus negligently failed to sufficiently test how the existing gear box, chip detectors, and/or HUMS system would perform in the heavier and more powerful models. Had Airbus conducted the appropriate tests, it would have realized that its designs for the Super Puma EC225 and the Super Puma AS332 L2 were defective. Airbus thus knew or should have known that the helicopters were unsafe and not airworthy, and that an event like the fatal accident on April 29, 2016 was likely to occur as a natural consequence of the defective design of Airbus's Super Puma EC225 and Super Puma AS332 L2.

28. Since the April 29, 2016 crash of the Super Puma EC225 registered LN-OJF, the offshore helicopter industry has united in discontinuing operation of Super Puma EC225s and all Super Puma AS332 L2s. After all, 13 people on board the Super Puma EC225 were killed when "sudden catastrophic failure" developed in a matter of seconds, causing "the main

[2] The Maximum All Up Weight is the maximum gross weight of the aircraft at which takeoff is permitted.

rotor head [to] suddenly detach[] from the body of the helicopter" at 2,000 feet in the air and "smash[] into a tiny island and burst into flames."[3] Statoil's head of production in Norway called it "one of the worst accidents in Norwegian oil history."[4] The U.K.'s National Union of Rail, Maritime and Transport Workers (RMT) has "heard widespread, strong backlash about the aircraft . . . . This sentiment was echoed in a change.org online petition, purportedly representing North Sea Offshore Oil Workers and their families, which called for the [Super Puma EC225] to be permanently removed from service. It received over 27,000 signatures."[5] Tommy Campbell, the chair of Offshore Coordinating Group (OCG), an "umbrella body of unions representing North Sea oil workers," stated that "workers must not be forced to fly in the [Super Puma EC225]" until the cause of the crash is determined.[6] CHC itself, which is one of the world's largest operators of these aircraft, announced that it would no longer fly Super Puma EC225s "based on customer demand."[7] Even chief executive Gretchen Haskins of HeliOffshore, the global safety association for the offshore helicopter industry, admitted

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3 *Safety Alert Issued After Metal Fatigue Found in Norway Crash Helicopter*, The Guardian (Jun. 2, 2016), https://www.theguardian.com/world/2016/jun/02/safety-alert-issued-after-metal-fatigue-found-in-norway-crash-helicopter.

4 Stine Jacobsen & Ole Petter Skonnord, *Oil Rig Helicopter Crashes Off Norway Coast, 13 Presumed Dead*, Reuters (May 3, 2016), http://in.reuters.com/article/norway-helicopter-crash-idINKCN0XQ1GK.

5 Thierry Dubois, *Airbus Helicopters Braces for Post-Turøy Impact*, Vertical Mag (Aug. 31, 2016), http://www.verticalmag.com/news/airbus-helicopters-braces-post-turoy-impact/.

6 Hilary Duncanson, *'Mechanical Failure' Caused Norway Helicopter Crash*, The Huffington Post (May 4, 2016), http://www.huffingtonpost.co.uk/2016/05/03/mechanical-failure-caused-norway-helicopter-crash_n_9832530.html.

7 Laura Paterson, *North Sea Helicopter Firm Says It Will No Longer Use Super Puma H225s Following Fatal Crash*, Daily Record (Jun. 8, 2016), http://www.dailyrecord.co.uk/news/scottish-news/north-sea-helicopter-firm-says-8141489.

that she would not feel comfortable flying in a Super Puma EC225 or a Super Puma AS332 L2: "'For me, it would have to go through all the steps and it has only been through the first ones.'"[8]

29. Members of the oil and gas industry are circulating a report that "claims to have identified a serious problem within the gearbox of the Super Puma [EC225 and AS332 L2] aircraft," according to accounts given to Scottish newspaper The Herald.[9] This report is said to conclude that EASA's "interim action" for replacing parts and monitoring is insufficient and would not eliminate the "potential for catastrophic failure." *Id.* The report also is said to conclude that the deterioration of the gear box that led to the fatal accident was an "inherent characteristic" of all Super Puma EC225s and all Super Puma AS332 L2s.[10]

30. The defects in the Super Puma EC225s and the Super Puma AS332 L2s were not discoverable through a visual or flight delivery inspection.

D. Airbus's False Statements

31. Despite the dangers inherent in the defective design of the Super Puma EC225s and Super Puma AS332 L2s, Defendant Airbus supplied false information in an attempt to assure the market that its products were safe and airworthy. In the Overview for the Super

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[8] Dominic Perry, *Airbus Helicopters Chief Insists Super Puma has Future in North Sea Region*, Flight Global (Oct. 12, 2016), https://www.flightglobal.com/news/articles/airbus-helicopters-chief-insists-super-puma-has-futu-430270/.

[9] Jody Harrison, *Super Puma Has 'Potentially Catastrophic' Design Failure*, The Herald (Oct. 31, 2016), http://www.heraldscotland.com/news/homenews/14832969.Super_Puma_has__potentially_catastrophic__design_failure__report_claims/.

[10] Keith Findlay, *Airbus Silent on Super Puma 'Fault' News Report*, The Press and Journal, Nov. 1, 2016, *available at* http://www.pressreader.com/uk/the-press-and-journal-inverness/20161101/282432758708830.

Puma AS332 L2 on its website, Airbus describes the helicopter as having an "excellent . . . operational safety level" making it "well suited for civil operations, as well as para-public uses."[11] Another Airbus webpage advertises the Super Puma AS332 L2 as "a highly reliable medium-weight helicopter" that "is exceptionally smooth and stable in flight."[12] A webpage advertising the Super Puma EC225 states that the helicopter is "ideally suited for public service missions such as search and rescue" and has a design that "increases operational safety."[13] And the Super Puma EC225 Overview asserts that the helicopter "offers superior . . . reliability" and "sets new standards for safety."[14]

32. In addition, Airbus made false statements to EASA, to the UK Air Accidents Investigation Branch ("AAIB"), and to the public in response to safety recommendations Airbus received after an investigation regarding an April 2009 crash of a Super Puma AS332 L2. On April 1, 2009, a Super Puma AS332 L2, registered G-REDL, crashed off the coast of the United Kingdom with the loss of 16 lives. Like the Super Puma EC225 that crashed in Norway in April 2016, the Super Puma AS332 L2 that crashed in April 2009 also lost its main rotor. The AAIB investigated the 2009 crash and concluded that the Super Puma AS332 L2 suffered a failure of the second stage planet gear of the main gearbox—the same component

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[11] *See H215 (Formerly Known as AS332) Overview*, Airbus Helicopters, Inc., http://airbushelicoptersinc.com/products/H215-overview.asp (last visited Nov. 15, 2016).

[12] *See H215 (Formerly Known as AS332)*, Airbus Helicopters, Inc., http://airbushelicoptersinc.com/products/H215-product.asp (last visited Nov. 15, 2016).

[13] *See H225 (Formerly Known as EC225)*, Airbus Helicopters, Inc., http://airbushelicoptersinc.com/products/H225-product.asp (last visited Nov. 15, 2016).

[14] *See H225 (Formerly Known as EC225) Overview*, Airbus Helicopters, Inc., http://airbushelicoptersinc.com/products/H225-overview.asp (last visited Nov. 15, 2016).

that AIBN say failed in the Super Puma EC225 that crashed in Norway.[15] Airbus assured the AAIB and other regulators, as well as the public, that Airbus had addressed and resolved design and airworthiness issues regarding the Super Puma EC225 and the Super Puma AS332 L2 that related to the issues involved in the 2009 crash. Airbus's false statements—all made prior to Plaintiff's purchase of the Super Puma EC225 and the Super Puma AS332 L2s—gave consumers false confidence that Airbus had addressed and resolved any defects of the Super Puma EC225s or Super Puma AS332 L2s that related to the 2009 crash.

33. At all relevant times that it described the Super Puma EC225s and the Super Puma AS332 L2s as safe, reliable, and airworthy, Airbus knew or should have known that it was supplying false information on which Plaintiff and others would reasonably rely in making purchasing decisions.

E. ECN Capital's Super Pumas

34. Plaintiff ECN Capital owns five Super Puma helicopters manufactured by Defendant Airbus—one EC225 and four AS332 L2s. In 2013, Plaintiff purchased all five of its Super Pumas from CHC (Barbados), which, on information and belief, in turn purchased the helicopters directly from an affiliate of Defendant Airbus. Plaintiff purchased the following aircrafts on the following dates: Super Puma AS332 L2 registration mark G-PUMS on June 5, 2013; Super Puma AS332 L2 registration mark G-PUMM on June 5, 2013; Super Puma EC225LP registration mark G-OAGA on September 26, 2013; Super Puma AS332 L2

[15] AIBN stated in its June 28, 2016 Preliminary Report on the April 29, 2016 accident: "Even though some differences are observed when comparing the [April 2016 EC225] accident with the [April 2009 AS332 L2] accident, the fatigue fractured planet gears, however, show clear similarities." Preliminary Report 28 June 2016, Accident Investigation Board Norway (Jun. 28, 2016), https://www.aibn.no/Aviation/Investigations/16-286?iid=20112&pid=SHT-Report-Attachments.Native-InnerFile-File&attach=1.

registration mark LN-OHE on September 27, 2013; and Super Puma AS332 L2 registration mark G-PUMO on December 6, 2013.

35. After purchasing the Super Pumas from CHC (Barbados), Plaintiff ECN Capital leased the five Super Puma helicopters back to CHC (Barbados) to be subleased and operated by CHC (Barbados). As part of the Sale/Purchase Agreement between Plaintiff and CHC (Barbados), CHC (Barbados) warranted that the helicopters were kept in good repair, condition and appearance in accordance with the relevant aviation authorities. In the Lease Acceptance Certificate for the leases between CHC (Barbados) and Plaintiff ECN Capital, CHC (Barbados) warranted that it fully examined and inspected each helicopter and that the helicopters were airworthy and of satisfactory quality.

36. Under the terms of the lease-back agreement between CHC (Barbados) and Plaintiff ECN Capital, CHC (Barbados) warranted that as lessee, it would at all times cause the helicopters to be "inspected, serviced maintained, overhauled, repaired, modified and tested . . . in accordance with the Manufacturer's applicable maintenance and overhaul manuals, Service Bulletins[16] and other written instructions by the Manufacturer," and in accordance with applicable written mandatory instructions issued by relevant aviation authorities. The lease agreement included a statement that "[t]he aircraft shall be maintained at maintenance facilities approved by the Lessor and the relevant Aviation Authority, so as to keep the same in as good repair and operating condition and appearance as when delivered to Lessee, ordinary wear and tear excepted; in such condition as is necessary to keep the Aircraft Serviceable and enable the certificate of airworthiness to be maintained in good

[16] The term "Service Bulletin" is defined in the agreement to mean "the document containing instructions for continued airworthiness developed by the Manufacturer of the aeronautical product."

standing at all times under the applicable Regulations; in a manner at least comparable to other reputable operators of the same type(s) of aircraft; and in compliance with all mandatory modifications and all Airworthiness Directives issued by the Aviation Authority and the relevant Aviation Authority through permanent modification or repair of the Aircraft."

F. CHC's Bankruptcy

37. After the grounding caused by Defendant Airbus's negligence, defective design, defective manufacturing, failure to warn, violation of implied warranty of merchantability, negligent misrepresentation, and/or fraud, the CHC Debtors filed for relief under the Bankruptcy Code on May 5, 2016 in this Court. (ECF No. 1, Docket 16-31854-bjh.)

38. In its voluntary petition, CHC Group listed its mailing address as Irving, TX, and its principal place of business as Grand Cayman, Cayman Islands. (*Id.*)

39. The CHC entities that are relevant to the present complaint—CHC Group and CHC (Barbados)—are also debtors in the CHC Bankruptcy Cases. Plaintiff purchased the five helicopters at issue from CHC (Barbados), which in turn purchased the helicopters from Airbus.

40. Airbus has been actively involved in the CHC Bankruptcy Cases. First, Airbus is a major creditor in the CHC Bankruptcy Cases. Specifically, on August 22, 2016, Airbus filed the following proofs of claim against the CHC Debtors: (a) Proof of Claim No. 353 seeking a general unsecured claim in the amount of $65,776.05 against Heli-One Canada ULC; (b) Proof of Claim No. 353 seeking an administrative priority claim in the amount of $27,295.18 against Heli-One Canada ULC; (c) Proof of Claim No. 365 seeking a general unsecured claim in the amount of $4,537,633.72 against Heli-One (Norway) AS; and (d)

Proof of Claim No. 365 seeking an administrative priority claim in the amount of $1,573,873.10 against Heli-One (Norway) AS. These claims total $6,204,578.05 and include numerous invoices submitted as part of Airbus's proofs of claim relating to the replacement or maintenance of Super Puma parts. In addition, on May 13, 2016, the United States Trustee appointed Airbus c/o Kevin Cabeniss in Grand Prairie, TX, to the Official Committee of Unsecured Creditors. (ECF No. 115.) Counsel for Airbus also filed Notices of Appearance and motions to appear pro hac vice in the CHC Bankruptcy Cases on June 2, 2016 and June 15, 2016. (ECF Nos. 227, 228, 229, 334, 335, 339.) Further, when Plaintiff ECN Capital filed a motion in the CHC Bankruptcy Cases seeking discovery from the CHC Debtors under Rule 2004 of the Federal Rules of Bankruptcy Procedure, Airbus engaged in discovery motion practice objecting to the motion. (ECF No. 862.)

41. On May 5, 2016, the CHC Debtors filed a First Omnibus Motion with the Court seeking authority to reject certain of their outstanding leases, including leases of the four Super Puma AS332 L2s owned by ECN Capital. (ECF No. 20.) On May 27, 2016, the CHC Debtors filed a Second Omnibus Motion with the Court seeking authority to reject additional outstanding leases, including the lease of the Super Puma EC225 owned by ECN Capital. (ECF No. 210.) The CHC Debtors' requests to reject these five Super Puma leases with ECN Capital were granted by the Court on June 30, 2016. (ECF Nos. 427, 428.) By these and two other motions, the CHC Debtors sought to reject leases of at least forty-six Super Puma AS332 L2s or EC225s owned by nine entities other than ECN Capital. Seven of these entities are creditors in the CHC Bankruptcy Cases.

42. As a result of the CHC Debtors' rejection of their leases with ECN Capital, ECN Capital filed Proofs of Claim Nos. 543, 545, 549, 556, and 575 in the CHC Bankruptcy

Cases against certain of the CHC Debtors seeking over $94 million from each such CHC Debtor. Other entities subject to lease rejections by the CHC Debtors filed similar proofs of claim. To the extent that ECN Capital recovers damages against Airbus through this action, the amount of ECN Capital's claims against the CHC Debtors will be reduced by ECN Capital's recovery. Similarly, if other entities subject to lease rejections by the CHC Debtors obtain damages from Airbus on the basis of Airbus's liability in this action, their claims against the CHC Debtors will be reduced by their recovery. Accordingly, the outcome of Plaintiff's claims in this action will: (a) alter the rights, obligations, and choices of action of creditors against the CHC Debtors; (b) alter the rights, obligations, and choices of action by the CHC Debtors against Airbus; (c) impact the CHC Debtors' estates; and (d) have an effect on the administration of the CHC Debtors' estates.

43. On information and belief, in addition to the Super Pumas for which the CHC Debtors rejected leases in the CHC Bankruptcy Cases, the CHC Debtors own and/or have owned other Super Puma EC225s and/or Super Puma AS332 L2s as well. The CHC Debtors thus could stand to recover damages directly from Airbus for Airbus's negligence, defective design, defective manufacturing, failure to warn, violation of implied warranty of merchantability, negligent misrepresentation, and/or fraud, which recovery would accrue to the benefit of the CHC Debtors' estates.

G. <u>Injury to ECN Capital</u>

44. The grounding of the Super Pumas owned by Plaintiff by the civil aviation authorities, and the findings by the AIBN and FAA that the helicopters are not safe to fly in their current condition, has caused ECN Capital damage that is the direct and proximate result of Airbus's negligence, defective design, defective manufacturing, failure to warn, violation

of implied warranty of merchantability, negligent misrepresentation, and/or fraud. ECN Capital has suffered and/or will continue to suffer damages including but not limited to economic loss (including but not limited to the amount of the value of ECN Capital's five Super Puma helicopters), damage to property, lost profits (including but not limited to the amount ECN Capital could have earned through leasing the Super Puma helicopters, were it not for Defendant Airbus's negligence that resulted in a ban on flying the Super Pumas), and costs of recovery, maintenance, storage and replacement.

45. By this action against Defendant Airbus, Plaintiff ECN Capital seeks relief for its damages caused by Defendant Airbus's negligence, defective design, defective manufacturing, failure to warn, violation of implied warranty of merchantability, negligent misrepresentation, and/or fraud.

FIRST CLAIM FOR RELIEF
(Negligence)

46. Paragraphs 1 through 45 of the Complaint are hereby repeated and realleged as if fully set forth herein.

47. Defendant had a duty to exercise reasonable care in the designing, researching, manufacturing, marketing, supplying, promoting, sale, testing, quality assurance, quality control, and/or distribution of the Super Puma EC225s and Super Puma AS332 L2s into the stream of commerce, including a duty to assure that the Super Puma EC225s and Super Puma AS332 L2s would not cause harm to purchasers.

48. Defendant failed to exercise reasonable care in the designing, researching, manufacturing, marketing, supplying, promoting, sale, testing, quality assurance, quality control, and/or distribution of the Super Puma EC225s and Super Puma AS332 L2s into interstate commerce in that Defendant knew or should have known that purchasers and

operators were at risk for suffering harmful effects from it including but not limited to economic loss, damage to property, lost profits, and costs of recovery maintenance, storage and replacement.

49. The negligence of Defendant, its agents, servants, and/or employees, included but was not limited to the following acts and/or omissions:

a. Negligently designing and/or manufacturing the Super Puma EC225s and Super Puma AS332 L2s in a manner that was dangerous to purchasers and operators;

b. Designing, manufacturing, marketing, selling, and/or distributing the Super Puma EC225s and Super Puma AS332 L2s without adequately, sufficiently, or thoroughly testing them to determine whether or not the Super Puma EC225s and Super Puma AS332 L2s were safe for use;

c. Negligently failing to adequately and correctly warn Plaintiff of the dangers of the Super Puma EC225s and Super Puma AS332 L2s;

d. Negligently failing to recall the dangerous and defective Super Puma EC225s and Super Puma AS332 L2s at the earliest date that it became known that the Super Puma EC225s and Super Puma AS332 L2s were, in fact, dangerous and defective;

e. Negligently advertising and recommending the use of the Super Puma EC225s and Super Puma AS332 L2s despite the fact that Defendant knew or should have known of their dangerous propensities;

f. Negligently representing that the Super Puma EC225s and Super Puma AS332 L2s were safe for use for their intended purpose, when, in fact, they were unsafe; and

g. Otherwise acting carelessly and/or negligently.

50. Defendant knew or should have known that the Super Puma EC225s and Super Puma AS332 L2s were unsafe and unfit for use by reason of the dangers to their purchasers and operators.

51. Defendant under-reported, underestimated and downplayed the serious danger of the Super Puma EC225s and Super Puma AS332 L2s.

52. Defendant was negligent in the designing, researching, supplying, manufacturing, promoting, packaging, distributing, testing, advertising, warning, marketing and sale of the Super Puma EC225s and Super Puma AS332 L2s in that Defendant:

a. Failed to use due care in designing and manufacturing the Super Puma EC225s and Super Puma AS332 L2s so as to avoid dangers to purchasers and operators;

b. Failed to accompany the Super Puma EC225s and Super Puma AS332 L2s with proper warnings;

c. Failed to accompany the Super Puma EC225s and Super Puma AS332 L2s with proper instructions for use, maintenance and/or monitoring;

d. Failed to conduct adequate testing to determine the safety of the Super Puma EC225s and Super Puma AS332 L2s; and

e. Otherwise acted carelessly and/or negligently.

53. Despite the fact that Defendant knew or should have known that the Super Puma EC225s and Super Puma AS332 L2s caused harm to purchasers and operators, Defendant continued to market, manufacture, distribute and/or sell the Super Puma EC225s and Super Puma AS332 L2s.

54. Defendant knew or should have known that consumers such as Plaintiff would suffer foreseeable injury, and/or be at increased risk of suffering injury as a result of Defendant's failure to exercise ordinary care.

55. Defendant's negligence was the proximate cause of Plaintiff's economic loss which Plaintiff has suffered and/or will continue to suffer.

56. Plaintiff has suffered, is likely to suffer, and will continue to suffer actual damages and diverted sales in an amount to be proven at trial and irreparable injuries as a proximate result of Defendant's wrongful acts.

57. In performing the foregoing acts and omissions, Defendant acted fraudulently and with malice so as to justify an award of punitive and exemplary damages.

SECOND CLAIM FOR RELIEF
(Strict Products Liability – Manufacturing Defect)

58. Paragraphs 1 through 57 of the Complaint are hereby repeated and realleged as if fully set forth herein.

59. Defendant designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and/or distributed the Super Puma EC225 and Super Puma AS332 L2s that Plaintiff purchased.

60. The Super Puma EC225 and Super Puma AS332 L2s that Plaintiff purchased were defective in their manufacture when they left the hands of Defendant, posing a serious

risk that they could fail and therefore give rise to damages including but not limited to economic loss, damage to property, lost profits, and costs of recovery maintenance, storage and replacement.

61. As a direct and proximate result of Defendant's placement of the defective Super Puma EC225s and Super Puma AS332 L2s into the stream of commerce, Plaintiff experienced and/or will experience severe harmful effects including but not limited to economic loss, damage to property, lost profits, and costs of recovery maintenance, storage and replacement.

62. Plaintiff is likely to suffer, has suffered, and/or will continue to suffer damages and irreparable injuries as a result of Defendant's wrongful acts.

63. In performing the foregoing acts and omissions, Defendant acted fraudulently and with malice so as to justify an award of punitive and exemplary damages.

THIRD CLAIM FOR RELIEF
(Strict Products Liability – Design Defect)

64. Paragraphs 1 through 63 of the Complaint are hereby repeated and realleged as if fully set forth herein.

65. Defendant designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and/or distributed the Super Puma EC225 and Super Puma AS332 L2s that Plaintiff purchased.

66. The Super Puma EC225s and Super Puma AS332 L2s designed, researched, manufactured, tested, advertised, promoted, marketed, sold and/or distributed by Defendant were in an unsafe, defective, and inherently dangerous condition that was dangerous to purchasers such as Plaintiff.

67. The Super Puma EC225s and Super Puma AS332 L2s designed, researched, manufactured, tested, advertised, promoted, marketed, sold and/or distributed by Defendant were in an unsafe, defective, and inherently dangerous condition at the time they left Defendant's possession.

68. The Super Puma EC225s and Super Puma AS332 L2s were expected to and did reach the usual purchasers and operators without substantial change in the condition in which the Super Puma EC225s and Super Puma AS332 L2s were designed, produced, manufactured, sold, distributed, and marketed by Defendant.

69. The unsafe, defective, and inherently dangerous condition of the Super Puma EC225 and Super Puma AS332 L2s was a cause of harm to Plaintiff.

70. The Super Puma EC225 and Super Puma AS332 L2s failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner.

71. The Super Puma EC225 and Super Puma AS332 L2s posed a risk of danger inherent in the design which outweighed the benefits of that design.

72. Defendant knew, or should have known, that the Super Puma EC225 and Super Puma AS332 L2s were in a defective condition, and were inherently dangerous and unsafe.

73. Defendant voluntarily designed the Super Puma EC225s and Super Puma AS332 L2s in a dangerous condition for use by the public and by Plaintiff.

74. Defendant had a duty to create a product that was not unreasonably dangerous for its normal, intended use.

75. Defendant designed, researched, manufactured, tested, advertised, promoted, marketed, sold and distributed a defective product which, when used in its intended or reasonably foreseeable manner, created an unreasonable risk to consumers and to Plaintiff, and Defendant is therefore strictly liable for the damages suffered by Plaintiff.

76. As a direct and proximate result of Defendant's placement of the defective Super Puma EC225s and Super Puma AS332 L2s into the stream of commerce, Plaintiff experienced and/or will experience damages including but not limited to economic loss, damage to property, lost profits, and costs of recovery maintenance, storage and replacement.

77. Plaintiff is likely to suffer, has suffered, and/or will continue to suffer damages and irreparable injuries as a result of Defendant's wrongful acts.

78. In performing the foregoing acts and omissions, Defendant acted fraudulently and with malice so as to justify an award of punitive and exemplary damages.

FOURTH CLAIM FOR RELIEF
(Strict Products Liability – Inadequate Warning)

79. Paragraphs 1 through 78 of the Complaint are hereby repeated and realleged as if fully set forth herein.

80. Defendant designed, manufactured, tested, marketed and distributed into the stream of commerce the Super Puma EC225s and Super Puma AS332 L2s.

81. The Super Puma EC225s and Super Puma AS332 L2s placed into the stream of commerce by Defendant were defective due to inadequate warning, because Defendant knew or should have known that the gearboxes, chip detectors, and/or HUMS systems of the Super Puma EC225s and Super Puma AS332 L2s could fail and therefore give rise to damages including but not limited to economic loss, damage to property, lost profits, and

costs of recovery maintenance, storage and replacement, but Defendant failed to give consumers adequate warning of such risks.

82. As a direct and proximate result of Defendant's placement of the defective Super Puma EC225s and Super Puma AS332 L2s into the stream of commerce, Plaintiff experienced damages including but not limited to economic loss, damage to property, lost profits, and costs of recovery maintenance, storage and replacement.

83. Plaintiff is likely to suffer, has suffered, and will continue to suffer damages and irreparable injuries as a result of Defendant's wrongful acts.

84. In performing the foregoing acts and omissions, Defendant acted fraudulently and with malice so as to justify an award of punitive and exemplary damages.

FIFTH CLAIM FOR RELIEF
(Breach of Implied Warranty of Merchantability)

85. Paragraphs 1 through 84 of the Complaint are hereby repeated and realleged as if fully set forth herein.

86. Defendant Airbus designed, manufactured, tested, marketed and distributed into the stream of commerce the Super Puma EC225s and Super Puma AS332 L2s.

87. At the time Defendant designed, manufactured, tested, marketed and distributed into the stream of commerce the Super Puma EC225s and Super Puma AS332 L2s, Defendant knew the use for which the Super Puma EC225s and Super Puma AS332 L2s were intended, and impliedly warranted the Super Puma EC225s and Super Puma AS332 L2s to be of merchantable quality and safe for such use.

88. Plaintiff reasonably relied upon the skill and judgment of Defendant as to whether the Super Puma EC225s and Super Puma AS332 L2s were of merchantable quality and safe for their intended use.

89. Contrary to Defendant's implied warranties, the Super Puma EC225s and Super Puma AS332 L2s were not of merchantable quality or safe for its intended use, because the Super Puma EC225s and Super Puma AS332 L2s were unreasonably dangerous as described above.

90. As a direct and proximate result of Defendant's breach of implied warranties regarding the safety and airworthiness of the Super Puma EC225s and Super Puma AS332 L2s, Plaintiff has suffered significant damages, including but not limited to economic loss, damage to property, lost profits, and costs of recovery maintenance, storage and replacement.

91. Plaintiff is likely to suffer, has suffered, and will continue to suffer damages and irreparable injuries as a result of Defendant's wrongful acts.

92. In taking the actions and omissions that caused these damages, Defendant acted fraudulently and with malice so as to justify an award of punitive and exemplary damages.

SIXTH CLAIM FOR RELIEF
(Negligent Misrepresentation)

93. Paragraphs 1 through 92 of the Complaint are hereby repeated and realleged as if fully set forth herein.

94. Defendant supplied false information to the public and to Plaintiff regarding the airworthiness and safety of the Super Puma EC225s and Super Puma AS332 L2s. Specifically, among other things, Airbus advertised the Super Puma EC225s and Super Puma AS332 L2s as "highly reliable" helicopters that set "new standards for safety".

95. Defendant provided this false information to induce the public and Plaintiff to purchase Super Puma EC225s and Super Puma AS332 L2s.

96. Defendant knew or should have known that the information it supplied regarding the purported airworthiness and safety of the Super Puma EC225s and Super Puma AS332 L2s to induce Plaintiff to purchase Super Puma EC225s and Super Puma AS332 L2s was false.

97. Defendant was negligent in obtaining or communicating false information regarding the purported airworthiness and safety of the Super Pumas.

98. Plaintiff relied on the false information supplied by Defendant to Plaintiff's detriment by purchasing and leasing a Super Puma EC225 and Super Puma AS332 L2s.

99. Plaintiff was justified in its reliance on the false information supplied by Defendant regarding the purported airworthiness and safety of the Super Pumas.

100. As a direct and proximate result of Defendant's negligent misrepresentations, Plaintiff has suffered significant damages, including but not limited to economic loss, damage to property, lost profits, and costs of recovery maintenance, storage and replacement.

101. Plaintiff is likely to suffer, has suffered, and will continue to suffer damages and irreparable injuries as a result of Defendant's wrongful acts.

SEVENTH CLAIM FOR RELIEF
(Fraud)

102. Paragraphs 1 through 101 of the Complaint are hereby repeated and realleged as if fully set forth herein.

103. Defendant made representations to Plaintiff that the Super Puma EC225s and Super Puma AS332 L2s were airworthy, safe helicopters. Specifically, among other things, Airbus advertised the Super Puma EC225s and Super Puma AS332 L2s as "highly reliable" helicopters that set "new standards for safety".

104. Before it marketed the Super Puma EC225 and Super Puma AS332 L2s that Plaintiff purchased, Defendant knew or should have known of the unreasonable dangers and serious risks that the Super Puma EC225 and Super Puma AS332 L2s posed to Plaintiff.

105. As specifically described in detail above, Defendant knew that the gearboxes, chip detectors, and/or HUMS systems of the Super Puma EC225s and Super Puma AS332 L2s could fail and therefore give rise to subject owners and operators to damages including but not limited to economic loss, damage to property, lost profits, and costs of recovery maintenance, storage and replacement.

106. Defendant's representations that the Super Puma EC225s and Super Puma AS332 L2s were airworthy and safe were false.

107. Plaintiff did not know of the falsity of Defendant's statements regarding the Super Puma EC225s and Super Puma AS332 L2s.

108. Plaintiff relied upon and accepted as truthful Defendant's representations regarding the Super Puma EC225s and Super Puma AS332 L2s.

109. Plaintiff had a right to reply on Defendant's representations. Had Plaintiff known that the Super Puma EC225s and Super Puma AS332 L2s were unsafe and not airworthy, Plaintiff would not have purchased the Super Puma EC225 or the Super Puma AS332 L2s.

110. As a direct and proximate result of Defendant's fraudulent representations, Plaintiff has suffered significant damages, including but not limited to economic loss, damage to property, lost profits, and costs of recovery maintenance, storage and replacement.

111. Plaintiff is likely to suffer, has suffered, and will continue to suffer damages and irreparable injuries as a result of Defendant's wrongful act

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ECN Capital prays for judgment against Defendant Airbus as follows:

A. That judgment be entered in favor of Plaintiff ECN Capital and against Defendant Airbus, for damages in such amounts as may be proven at trial;

B. That Plaintiff ECN Capital be awarded compensation for damages Plaintiff ECN Capital has sustained in consequence of Defendant Airbus's wrongful conduct in such amounts as may be proven at trial;

C. That punitive and exemplary damages be entered against Defendant Airbus in such amounts as may be proven at trial;

D. That Plaintiff ECN Capital be granted compensation for its attorneys' fees and costs;

E. That Plaintiff ECN Capital be granted prejudgment and postjudgment interest; and

F. That Plaintiff ECN Capital have such other relief as this Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff ECN Capital hereby demands a trial by jury on all issues and claims so triable.

Dated: November 17, 2016
Dallas, Texas

KANE RUSSELL COLEMAN & LOGAN PC

By: */s/George H. Barber*
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COUNSEL FOR PLAINTIFF ECN CAPITAL (AVIATION) CORP.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	**Chapter 11**
CHC GROUP LTD., et al.,	**Case No. 16-31854(BJH)**
Debtors,	**(Jointly Administered)**
ECN CAPITAL (AVIATION) CORP.,	**Adv. No. 16-03151-bjh**
Plaintiff,	**Plaintiff's Opposition To Defendant's Motion To Dismiss**
v.	
AIRBUS HELICOPTERS (SAS),	
Defendant.	

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STATUTES

Plaintiff ECN Capital (Aviation) Corp. (f/k/a Element Capital Corp.) ("ECN Capital"), by its undersigned attorneys, files this Memorandum of Law in Opposition to Defendant Airbus Helicopters S.A.S.'s ("Airbus") Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction and *Forum non Conveniens*, and respectfully would show the Court as follows:

PRELIMINARY STATEMENT

Airbus does not dispute that ECN Capital's Complaint adequately states claims against Airbus for its defective design of EC225 and AS332 L2 helicopters it manufactured and sold. Instead, Airbus moves for dismissal of the Complaint solely on the basis of jurisdictional arguments, all of which are without merit.

The Motion to Dismiss makes one thing clear: Airbus does not want to litigate ECN Capital's claims in this forum. But Airbus voluntarily came to this Court and filed claims in these bankruptcy cases in hopes of recovering millions of dollars from the Debtors, who were owners, lessors, and/or operators of Airbus's EC225 and AS332 L2 helicopters—including the EC225 helicopter that crashed in April 2016, killing all 13 passengers and crew on board; the four AS332 L2s and one EC225 owned by ECN Capital that have been grounded since the April 2016 crash and that are the subject of the Complaint; and scores more EC225 and AS332 L2 helicopters owned outright by the Debtors or by other creditors in these bankruptcy cases. As much as Airbus may wish to avoid this Court's jurisdiction over ECN Capital's claims, settled law establishes that the claims and the parties are properly before this Court.

First, Airbus incorrectly contends that this Court lacks subject matter jurisdiction to hear ECN Capital's claims. Airbus misstates the legal standard for subject matter jurisdiction in this context, and completely ignores the close connection between this adversary proceeding and the rights, liabilities, and/or property of the Debtors in the related bankruptcy cases. As made clear by allegations in the Complaint—which, for purposes of deciding Airbus's motion, must be

taken as true and interpreted in the light most favorable to ECN Capital—a recovery by ECN Capital in this adversary proceeding could provide an enormous benefit to the Debtors' stakeholders. If, for example, ECN Capital succeeds on any of its claims, Airbus could be liable to the Debtors on collateral estoppel grounds for claims arising from the April 2016 crash and subsequent grounding—which claims the Debtors have expressly preserved and which involve substantially similar facts and circumstances to those at issue here. Any recovery by the Debtors in such actions post-emergence could augment their going-concern value for the benefit of their future stakeholders—*i.e.*, the Debtors' constituents that will receive a substantial portion of the reorganized Debtors' equity. Additionally, any recovery by ECN Capital in this action or by the Debtors' creditors in separate actions against Airbus could reduce the Debtors' liability on such parties' proofs of claim. Accordingly, this adversary proceeding satisfies the relevant legal threshold for related-to jurisdiction in that it "could *conceivably* have an effect" on the Debtors' estates. The cases on which Airbus relies to argue that subject matter jurisdiction does not exist are inapplicable, as they involved plaintiffs who failed to allege any connection between their claims and the debtors' estates, or who had filed actions in state court.

Second, Airbus asks the Court to refrain from exercising its lawful jurisdiction on the grounds of permissive abstention. Airbus again relies on inapposite cases and ignores the impact of ECN Capital's claims on the rights, liabilities, and/or property of the Debtors. Contrary to Airbus's protestations, the facts here, when viewed in the context of the relevant legal standard, weigh heavily in favor of this Court exercising its jurisdiction over ECN Capital's claims.

Third, Airbus incorrectly asserts that this Court lacks personal jurisdiction over Airbus. Airbus first appeared in these cases nearly eight months ago, represented by U.S. counsel. Since then, Airbus has, among other things, filed proofs of claims against the Debtors, served on the

Creditors' Committee (and in such capacity was represented by a U.S. employee of Airbus based in Dallas, Texas), and filed briefing on discovery motions in the bankruptcy cases. After all that, Airbus audaciously claims that it has not availed itself of this Court's jurisdiction and is not present before the Court for the purpose of these proceedings. The case law is to the contrary, and makes clear that once a party avails itself of the jurisdiction of a court by filing claims before that court, the party is subject to the personal jurisdiction of the court for claims arising out of the same set of facts. Having filed proofs of claim in these bankruptcy cases concerning the same helicopters that are the subject of ECN Capital's claims, Airbus has submitted to the Court's jurisdiction for this "related to" adversary proceeding. Without citing any legal authority in support of its position, Airbus attempts to cast doubt on the common sense principle underlying "related to" jurisdiction, by absurdly mischaracterizing its impact and pretending that a finding of personal jurisdiction here would mean that Airbus necessarily is subject to the general jurisdiction of *all* U.S. courts for *any* action brought by *any* party on *any* set of facts. That plainly is not the case. Rather, courts uniformly hold that when a foreign entity submits a proof of claim in a bankruptcy case, it submits to the jurisdiction of *that bankruptcy court* for adversary proceedings *related to those proofs of claim*. Airbus cannot avoid the consequences of its assertive presence in these bankruptcy cases. Moreover, to the extent a minimum contacts analysis is required, the proper scope of such an analysis is nationwide, taking into account all of Airbus's activity in the U.S. In addition to filing litigation in this forum (represented by U.S. counsel and with a U.S. employee sitting on the Creditors' Committee), Airbus has admitted that it does business in the U.S., that its U.S.-based affiliates sell EC225 and AS332 L2 helicopters in the U.S. to U.S. companies for use in the U.S., and that Airbus and its U.S.-based affiliates

deliver EC225 and AS332 L2 helicopters to the U.S. These contacts are sufficient to establish personal jurisdiction over Airbus in these proceedings.

Fourth, Airbus requests that the Court refrain from exercising its lawful jurisdiction on the grounds of *forum non conveniens*, and instead send the case to France for adjudication. The law imposes a heavy burden on Airbus to overcome the presumption in favor of ECN Capital's choice of forum, and Airbus fails to meet it. Airbus points to forum selection clauses in third-party contracts setting France as its preferred place of adjudication, but ECN Capital is not a party to those contracts and is not limited by their provisions. Airbus again asserts that there is no connection between this adversary proceeding and the bankruptcy cases, but ECN Capital's claims are intertwined with the claims, liabilities, and property of the Debtors and the value of the consideration—*i.e.*, the Debtors' post-reorganization equity—that will be distributed to their creditors under the chapter 11 plan. Airbus contends that the Court has no familiarity with the facts underlying ECN Capital's claims, but that is plainly inaccurate—the relevant parties have appeared before this Court during these chapter 11 cases, and this Court is familiar with the nature of the helicopters at issue and the facts underlying the April 2016 accident and subsequent grounding. Airbus complains of the burden of coming to Texas to litigate this case, yet Airbus has voluntarily made itself present already in this forum, and submitted to this Court's jurisdiction, through its substantial participation in the bankruptcy cases. Moreover, Airbus is involved in civil litigation in Texas state court in connection with claims brought by plaintiffs on the same set of facts that underlie ECN Capital's claims. There is no question why Airbus wants to litigate in France—France owns 10% of the voting stock of Airbus's direct parent company, and Airbus is engaged in blatant forum shopping. Airbus has failed to meet its heavy burden for

dismissal, and the Court thus should deny Airbus's request to send the claims to France, where Airbus will all but control the proceedings and their outcome. Airbus's motion should be denied.

FACTUAL BACKGROUND

ECN Capital's well-pled claims arise out of the April 2016 crash of an Airbus-manufactured EC225 helicopter operated by CHC Group Ltd. ("CHC"), the investigations and groundings resulting therefrom, and the subsequent chapter 11 cases filed by CHC and its affiliates, in which ECN Capital and Airbus are creditors. The facts underlying the claims are set forth in the allegations of the Complaint, which must be accepted as true for purposes of this motion.[1] ECN Capital sets forth here the salient facts relating to the Motion to Dismiss.

The Parties to the Adversary Proceeding

ECN Capital, an Ontario corporation, is a commercial financing business with headquarters in Toronto, Canada. (¶ 5.)[2] With its principal place of operations in North America, ECN Capital serves customers in the transportation and energy sectors throughout Canada and the U.S., including in Texas. (*Id.*)

Airbus is organized under the laws of France with its principal place of business in Marignane, France. (¶ 6.) Airbus designs, manufactures, markets, and sells aircraft, including two models of utility helicopters sold under the name "Super Puma"—the Eurocopter EC225 ("EC225") and the Eurocopter AS332 L2 ("AS332 L2"). (¶ 1.) Airbus markets EC225 and AS332 L2 helicopters for distribution and services for operation around the world and throughout the U.S., including in Texas. (¶ 6.) Airbus is primarily owned by its parent

[1] Airbus moves for dismissal under Fed. R. Civ. P. Rules 12(b)(1) and 12(b)(2). "[W]hen deciding whether to grant a 12(b)(1) motion, the Court 'must accept all factual allegations in the plaintiffs complaint as true.'" *In re Wilborn*, 401 B.R. 872, 877 (Bankr. S.D. Tex. 2009) (quoting *Ramming* v. *United States*, 281 F.3d 158, 161 (5th Cir. 2001)). "In determining whether a *prima facie* case for personal jurisdiction exists on a [12(b)(2)] motion to dismiss, uncontroverted factual allegations in the plaintiff's complaint must be taken as true." *Seghers* v. *El Bizri*, 513 F. Supp. 2d 694, 703 (N.D. Tex. 2007).

[2] All references herein to "¶ __" are to the Complaint filed by ECN Capital on November 17, 2016 (the "Complaint"). All references herein to "Ex. __" are to the accompanying Declaration of Pietro J. Signoracci dated January 27, 2017.

company, Airbus Group, S.E. ("Airbus Group").[3] France has a significant ownership interest in Airbus Group, holding over 10% of its voting stock.[4] Airbus Group is the direct parent company of Airbus Group, Inc. ("AGI"), a Delaware corporation headquartered in Virginia, which is the direct parent of Airbus Helicopters, Inc. ("AHI"), a Delaware corporation headquartered in Texas.[5] Airbus sells and delivers EC225 and AS332 L2 helicopters to AHI for sale, delivery, and operation in the U.S., including in Texas.

2016 Crash and Grounding

On April 29, 2016, an EC225 crashed near Turøy, Norway, killing all 13 individuals on board (the "2016 Crash"). (¶ 1.) Preliminary investigative reports from the 2016 Crash identified unsafe conditions in the design of the main gear box of AS332 L2s and EC225s, which connects to the helicopter frame the main rotor head that is attached to the main rotor blades. (¶¶ 3, 17–21.) The 2016 Crash and related investigations led various civil aviation authorities to issue regulations and directives that caused a total grounding of all AS332 L2s and EC225s (the "2016 Grounding"). (¶¶ 3, 17–25.)

CHC Bankruptcy

Approximately one week after the 2016 Crash, on May 5, 2016, CHC and certain of its affiliates (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, jointly administered in this Court under the caption *In re CHC Group Ltd., et al.*, No. 16-31854 (BJH) (the "Bankruptcy Cases"). (¶ 37.)

ECN Capital, a creditor in the Bankruptcy Cases, filed five separate proofs of claim against certain of the Debtors seeking a total of over $94 million from each such Debtor. (¶ 42.) These claims relate to the rejection by certain Debtors of outstanding leases between those

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[3] *See* Ex. A (Airbus Helicopters SAS: Private Company Information).
[4] *See* Ex. B (Airbus Group Registration Document 2015) p. 7.
[5] *See* Ex. C (Airbus Group Inc. Corporate Tree).

Debtors and ECN Capital, including leases of four AS332 L2s and one EC225 owned by ECN Capital, which were subject to the 2016 Grounding. (*Id.*; *see also* ¶¶ 4, 34.)

In May 2016, the United States Trustee appointed Airbus to the Official Committee of Unsecured Creditors (the "Creditors' Committee"), care of Kevin Cabaniss in Grand Prairie, TX. (¶ 11.) In June 2016, Airbus's U.S. counsel filed notices of appearance in the Bankruptcy Cases on behalf of Airbus. (¶ 40.) In August 2016, Airbus filed proofs of claim in the Bankruptcy Cases against certain of the Debtors seeking a total of over $6.2 million for claims relating to EC225s and AS332 L2s owned, leased, and/or operated by CHC. (*Id.*) Airbus also filed briefing in connection with discovery motions in the Bankruptcy Cases. (*Id.*)

The Debtors owned, leased, and/or operated dozens of EC225s and AS332 L2s grounded by the 2016 Crash, causing substantial harm to the Debtors' operations and restructuring.[6] The Debtors have explained that they suffered harm as a result. At a May 6, 2016 hearing in the Bankruptcy Cases, counsel for the Debtors stated: "[The EC225] has been temporarily grounded in certain jurisdictions and that has had an impact on our fleet reconfiguration, which is central to our restructuring."[7] The Chief Restructuring Officer of CHC stated at the same hearing that a halt on flight of EC225s "could have a major difference on the aircraft values" of the Debtors' fleet.[8] In its 2016 Form 10-K filing with the Securities and Exchange Commission, CHC stated:

- "A significant portion of our property and equipment, funded residual value guarantees and related assets is tied to the aircraft type H225." (Ex. I at p. 9.)
- "We have also suffered costs due to . . . [the April 2016] accident . . . ." (*Id.* at p. 3.)
- "[The 2016 Grounding] will adversely impact our business, financial condition and results of operations . . . . We may lose revenue . . . due [to] the [2016 Grounding]." (*Id.* at p. 6.)

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6 ¶¶ 41, 43. The Debtors owned or leased at least 51 EC225s or AS332 L2s after the 2016 Grounding commenced. *See* Ex. D (Debtors' First Omnibus Motion [Dkt. No. 20]); Ex. E (Debtors' Second Omnibus Motion [Dkt. No. 210]); Ex. F (Debtors' Third Omnibus Motion [Dkt. No. 250]); Ex. G (Debtors' Omnibus Motion [Dkt. No. 275]). The original purchase price of these 51 helicopters likely exceeded $1 billion.

7 *See* Ex. H (Excerpt of Tr. of 5/6/2016 H'r'g [Dkt. No. 105]) 17:25–18:3.

8 *Id.*

On December 19, 2016, the Debtors filed a second amended reorganization plan (the "Plan") and a related disclosure statement (the "Disclosure Statement"). In the Disclosure Statement, the Debtors expressly stated that neither the Disclosure Statement nor the Plan:

> attempts to alter any rights or claims (whatever such rights or claims may be) that any debtor, creditor, lessor, or third party may have against any OEM (original equipment manufacturer) of any helicopter or helicopter component arising out of accidents involving the "EC 225" and "AS 332 L2" helicopter types and resulting regulatory actions, including, without limitation, the April 29, 2016 EC 225 helicopter type accident near the Flesland Airport in Bergen, Norway and resulting regulatory suspension of flight operations.[9]

On January 24, 2017, the Debtors filed a motion for an order authorizing the Debtors to settle certain claims between the Debtors and Airbus. The proposed settlement similarly reserves the Debtors' claims against Airbus arising out of the 2016 Crash and the 2016 Grounding.[10]

ECN Capital's Complaint

The Complaint asserts, among other things, claims against Airbus for defective design and breach of implied warranty of merchantability regarding Airbus's manufacturing, marketing, and sale of the EC225 and the AS332 L2. (*See* ¶¶ 46–111.) The Complaint includes uncontroverted allegations demonstrating that ECN Capital's claims would likely have an impact on the rights, liabilities, and/or property of the Debtors' estates (and, at the very least, "could conceivably have an effect" on the Debtors' estates), and thus are related to the Bankruptcy Cases. (*See, e.g.*, ¶¶ 8, 43.) The Complaint also includes uncontroverted allegations demonstrating this Court's personal jurisdiction over Airbus. (*See, e.g.*, ¶¶ 11, 40.)

Related Actions Against Airbus and Its Affiliates

Other owners of EC225s filed similar claims against Airbus and/or its affiliates in Texas state court. (¶ 11.) On July 28, 2016, Wells Fargo filed breach of warranty and contract claims

[9] *See* Ex. J (Disclosure Statement [Dkt. No. 1379]) p. 39.
[10] *See* Ex. K (Motion for Order [Dkt. No. 1536]) p. 37 § 8(g).

against AHI regarding three EC225s Wells Fargo purchased from AHI.[11] On November 21, 2016, Era Group Inc. ("Era") filed breach of express and implied warranty claims against AHI and Airbus regarding ten EC225s Era purchased from AHI (the "Era Complaint").[12] Like ECN Capital's Complaint, the Wells Fargo Complaint and the Era Complaint state claims for, among other things, damages suffered by the plaintiffs relating to the 2016 Grounding.

ARGUMENT

I. This Court Has Subject Matter Jurisdiction over ECN Capital's Claims, Which Are Related to the Bankruptcy Cases.

As ECN Capital demonstrated in the Complaint, in allegations that must be taken as true,[13] the claims in this adversary proceeding would likely impact the CHC Debtors' estates in the Bankruptcy Cases. (¶¶ 8–12, 40–43.) Thus, this Court has subject matter jurisdiction to hear ECN Capital's claims under 28 U.S.C. § 1334(b), which provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in *or related to* cases under title 11." 28 U.S.C. § 1334(b) (emphasis added).

The Fifth Circuit has taken a broad view of claims that are "related to" bankruptcy proceedings, holding that "[a] proceeding is 'related to' a bankruptcy if the outcome of that proceeding *could conceivably have any effect* on the estate being administered in bankruptcy." *In re Bass*, 171 F.3d 1016, 1022 (5th Cir. 1999) (emphasis added) (quoting *In re Walker*, 51 F. 3d 562, 569 (5th Cir. 1995)).[14] Indeed, this Court has highlighted the Fifth Circuit's ruling that "an action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities,

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[11] *See* Ex. L (Wells Fargo Complaint [*Wells Fargo Bank Northwest N.A.* v. *Airbus Helicopters Inc.*, DC-16-09090 (Tex. Dist. Ct., filed Jul. 28, 2016) Dkt. No. 2]).

[12] *See* Ex. M (Era Complaint [*Era Group Inc.* v. *Airbus Helicopters Inc., et al.*, DC-16-15017 (Tex. Dist. Ct., filed Nov. 21, 2016) Dkt. No. 2]).

[13] *See supra* n.1.

[14] *See also Randall & Blake, Inc.*, v. *Evans* (*In re Canion*), 196 F.3d 579, 585 (5th Cir. 1999) (holding that the test for "related to" jurisdiction is whether the outcome of the proceeding could conceivably have an effect on the bankruptcy estate being administered).

options, or freedom of action (either positively or negatively)." *Kimpel* v. *Meyrowitz* (*In re Meyrowitz*), Nos. 06-31660-BJH-11, 10-03227, 2010 WL 5292066, at *5 (U.S. Bankr. N.D. Tex. Dec. 20, 2010) (Houser, J.) (quoting *In re Bass*, 171 F.3d at 1022).[15]

Here, there is no question that the outcome of ECN Capital's claims could conceivably have an effect on the rights, liabilities, claims, and/or property of the Debtors and the administration of their estates. Most significantly, ECN Capital's claims could pave the way for numerous other lawsuits against Airbus by similarly situated plaintiffs—including the Debtors. If Airbus is held liable for its defective design of the EC225s and AS332 L2s in this action, such plaintiffs could rely on collateral estoppel to recover from Airbus for similar claims arising from the 2016 Crash and the 2016 Grounding. The Debtors must believe that such claims are valuable given that, notwithstanding that they entered into a "global" settlement with Airbus, they expressly preserved these claims for the benefit of the reorganized Debtors and their creditors. The Debtors' post-emergence recovery from Airbus could enhance their going-concern value for the benefit of their equity holders—*i.e.*, the Debtors' constituents that will receive a substantial portion of the reorganized Debtors' equity under the Plan. As such, the Debtors' stakeholders could reap the rewards of ECN Capital's litigation in the form of an increase in the value of their post-emergence equity, and, thus, ECN's Capital's claims could have a significant and meaningful economic impact on these estates.

Additionally, the outcome of ECN Capital's claims against Airbus could reduce the Debtors' liability to ECN Capital on its proofs of claim. The five helicopters that are the subject

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[15] As another court explained:

> [I]if the bankruptcy estate could suffer any conceivable benefit or detriment as a result of the determination of the adversary proceeding, then bankruptcy jurisdiction exists. The benefit can take the form of disallowance of claims against the estate or the actual recovery of assets; the detriment can take the form of either the allowance of claims against the estate or the potential loss of assets due to any number of theories.

In re Michigan Real Estate Ins. Trust, 87 B.R. 447, 458 (E.D. Mich. 1988).

of ECN Capital's claims against Airbus are the same five helicopters that ECN Capital leased to certain of the Debtors, which leases the Debtors rejected due in part to operational difficulties arising from the 2016 Grounding, and which rejection formed the basis of ECN Capital's proofs of claim against the Debtors. And, creditors who were similarly impacted by the 2016 Crash could—like the Debtors—bring successful claims against Airbus on collateral estoppel grounds, which could further reduce the Debtors' liability on account of such creditors' proofs of claim. This alone is sufficient to establish "related to" subject matter jurisdiction. *See In re Horn*, 264 B.R. 848, 849 & n.1 (Bankr. E.D. Tex. 2001) ("Courts . . . have held that a claim between two non-debtors that will potentially reduce the bankruptcy estate's liabilities produces an effect on the estate sufficient to confer 'related to' jurisdiction.").[16] The Court consequently has subject matter jurisdiction over ECN Capital's claims.[17]

Airbus argues this Court lacks subject matter jurisdiction because ECN Capital's claims are not asserted against the Debtors, are non-core claims, and do not involve the property of the

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[16] *See also Owens Illinois, Inc.* v. *Rapid American Corp* (*In re Celotex Corp.*), 124 F.3d 619, 626 (4th Cir. 1997) (finding "related to" jurisdiction when a creditor's claim against a non-debtor would reduce its claim in bankruptcy); *Kaonohi Ohana, Ltd.* v. *Sutherland*, 873 F.2d 1302, 1306–07 (9th Cir. 1989) (upholding "related to" jurisdiction over third-party action where remedy in third-party action would reduce amount of claim against bankruptcy estate). This Court, in a case cited in Airbus's own Motion to Dismiss briefing, concluded that subject matter jurisdiction is established where the outcome of non-core claims in an adversary proceeding by a creditor against a non-debtor could reduce the size of the creditor's claim against the debtor:

> To the extent the [creditor-plaintiffs] prevail on any of the[ir] claims [against non-debtor defendants], obtain judgments against [non-debtor defendants], and then ultimately collect on those judgments, the [creditor-plaintiffs'] allowable claims against the [debtors'] bankruptcy estate would be reduced by any such recovery. . . . Thus, it is "conceivable" that the outcome of the [creditor-plaintiffs'] claims against [non-debtor defendants] could "alter the debtor's liabilities and impact the handling and administration of the bankruptcy estate. Accordingly, the Court concludes that it has "related to" jurisdiction over the claims asserted against [non-debtor defendants] in the Complaint.

In re Meyrowitz, 2010 WL 5292066, at *6. Airbus's brief in fact cites a number of cases in which the bankruptcy court held that it had "related to" subject matter jurisdiction over non-core adversary claims against a non-debtor defendant. *See* Airbus Br. pp. 10–11 (citing *Barbee* v. *Colonial Healthcare Ctr., Inc.*, No. 3:03-cv-1658-N, 2004 U.S. Dist. LEXIS 4868, at *8–9 (N.D. Tex. Mar. 22, 2004), and *P.O'B. Apollo Tacoma, L.P.* v. *TJX Cos.*, No. 3:02-cv-0222-H, 2002 U.S. Dist. LEXIS 18702, at *2–5 (N.D. Tex. Oct. 3, 2002)).

[17] *See Passmore* v. *Baylor Health Care Sys.*, 823 F.3d 292, 296 (5th Cir. 2016) (finding "related to" subject matter jurisdiction where outcome of creditor's adversary proceeding could lead to claims by other parties impacting the estate); *8300 Newburgh Rd. Partnership* v. *Time Constr., Inc. (In re Time Constr., Inc.)*, 43 F.3d 1041, 1045 (6th Cir. 1995) (explicitly applying same standard as Fifth Circuit and noting that third-party action was related to bankruptcy because outcome of action would impact value of debtor's property).

Debtors' estates. (Airbus Br. pp. 6–8.) Settled case law establishes that these are not legitimate bases to deny § 1334(b) subject matter jurisdiction over claims that are related to bankruptcy cases. Courts in the Fifth Circuit and elsewhere have confirmed that "related to" jurisdiction extends to claims brought in adversary proceedings that do not involve the debtor as a party,[18] to "non-core claims",[19] and to claims that concern property that does not belong to the debtor.[20]

The authorities Airbus points to are not to the contrary. While Airbus relies on *Singer* v. *Adamson*, 334 B.R. 1, 11 (Bankr. D. Mass. 2005), the court in that case held that it was compelled to decline jurisdiction as a result of "exceptional circumstances" of the adversary proceeding, including the fact that plaintiff's claims against non-debtor defendants could "have no conceivable effect on the administration of th[e] bankruptcy estate," in part because the estate had already been fully administered. That is not the case here, where the outcome of Plaintiff's claims in this adversary proceeding will directly impact rights, liabilities, and property involved in the administration of the Debtors' estates, which have not been fully administered.[21] In

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[18] *Matter of Zale Corp.*, 62 F.3d 746, 752 (Bankr. 5th Cir. 1995) (stating that a purpose of § 1334(b) "is to force into the bankruptcy court suits to which *the debtor need not be a party* but which may affect the amount of property in the bankrupt estate") (emphasis added) (quoting *Zerand–Bernal Group, Inc.* v. *Cox*, 23 F.3d 159, 161–62 (7th Cir. 1994)).

[19] *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, No. Civ.A. G-02-0299, 2002 WL 32107216, at *10 (S.D. Tex. Aug. 12, 2002) (holding that abstention was not warranted in non-core proceeding "[e]ven though the . . . suit . . . involve[d] adjudication of rights between nondebtor parties"); *see also Carr* v. *Michigan Real Estate Ins. Trust* (*In re Michigan Real Estate Ins. Trust*), 87 B.R. 447 (E.D. Mich. 1988) (finding that adversary claims, though "not core proceedings . . . are, however, otherwise related to" bankruptcy proceedings, and therefore were "well within the subject matter jurisdiction of the district court to determine" under § 1334(b)).

[20] *Walker* v. *Cadle Co.* (*In re Walker*), 51 F.3d 562, 565 (5th Cir. 1995) ("§ 1334(b) gives bankruptcy courts jurisdiction over 'more than [] simply proceedings involving the property of the estate.'") (quoting *Celotex Corp.* v. *Edwards*, 115 S.Ct. 1493, 1498 (1995)).

[21] Subject matter jurisdiction over this adversary proceeding is determined at the time ECN Capital filed its claims, and any subsequent confirmation of a reorganization plan in the Bankruptcy Cases would not divest the bankruptcy court of subject matter jurisdiction over the adversary proceeding. *See Nuveen Mun. Trust* v. *Withumsmith Brown, P.C.*, 692 F.3d 283, 299–300 (3d Cir. 2012) (holding that subject matter jurisdiction is determined when the action is filed, regardless of whether the debtor's reorganization plan is confirmed while the action is pending) (citing *Grupo Dataflux* v. *Atlas Global Grp., L.P.*, 541 U.S. 567 (2004)); *Fried* v. *Lehman Bros. Real Estate Assocs. III, L.P.*, 496 B.R. 706, 710 (S.D.N.Y. 2013) (holding that confirmation of a plan did not divest the court of "related to" subject matter jurisdiction where it existed prior to confirmation, and that to hold otherwise would "create perverse incentives for the parties to engage in delay and gamesmanship"); *see also In re Doctors Hosp. 1997, L.P.*, 351 B.R. 813, 829 n.10 (Bankr. S.D. Tex. 2006) (holding that the

particular, under the Plan, the reorganized Debtors expressly retained all claims and "Causes of Action" (as defined in the Plan) they had prior to the effective date of the Plan (unless otherwise released), including claims against Airbus arising from the 2016 Crash and 2016 Grounding.[22]

Airbus also quotes at length from the decision in *Yashiro Co.* v. *Falchi* (*In re Falchi*), Case No. 97 B 43080, 1998 WL 274679 (Bankr. S.D.N.Y. May 26, 1998). In *Falchi*, the court held that the plaintiff's claims would not conceivably have an impact on the rights, liabilities, or property of the debtor because the claims concerned only property that was in the possession of the non-debtor adversary defendant, and would not affect any property of the debtor. 1998 WL 274679, at *7. As alleged in the Complaint and explained above, ECN Capital's claims in this adversary proceeding concern property that is the subject of ECN Capital's claims in the Bankruptcy Cases and will have a direct impact on the value of the Debtors' estates. This Court accordingly has subject matter jurisdiction over this adversary proceeding under § 1334(b).

II. This Court Should Not Abstain from Exercising Subject Matter Jurisdiction over ECN Capital's Claims.

Airbus argues that the Court should abstain, under 28 U.S.C. § 1334(c)(1), from exercising its lawful jurisdiction over these claims, but has not satisfied its burden of establishing that permissive abstention is warranted.[23] Airbus's arguments on this point suffer from the same fatal flaws as its arguments against subject matter jurisdiction. While Airbus argues that resolution of this dispute "will have no effect" on the Debtors' estates, ECN Capital's well-pled allegations demonstrate just the opposite.

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bankruptcy court has and retains subject matter jurisdiction over an adversary proceeding filed pre-confirmation if, at the time of filing, the outcome of the claims could conceivably have an impact on the debtor's estate).

[22] *See* Ex. N (Second Amended Joint Chapter 11 Plan [Dkt. No. 1371]) §§1.1, 10.7, 10.12.

[23] *See In re Residential Capital, LLC*, 515 B.R. 52, 67 ("The movant bears the burden of establishing that permissive abstention [under § 1334(c)(1)] is warranted.") (Bankr. S.D.N.Y. 2014). Airbus argues only for permissive abstention under 28 U.S.C. § 1334(c)(1). *See* Airbus Br. pp. 8–11. Airbus does not argue for mandatory abstention under 28 U.S.C. § 1334(c)(2). Mandatory abstention is appropriate only where a state court proceeding has been "commenced and can be timely adjudicated in a state forum," which is not the case here. *See* 28 U.S.C. § 1334(c)(2); *see In re TXNB Internal Case*, 483 F.3d 292, 300 (5th Cir. 2007).

Tellingly, Airbus fails to provide any framework to determine whether permissive abstention would be appropriate here. Airbus merely points to a few cases in which permissive abstention was granted and wrongly asserts that those cases involved "similar circumstances" as the case here. Airbus Br. at pp. 9, 10. To the contrary, those cases are readily distinguishable because both parties to this adversary proceeding are creditors in the Bankruptcy Cases, no state court action has been commenced concerning ECN Capital's claims, and the outcome of ECN Capital's claims will directly impact the rights, liabilities, and/or property of the Debtors estates:

- In *In re Meyrowitz*, the adversary plaintiff had not filed a proof of claim in the bankruptcy, and this Court found that the claims in the adversary proceeding "ha[d] little to do with the main [] bankruptcy case" and that their outcome would have "no real effect on the efficient administration of the [] bankruptcy estate." 2010 WL 5292066, at *7. This Court thus permissively abstained to reserve the Court's resources for "'related to' proceedings that have a more substantial impact upon an active bankruptcy estate." *Id.* at 8.

- In *Efurd* v. *Baylor Health Care Sys.*, No. 3:14-cv-556, 2015 WL 11027603 (N.D. Tex. Mar. 25, 2015), the court stated it was "likely required [] to abstain from hearing this action" on mandatory abstention grounds, given that a state court proceeding concerning the claims had been commenced. 2015 WL 11027603, at *4.

- In *Barbee* v. *Colonial Healthcare Ctr., Inc.*, No. 3:03-cv-1658-N, 2004 WL 609394, at *2 (N.D. Tex. Mar. 22, 2004), the court abstained only after finding that "the resolution [of the claims in the adversary proceeding] would not impact the bankruptcy estate."

- In *P.O'B. Apollo Tacoma, L.P.* v. *TJX Cos.*, No. 3:02-cv-0222-H, 2002 WL 31246633 (N.D. Tex. Oct. 3, 2002), the plaintiff had no involvement in the bankruptcy in question when it filed a breach of contract claim against a non-debtor defendant in state court. The defendant removed the state court action to federal court and sought to join it with the bankruptcy case on the grounds that the defendant had an indemnification agreement with the debtor. The court held that such connection was too attenuated to preclude permissive abstention, especially considering that plaintiff already had commenced its action in state court and neither plaintiff nor defendant was a debtor in the bankruptcy proceedings. *Id.* at *2.

Airbus in fact provides no applicable precedent supporting its request that the Court abstain from exercising the jurisdiction it has to adjudicate ECN Capital's claims.

Rather than taking Airbus at its word that "similar circumstances" exist here to warrant permissive abstention, the Court should look to the appropriate legal standard for analyzing

requests for permissive abstention under 28 U.S.C. § 1334(c)(1). In *In re MontCrest Energy, Inc.*, this Court set out 12 factors that may be considered in a permissive abstention analysis:

(1) the effect, or lack thereof, on the efficient administration of the estate if a court recommends abstention;
(2) the extent to which state law issues predominate over bankruptcy issues;
(3) the difficulty or unsettled nature of the applicable state law;
(4) the presence of a related proceeding commenced in state court or other nonbankruptcy court;
(5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334;
(6) the degree of relatedness [] of the proceeding to the main bankruptcy case;
(7) the substance rather than form of an asserted "core" proceeding;
(8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court . . . ;
(9) the burden on the bankruptcy court's docket;
(10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
(11) the existence of a right to a jury trial; and
(12) the presence in the proceeding of nondebtor parties.[24]

Courts have held that "[t]hese factors should be flexibly applied since 'their relevance and importance will vary with the particular circumstances of each case, and no one factor is necessarily determinative.'"[25] In this case, the most important factors all weigh heavily in favor of declining Airbus's request for permissive abstention. Six of the factors—**Factors 1, 3, 4, 6, 9, and 10**—clearly weigh against abstention. Because ECN Capital's claims are closely related to the value of the Debtors' estates (**Factor 6**), abstention would negatively affect the efficient administration of the Debtors' estates by, among other things, delaying adjudication of claims by creditors against the Debtors or by the Debtors against Airbus (**Factor 1**). For the same reasons, it would not be unduly burdensome for the Court to adjudicate ECN Capital's claims in the adversary proceeding, as they are closely related to the Debtors' rights, liabilities, and property (**Factor 9**). Abstention also is strongly disfavored in cases like this one, where no proceeding

[24] *In re MontCrest*, 2014 WL 6982643, at *7 (Bankr. N.D. Tex. Dec. 9, 2014).
[25] *In re Hearthside Baking Co., Inc.*, 391 B.R. 807, 817 (Bankr. N.D. Ill. 2008) (quoting *Matter of Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 6 F.3d 1184, 1189 (7th Cir. 1993)).

involving ECN Capital's claims against Airbus has been commenced in state court or any other non-bankruptcy court (**Factor 4**). Further, abstention is unwarranted because ECN Capital's claims do not involve difficult or unsettled areas of law (**Factor 3**), and because Airbus does not suggest that ECN Capital engaged in forum-shopping by commencing the adversary proceeding (**Factor 10**)—in fact, it is Airbus that has engaged in forum-shopping by seeking permissive abstention, as discussed further below in Section IV (*see infra*, pp. 23–25).

The remaining factors do not, on balance, suggest that abstention should be granted. Two of the factors—**Factors 7 and 8**—are not applicable here, because the adversary proceeding does not involve core claims. Two more factors—**Factors 2 and 5**—have very little relevance here, where Airbus does not assert that ECN Capital's claims ought to be heard in state court. Indeed, Airbus has not consented to jurisdiction in state court, and Airbus is fighting jurisdiction in related product liability actions brought against Airbus in Texas state court by other owners or operators of EC225s regarding damages arising from the 2016 Crash. One factor—**Factor 12**—is neutral in this context, as the adversary proceeding involves two non-debtor parties, but both non-debtor parties are creditors in the Bankruptcy Cases, and certain of the Debtors at a minimum will be necessary witnesses in this proceeding and will have a substantial interest in the outcome of the claims by (creditor) ECN Capital against (creditor) Airbus.[26] That leaves just one factor—**Factor 11**—favoring abstention, as the parties request a jury trial. But bankruptcy courts routinely exercise jurisdiction, and deny requests for permissive abstention, where one or more party has requested a jury trial.[27]

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[26] In any event, a bankruptcy court "may consider 'related to' actions between third party non-debtors under 28 U.S.C. § 1334(b) in appropriate circumstances." *Estate of Johnny Fisher* v. *JPMorgan Chase Bank, N.A.* (*In re Fort Worth Osteopathic Hosp., Inc.*), 406 B.R. 741, 745 (Bankr. N.D. Tex. 2009).

[27] For example, in *In re Freeway Foods of Greensboro, Inc.*, 449 B.R. 860, 889–90 (Bankr. M.D.N.C. 2011) the court explained:

> Because mandatory abstention does not apply, and because the majority of the factors in this case weigh against permissive abstention and equitable remand, the Motion to Remand will be denied. For the time

III. This Court Has Personal Jurisdiction over Airbus in this Action.

A. By Participating in the Bankruptcy Cases, Airbus Has Submitted Itself to Personal Jurisdiction for ECN Capital's Related Claims.

Airbus admits that by filing proofs of claim in the Bankruptcy Cases it has submitted itself to personal jurisdiction for related claims. (Airbus Br. p. 12.) Without citing any authority for the proposition, Airbus argues that its submission extends only to claims brought by the Debtors. (*Id.*) Airbus argues that the Court must hold that the principle "does not extend to *unrelated* claims by co-creditors," (*id.* (emphasis added)), claiming that a finding of jurisdiction here would be tantamount to a ruling that by filing a proof of claim Airbus "would be subjecting itself to the *general jurisdiction* of United States courts" for any claim arising from any set of facts. (*Id.* (emphasis added).)

Airbus's arguments are pure hyperbole. This adversary proceeding is not an "unrelated claim," as Airbus suggests. As explained above, ECN Capital's claims are inextricably linked to the facts underlying the Bankruptcy Cases and the Debtors' estates. ECN Capital by no means suggests that Airbus has submitted itself to the general jurisdiction of all U.S. courts for any claim by any party, regardless of the underlying facts giving rise to the claim. Rather, Airbus has

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being, the Adversary Proceeding will proceed in this Court. The Court realizes that issues involving the right to a jury trial will eventually need to be addressed by the parties. They can agree to a bench trial before this Court. 28 U.S.C. § 157(c)(2). They can agree to a jury trial before this Court. 28 U.S.C. § 157(e); Fed. R. Bankr. P. 9015(b). They can move the United States District Court to withdraw the reference so that a jury trial may be held there. 28 U.S.C. § 157(d); *see, e.g.*, *Hutson* v. *Bay Harbour Mgmt., L.C.*, No. 1:06CV01037, 2007 WL 1434834, at *1 (M.D.N.C. May 11, 2007) (withdrawing a matter from the bankruptcy court solely for the purpose of conducting a jury trial).

See also Snider v. *Sherman*, 2007 WL 1174441, at *44–45 (E.D. Cal. Apr. 19, 2007) (holding that request for jury trial does not preclude exercise of bankruptcy court's discretion over adversary proceeding, given availability of procedures in bankruptcy court and district court to hold jury trial at appropriate time). Courts also have held that a party, like Airbus, should not be rewarded for its refusal to consent to a jury trial before the bankruptcy court in furtherance of its attempt to seek abstention. *In re Schlotzky's, Inc.*, 351 B.R. 430, 437 (Bankr. W.D. Tex. 2006) ("Nor ought we to institute a rule of decision that in effect rewards the party seeking abstention if that party insists on being as obstructionist as possible by refusing to consent either to the entry of final judgment by the bankruptcy judge or the conduct of a jury trial by that court.").

submitted itself to the specific personal jurisdiction of this Court for claims related to the Bankruptcy Cases in which Airbus filed its own proofs of claim.

It is well established that when a party avails itself of a court's jurisdiction, it cannot escape claims related to the proceedings. In Texas, "[v]oluntarily filing a lawsuit in a jurisdiction is a purposeful availment of the jurisdiction's facilities and can subject a party to personal jurisdiction in another lawsuit when the lawsuits arise from the same general transaction."[28] That a party has previously chosen to litigate in a court eliminates any claim it has that defending another case in that forum—even if brought by other litigants—would be "unreasonably burdensome."[29] Bankruptcy courts have applied this principle to the precise issue here, holding that by filing a proof of claim in a bankruptcy case, a foreign creditor consents to personal jurisdiction of the bankruptcy court for related adversary proceedings.[30]

Moreover, Airbus has done more than simply file claims against the Debtors in the Bankruptcy Cases. Airbus jockeyed to become a member of the Creditors' Committee, represented by its Texas-based employee, Kevin Cabaniss, and subsequently has attended various Creditors' Committee meetings in this forum. When ECN Capital filed a Motion for an Order Directing 2004 Examination of Debtors in the Bankruptcy Cases, Airbus filed an objection

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[28] *Int'l Transactions, Ltd.* v. *Embotelladora Agral Regionmontana SA de CV*, 277 F. Supp. 2d 654, 667–68 (N.D. Tex. 2002) (holding that defendant had purposefully availed itself of the forum court because it had brought two lawsuits in the same district against a third party relating to a dispute arising out of similar facts) (quoting *Primera Vista S.P.R. de R.L.* v. *Banca Serfin, S.A. Institucion de Banca Multiple Grupo Financiero Serfin*, 974 S.W.2d 918, 926 (Tex. App.–El Paso 1998)).

[29] *See Hess* v. *Bumbo Int'l Trust*, 954 F. Supp. 2d 590, 597 (S.D. Tex. 2013) (holding that foreign entity purposefully availed itself of the forum court, for purposes of consumer product liability claim, when it filed litigation against its prior distributor in the federal court in Texas).

[30] *See, e.g.*, *Secs. Inv. Prot. Corp.* v. *Bernard L. Madoff Inv.*, 460 B.R. 106, 117 (Bankr. S.D.N.Y. 2011) (participation in bankruptcy cases demonstrated "consent to personal jurisdiction in . . . adversary proceeding") (citing *In re Deak & Co., Inc.*, 63 B.R. 422, 431 (Bankr. S.D.N.Y. 1986) (holding that foreign defendant-creditors effectively consented to personal jurisdiction by purposefully availing themselves of the protections afforded by United States bankruptcy law)); *In re Quality Lease and Rental Holdings, LLC*, 2016 WL 416961, at *5 (Bankr. S.D. Tex. Feb. 1, 2016) ("Filing a proof of claim brings a creditor within the equitable jurisdiction of a bankruptcy court."); *see also* U.S. Dep't of Justice, U.S. Attorneys' Manual § 1-188, https://www.justice.gov/usam/civil-resource-manual-188-bankruptcy-jurisdiction-personal-jurisdiction ("[A] foreigner filing a proof of claim submits to the personal jurisdiction of the bankruptcy court.").

and actively litigated to prevent ECN Capital from obtaining documents in the Debtors' possession regarding the EC225 and AS332 L2s that are the subject of ECN Capital's claims against Airbus here and of ECN Capital's proofs of claim against the Debtors in the Bankruptcy Cases. Given Airbus's assertive presence in the Bankruptcy Cases—including with regard to the very helicopters that are the subject of this adversary proceeding—Airbus cannot escape the personal jurisdiction to which it submitted. *See Secs. Inv. Prot. Corp.* v. *Bernard L. Madoff Inv.*, 460 B.R. 106, 114–115 (Bankr. S.D.N.Y. 2011) (exercising personal jurisdiction in adversary proceeding on grounds that defendant "has been and remains a 'player' in the bankruptcy").

B. This Court Has Specific Jurisdiction over Airbus for ECN Capital's Claims.

This Court also has specific personal jurisdiction over Airbus for the purposes of hearing ECN Capital's claims on account of Airbus's relevant contacts with the U.S. Courts in the Fifth Circuit follow a three-step analysis to determine whether specific jurisdiction exists:

> (1) whether the defendant has minimum contacts with the forum state, i.e., whether it purposely directed its activities toward the forum state or purposefully availed itself of the privileges of conducting activities there; (2) whether the plaintiff's cause of action arises out of or results from the defendant's forum-related contacts; and (3) whether the exercise of personal jurisdiction is fair and reasonable.

Luci Bags LLC v. *Younique, LLC*, 2017 WL 77943, at *2 (E.D. Tex. Jan. 9, 2017). "If the plaintiff successfully satisfies the first two steps, the burden shifts to the defendant to defeat jurisdiction by showing that its exercise would be unfair or unreasonable." *Sarkar* v. *Petrol. Co. of Trinidad & Tobago Ltd.*, 2016 WL 3568114, at *14 (S.D. Tex. June 23, 2016).

"A plaintiff may establish specific jurisdiction over a nonresident defendant by showing that the defendant purposefully directed his activities at residents of the forum and that the litigation results from injuries that arise out of *or relate to* those activities." *Verde* v. *Stoneridge, Inc.*, 2015 WL 1384373, at *3 (E.D. Tex. Mar. 23, 2015) (emphasis added) (internal quotation omitted). "Even a *single act* by a defendant may establish specific jurisdiction if the act in the

forum state is substantially related to the suit." *Luci Bags*, 2017 WL 77943, at *2 (emphasis added) (citing *Moncrief Oil Int'l* v. *OAO Gazprom*, 481 F.3d 309, 311 (5th Cir. 2007)).

In this adversary proceeding brought pursuant to § 1334(b), the relevant forum state is not Texas, but the entire U.S.[31] Airbus falsely claims in its Motion to Dismiss that it has no U.S. contacts or activity relevant to ECN Capital's claims. Airbus's own statements in its filings in other cases in the U.S.—including cases in Texas regarding the EC225 and AS332 L2 helicopters at issue here—prove otherwise. In the Era Complaint, Louisiana-based owners of EC225s asserted product liability claims regarding Airbus's defective design of EC225s, in Texas state court, against Airbus and its U.S.-based affiliate, AHI.[32] In a responsive pleading Airbus filed in the case earlier this month, Airbus admitted that it sold EC225s to its U.S. affiliate, AHI, "with final delivery [of the EC225s] occurring at [AHI's] facility in Texas." (Ex. O (Special Appearance) p. 4.) Airbus also admitted that AHI in turn sold the EC225s to U.S. purchasers (including Louisiana-based Era) for operation in the U.S. *Id.* Airbus admitted that it "has sold helicopters, including the [EC225s] at issue, to [AHI], a distributor in Texas;" and that Airbus-manufactured EC225s "passed through Texas-based transactions between [AHI] and their Louisiana purchasers, and four [EC225s] passed physically though Texas." *Id.* p. 14. Airbus also has acknowledged, as further set forth in its proofs of claim in the Bankruptcy Cases, that Airbus has sold and delivered EC225 and AS332 L2 helicopters and/or parts to Texas-based CHC and its affiliates. (*See* Ex. P (Airbus Proofs of Claim Nos. 353, 365).) These CHC entities,

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[31] *In re Celotex*, 124 F.3d at 630 ("[W]hen an action is in federal court on 'related to' jurisdiction, the sovereign exercising authority is the United States, not the individual state where the federal court is sitting."); *In re Paques*, 277 B.R. 615, 633 (Bankr. E.D. Pa. 2000) ("[T]he proper exercise of personal jurisdiction [in 'related to' proceedings] must focus upon the minimum contacts of [foreign defendant] with the United States.").

[32] *See* Ex. M (Era Complaint).

headquartered in Texas, act as nationwide distributors, sellers, and operators of Airbus-manufactured helicopters.[33]

Courts in the Fifth Circuit have held that such contacts are sufficient to establish specific personal jurisdiction on claims like those ECN Capital asserts here over a foreign defendant manufacturer on a stream of commerce theory. In *Verde* v. *Stoneridge, Inc.*, 2015 WL 1384373 (E.D. Tex. Mar. 23, 2015), the court held that specific personal jurisdiction existed over a defendant manufacturer for product liability, design defect, and negligence claims where the manufacturer delivered products to a distributor without limiting distribution to the forum state. 2015 WL 1384373, at *3–4. The court in *Verde* relied on the Fifth Circuit's decision in *Bean Dredging Corp.* v. *Dredge Tech. Corp.*, 744 F.2d 1081 (5th Cir. 1984), which similarly held that specific personal jurisdiction existed for product liability and negligence claims against a foreign manufacturer that did not seek to limit the sale, distribution, or use of its products in the forum state. 744 F.2d at 1085; *Verde*, 2015 WL 1384373, at *4; *see also Luv n' care, Ltd.* v. *Insta–Mix, Inc.*, 438 F.3d 465, 470–71 (5th Cir. 2006), *cert. denied*, 548 U.S. 904 (2006) (finding jurisdiction over defendant that expected its products to be purchased in the forum state).

Airbus cannot credibly claim unfairness where it submitted to the jurisdiction of this Court by actively participating in the Bankruptcy Cases and delivering products into the stream of commerce without restricting their distribution—indeed, with knowledge the products would be marketed, sold, distributed, and delivered by U.S. entities to U.S. entities for operation in the U.S. *See Verde*, 2015 WL 1384373, at *3–4; *Bean Dredging*, 744 F.2d at 1085. Airbus's burden

[33] Airbus attempts to distance itself from its U.S. affiliates, *see* Airbus Br. pp. 3, 13, but the fact that Kevin Cabaniss is both an employee of U.S.-based AHI and the designated representative for Airbus Helicopters (SAS) on the Creditors' Committee undermines this position. In any event, as explained below, Airbus's distribution of its products into the U.S.—whether through its own affiliate or through an unaffiliated distributor—gives rise to specific personal jurisdiction over ECN Capital's claims. *See, e.g.*, *Verde* v. *Stoneridge, Inc.*, 2015 WL 1384373, at *3–4 (E.D. Tex. Mar. 23, 2015).

of litigating in this jurisdiction—where it sold and sent its helicopters, where it chose to file its claims, and where it is currently defending other lawsuits regarding the same helicopters—does not preclude this Court's reasonable exercise of personal jurisdiction over Airbus. *See Verde*, 2015 WL 1384373, at *5.[34] In addition to Airbus's substantial participation in the Bankruptcy Cases, where both ECN Capital and Airbus have filed proofs of claims regarding EC225s and AS332 L2s, Airbus's contacts with the U.S. provide a sufficient basis for exercising specific personal jurisdiction in this case.[35]

IV. This Court Should Deny Airbus's Attempt To Forum-Shop.

Airbus argues that the Court should abstain from exercising the jurisdiction it has to hear ECN Capital's claims and dismiss this case on *forum non conveniens* grounds because the action involves two foreign entities and concerns some events that occurred in foreign districts. (Airbus Br. pp. 18–24.) Airbus fails to meet its heavy burden for dismissal on such grounds.

"'A defendant invoking *forum non conveniens* ordinarily bears a heavy burden in opposing plaintiff's chosen forum.'" *Tempur-Pedic Int'l, Inc.* v. *Go Satellite Inc.*, 758 F. Supp. 2d 366, 379 (N.D. Tex. 2010) (quoting *Sinochem Int'l Co.* v. *Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430 (2007)); *see also Alpine View Co. Ltd.* v. *Atlas Copco AB*, 205 F.3d 208, 222 (5th Cir. 2000) ("[T]he court must give the relevant deference to the plaintiff's choice of forum."). Dismissal on grounds of *forum non conveniens* is only permitted where there is an adequate alternative forum that is "substantially more convenient" *for all parties*. *Snaza* v. *Howard Johnson Franchise Sys., Inc.*, 2008 WL 5383155, at *2 (N.D. Tex. Dec. 24, 2008).

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[34] *See also First Capital Asset Mgmt., Inc.* v. *Brickellbush, Inc.*, 218 F. Supp. 2d 369, 403 (S.D.N.Y. 2002) (finding personal jurisdiction over Swiss defendant despite "significant" burden).

[35] In a case concerning alleged defects in another model of helicopter it manufactured that was sold and delivered to and operated in the U.S., Airbus admitted that it is subject to jurisdiction in the U.S. *See* Airbus Answer ¶ 2.1, *Newman* v. *Airbus Helicopters Inc., et al.*, No. 16-2-26710-6 SEA (Wash. Super. Ct., filed Nov. 1, 2016).

Airbus fails to prove, or even argue, that France is a "substantially more convenient" forum for ECN Capital, which is headquartered in North America, regularly does business in Texas, and—like Airbus—is currently participating in the Bankruptcy Cases in this Court, to which its claims in this adversary proceeding are related. In similar circumstances, courts have ruled that "related to" claims in adversary proceedings should be adjudicated in the Court where the bankruptcy cases are pending. *In re Bernard L. Madoff Inv. Secs. LLC*, 418 B.R. 75, 82 (Bankr. S.D.N.Y. 2009) ("[T]he most efficient resolution of the controversy would be in the United States, where the inextricably-related [bankruptcy] is ongoing before this Court.").

Airbus argues that dismissal is appropriate because, in certain Airbus contracts (to which ECN Capital is *not* a party), France is designated as the governing law and chosen forum. This fact is irrelevant to the *forum non conveniens* analysis, as ECN Capital is not a party to any such contract with Airbus and has not asserted breach of contract claims against Airbus. Airbus also suggests dismissal is appropriate because this matter has "no connection with Texas or the United States." (Airbus Br. 19.) That is patently false. As explained above, this adversary proceeding is closely related to the Bankruptcy Cases, in which both ECN Capital and Airbus are creditors—with each party's proofs of claim concerning the helicopters at issue in this lawsuit—and ECN Capital's claims are intertwined with the claims, liabilities, and property of the Debtors. Airbus also contends that the Court has no familiarity with the facts underlying ECN Capital's claims, but this again is false. From months of presiding over the proceedings in the Bankruptcy Cases, this Court has become familiar with the parties to this action; the factual circumstances giving rise to ECN Capital's claims; and the property that is the subject of, and will be affected by, this adversary proceeding. Airbus claims that none of the evidence relevant to ECN Capital's claims is in the U.S., but this is untrue—among the federal aviation authorities

investigating the 2016 Crash is the U.S. Federal Aviation Authority, which issued *from Fort Worth, Texas* an Emergency Airworthiness Directive requiring the grounding of all EC225s and AS332 L2s in response to the 2016 Crash.[36] Airbus also refers to issues of "comity" and the fact that certain of Airbus's contracts designate France as the governing law and chosen forum for disputes. International comity is an appropriate concern in a *forum non conveniens* analysis only if the movant shows that a true conflict of law exists, which Airbus has not done.[37] Airbus's grounds for *forum non conveniens* dismissal are pure pretext.

Airbus's real reason for wanting to escape this Court's jurisdiction and force ECN Capital to adjudicate its claims in France is clear. The government of France owns over 10% of the voting stock in Airbus's parent company, Airbus Group.[38] Until recently, France held an even greater stake in Airbus Group. In 2014, France sold off a small portion of its holdings in Airbus Group. Airbus Group's Chief Executive, Thomas Enders, acknowledged that the sale was designed to reduce—but not eliminate—the direct influence the French government held over the company, and to help Airbus Group become a more "normal" firm.[39] Courts do not dismiss cases on grounds of *forum non conveniens,* however, where one of the parties is likely to be treated unfairly. *Alpine View Co. Ltd.* v. *Atlas Copco AB*, 205 F.3d 208, 221 (5th Cir. 2000). Courts especially disfavor requests like Airbus's, where a foreign defendant attempts to move a case from its proper forum to the foreign defendant's home turf. *Magnolia Ocean Shipping Corp.* v. *M/V Marco Azul*, 1981 A.M.C. 2071, 2075, (E.D. Va. 1981) ("[T]he Supreme Court, as well as other courts in our federal system, has demonstrated a strong reluctance to applying the doctrine of *forum non conveniens* where the foreigners involved belonged to different nations.").

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36 *See* Ex. Q (June 3, 2016 FAA Airworthiness Directive).

37 *See In re Maxwell Comm. Corp.*, 93 F.3d 1036, 1049 (2d Cir. 1996) ("International comity comes into play only when there is a true conflict between American law and that of a foreign jurisdiction.").

38 *See* Ex. B (Airbus Group Registration Document 2015) p. 90.

39 *See* Ex. R (Ruth David, *France Selling $618 Million Airbus Stake to Institutions*, Bloomberg (Jan. 16, 2014)).

CONCLUSION

For the foregoing reasons, this Court should deny Defendant's Motion to Dismiss the Complaint.

Dated: January 27, 2017
Dallas, Texas

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN PC

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CERTIFICATE OF SERVICE

I hereby certify that, on January 27, 2017, I caused the foregoing Opposition to Defendant's Motion to Dismiss to be served via electronic mail and First Class U.S. Mail, postage prepaid, to the following counsel of record for the Defendant:

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Exhibit C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	:	**Chapter 11**
CHC GROUP LTD. *et al.*,	:	**Case No. 16– _____ ( )**
Debtors.	:	**(Joint Administration Requested)**

DECLARATION OF ROBERT A. DEL GENIO IN SUPPORT OF THE DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY RELIEF

I, Robert A. Del Genio, pursuant to section 1746 of title 28 of the United States Code, hereby declare that the following is true to the best of my knowledge, information, and belief:

1. I am the Chief Restructuring Officer ("**CRO**") of CHC Group Ltd. ("**CHC Group**") and each of the other debtors (collectively, the "**Debtors**" and, together with their non-debtor affiliates, "**CHC**" or the "**Company**") in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**").[1] I am a Managing Member and founder of CDG Group, LLC, a financial advisory firm that provides restructuring, crisis, and turnaround management services. I have been working closely with the Company for the past several months and was recently appointed as the CRO. As CRO, I report and provide strategic business advice to CHC Group's Board of Directors, Chief Executive Officer, and other members of management in connection with the Debtors' Chapter 11 Cases, and am responsible for carrying out the Debtors' restructuring strategy and objectives described herein.

[1] A list of the Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, where applicable, is attached hereto as **Exhibit A**.

2. Concurrently with the filing of this declaration (the "**Declaration**") on the date hereof (the "**Petition Date**"), the Debtors have filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). To enable the Debtors to operate effectively and minimize the potential adverse effects of the commencement of these reorganization cases, the Debtors have requested certain relief in "first day" applications and motions filed with the Court (collectively, the "**First Day Pleadings**"). The First Day Pleadings, described in detail below, seek, among other things, relief intended to preserve the value of the Debtors and maintain continuity of operations by, among other things, (i) preserving the Debtors' relationships with their customers and employees, many of whom are located in jurisdictions outside the United States, (ii) maintaining the Debtors' cash management system and other business operations without interruption, (iii) confirming the reach of the automatic stay to protect the Debtors' assets, and (iv) establishing certain administrative procedures to facilitate an orderly transition into, and uninterrupted operations throughout, these Chapter 11 Cases. This relief is critical to the Debtors' restructuring efforts.

3. This Declaration is submitted to assist the Court and other parties in interest in understanding the circumstances that compelled the commencement of these Chapter 11 Cases and in support of (i) the petitions for relief under the Bankruptcy Code filed on the Petition Date and (ii) the First Day Pleadings. Any capitalized term not defined herein shall have the meaning ascribed to that term in the relevant First Day Pleading. Except as otherwise indicated herein, the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by employees working under my supervision or my opinion based upon experience, knowledge and information concerning the operations of CHC, the oil and gas industry, and the commercial helicopter service industry. If

called upon to testify, I would testify competently to the facts set forth in this Declaration. I am authorized to submit this Declaration on behalf of the Debtors.

4. This Declaration is intended to provide a summary overview of CHC and the Debtors' Chapter 11 Cases, and is organized as follows: **Part I** describes the Debtors' businesses; **Part II** describes the Debtors' prepetition capital structure; **Part III** describes the key events that led to the commencement of these Chapter 11 Cases, the Debtors' prepetition restructuring negotiations with key creditors within the capital structure and the goals that the Debtors seek to accomplish through the commencement of these Chapter 11 Cases; and **Part IV** provides the evidentiary support for the First Day Pleadings filed concurrently herewith.

5. Unless otherwise indicated, the financial information contained herein is provided on a consolidated basis, which includes certain of the Debtors' non-debtor affiliates (collectively, the "**Non-Debtor Affiliates**").

Preliminary Statement

6. CHC is a global commercial helicopter services company primarily servicing the offshore oil and gas industry. CHC's principal business is to provide helicopter services for large, long-distance crew changes on offshore production facilities and drilling rigs for major, national, and independent oil and natural gas companies. As a result of this nexus, the Debtors' performance is closely tied to the state of the oil and gas industry.

7. Starting in the summer of 2014, oil prices began to decline precipitously. Over the next six months or so of 2014, the price of oil was cut in half. On May 2, the price for a barrel of Brent Crude was $45, down approximately 64% from a high of $125 per barrel in 2012. This rapid and unexpected decline in oil prices has led to a significant decline in offshore oil exploration, cost reduction measures for production operations, and a substantially decreased demand for offshore drilling services. As CHC's oil and gas customers have implemented

severe reductions in capital spending and cost cutting measures, the demand for CHC's helicopter services has dramatically declined. The significant and sustained drop in oil prices and related contraction of demand for offshore helicopter services, coupled with CHC's customers demanding price concessions and new flexible contract terms, has caused uncertainty regarding the Debtors' ability to maintain their leveraged capital structure and large helicopter fleet in the long term. A comprehensive balance sheet and fleet restructuring is necessary.

8. The Debtors have determined that, in the wake of the decline in oil prices and resulting declines in customer revenue, their enterprise can no longer bear the weight of its current capital structure and fleet expenses. Indeed, the Company needs to substantially reduce its debt obligations and shed at least 90 unproductive aircraft. To accomplish this, the Company began to explore options that would allow the company to deleverage its capital structure and reduce its fleet costs, paving the way toward future growth and long-term success, even in a down market. To that end, CHC launched significant out-of-court restructuring initiatives, as described in more detail below, including efforts to obtain concessions from its lessors. While these cost-cutting measures enabled the Company to mitigate some of its operating losses in Q3 2016 compared to the prior year quarter, the Company determined that it would be appropriate to consider a broader range of strategic alternatives and hired legal and financial advisors to assist with this analysis.

9. With guidance from their advisors, over the past several months, the Debtors launched negotiations with various members of the Debtors' capital structure and certain, key third-party aircraft lessors. Although the Debtors believe that these negotiations and discussions have been fruitful, and they remain ongoing, the Debtors have determined that relief under chapter 11 is the best path forward to preserve liquidity and provide a forum to streamline and expedite the restructuring process in these uncertain times. As part of the Debtors' goal to

preserve liquidity, the Debtors expect to return, and reject, the leases and subleases related to over 90 unproductive leased aircraft during the first 60 days of these Chapter 11 Cases.

10. The breadth of the targeted restructuring, the number of creditors at issue, the global reach of the Debtors' assets and operations, the importance of accessing the relief and provisions of the Bankruptcy Code and the authority of this Court as the forum for supervising and implementing the Debtors' reorganization, cannot be over-emphasized. Although CHC manages its operations in Irving, Texas and maintains its key sales office in Houston, Texas, CHC operates a truly global business, with assets and operations scattered across six continents around the globe. CHC conducts business in numerous countries with different legal systems, including, among others, Australia, Brazil, Canada, East Timor, Equatorial Guinea, Ireland, Malaysia, Netherlands, Nigeria, Norway, Poland, Kazakhstan, the United Kingdom, and the United States. In addition, many of the Debtors are incorporated under the laws of numerous additional countries, including the Cayman Islands, Luxembourg, Bermuda, and Barbados, and many of the Debtors' key contracts are governed by the laws of foreign jurisdictions. CHC holds aircraft operating certificates and licenses from 10 different countries, employs approximately 3,800 employees worldwide, and has customers from jurisdictions across the globe.

11. Given these and other considerations, the Debtors concluded in the exercise of their business judgment and as fiduciaries for all of the Debtors' stakeholders that the best path to maximize the value of their businesses and preserve thousands of jobs was a strategic U.S. chapter 11 filing. The filing will give the Debtors a much needed breathing spell – one of the fundamental tenets of a traditional chapter 11 filing – as they continue to work with their key stakeholders. Moreover, the self-executing and global nature of sections 362, 365, 525, and 541(c) of the Bankruptcy Code, along with the other protections and tools available to chapter 11 debtors, as they have been explained to me, provide the Debtors with the best – and

only real – option to effectuate a rapid and comprehensive balance sheet restructuring and fleet optimization for this truly global business. It is the Debtors' judgment that there is no alternative forum in which the Debtors could collectively seek relief to preserve value and reorganize their businesses, and absent these Chapter 11 Cases, the Debtors likely would be left with no choice but to liquidate their businesses in a fire sale and piecemeal fashion.

12. Although the Debtors believe that they have sufficient liquidity to fund these Chapter 11 Cases, at this time, the Debtors are constrained to a short-term four week cash forecast as a result of the recent tragic accident in Norway that may have an impact on their future revenues, cost structure, and helicopter fleet.[2] On this basis, on the first day of these cases, the Debtors are only seeking limited use of cash collateral on interim basis and will seek further relief at a later date.

I.

The Debtors' Businesses

13. CHC is one of the largest global commercial helicopter service companies in the world, primarily engaged in providing helicopter services to the offshore oil and gas industry. With its senior management headquartered in Irving, Texas, CHC maintains bases on six continents with major operations in the North Sea, Brazil, Australia, and several locations across Africa, Eastern Europe, and South East Asia. CHC's business consists of two main operating segments: (i) helicopter flight operations ("**Helicopter Services**"); and (ii) helicopter

[2] On April 29, 2016, an Airbus EC 225 helicopter, or EC 225, operated in Norway by one of the Debtors' Non-Debtor Affiliates, CHC Helikopter Services AS, was involved in an accident while on approach to Flesland Airport in Bergen, Norway from the Gullfaks B platform. The EC 225 carried 11 passengers and two crew members. The cause of the accident is not yet known and full investigations are being carried out in conjunction with regulators and police authorities. In collaboration with CHC's stakeholders, customers and regulatory authorities, pending further regulatory guidance, CHC has temporarily put on hold all EC 225 commercial flights around the world (with the exception of search-and-rescue missions).

maintenance, repair, and overhaul operations ("**MRO**") carried out by its Heli-One division ("**Heli-One**"), which services CHC's helicopter fleet as well as third-party customers.

A. Helicopter Services

14. CHC's Helicopter Services segment consists of flying operations in the Eastern North Sea, the Western North Sea, the Americas, the Asia Pacific region and the Africa-Euro Asia region, primarily serving offshore oil and gas customers. These services facilitate large, long-distance crew changes on offshore production facilities and drilling rigs. Helicopter Services also provides helicopter services for search and rescue ("**SAR**") and emergency medical services ("**EMS**") to various government agencies, all of which are typically under long-term service contracts. In some instances, Helicopter Services also provides SAR and EMS services to its oil and gas customers.

15. The majority of CHC's customers are major, national, and independent oil and gas companies, including Statoil, Total, Apache, Petrobras, and Royal Dutch Shell, and the majority of CHC's customer contracts provide for revenues based on fixed-monthly charges and hourly flight rates. CHC's contracts with offshore oil and gas customers are typically for periods of four to five years, and normally carry extension options of one to five years; however, most of the customer contracts contain termination for convenience provisions. CHC also has long-term contracts with government agencies and commercial operators in the United Kingdom and in Ireland, as well as contracts with commercial operators, the military, and local governments in Australia to provide SAR and EMS helicopter services.

16. Helicopter Services generated approximately 90% of its revenue for the three years ended April 30, 2015 from oil and gas customers and, of this amount, the majority was tied to CHC's customers' offshore production operations, which can have long-term

transportation requirements. SAR and EMS revenue to non-oil and gas customers contributed approximately 10% of Helicopter Services revenue for the three years ended April 30, 2015.

B. Heli-One (MRO)

17. CHC's Heli-One segment includes helicopter MRO facilities in Norway, Poland, Canada, and the United States, which provide services for CHC's helicopter fleet and for CHC's external customer base primarily in Europe, Asia, and North America. CHC's MRO capabilities enable CHC to perform heavy structural repairs, and maintain, overhaul, and test helicopters and helicopter components globally across various helicopter types. Heli-One's largest customer is CHC's Helicopter Services segment. Heli-One derives the majority of its third-party revenue from "power by the hour" ("**PBH**") contracts, where the customer pays a ratable monthly charge, typically based on the number of hours flown, for all scheduled and un-scheduled maintenance. CHC is the largest commercial operator of helicopter flights in the world that also provides MRO services.

18. CHC maintains one of its primary MRO facilities in Fort Collins, Colorado, where it provides specialized engine overall capabilities for aircraft used by the United States Customs and Border Protection Service as well as the Texas Department of Transportation, and for specialized firefighting helicopters.

C. Fleet

19. CHC maintains a fleet of 230 medium (8 to 15 passengers) and heavy (16 to 26 passengers) helicopters (the "**CHC Fleet**"). A significant portion of the fleet is comprised of new technology helicopters which have greater range, higher passenger capacity, enhanced safety systems, and the ability to operate in variable conditions. Of the total 230 helicopters in the fleet, CHC owns 67 helicopters and CHC leases the remainder from various third-party lessors.

D. Organizational Structure

20. The various legal entities in CHC's organizational structure primarily consist of (i) operating affiliates, including Variable Interest Entities (as defined below), in various jurisdictions that support Helicopter Services (the "**HS Operating Entities**"), (ii) fleet entities that either own or lease aircraft from third-party lessors (the "**FleetCos**"), (iii) Heli-One entities that support the MRO business (the "**Heli-One Entities**"), and (iv) entities that provide general corporate support and administration functions to the CHC enterprise (the "**G&A Entities**"), including the provision of pilots and engineers from CHC's global touring crew (the "**Global Touring Crew**") to the HS Operating Entities.

21. The HS Operating Entities typically hold the Helicopter Services customer contracts and collect the associated revenue. In some cases, the customer contracts are held by other non-operating CHC legal entities who subcontract internally with the HS Operating Entities. The HS Operating Entities hold various aircraft operating certificates, operating licenses, and regulatory authorizations (collectively, the "**AOCs**") that are required to carry out helicopter flight operations in the various operating jurisdictions. These AOCs are issued to the HS Operating Entities by government regulated aviation bodies, and each entity holding an AOC is typically required to satisfy, among other requirements, certain financial, insurance, and ownership criteria. In certain jurisdictions in which CHC operates, in order to satisfy local ownership requirements, CHC has entered into joint venture arrangements ("**JVs**") and strategic partnerships (together with the JVs, the "**Variable Interest Entities**") with third-party nationals or entities controlled by third-party nationals in those jurisdictions. CHC currently holds 11 active AOCs, all in separate regional legal entities.

22. The HS Operating Entities typically employ local pilots and maintenance engineers, together with administrative and other support staff. In certain jurisdictions where

local experienced pilots and engineers are not available, the HS Operating Entities enter into intercompany secondment agreements for the provision of pilots and engineers from CHC's Global Touring Crew. The HS Operating Entities often perform light maintenance on their helicopters at the local base location; however, the majority of all major aircraft maintenance and the overhaul of major components is performed by Heli-One pursuant to internal PBH service contracts with the Heli-One Entities. Pursuant to these intercompany agreements, Heli-One charges fees for PBH support as well as for time and materials based maintenance and other aircraft modification services.

23. The CHC FleetCos either own or lease from third-party lessors all of the aircraft in the CHC Fleet. In most cases, the FleetCos sublease the aircraft to HS Operating Entities. These leasing structures provide maximum regulatory and business flexibility.

24. The Heli-One Entities are responsible for the majority of the MRO activities within the CHC business, including the internal PBH service arrangements with the HS Operating Entities as well as the third-party PBH contracts. These entities also manage the supply chain and logistics for moving spare parts and components between the various Heli-One facilities and CHC bases. The Heli-One Entities employ a larger number of shop employees in the Netherlands, Norway, Canada, Poland, and Fort Collins, Colorado.

25. CHC has centralized many of its general corporate and administrative functions in the G&A Entities, which typically provide services across the entire CHC enterprise. These services include, among others, executive, legal, finance, accounting, information technology, crew provision and scheduling, and certain sales functions. In most instances, the services provided by the G&A Entities are allocated to the various operating entities pursuant to intercompany service arrangements and booked as intercompany payables.

26. For the fiscal year ended April 30, 2016, the Debtors' total operating revenues were approximately $1.4 billion, representing an approximate 15% decrease in operating revenues year over year, which (as described herein) was driven by a dramatic decline in demand for CHC's helicopter services resulting from a change in customers' use of helicopter services and the price and terms on which they are willing to accept service.

II.

Prepetition Capital Structure

27. All of the Debtors are direct or indirect wholly-owned subsidiaries of Debtor CHC Group and, with the exception of CHC Cayman Investments I Ltd., together constitute the issuers and guarantors of all of the Debtors' funded debt (described in detail below). CHC's other entities, including certain operating entities, are not debtors in these Chapter 11 Cases and are continuing to conduct their businesses in the ordinary course. A chart illustrating the Debtors' organizational structure, as of the date hereof, is annexed hereto as **Exhibit B**. The following description of the Debtors' capital structure is for informational purposes only and is qualified in its entirety by reference to the documents setting forth the specific terms of such obligations and their respective related agreements.

28. As of the date hereof, the Debtors had outstanding funded debt obligations in the aggregate amount of approximately $1.6 billion, which amount consists of (i) approximately $370 million in secured borrowings under the Debtors' Revolving Facility (as herein defined), (ii) approximately $139 million in secured borrowing under the Debtors' ABL Facility (as herein defined), (iii) approximately $1.0 billion in principal amount of Senior Secured Notes (as herein defined), and (iv) approximately $95 million in principal amount of

Unsecured Notes (as herein defined). The Debtors also have approximately $644 million in Preferred Stock (as defined herein) outstanding as of the date hereof.[3]

A. Equity Ownership

29. CHC Group is a public company and files annual reports with, and furnishes other information to, the United States Securities and Exchange Commission (the "**SEC**"). The common stock of CHC Group traded on the New York Stock Exchange (the "**NYSE**") under the symbol "HELI" until February 1, 2016, when CHC received a delisting notice from the NYSE. Following the delisting, CHC's common stock was accepted for listing on the OTCQX Best Market ("**OTCQX**") and trading in CHC's common stock commenced on the OTCQX under the ticker symbol "HELIF" on February 2, 2016.

30. As of April 30, 2016, 544,000,000 shares of the Debtors' $0.003 par value common stock had been authorized with 2,721,592 shares of common stock issued and outstanding. As of April 30, 2016, 6,000,000 shares of the Debtors' $0.0001 par value redeemable convertible preferred shares had been authorized with 671,189 shares of redeemable convertible preferred shares issued and outstanding. As of May 3, 2016, CHC's common stock was trading at $0.65 per share.

31. As of April 30, 2016, First Reserve Management, L.P. ("**First Reserve**"), a global private equity firm focused on energy, owned 1,530,011 shares of the CHC's common stock, representing approximately 28.1% of the total voting power calculated on an as-converted basis of all stock.

32. On December 15, 2014, the Debtors completed the final of three offerings for a total of 600,000 shares of Convertible Preferred Shares (the "**Preferred Stock**" and the holders of Preferred Stock, the "**Preferred Holders**") through a private placement to Clayton

[3] All amounts listed in this Declaration are in United States dollars.

Dubilier & Rice, LLC ("**CD&R**") at the price of $1,000 per share for a total of $600 million. CHC used the net proceeds of this investment to reduce debt and other fixed charges.

33. Pursuant to that certain Rights and Restrictions of the Convertible Preferred Shares of CHC Group Ltd. Establishing the Terms of the Convertible Preferred Shares (the "**Preferred Share Rights and Restrictions**"), Preferred Holders accrue and accumulate dividends on a daily basis at a base rate of 8.50% *per annum*, which are payable, either in cash or with additional Preferred Stock, quarterly in arrears if, as and when so authorized and declared by the Board of Directors. As of April 30, 2015, 671,189 Preferred Shares were issued and outstanding, and all held directly or indirectly by CD&R.

34. At any given time, all Preferred Holders can convert any or all of their Preferred Shares into some number of common stock based upon a variable conversion rate. As of April 30, 2016, CD&R held preferred shares representing approximately 52.2% of common stock on an as-converted basis. Pursuant to the Preferred Share Rights and Restrictions, to the extent that any Preferred Holder converts some number of Preferred Shares into ordinary shares such that the Preferred Holder controls more than 49.9% of total outstanding common stock, any shares in excess of 49.9% of the total outstanding common stock are replaced with an equivalent number of non-voting common stock.

B. <u>ABL Facility</u>

35. Debtor CHC Cayman ABL Borrower Ltd. (the "**CHC ABL Borrower**"), as borrower, is a party to that certain Credit Agreement, dated as of June 12, 2015 (as amended, restated, supplemented or otherwise modified from time to time, the "**ABL Credit Agreement**" and, together with all agreements and documents delivered pursuant thereto or in connection therewith, each as amended, supplemented or otherwise modified, the "**ABL Facility Documents**"), with the lenders party thereto from time to time, Morgan Stanley Senior Funding,

Inc., as administrative agent (the "**ABL Administrative Agent**"), and BNP Paribas S.A., as collateral agent (the "**ABL Collateral Agent**"). The ABL Credit Agreement provides the borrower with a senior secured non-amortizing asset based revolving credit facility in the aggregate amount of up to $145 million (the "**ABL Facility**").

36. The obligations under the ABL Facility are guaranteed by 6922767 Holding SARL, CHC Helicopter Holding S.á r.l., CHC Helicopter S.A. ("**CHC SA**"), pursuant to that certain Guarantee Agreement, dated as of June 12, 2015, in favor of the ABL Administrative Agent, and by CHC Cayman ABL Holdings Ltd pursuant to that certain Guarantee and Collateral Agreement, dated as of June 12, 2015 (as amended, restated, supplemented, or otherwise modified from time to time, the "**ABL GCA**"), by and among CHC Cayman ABL Holdings Ltd., CHC ABL Borrower, the ABL Administrative Agent, and the ABL Collateral Agent.

37. Pursuant to the terms of the ABL GCA and certain local law security documents, CHC Cayman ABL Holdings Ltd. has purportedly granted a security interest in the equity interests it holds in CHC ABL Borrower, and CHC ABL Borrower has purportedly granted a security interest in substantially all of its respective assets, in each case to secure the obligations under the ABL Facility, subject to the exceptions specified in the ABL Facility Documents. The ABL Facility is purportedly secured by certain of the Debtors' owned aircraft and related assets, intercompany aircraft leases, and cash on deposit in certain of the Debtors' bank accounts. Pursuant to that certain most recent Borrowing Base Certificate, dated April 6, 2016 (the "**Borrowing Base Certificate**") annexed hereto as **Exhibit C**, the total average appraised value of the aircraft currently in the facility is approximately $185 million.[4]

[4] CHC's Monthly Depreciation Schedule for the period of May 2015 through March 2016, is annexed here to as **Exhibit D**. CHC's Projected Aircraft Depreciation Schedule is annexed hereto as **Exhibit E.**

38. As of the date hereof, the aggregate principal amount outstanding under the ABL Facility is approximately $139 million in unpaid principal, plus accrued and unpaid interest, fees, and other expenses. The ABL Facility bears interest at a floating rate that varies based upon the level of utilization of the facility, and matures on June 12, 2020.

C. The Revolving Facility

39. Debtors CHC SA, CHC Global Operations International Inc., CHC Global Operations (2008) Inc., Heli-One Canada Inc., Heli-One Leasing Inc., CHC Den Helder B.V., CHC Holding NL B.V., CHC Netherlands B.V., CHC Norway Acquisition Co AS, and Heli-One (Norway) AS, as borrowers, are parties to that certain Credit Agreement, dated as of January 23, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "**Revolving Credit Agreement**"), with the lenders and issuing banks party thereto from time to time (collectively, the "**Revolving Facility Lenders**"), HSBC Bank PLC, as administrative agent (the "**Revolving Facility Administrative Agent**"), and HSBC Corporate Trustee Company (UK) Limited, as collateral agent (together with the Revolving Facility Lenders and the Revolving Facility Administrative Agent, the "**Revolving Facility Secured Parties**").

40. The Revolving Facility Credit Agreement governs a revolving credit facility (the "**Revolving Facility**") that provides for revolving credit commitments, including letter of credit commitments and swingline commitments, in an aggregate principal amount of up to $375 million. The Revolving Facility is guaranteed by CHC Group, 6922767 Holding SARL, CHC Helicopter Holding S.á r.l., and certain of CHC SA's subsidiaries (the borrowers and guarantors under the Cash Flow Revolving Facility, the "**Revolving Facility Obligors**").

41. As of the date hereof, the aggregate principal amount outstanding under the Revolving Facility is approximately $328 million in unpaid principal and $43 million in face amount of undrawn Revolving Letters of Credit (as defined in the Revolving Credit Agreement),

plus accrued and unpaid interest, fees, and other expenses. The Revolving Facility bears interests at a floating interest rate that varies based upon the Company's consolidated total leverage, and matures on January 23, 2019.

D. The Senior Secured Notes

42. Debtor CHC SA, as issuer, is party to that certain Indenture, dated as of October 4, 2010 (as amended, modified, or otherwise supplemented from time to time, the "**Senior Secured Notes Indenture**"), with The Bank of New York Mellon, as indenture trustee (in such capacity, the "**Senior Secured Notes Indenture Trustee**"), and HSBC Corporate Trustee Company (UK) Limited, as collateral agent (together with the Senior Secured Notes Indenture Trustee and the Senior Secured Noteholders, the "**Senior Secured Notes Secured Parties**"), pursuant to which CHC SA issued 9.250% Senior Secured Notes due 2020 in the aggregate principal amount of $1.1 billion, of which approximately $1.0 billion is currently outstanding (the "**Senior Secured Notes**," and the holders of such notes, the "**Senior Secured Noteholders**").

43. The Senior Secured Notes are guaranteed by CHC Group, 6922767 Holding SARL, CHC Helicopter Holding S.á r.l., and certain of CHC SA's subsidiaries (the issuer and the guarantors in respect of the Senior Secured Notes, the "**Senior Secured Notes Obligors**").

44. As of the date hereof, the aggregate amount outstanding under the Senior Secured Notes is $1.0 billion in unpaid principal, plus accrued and unpaid interest, fees, and other expenses. The Senior Secured Notes bear interest at a rate of 9.25% per annum with interest payable semiannually on April 15 and October 15, and mature on October 15, 2020.

E. The Security Documents for the Revolving Credit Facility and the Senior Secured Notes

45. The obligations under the Revolving Credit Agreement and the Senior Secured Notes are purportedly secured in accordance with the terms of certain local law security documents, pursuant to which the Revolving Facility Obligors and the Senior Secured Notes Obligors purportedly granted first priority *pari passu* liens on substantially all of their assets (the "**Prepetition Collateral**"). The liens on the Prepetition Collateral were purportedly granted in favor of HSBC Corporate Trustee Company (UK) Limited, which was appointed to act as agent and trustee (in such capacity the "**Collateral Agent**") for the benefit of the Revolving Facility Secured Parties and the Senior Secured Notes Secured Parties under the terms of that certain Collateral Agent and Administrative Agent Appointment Deed, dated as of October 4, 2010, among the Revolving Facility Administrative Agent, the Senior Secured Notes Indenture Trustee, the grantors party thereto, the lenders and arrangers party thereto, and the Collateral Agent.

46. The rights of the Revolving Facility Secured Parties and the Senior Secured Notes Secured Parties with respect to their shared collateral are governed by that certain Intercreditor Agreement, dated as of October 4, 2010, among CHC SA, the other grantors party thereto, the Collateral Agent, the Revolving Facility Administrative Agent and the Senior Secured Notes Indenture Trustee (as amended, modified, or otherwise supplemented from time to time, the "**Intercreditor Agreement**"). Pursuant to the Intercreditor Agreement, all Cash Flow Revolving Facility Secured Obligations and Senior Secured Notes Obligations are secured equally with respect to the "**Shared Collateral**" described therein. Under the payment priority waterfall established by the Intercreditor Agreement, the Revolving Facility Secured Parties are entitled to receive proceeds of the Shared Collateral until paid in full, at which point the outstanding Senior Secured Notes Secured Obligations are to be paid ratably.

F. The Unsecured Notes

47. Debtor CHC SA, as issuer, is party to that certain Indenture, dated as of May 13, 2013 (as amended, modified, or otherwise supplemented from time to time, the "**Unsecured Notes Indenture**"), with The Bank of New York Mellon, as indenture trustee, pursuant to which CHC SA issued 9.375% Senior Unsecured Notes due 2021 in the original aggregate principal amount of $300 million (the "**Unsecured Notes**").

48. The Unsecured Notes are guaranteed by CHC Group, 6922767 Holding SARL, CHC Helicopter Holding S.á r.l., and certain of CHC SA's subsidiaries. The Unsecured Notes are senior unsecured obligations of the Debtors.

49. As of the date hereof, the aggregate amount outstanding under the Unsecured Notes is approximately $95 million in unpaid principal, plus accrued and unpaid interest, fees, and other expenses. The Unsecured Notes bear interest at a rate of 9.375% per annum with interest payable semiannually on June 1 and December 1, and mature on June 1, 2021.

III.

Key Events Leading to Chapter 11

50. As noted above, with a significant customer base in the oil and gas industry, CHC's performance is closely tied to and impacted by changes in oil prices. The prices of Brent crude oil and natural gas have declined dramatically since mid-year 2014, having recently reached multiyear lows, as a result of robust supply growth led by unconventional production in the United States, weakening demand in Europe and emerging markets, and the Organization of the Petroleum Exporting Countries' decision to continue to produce at current levels. These market dynamics have led many to conclude that the energy sector will remain under pressure for a prolonged period. The effects of this protracted downturn are evident in

both onshore and offshore operations and throughout the oil and gas supply chain – in both exploration and production.

51. Due to the significant and rapid downturn in market conditions, CHC is seeing its oil and gas customers reassess their exploration projects and reduce their capital expenditure plans. Offshore exploration activity has plummeted from its peak in 2013, with the majority of the drop in the last six months. Specifically, the global offshore rig count is down 27% since 2013, with deep water rigs down more than 34%. With oil and gas exploration in a lull, many of CHC's customers are using the down cycle to focus only on commitment wells and to perform plug and abandonment work. Overall, CHC's exploration revenue, which accounts for approximately 10% of CHC's revenue from the oil and gas industry, is down over 40% in 2016 versus 2014.

52. On the production side, which accounts for approximately 70% of CHC's revenue from the oil and gas industry, the sustained dip in oil prices has put the supply chains of oil and gas companies under intense pressure. As production revenue has dropped, oil and gas companies have been targeting operational inefficiencies in their supply chains to reduce costs. Pricing on existing contracts and new tenders has declined as these customers have implemented cost reduction measures and have demanded significant prices concessions. Customers also have started utilizing less frequent worker rotations and service patterns to increase their productivity of assets and employees, resulting in a reduction in the number of aircraft required for each contract. These improvements in passenger utilization, coupled with the decrease in volume of offshore personnel, have significantly reduced demand for flying hours. Some customers have even started taking advantage of clauses in their contracts that permit termination for convenience as they seek out new contracts on the lowest-price principle from competitors. CHC's customers have been able to extract more and more concessions and favorable contract

terms as the market for the remaining share of flight hours continues to shrink. Unlike exploration revenue that may come back as the oil price rebounds, these operational efficiencies on the production side are margin negative for helicopter operators and will likely remain in the supply chain even as market conditions improve.

53. Despite efforts to undertake transactions to reduce long-term debt and reduce structural costs that are discussed below, the Debtors are unable to absorb the ongoing and precipitous decline in business demand from the oil and gas industry and the corresponding decline in the Debtors' revenues and cash flows. Based on current market conditions, the Debtors believe that a significant reduction in their long-term debt and cash interest obligations, as well as a significant reduction in their fleet size and related expenses, is required to improve their financial position and flexibility and position them to take advantage of opportunities that may arise out of the current industry downturn.

A. Cost Cutting Measures

54. In response to these developments, the Debtors have, among other things, significantly reduced their spending and implemented a series of structural cost-cutting measures (described in more detail below). Recognizing the need to take these proactive steps in this down market, in early 2015, the Debtors brought in a new management team with substantial experience and expertise in the aircraft and leasing industry. The members of this new management team draw on experience from GE Capital, International Lease Finance Corporation, and Schlumberger, and the team is led by Chief Executive Officer, Karl Fessenden. Over the past year, the Debtors and this new management team have, through various initiatives, achieved reductions in operating expenses of approximately 18% on an FX neutral basis.

55. Specifically, these costs reductions were driven by, among other things, a significant reduction in headcount, certain base closures, organizational delayering and

centralization of back-office functions, renegotiation of certain professional fees, restructuring of the maintenance and engineering teams, and various fleet adjustments. In addition, CHC engaged a consultant to review and provide recommendations to restructure its supply chain organizational structure and approach, which led to a substantial consolidation of its suppliers along with various process changes. For example, CHC consolidated its air freight and courier carriers from 54 to 10 key accounts, reducing costs by over $4 million, and optimized its inventory, reducing repair costs by over $7 million. CHC also undertook a strategic review of its direct labor costs, which resulted in changes to its roster patterns, a reduction in travel pay for employees, and a decision to outsource certain non-essential work such as ground operations.

56. The Debtor have also taken steps to reduce their total outstanding long-term obligations through two debt repurchase transactions of their Unsecured Notes, which resulted in a reduction of their annual cash requirements by approximately $3.8 million. This restructuring complemented the debt redemption and repurchase transactions the Debtors undertook in fiscal years 2014 and 2015 to reduce their total outstanding long-term debt obligations, which reduced their cash requirements on an annualized basis approximately $41.9 million.

57. Despite the best efforts of the Debtors and their management to actively restructure and reduce their operational and financial costs, the significant and prolonged downturn in market conditions in the oil and gas sector, the cost cutting measures being deployed by their customers, and the related decrease in the Debtors' revenues and cash flows from operations, has caused uncertainty regarding the viability of the Debtors' leveraged capital structure and cash flow structure in the long term. Accordingly, the Debtors began to explore potential alternatives that would allow the Debtors to deleverage their balance sheet, reduce their fleet cost structure, and allow for growth and long-term success.

58. In response to this, in early 2016, the Debtors retained Weil, Gotshal & Manges LLP ("**Weil**"), as restructuring counsel, Debevoise & Plimpton LLP ("**Debevoise**"), as special aircraft counsel, PJT Partners LP ("**PJT Partners**"), as investment banker, Seabury Corporate Advisors LLC ("**Seabury**"), as financial advisor, and CDG Group, LLC, as restructuring advisor (together with Weil, Debevoise, PJT Partners, and Seabury, the "**Advisors**"), to assist them in developing and implementing a comprehensive restructuring plan. The Advisors quickly engaged to explore, analyze, and develop strategic alternatives for resolving the Debtors' financial issues.

B. Preserving Liquidity

59. One of the earliest strategies emphasized by the Debtors' Advisors was the implementation of a strict liquidity preservation policy. Consistent with this, in January 2016, the Debtors drew the remaining $233 million available under the Cash Flow Revolving Facility. In addition, in April 2016, CHC Group and CHC SA decided not to make an interest payment of approximately $46 million due with respect to the Senior Secured Notes, and to use the 30-day grace period under the Senior Secured Notes Indenture to continue working with the Advisors to review strategic alternatives for restructuring the Company's debt and leases expenses.

C. Prepetition Negotiations with Creditors

60. With the flexibility of the grace period, the Debtors and their Advisors commenced negotiations with certain of the Debtors' key stakeholders, including various members of the Debtors' capital structure as well as the Debtors' third-party aircraft lessors. During these early discussions, the Debtors' presented their business plan, strategies for creating a viable business model in this down market, and restructuring proposals.

61. Recognizing the importance of swift action to preserve liquidity and enterprise value, these stakeholders and their advisors quickly began conducting diligence and

engaging with the Debtors and their Advisors. These negotiations advanced through the early stages and continue to progress.

62. The Debtors decided to seek chapter 11 protection to take advantage of the breathing spell afforded by the automatic stay as they continue negotiating and working with these creditors and lessors to develop a proposal to restructure CHC's fleet and balance sheet. The Debtors are focused on quickly moving forward and ideally reaching a consensual deal that will enable the Debtors to quickly emerge from these Chapter 11 Cases with a significantly strengthened financial position.

63. The Debtors expect that their current cash on hand, combined with revenue generated from ongoing operations, will provide sufficient liquidity to support CHC's business during these Chapter 11 Cases.

V.

First Day Motions

64. Below is an overview of the First Day Motions. The First Day Motions seek relief intended to facilitate a smooth transition for the Debtors into these Chapter 11 Cases and minimize disruptions to the Debtors' business operations. Capitalized terms used but not otherwise defined in this section of the Declaration shall have the meanings ascribed to them in the relevant First Day Motions.

A. Joint Administration Motion

DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING JOINT ADMINISTRATION OF CHAPTER 11 CASES PURSUANT TO RULE 1015(B) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

65. By the Joint Administration Motion, the Debtors seek joint administration of their Chapter 11 Cases for procedural purposes only pursuant to Bankruptcy Rule 1015(b) and Rule 1015-1 of the Local Rules. Specifically, I understand that the Debtors request that the

Court maintain one file and one docket for all of these Chapter 11 Cases under the case of lead Debtor CHC Group. Further, the Debtors request that an entry be made on the docket of each of the cases of the Debtors to indicate the joint administration of these Chapter 11 Cases.

66. I understand that a court can order the joint administration of multiple Chapter 11 Cases where the debtors are "affiliates" as defined in section 101(2) of the Bankruptcy Code. Debtor CHC Group owns or controls, either directly or indirectly, 100 percent of the outstanding voting securities of each of the other Debtors. Accordingly, I understand that the Debtors are "affiliates" and this court is authorized to order joint administration of their estates. Joint administration will avoid the preparation, replication, service, and filing, as applicable, of duplicative notices, applications, and orders in each of the forty-three Debtor cases, thereby saving the Debtors' estates considerable expense and resources. The relief requested will not adversely affect creditors' rights and, in fact, the rights of all creditors will be enhanced by the reduction in costs resulting from joint administration. Further, I understand that the relief requested will also relieve the Court of the burden of entering duplicative orders and maintaining duplicative files and dockets, and, similarly, simplify supervision of the administrative aspects of these Chapter 11 Cases by the Office of the U.S. Trustee for the Northern District of Texas (the "**U.S. Trustee**").

67. Accordingly, I believe that joint administration of the Debtors' Chapter 11 Cases is in the best interests of the Debtors, their estates, and all parties in interest.

B. Extension of Time to File SOFAs and Schedules

DEBTORS' MOTION FOR ENTRY OF ORDER EXTENDING TIME TO FILE (I) SCHEDULES OF ASSETS AND LIABILITIES; (II) SCHEDULE OF CURRENT INCOME AND EXPENDITURES; (III) SCHEDULE OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (IV) STATEMENT OF FINANCIAL AFFAIRS PURSUANT TO SECTION 521 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 1007(C), AND LOCAL RULE 1007-1

68. By the Extension Motion, the Debtors request that the Court extend the fourteen-day period in which the Debtors are required, pursuant to section 521 of the Bankruptcy Code and Rule 1007(c) of the Bankruptcy Rules, to file (i) schedules of assets and liabilities, (ii) a schedule of current income and expenditures, (iii) a schedule of executory contracts and unexpired leases, and (iv) a statement of financial affairs (collectively, the "**Schedules**"), for an additional forty-five days (making the Schedules due on or before sixty days after the Petition Date), without prejudice to the Debtors' right to request further extensions.

69. I understand that, to prepare the Schedules, the Debtors must compile information from books, records, and documents maintained by each of the forty-three Debtors, relating to the claims of thousands of creditors, as well as the Debtors' many assets and contracts. With global operations and a widespread international footprint, it will take substantial time to gather and process such information. The Debtors have a limited number of employees with detailed knowledge of the Debtors' financial affairs and the skill to perform the necessary review and analysis of the Debtors' financial records. Given the size and complexity of the Debtors' businesses, and the resulting significant amount of work required to complete the Schedules, as well as the competing demands on the Debtors' employees and professionals to assist in critical efforts to stabilize the Debtors' business operations during the initial postpetition period, I believe that an extension is necessary.

70. I believe that the extension requested in the Extension Motion also will aid the Debtors in efficiently preparing accurate Schedules, as it will allow the Debtors to account for prepetition invoices not yet received or entered into their accounting systems as of the Petition Date, and will minimize the possibility that any subsequent amendments to the Schedules are necessary. As such, I believe that the extension will benefit not only the Debtors, but all creditors and other parties in interest.

71. Although the Debtors, with the assistance of their professional advisors, have begun to compile the information necessary for the Schedules, I understand that the Debtors have been consumed with a multitude of other legal, business, and administrative matters in the weeks prior to the Petition Date. Going forward, the Debtors anticipate having to devote a substantial amount of time and attention to a variety of additional, time-sensitive issues relating to their businesses and newly-commenced Chapter 11 Cases. Accordingly, I understand that the Debtors expect that they will require at least forty-five additional days to finalize the Schedules.

72. I believe that the vast amount of information that the Debtors must assemble and compile, the multiple places where the information is located, and the number of employee and professional hours required to complete the Schedules all constitute good and sufficient cause for granting the requested extension of time in the Extension Motion.

C. Waiver of Requirement to File Creditor List and Equity List

MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) WAIVING THE REQUIREMENT TO FILE A LIST OF CREDITORS, (II) WAIVING THE REQUIREMENT TO FILE AN EQUITY LIST, AND (III) APPROVING THE FORM AND MANNER OF NOTIFYING CREDITORS OF THE COMMENCEMENT OF THE DEBTORS' CHAPTER 11 CASES

73. By the Waiver Motion, the Debtors request, pursuant to section 105(a) of the Bankruptcy Code: (i) a waiver of the requirement to file a list of creditors on the Petition Date as required by section 521(a)(1) of the Bankruptcy Code, Rule 1007(a)(1) of the

Bankruptcy Rules, and Rule 1007-1 of the Local Rules Bankruptcy Rules for the Northern District of Texas, (ii) a waiver of the requirement to file a list of all equity security holders (the "**Equity List**") within fourteen (14) days after the Petition Date as required by Bankruptcy Rule 1007(a)(3), and (iii) authority to implement certain procedures for notifying creditors of the commencement of these Chapter 11 Cases and of the meeting of creditors to be held pursuant to section 341 of the Bankruptcy Code (the "**Notice of Commencement**").

74. I understand that the Debtors are requesting authorization to retain and employ Kurtzman Carson Consultants LLC as a notice and claims processing agent (the "**Notice and Claims Agent**") in these Chapter 11 Cases, pursuant to section 156(c) of title 28 of the United States Code and section 327(a) of the Bankruptcy Code. The Debtors propose that, pursuant to section 342(a) of the Bankruptcy Code and Bankruptcy Rules 2002(a) and (f), as soon as practicable after the Petition Date, the Debtors furnish their list of creditors to the Notice and Claims Agent so that the Notice and Claims Agent may mail the Notice of Commencement to the parties identified thereon.

75. The Notice and Claims Agent will receive the list of creditors and mail the Notice of Commencement to the parties identified thereon and the Notice of Commencement will be published in the international edition of the *Wall Street Journal*. Thus, filing a list of creditors will serve no independent purpose.

76. The Debtors will provide the parties on the Equity List with notice as required by the Bankruptcy Code. Thus, waiving the Equity List will not prejudice the equity security holders.

77. Based on the foregoing, I believe that the relief requested in the Waiver Motion is appropriate in these Chapter 11 Cases to provide adequate notice to all parties in interest

D. Customer Deposits

MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS AUTHORIZING DEBTORS TO MAINTAIN, APPLY, PAY, AND HONOR PREPETITION CUSTOMER DEPOSITS PURSUANT TO SECTIONS 363(b) AND 105(a) OF THE BANKRUPTCY CODE

78. Pursuant to the Customer Deposits Motion, the Debtors request authority to, in the ordinary course of business and consistent with past practice, maintain, apply, pay, and honor prepetition customer deposits. As described more fully in the motion, the Debtors have a contractual arrangement with certain of their third-party PBH customers (the "**Customers**") whereby the Customer pays a monthly fee (the "**Deposit**"), calculated based upon estimated flight hours operated, to be allocated to pay for future maintenance performed on covered components during each component's respective maintenance cycle. Upon the termination or expiration of the Customer's contract, the Heli-One Debtors calculate what amount, if any, is owed to the Customer based upon the timing of the contract's termination or expiration within the maintenance cycle of the covered components and the amount is calculated to provide for fees accrued in anticipation of a maintenance cycle that has not yet concluded. In certain limited circumstances, additional amounts could be owed by the Customer to the Heli-One Debtors. The amount ultimately paid to the Customer also takes into account a contractually agreed upon percentage of the Deposit that is retained by the Heli-One Debtor as a holdback for capital costs.

79. The Deposits are an integral part of the Debtors' MRO business and the terms and conditions on which they are paid and applied are used elsewhere in the industry. As a result of the commencement of these Chapter 11 Cases, I have been advised that the Deposits constitute property of the Debtors' estates, leaving Customers with unsecured claims for such amounts. Absent relief from the Court permitting the Heli-One Debtors to treat those Deposits in the ordinary course of business and apply such Deposits according to the terms of the Customer contracts, the Heli-One Debtors will be left in an untenable position with their Customers. It is

crucial to the ongoing success of the Debtors' operations that the Heli-One Debtors maintain their relationships with their Customers. Without the ability to continue to honor the Deposits in the ordinary course of business, the Heli-One Debtors' reputation, market share, and revenue stream are at risk. Many of the Customers' contracts are terminable at will. If the Customers fail to receive assurance that their Deposits will be honored and applied, and that any amounts owed will be paid pursuant to the contract terms upon termination or expiration of the contracts, there is a significant risk that Customers may seek relief from the automatic stay to terminate their contracts and obtain services from one of the Heli-One Debtors' competitors. Indeed, certain of the Heli-One Debtors' Customers already have expressed concerns about the status and treatment of their Deposits.

80. It is my understanding that the Debtors estimate that, as of the Petition Date, the Heli-One Debtors hold approximately $30-40 million in Deposits on account of approximately fifteen (15) Customer contracts and estimate that approximately $18 million could potentially be owed to Customers upon termination or expiration of the Customers' contracts.

81. Accordingly, I believe that the relief requested in this motion is in the best interests of the Debtors, their estates, and all parties in interest and should be granted.

E. Automatic Stay Enforcement

MOTION OF DEBTORS FOR ENTRY OF ORDER ENFORCING THE PROTECTIONS OF SECTIONS 362, 365, 525, AND 541(c) OF THE BANKRUPTCY CODE PURSUANT TO SECTION 105 OF THE BANKRUPTCY CODE

82. Pursuant to the Automatic Stay Enforcement Motion, the Debtors request entry of an order enforcing the protections of sections 362, 365, 525, and 541(c) of the Bankruptcy Code to aid in the administration of their Chapter 11 Cases and to help ensure that the Debtors' global business operations are not disrupted. As previously noted, the Debtors conduct significant operations in foreign countries and, as a result, incur obligations to foreign

customers, employees, independent contractors, vendors, service providers, utility companies, taxing authorities and other entities. Many of the Debtors' foreign creditors and contract counterparties do not transact business on a regular basis with companies that have filed for chapter 11 protection and, therefore, may be unfamiliar with the scope of a debtor in possession's authority to conduct its business and may be unaware of the protections of the automatic stay and other provisions of the Bankruptcy Code that assist debtors in possession during their Chapter 11 Cases and restructuring efforts.

83. I have been informed that the protections afforded by sections 362, 365, 541, and 525 of the Bankruptcy Code are self-executing and global; however, I believe that not all parties affected or potentially affected by the commencement of a chapter 11 case are aware of these statutory provisions or their significance and impact. Consequently, I believe that it is prudent to obtain an order of the Court confirming and reinforcing the relevant sections of the Bankruptcy Code so that the Debtors may advise such parties of the existence, reach, and effects of these sections of the Bankruptcy Code.

84. I believe the requested relief is particularly appropriate in the present cases because the Debtors operate in many foreign jurisdictions with different legal systems, including, but not limited to, Australia, Canada, Norway, Denmark, Malaysia, Ireland, the United Kingdom, Poland, and Barbados. The Debtors' helicopters fly around the world. In the course of operating their helicopter services and MRO businesses, the Debtors engage with numerous foreign customers, suppliers, and other vendors, as well as foreign regulators and other governmental units. In addition, the Debtors are incorporated under the laws of numerous countries and some of the Debtors' key contracts are governed by the laws of foreign jurisdictions.

85. Based on the foregoing, I believe that the relief requested in this motion is in the best interests of the Debtors, their estates, and all parties in interest and should be approved.

F. Cash Management System Motion

MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO (A) CONTINUE THEIR EXISTING CASH MANAGEMENT SYSTEM, (B) CONTINUE EXISTING INTERCOMPANY TRANSACTIONS, (C) MAINTAIN EXISTING BANK ACCOUNTS AND BUSINESS FORMS, AND (D) HONOR CERTAIN PREPETITION OBLIGATIONS RELATING TO THE USE OF THE CASH MANAGEMENT SYSTEM, AND (II) GRANTING EXTENSION OF TIME TO COMPLY WITH, AND PARTIAL WAIVER OF, REQUIREMENTS OF SECTION 345(B) OF THE BANKRUPTCY CODE PURSUANT TO SECTIONS 105(A), 345(B), 363(C), 364(A), AND 503(B) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6003 AND 6004

86. By the Cash Management Motion, the Debtors request: (i) authorization to (a) continue their existing cash management system (the "**Cash Management System**"), (b) continue certain Intercompany Transactions (as defined below), including Intercompany Netting (as defined below), and afford Intercompany Transactions with Debtor entities administrative expense priority, (c) maintain existing bank accounts (collectively, the "**Bank Accounts**") located at various banks (collectively, the "**Banks**") and existing business forms, and (d) honor certain prepetition obligations relating to the use of the Cash Management System; and (ii) an extension of time to comply with, and partial waiver of, the requirements of section 345(b) of the Bankruptcy Code. CHC uses a centralized cash management system to collect and transfer the funds generated by both the Debtors and Non-Debtor Affiliates and disburse those funds to satisfy the obligations incurred in the course of operating CHC's businesses. Carefully managed and maintained by CHC's treasury personnel, all collections, transfers and disbursements of cash are accurately tracked and reported as they are made. I understand that

CHC adopted its centralized cash management system shortly before the Petition Date in response to the discontinuance of cash pooling agreements with two of the Banks.

87. I understand that the Cash Management System facilitates cash monitoring, forecasting, and reporting and enables CHC to maintain control over the administration of the Bank Accounts located at the Banks, including, but not limited to, the Debtor bank accounts listed on **Exhibit D** to the Cash Management Motion. I have been informed that the Debtors maintain 230 bank accounts comprised mainly of operating/disbursement accounts as well as a small number of specialized restricted accounts established for particular projects or business purposes.[5] As described in further detail below, the components of the Cash Management System are organized around three principal cash functions: collection, concentration, and disbursement. **Exhibit E** to the Cash Management Motion illustrates the movement of cash and flow of funds through the Cash Management System. In addition, I understand that the Debtors also use certain additional payment methods in conjunction with the Cash Management System, including: (i) a global corporate credit card program with American Express (the "**Corporate Credit Card Program**"); (ii) a pre-loaded debit card program managed by Berkeley Payment Solutions (the "**Pre-Loaded Debit Card Program**"); and (iii) petty cash.

88. Both the Debtors and the Non-Debtor Affiliates utilize CHC's centralized Cash Management System, under which CHC Cayman Investments I, Ltd. ("**Cayman Investments I**") serves as the "central banker" entity. I understand that individual CHC entities, whether Debtors or Non-Debtor Affiliates, do not have their own cash management system and must rely on the Cash Management System in the course of their day-to-day business operations.

[5] The specialized restricted accounts are used for purposes such as securing work visas for certain of the Debtors' employees in Kazakhstan, cash collateralizing letters of credit, paying certain payroll taxes in Norway, and providing security deposits to certain lessors in the ordinary course of business.

This system for cash management provides a seamless accounting function across and among all CHC entities in a single location, reducing banking expenses, permitting prompt and accurate liquidity tracking, and allowing simple and accurate intercompany allocations and transfers. To lessen the disruption caused by these Chapter 11 Cases, minimize expense, and maximize the value of their estates, it is vital that the Debtors maintain their existing system of managing cash under the Cash Management System.

Cash Collection

89. I understand that CHC's revenue is primarily generated through its operating subsidiaries. CHC's Debtor and non-debtor operating subsidiaries receive and collect revenue on account of: (i) helicopter flight operations carried out by CHC's heli-service subsidiaries (the "**Heli-Service Subsidiaries**"); (ii) helicopter maintenance, repair, and overhaul operations carried out by its Heli-One division (the "**Heli-One Subsidiaries**"), which services CHC's helicopter fleet as well as third-party customers; (iii) the provision of helicopter leases with varying levels of associated service and staffing to third-party customers (the "**Strategic Partnerships**"); and (iv) ownership interests in JVs (collectively with the Heli-Service Subsidiaries, Heli-One Subsidiaries, and Strategic Partnerships, the "**Revenue Generating Entities**").

Concentration

90. I understand that the majority of cash received by the Revenue Generating Entities is ultimately collected in one of six main operating accounts (the "**Main Operating Accounts**") held by Cayman Investments I at Bank of America, National Association ("**Bank of America**"). CHC's global reach requires it to hold separate operating accounts denominated in U.S. Dollars, Canadian Dollars, British Pounds Sterling, Norwegian Krone, Australian Dollars, and Euros.

91. I have been informed that cash collected by the Revenue Generating Entities is first used by those entities to pay for certain local costs and expenses (*e.g.*, local payroll, taxes, and other third-party direct costs and expenses). After any local minimum capital requirements are taken into account, the Revenue Generating Entities then upstream excess cash to the Main Operating Accounts. When a Revenue Generating Entity transfers such funds, Cayman Investments I books an account payable in the relevant Revenue Generating Entity's name on account of that transfer.

Disbursements

92. I understand that CHC makes most of its disbursements from the Main Operating Accounts. CHC's disbursements relate primarily to (i) payroll and employee expenses, (ii) debt service, (iii) helicopter lease payments, (iv) operating expenses, and (vi) taxes.

93. To support the operations of the Revenue Generating Entities, CHC has numerous Debtor and Non-Debtor Affiliate captive service companies (the "**Service Companies**") that provide management, personnel, corporate services, equipment, maintenance, and other forms of support to the Revenue Generating Entities. These Service Companies include, but are not limited to: (i) leasing entities, which lease helicopters directly from third-party lessors and then sublease those aircraft to the Revenue Generating Entities; (ii) Heli-One Subsidiaries, which provide maintenance, repair, and overhaul services to the Revenue Generating Entities (in addition to third party customers); (iii) CHC Helicopters (Barbados) Limited and CHC Hoofddorp BV ("**Hoofddorp**"), which license CHC's intellectual property to the Revenue Generating Entities; (iv) management and corporate service entities, which provide general and administrative support to the Revenue Generating Entities; and (v) employment entities, which provide crew and maintenance staff to the Revenue Generating Entities. Periodically, the Service Companies issue intercompany invoices (the "**Intercompany**

Invoices") to the Revenue Generating Entities on account of the support and services they have provided. I understand that the Intercompany Invoices are booked as accounts receivable at the relevant Service Companies and as accounts payable at the relevant Revenue Generating Entities. These Intercompany Invoices are satisfied via an intercompany netting arrangement, as described below.

94. Cayman Investments I disburses funds on behalf of the Service Companies, and in some instances, certain Revenue Generating Entities, on account of amounts payable to third parties by wire transfer. I have been informed that where accounts payable must be paid directly by the relevant Service Company or Revenue Generating Entity and that entity does not have sufficient cash to meet those obligations, Cayman Investments I funds a disbursement account at the relevant entity by way of an Intercompany Transaction (as defined below). In certain situations, a Service Company or Revenue Generating Entity may pay its own third-party expenses if that entity has sufficient cash in the correct currency, and CHC's treasury team determines that making such payment directly, rather than via Cayman Investments I, is more efficient.

95. I have been informed that Cayman Investments I also provides an important foreign currency management function for the CHC businesses. When a Service Company or Revenue Generating Entity has sufficient cash to satisfy a local creditor, but that cash is in the wrong currency, that Service Company or Revenue Generating Entity can swap currencies against the Main Operating Accounts. For example, if an entity's contract revenues were collected in Euros, but the entity needs to pay an invoice in U.S. dollars, that entity can trade Cayman Investments I Euros for U.S. dollars. Such swaps are priced at a market rate set automatically by CHC's accounting system at the end of every month. Cayman Investments I

does not profit from such swaps, and CHC does not use these transactions to hedge against fluctuations in currency prices.

96. Every CHC entity is party to that certain Cash Management and Cash Pooling Agreement (Cayman Down), effective April 29, 2016 and that certain Cash Management and Cash Pooling Agreement (Cayman Up), effective April 29, 2016 (together, the "**Intercompany Netting Agreement**").[6] I understand that pursuant to the Intercompany Netting Agreement, CHC periodically nets the Intercompany Claims (as defined below) owing between the Revenue Generating Entities, the Service Companies, and Cayman Investments I ("**Intercompany Netting**"). The Intercompany Netting offsets amounts owing between Revenue Generating Entities and Services Companies on account of the Intercompany Invoices against Intercompany Claims to/from Cayman Investments I, and converts them into a single Intercompany Claim owed to or by Cayman Investments I (the "**Intercompany Balances**"). The Intercompany Balances are generated by having entities that are party to the Intercompany Netting Agreement periodically assign Intercompany Claims they hold to Cayman Investments I. The assignment is made in exchange for a receivable of equal face amount from Cayman Investments I. Cayman Investments I is then able to offset its accounts receivable from, and accounts payable to, each entity in the Cash Management System. The Intercompany Balances are carefully recorded, and track the extent to which individual CHC legal entities contribute to, or are dependent upon, the overall CHC enterprise.

97. I understand that transfers between CHC entities (including by electronic book entry, the "**Intercompany Transactions**," and each intercompany receivable and payable

[6] Lloyd Helicopter Services Pty Ltd., Lloyd Helicopters Pty Ltd., CHC Helicopter Australia Pty Ltd., Lloyd Bass Strait Helicopters Pty Ltd., and Lloyd Helicopters International Pty Ltd. (collectively, the "**Australian Entities**") and Cayman Investments I are also party to that certain Side Deed to the Cash Management and Cash Pooling Agreements, effective May 4, 2016 (the "**Australian Side Deed**"). Pursuant to the Australian Side Deed, any transfer of cash or other assets out of an Australian Entity is subject to certain review and approval rights of the board of directors of that Australian Entity.

generated pursuant to an Intercompany Transaction, an "**Intercompany Claim**") are generally recorded in CHC's intercompany books and records automatically by CHC's accounting system. Disbursements, including wires, certain automated clearing house ("**ACH**") and electronic funds transfer ("**EFT**") payments, certain accounts payable checks, and certain checks to governmental entities are issued by CHC Cayman Investments I and then allocated to the appropriate CHC entity through Intercompany Transactions.

98. I have been informed that CHC also benefits from the use of a cross-currency cash pool with Nordea Bank Norge ASA (the "**Nordea Pool**"). The Nordea Pool aggregates balances in Bank Accounts held by several Debtors and Non-Debtor Affiliates,[7] and permits CHC to carry negative balances in certain accounts so long as the overall balance in the pool remains positive. This arrangement affords CHC a degree of flexibility in certain situations where it collects revenue in one currency, but must then disburse funds in another currency. Funds from the Nordea Pool are routed through the Main Operating Accounts for cross-entity transfers.

Additional Payment Methods

99. I understand that, as noted above, CHC utilizes certain additional cash management tools in support of the ordinary course operation of its businesses, including the Corporate Credit Card Program, the Pre-Loaded Debit Card Program, and the use of petty cash.

100. I have been informed that the Corporate Credit Card Program is used in the ordinary course of business by CHC as a convenient way to allow employees to make purchases for the business where a wire, check, ACH, or EFT payment is not possible or otherwise inconvenient. In addition, CHC's procurement group uses specialized purchasing

[7] Debtor participants in the Nordea Pool are CHC Norway Acquisition Co AS, Heli-One (Norway) AS, Heli-One (UK) Ltd., Heli-One Leasing (Norway) AS, and Integra Leasing AS. CHC Helikopter Services AS, a non-Debtor, is also a participant in the Nordea Pool. The currencies covered by the Nordea Pool include Norwegian Krone, U.S. Dollars, Canadian Dollars, British Pounds Sterling, and Euros.

cards to purchase various supplies, consumables, and off-the-shelf parts. The Corporate Credit Card Program consists of 237 corporate American Express cards and five American Express purchasing cards. The 237 corporate cards consist of 17 Platinum Cards, which are held by certain CHC executives and senior managers, and 220 Green Cards, which are held by key CHC employees in different jurisdictions across the globe. The Corporate Credit Card Program features a number of safety and security measures designed to prevent fraud or misuse. For example, CHC's American Express cards have controlled merchant codes, which prevent cardholders from using their cards for certain categories of inappropriate expenses. In addition, CHC regularly receives a global credit card billing statement from American Express, confirms that the charges are attributable to CHC business expenses or appropriate employee expense reimbursements, and then remits payment to American Express. After reviewing its monthly statement, CHC has the ability to flag inappropriate charges. When an inappropriate charge is flagged, American Express seeks reimbursement from the cardholder directly rather than CHC. CHC employees who hold CHC American Express Cards are required to submit expense reports, and must support those reports with receipts for all charges greater than $25. CHC's average monthly expenses associated with the Corporate Credit Card Program are approximately $350,000. In the weeks leading up the Petition Date, CHC began paying and prepaying American Express on a weekly basis. Consequently, I do not believe that American Express holds any prepetition claims against the Debtors, and are only seeking to continue using the Corporate Credit Card Program in the ordinary course of business.

101. I have been informed that the Pre-Loaded Debit Card Program consists of approximately 100 pre-loaded Visa debit cards (the "**Berkeley Cards**") managed by Berkeley Payment Solutions ("**Berkeley**") and governed by that certain Master Prepaid Card Services Agreement, dated May 21, 2014, between Berkeley and Heli-One Canada Inc. ("**Heli-One**

Canada").[8] I understand that the Pre-Loaded Debit Card Program is managed by CHC's treasury group, and provides a convenient way for CHC employees across the globe, including base managers and pilots, to make relatively small, one-off purchases. The cost of the Pre-Loaded Debit Card Program varies based on use, and Berkeley invoices Heli-One Canada Inc. for the Pre-Loaded Debit Card Program on a monthly basis. I have been informed that the average cost of the Pre-Loaded Debit Card Program prior to the Petition Date was $1,500 per month. The CHC treasury group has the ability to easily fund or de-fund the Berkeley Cards as the need arises, and new cards can be issued easily. The Berkeley cards are particularly useful for CHC employees performing ferry flights to move helicopters from one jurisdiction to another. During ferry flights, CHC pilots can use a Berkeley Card to pay for travel costs, fuel, and incidentals as they fly the helicopter from one jurisdiction to another – trips that often require more than one stop. The Berkeley cards are held by employees of the Debtors as well as employees of the Non-Debtor Affiliates. I understand that to fund the Pre-Loaded Debit Card Program, CHC's treasury group causes Heli-One Canada ULC to fund an escrow account at the Royal Bank of Canada ("**RBC**") in the name of RBC Prepaid Card Program. CHC's contributions to the account are tracked by Berkeley, and only CHC has the ability to direct the use of the funds that it contributes to the RBC escrow account. To fund a particular debit card, the CHC treasury group provides instructions to Berkeley, which funds the particular card from the RBC escrow account. I have been informed that as of the Petition Date, CHC has approximately $65,000 in the RBC escrow account, and approximately $115,000 distributed across the issued and outstanding Berkeley Cards. I understand that any CHC entity that requests a funded Berkeley Card immediately reimburses Heli-One Canada for any amounts

[8] Heli-One Canada ULC was formerly known as Heli-One Canada Inc. Heli-One Canada Inc. was continued as a British Columbia Unlimited Liability Company in the fall of 2014.

loaded onto a Berkeley card on its behalf. Consequently, the funds in the RBC escrow account and loaded onto the Berkeley cards are attributable not only to Heli-One Canada, but also to a number of Debtors and Non-Debtor Affiliates. I have been informed that prior to the Petition Date, the Debtors prepaid Berkeley. Consequently, because of that prepayment and because the Berkeley cards are pre-funded, I do not believe that Berkeley holds any prepetition claim against the Debtors. I have been informed that CHC will instruct its employees that the Berkeley Cards are not to be used to satisfy prepetition obligations, and are only seeking to continue using the Pre-Loaded Debit Card Program in the ordinary course of business.

102. I have been informed that in addition to the Corporate Credit Card Program and the Pre-Loaded Debit Card Program, the Debtors also use petty cash managed by CHC employees at CHC's bases around the world to satisfy certain *de minimis* obligations. I understand that CHC will instruct its employees that petty cash is not to be used to satisfy prepetition obligations, and the Debtors propose to continue using petty cash on hand in the ordinary course of business.

Mozambique Cash

103. I understand that until recently, CHC Global Operations Canada (2008) ULC ("**GO Canada**") carried out helicopter flight operations in the Republic of Mozambique ("**Mozambique**") using a local branch established in Mozambique ("**CHC Mozambique**"). I have been informed that as part of its ordinary course cash management procedures for repatriating revenue earned in Mozambique, CHC Mozambique makes intercompany transfers to Hoofddorp on account of both intellectual property royalty charges and general and administrative expenses. I have been informed that as of the Petition Date, approximately $1,300,000 of intercompany invoices issued by Hoofddorp to CHC Mozambique are due and outstanding, and such amount currently is deposited in a Bank Account controlled by CHC

Mozambique (the "**Mozambique Funds**"). Under applicable law in Mozambique, payment of the intercompany obligation owed by CHC Mozambique to Hoofddorp is the only way to repatriate that cash, and to accomplish this GO Canada was required to register the relevant intercompany service agreements with the government of Mozambique when it established CHC Mozambique. I understand that to effectuate the transfer of funds, CHC Mozambique must obtain a certification from the government that it has paid all local taxes, including applicable withholding taxes, and then it presents that tax certification, along with a copy of the registered intercompany invoice, to Standard Bank in Mozambique. I have been informed that once Standard Bank has verified that all of the paperwork is in order, it will permit CHC Mozambique to wire the Mozambique Funds to Hoofddorp. Any remaining cash related to the retained branch profits of CHC Mozambique will be repatriated once audited financial statements are issued and final tax returns are prepared in due course. By the Cash Management Motion, the Debtors are seeking authority, on a final basis only, to permit CHC Mozambique to satisfy its prepetition obligations to Hoofddorp, as the exclusive means to repatriate cash currently held by CHC Mozambique that would otherwise be unavailable to the overall CHC enterprise.

A. The Relief Requested in the Cash Management Motion Is Necessary

104. I believe that the Debtors' Cash Management System constitutes an ordinary course, essential business practice providing significant benefits to the Debtors, including the ability to: (i) control corporate funds; (ii) ensure the availability of funds when necessary; (iii) manage cross-currency transactions; and (iii) reduce costs and administrative expenses by facilitating the movement of funds and the development of more timely and accurate account balance information. Any disruption of the Cash Management System could have a severe and adverse impact upon the Debtors' reorganization efforts and, as noted above, on the day-to-day business operations of the Debtors and Non-Debtor Affiliates. I believe that

continuing the Cash Management System is vital to continued operation of CHC's business and the efficient and economic administration of these Chapter 11 Cases. As a practical matter, because of CHC's corporate and financial structure, which includes 81 entities operating in every continent except Antarctica – I believe that it would be extremely difficult and expensive to establish and maintain a separate cash management system for each Debtor and Non-Debtor Affiliate. As discussed above, CHC's existing Cash Management System efficiently collects, disburses, and tracks the movement of funds through CHC's existing Bank Accounts. Consequently, I believe that maintaining this system is essential to CHC's operations and will allow all parties in interest, including the U.S. Trustee, to monitor the Debtors' use of cash to ensure compliance with this Court's orders and the provision of the Bankruptcy Code.

105. I believe that continued use of the Cash Management System is also essential to ensure continued access to revenue generated by operations, which originates at the Revenue Generating Entities but is attributable to services provided by numerous CHC affiliates, for the benefit of the CHC enterprise as a whole. By the Cash Management Motion, the Debtors are also requesting authority to allow Cayman Investments I to continue funding, making payments on behalf of, and borrowing from, both the Debtor and Non-Debtor Affiliate participants in the Cash Management System in the ordinary course of business pursuant to the terms of the Intercompany Netting Agreement. In addition, the Debtors are requesting authority to allow the rest of the Debtors to continue making intercompany transfers to, and borrowing from, Cayman Investments I. Recognizing the need to protect each Debtors' respective creditors, the Debtors are requesting that the Court grant all postpetition Intercompany Claims against Debtor entities, including Cayman Investments I, administrative expense priority.

106. I understand that the Debtors have a responsibility to maximize the value of their assets, for the benefit of creditors and other stakeholders. Accomplishing this requires,

among other things, maintaining the ability to support and fund the operations of the Debtors and the Non-Debtor Affiliates where (and only where) the Debtors, in the exercise of their business judgment, determine that doing so preserves value for the benefit of the estates and the Debtors' creditors. I understand that, if CHC Cayman Investments I were to stop making transfers to the entities throughout the CHC enterprise that rely on its funding from time to time, a group that includes both Debtors and certain Non-Debtor Affiliates, it would have an immediate and significant adverse effect on both the Debtors and the CHC enterprise as a whole. Not only would this diminish the value of the Debtors' estates through a reduction in the value of the Debtors' interest in such affiliates, but also it would have an immediate and potentially irreparable impact on the operations of the Debtors themselves. For example, I have been informed that failure to provide funding to the Service Companies, which serve critical roles in the Debtors' businesses, would cause such entities to cease providing intercompany services, forcing many of the Debtors' operations to grind to a halt. The relationship is one of mutual dependency. In addition, if postpetition funding needs are not honored, CHC affiliates would be forced to institute their own, separate and new cash management structures in order to continue operating on a go-forward basis. I believe that such a project, instituted on an emergency basis, would be time consuming and costly, and would preclude the Debtors and the Non-Debtor Affiliates from accessing the efficiencies and cost benefits that a centralized cash management system allows them to achieve.

107. I understand that certain Debtors and Non-Debtor Affiliates within the CHC enterprise are net users of cash. Continuing to fund such entities pursuant to the Cash Management System, to the extent the Debtors determine it is appropriate, represents a sound exercise of business judgment, and this Court should approve the ordinary course support of those entities implicit in the Cash Management System. Certain entities are net users of cash

because CHC has compartmentalized its business functions for efficiency and to allow CHC to scale its operations across the globe. Because of this compartmentalization, I understand that revenue generation is typically isolated from the enterprise's cost centers (*e.g.*, the Service Companies). As described above, if the Debtors did not continue to fund the Service Companies, the Revenue Generating Entities would not have the support and services necessary to carry out their day-to-day operations. I believe that allowing the Cash Management System to continue functioning in the ordinary course is an acknowledgement of the impact of CHC's segmentation on its cash flows and a recognition that the value of the CHC platform should be viewed as a whole. Further, I believe that the going concern value of the enterprise, including all of its components, is worth more than if certain of the Debtors and/or the Non-Debtor Affiliates were forced to discontinue operations, liquidate and sell their assets piecemeal.

108. I believe that due in part to global macroeconomic factors beyond CHC's control, CHC, as an overall enterprise, currently spends more cash than it generates. Furthermore, I understand that at a local level, CHC is also exposed to the microeconomic climate of each region and country in which it operates. CHC management has undertaken a careful analysis of each market, and has determined, based on conservative assumptions, that certain business lines and regional operations, are worth maintaining – even if they are expected to generate losses in the near term. I believe that these investments in the future represent an important part of the going concern value of the CHC enterprise. Consequently, for all of the reasons outlined above, I believe that CHC Cayman Investments I should be permitted to continue supporting all entities, including the net users of cash throughout the CHC enterprise, and net producers of cash throughout the Cash Management System should be permitted to continue making intercompany transfers to Cayman Investments I in the ordinary course of business.

109. I have been informed that the Debtors will continue to maintain records of all receipts, disbursements, and transfers within the Cash Management System. In this way, all transfers and transactions will be properly documented, and accurate Intercompany Balances will be maintained. As a result, I understand that the Debtors will be able to accurately record the transactions within the Cash Management System, including Intercompany Balances, for the benefit of all parties in interest. Creditors of the Debtors will be protected by the fact that the relative contribution of the Debtor against which they have a claim, regardless of whether that Debtor is a net contributor or net user of cash, will be tracked by way of the Intercompany Balances such contributions or borrowings will generate. Further, if the relief requested in the Cash Management Motion is granted, postpetition Intercompany Claims against Debtors, including the Intercompany Balance attributable to any one Debtor, will be accorded administrative expense priority.

110. Based on the foregoing, I believe that authorizing the Debtors to maintain the Cash Management System will support the ongoing operations of the Debtors and the Non-Debtor Affiliates in an efficient, cost-effective, and orderly manner that will preserve the value of the enterprise and the Debtors' estates, for the benefit and protection of creditors and other parties in interest. Accordingly, I believe that continuation of the Cash Management System is in the best interests of the Debtors' estates and all parties in interest, and the relief requested herein should be approved.

111. I have been informed that the Cash Management System is similar to those commonly employed by other large corporate enterprises, in which Intercompany Transactions are tracked as Intercompany Claims. In the ordinary course operation of the Cash Management System, funds generated by the Revenue Generating Entities, both Debtors and Non-Debtor Affiliates alike, flow into the Main Operating Accounts held by Cayman Investments I, a Debtor.

Cayman Investments I then makes payments on behalf of both Debtor and Non-Debtor Affiliate entities to third parties and affiliated Service Companies if their revenue falls short of expenses, all of which generates Intercompany Claims. Consequently, at any point in time, I understand that there may be outstanding amounts due and owing among the various Debtors and the Non-Debtor Affiliates, all of which are recorded and documented as Intercompany Transactions and can be accurately tracked.

112. The Intercompany Transactions are not just a matter of ordinary course in the Debtors' businesses: they are the sorts of transactions that are common among many business enterprises that operate with a centralized cash management system through multiple affiliates. Yet, precisely because of their routine nature, I believe that the Intercompany Transactions, including the ability to fund the Service Companies that provide valuable goods and services to the Revenue Generating Entities, are integral to the Debtors' ability to operate their businesses and successfully emerge from chapter 11. Accordingly, out of an abundance of caution, the Debtors request by the Cash Management Motion express authority to engage in such transactions postpetition.

113. To ensure that each individual entity will not, at the expense of its creditors, fund the operations of an affiliated Debtor, I understand that the Debtors have requested that all Intercompany Claims against Debtors arising after the Petition Date in the ordinary course of business, including, without limitation, the Intercompany Balances, be afforded administrative expense priority. I also understand that, absent an order of this Court directing otherwise, prepetition Intercompany Claims will be frozen.

114. I have been informed that the U.S. Trustee's "Guidelines for Chapter 11 Debtors-in Possession" (the "**Guidelines**") mandate the closure of a debtor's prepetition bank accounts, the opening of new accounts, including special accounts for the payment of taxes and

segregation of cash collateral, and the immediate printing of new checks. I believe that if the Debtors were required to comply with these Guidelines, their operations would be severely harmed by the disruption, confusion, delay, and cost that would result from the closure of existing Bank Accounts, the opening of new accounts, and the immediate printing of new checks. I have been informed that these requirements are designed to establish a clear line of demarcation between prepetition and postpetition claims and payments, and to help protect against a debtor's inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the commencement of the debtor's Chapter 11 Cases. I believe that the Debotrs are still able to accomplish these goals by training their employees, implementing rigorous controls over the postpetition use of funds, and by carefully tracking all transactions in the Cash Management System.

115. I believe that in these Chapter 11 Cases, strict enforcement of the Guidelines would severely disrupt the Debtors' ordinary financial operations by reducing efficiencies, increasing administrative burdens, and creating unnecessary expenses. I understand that the Debtors maintain 230 Bank Accounts. If the Debtors were required to close these Bank Accounts and open new debtor in possession accounts, I believe that CHC would be forced to reconstruct the Cash Management System in its entirety. I believe that this reconstruction would be impractical and cost prohibitive in an enterprise like CHC, a business that requires multiple Bank Accounts all over the world. I believe that CHC's treasury department, including accounting and bookkeeping employees, would need to focus their efforts on immediately opening new bank accounts and working to establish proper cash flow controls, thereby diverting them from their daily responsibilities during this critical juncture of the Debtors' Chapter 11 Cases. I believe that many accounts could not be replaced in time to effectively continue the Debtors' businesses. Even if they could, I believe that the opening of new bank accounts would

increase operating costs, and the delays that would result from opening new accounts, revising cash management procedures, and redirecting payments would negatively impact the Debtors' ability to operate their businesses while establishing these new arrangements. I believe that this would further exacerbate the risk to the Debtors' businesses caused by these Chapter 11 Cases, in particular given their foreign customers and foreign suppliers who are unfamiliar with chapter 11.

116. I believe that the Debtors' transition to chapter 11 will be significantly smoother and more orderly, with minimum disruption and harm to CHC's global operations, if the Bank Accounts are continued following the Petition Date with the same account numbers. By preserving business continuity and avoiding the disruption and delay to the Debtors' collection and disbursement procedures that would necessarily result from closing the Bank Accounts and opening new accounts, all parties in interest, including employees, vendors, customers, and creditors will be best served. I believe that the confusion that would otherwise result, absent the relief requested herein, would ill-serve the Debtors' rehabilitative efforts. Accordingly, by the Cash Management Motion, the Debtors have requested authority to maintain the Bank Accounts in the ordinary course of business.

117. The payment of any Bank Account maintenance, administrative, use, and other fees (the "**Bank Fees**"), including those incurred prepetition, is also warranted. I understand that CHC's banks automatically debit the Bank Accounts periodically for Bank Fees incurred in connection with the Cash Management System. I have been informed that CHC's average Bank Fees are approximately $100,000 per month. I understand that the Bank Fees vary depending upon several factors, including the balances in the Bank Accounts and the number and type of transactions that are requested. I have been informed that the Debtors' Banks may hold setoff rights and therefore may be entitled to automatically debit the Bank Accounts for amounts

owed by the Debtors in connection with maintaining the Cash Management System. Consequently, I believe that payment of prepetition Bank Fees is only a matter of timing, will prevent any disruption to the Cash Management System, is in the best interests of the Debtors and their estates, and will not negatively affect Unsecured Creditors.

118. I have been informed that, in the ordinary course of business, the Debtors conduct transactions by debit, wire, ACH, EFT, and other similar methods. A large percentage of the Debtors' customers pay them through ACH, EFT, or wire transfer, and the Debtors pay a majority of their third-party vendors and service providers through ACH, EFT, or wire transfer. Accordingly, to avoid any disruption or claims against the Debtors, by way of the Cash Management Motion, the Debtors are seeking to continue their prepetition debit, wire, ACH, and EFT practices during these Chapter 11 Cases.

119. Although the Debtors request in the Cash Management Motion that they be allowed to maintain their prepetition Bank Accounts, the Banks at which such accounts are kept must adhere to certain guidelines. Specifically, the Debtors have requested that unless otherwise ordered by this Court, no Bank be permitted to honor or pay any check issued on account of a prepetition claim. The Debtors have also requested that the Banks may honor any checks issued on account of prepetition claims where this Court has specifically authorized such checks to be honored. Furthermore, the Debtors request that the Banks be authorized to accept and honor all representations from the Debtors as to which checks should be honored or dishonored consistent with any order(s) of this Court, whether or not the checks are dated prior to, on, or subsequent to the Petition Date. By the Cash Management Motion, the Debtors have requested that the Banks not be liable to any party on account of following the Debtors' instructions or representations regarding which checks should be honored. The Debtors have requested that should any Bank honor a prepetition check, draft, wire transfer, ACH transfer,

EFT transfer, or other debit drawn on a Bank Account (a) at the direction of any of the Debtors to honor such prepetition check or item, (b) in a good faith belief that the Court has authorized such prepetition item to be honored, (c) as a result of an innocent mistake made despite the implementation of customary item handling procedures, or (d) consistent with its past practices under the Cash Management System, such Bank shall not be deemed to be, nor shall be, liable to the Debtors or their estates or otherwise in violation of the Interim Order or Final Order. Further, the Debtors have requested that the Banks shall have no liability for any operational processing errors that are the result of human error.

120. I believe that to minimize expenses, the Debtors should also be permitted to maintain and continue to use their business forms substantially in the forms existing immediately before the Petition Date. I understand that the Debtors issue manual checks from time to time and use a variety of business forms (including, but not limited to letterhead, purchase orders, invoices, and other business forms) in the ordinary course of their businesses (collectively, the "**Business Forms**"). I believe that strict compliance with the Guidelines, which require reprinting such documents, would increase the Debtors' expenses and would risk unnecessarily confusing the Debtors' customers, suppliers, and employees. Accordingly, I believe that it is appropriate to continue to use all Business Forms as such forms were in existence prior to the commencement of these Chapter 11 Cases, without any reference to the Debtors' current status as debtors in possession.

121. In short, I believe that any benefits of the Debtors' strict compliance with the Guidelines would be far outweighed by the resulting expense, inefficiency, and disruption to the Debtors' businesses. Accordingly, the Debtors have requested authority to maintain their Bank Accounts and Business Forms during these Chapter 11 Cases. Furthermore, the Debtors have sought a waiver of the Guidelines to the extent that requirements outlined therein otherwise

conflict with (i) the Debtors' existing practices under the Cash Management System, or (ii) any action taken by the Debtors in accordance with the Interim Order or the Final Order, or any other order entered in these cases.

122. I have been informed that section 345(a) of the Bankruptcy Code governs a debtor's deposit and investment of cash during its chapter 11 case and authorizes such deposits or investments as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment. Further, I understand that for deposits or investments that are not insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States, section 345(b) of the Bankruptcy Code requires that the debtor obtain from the entity with which the money is deposited or invested a bond in favor of the United States that is secured by the undertaking of an adequate corporate surety unless the court for cause orders otherwise.

123. I have been informed that many of the Bank Accounts are maintained at banks that have been approved by the U.S. Trustee as authorized depositories ("**Authorized Depositories**"). Accordingly, I believe that any funds that are deposited in these accounts are secure.

124. To the extent the Debtors hold Bank Accounts at non-Authorized Depositories (the "**Non-Approved Bank Accounts**"), the Debtors have proposed to engage in discussions with the U.S. Trustee to determine what modifications to such Non-Approved Bank Accounts, if any, are necessary under the circumstances. To enable such discussions, if they become necessary, the Debtors have requested a 45-day extension (or such additional time to which the U.S. Trustee may agree or the court may order) of the time period in which to come into compliance with section 345(b) of the Bankruptcy Code, to make other arrangements that would be acceptable to the U.S. Trustee, or to seek relief from this Court.

125. I believe that in Chapter 11 Cases such as these, strict adherence to the requirements of section 345(b) of the Bankruptcy Code would be inconsistent with the value-maximizing purpose of chapter 11 by unduly hampering a debtor's ability under section 345(a) to invest money such as will yield the maximum reasonable net return on such money. I have been informed that Congress amended section 345(b) to provide that its strict investment requirements may be waived or modified if the court so orders for cause. I believe that there is cause to warrant a waiver of the requirements of section 345(b) because, among other things: (i) all or nearly all of the Debtors' Banks holding significant balances are highly rated, reputable banks that are typically subject to supervision by national banking regulators; (ii) the Debtors retain the right to close accounts with the Banks and establish new bank accounts as needed; (iii) the cost associated with satisfying the requirements of section 345(b) is needlessly burdensome to the Debtors and their estates; and (iv) the process of satisfying such requirements would lead to needless inconvenience and inefficiencies in the management of the Debtors' businesses. I believe that the benefits of a waiver would far outweigh any potential harm to the estates from noncompliance with section 345(b). I understand that the international nature of the Debtors' businesses requires bank accounts in multiple jurisdictions across the globe. Moreover, I believe that a bond secured by the undertaking of a corporate surety would be prohibitively expensive (if such a bond could be obtained at all). I have been informed that the Debtors intend to be in chapter 11 only a short period of time, and the costs of disruption to the businesses by having to close dozens of accounts far outweighs the risks of the Debtors continuing to maintain their historic Bank Accounts for the short period of time they remain in chapter 11. Furthermore, I have been informed that, based on the company's past experience opening new bank accounts, it would take months to create a new suite of bank accounts to service their businesses. Accordingly, I believe that the Court should grant a temporary extension of 45 days for the

Debtors to comply with the requirements of section 345(b) with respect to any Non-Approved Bank Accounts. During that 45 day period (the "**Extension Period**), I understand that the Debtors propose to conference with the U.S. Trustee and identify certain accounts for which the Court will be asked to waive the requirements of section 345(b) in these Chapter 11 Cases. I have been informed that on or before the expiry of the Extension Period, the Debtors propose to (i) seek an additional extension of time, if necessary, to comply with the requirements of section 345(b) with respect to certain Bank Accounts, or (ii) request that the Court rule upon a waiver of the requirements of section 345(b) with respect to certain Bank Accounts (the Debtors to endeavor to conference in good faith with the U.S. Trustee to consensually agree upon the identity of such accounts).

126. As described above, the Debtors have a unique cash situation with respect to their Mozambique branch. By the Cash Management Motion, the Debtors are seeking authority, on a final basis only, to permit CHC Mozambique to satisfy its prepetition obligations to Hoofddorp to repatriate the approximately $1,3000,000 held by CHC Mozambique that otherwise would be unavailable to the overall CHC enterprise. I also understand that the Debtors also intend and seek authority to continue repatriating revenue earned in Mozambique in the ordinary course of business. I have been informed that the Debtors' requested transfer will satisfy a prepetition intercompany claim between Go Canada (via CHC Mozambique) and Hoofddorp. To avoid prejudicing the creditors of GO Canada by depriving GO Canada of the Mozambique Funds, the Debtors have proposed to effect a simultaneous transfer of an amount equal to the Mozambique Funds from Hoofddorp to GO Canada (the "**Mozambique Settlement**"). To further avoid upsetting the relative prepetition position of the creditors at Hoofddorp and GO Canada, the Debtors have requested that the Court enter an order that the Mozambique Settlement be stripped of the administrative priority it otherwise would be

accorded, and that the corresponding intercompany obligation owed by GO Canada to Hoofddorp be accorded the same priority as the prepetition claim owed by GO Canada to Hoofddorp. I believe that the requested relief is in the best interests of the Debtors, their estates and all parties in interest because it will free up approximately $1,3000,000 of liquidity for use by the overall CHC enterprise that otherwise would remain trapped in Mozambique.

127. For the foregoing reasons, I believe that granting the relief requested in the Cash Management Motion is appropriate, entirely consistent with the rehabilitative purpose of chapter 11, and in the best interests of the Debtors' estates and creditors.

G. Cash Collateral Motion

MOTION OF DEBTORS FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO UTILIZE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES PURSUANT TO SECTIONS 105, 361, 362, 363, AND 507 OF THE BANKRUPTCY CODE; AND (III) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(b)

128. Pursuant to the Cash Collateral Motion, the Debtors request entry of an interim order (i) authorizing the Debtors to use cash collateral and (ii) granting adequate protection to the certain Prepetition Secured Parties (as defined in the motion) on the terms and conditions set forth in the proposed interim order. The Debtors also request a final hearing to consider the relief requested in the motion.

129. The proposed Cash Collateral the Debtors seek to use consists of proceeds or products of Prepetition Collateral or cash subject to the Prepetition Secured Parties' rights of setoff, if any. The Debtors require authorization to use Cash Collateral to maintain their existing cash management system, which includes the pooling of Cash Collateral and Unencumbered Cash. Without this authorization, the Debtors would not be able to access their cash management system and provide sufficient working capital to carry on the operation of their

businesses. This outcome could have disastrous effects on their business causing immediate and irreparable harm to the Debtors, their respective estates, and their creditors.

130. The Debtors seek authority to use Cash Collateral until such time as the Court holds a final hearing on the motion. During the interim period, the Debtors will fund operations in accordance with the forecast (as may be revised from time to time at the sole discretion of the Debtors, the "**Forecast**"), which sets forth all projected cash receipts and cash disbursements on a weekly basis over a 4-week period.[9] I worked with the Debtors and a team from Seabury Group to formulate the Forecast, which includes reasonable and foreseeable expenses to be incurred, and the costs of administering the Chapter 11 Cases during, the applicable period.

131. To protect the Prepetition Secured Parties to the extent of any aggregate diminution in value of the Prepetition Collateral resulting from the use of Cash Collateral, the Debtors propose to provide various forms of adequate protection detailed in the proposed interim order to the motion. The proposed adequate protection includes a first priority lien on, and security interest in certain unencumbered property, which includes approximately $142.6 million in a Bank of America (London branch) account owned by the Debtor CHC Cayman Investments I Ltd.

132. I believe that the proposed adequate protection provides the Prepetition Secured Parties with sufficient adequate protection to protect them from any diminution in value of their interests in the Prepetition Collateral during the Chapter 11 Cases. I believe that the relief requested in the cash collateral motion is in the best interests of the Debtors, their estates, and all parties in interests and should be approved.

[9] CHC's Weekly Cash Flow Forecast is annexed hereto at **Exhibit F.**

H. Tax Motion

MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION TAXES AND ASSESSMENTS AND (II) DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS PURSUANT TO SECTIONS 105(a), 363(b), 507(a)(8), AND 541(d) OF THE BANKRUPTCY CODE

133. Pursuant to the tax motion, the Debtors seek authority, but not direction, to satisfy all Taxes (as defined below) due and owing to various local, state and foreign taxing authorities and governmental regulatory bodies (collectively, the "**Taxing Authorities**") that arose prior to the Petition Date (as defined below), including all Taxes subsequently determined by audit or otherwise to be owed for periods prior the Petition Date. In the ordinary course of their businesses, the Debtors collect, remit, withhold, and pay certain sales, property, and foreign taxes, and also incur certain regulatory assessments and other charges.

134. **Sales Taxes**. As described more fully in the tax motion, the Debtors are required to collect sales taxes from certain customers on behalf of the applicable Taxing Authorities. The Debtors then remit these collected sales taxes to the relevant Taxing Authorities according to the requirements of such authorities. The Debtors also self-assess import sales taxes on certain asset purchases and then pay such sales taxes to the applicable Taxing Authorities according to the requirements of such authorities, which depend on the timing of the asset purchase imports. The timing and frequency of remittance and payment of the sales taxes differs depending on the tax. For example, the Debtors remit collected sales taxes in California on a monthly basis and pay the self-assessed sales taxes in British Columbia, Canada on a quarterly basis. I have been informed that the Debtors' owe approximately $35,000 in sales taxes in California and approximately $85,000 in sales taxes in Canada relating to periods prior to the Petition Date.

135. **Property Taxes**. The Debtors own or lease certain real and personal properties in domestic and non-U.S. jurisdictions that are subject to local property taxes. The Debtors pay property taxes in numerous locations, including, but not limited to, Canada, Ireland, the Netherlands, Norway, and the United Kingdom. The property taxes are generally assessed in estimated amounts once per year, although certain property taxes are assessed more frequently on a monthly or semi-annual basis. I have been informed that the Debtors' owe approximately $50,000 in property taxes relating to periods prior to the Petition Date, which the Debtors believe is due and payable in the next thirty (30) days.

136. **Foreign Taxes**. In connection with its foreign operations, the Debtors withhold and incur certain corporate income taxes, withholding taxes, customs taxes, value-added taxes, goods and services taxes, and other business taxes, and are obligated to timely collect, withhold, and remit the foreign taxes to various foreign Taxing Authorities. For instance, the Debtors incur corporate income taxes in jurisdictions including, but not limited to, Equatorial Guinea, Kazakhstan, Barbados, Luxembourg, and Ireland, business withholding taxes in jurisdictions including, but not limited to, Canada and Equatorial Guinea, and value-added taxes or goods and services taxes in jurisdictions including, but not limited to, Ireland, the United Kingdom, Canada, and the Netherlands. The timing and frequency of payment of the foreign taxes differs depending on the tax, ranging from monthly, to quarterly, to annually or with variant timing, depending upon assessment by the Taxing Authority. The Debtors estimate that they owe approximately $8,100,000 in Foreign Taxes relating to periods prior to the Petition Date, approximately $6,700,000 of which the Debtors estimate is due and payable in the next thirty (30) days. Additionally, certain of the foreign countries in which the Debtors operate require a tax paying entity to pay a security deposit or provide a bank guarantee for certain taxes. For instance, the Debtors have paid a goods and services tax security deposit of

approximately $300,000 with the Canadian Revenue Agency. This amount is adjusted up or down at the request of the Canadian Revenue Agency depending on the Debtors' import activity into Canada. Additionally, the Debtors have certain bank guarantees in the form of letters of credit posted by banks for approximately $225,000 the United Kingdom relating to the importation of goods. These bank guarantees represent security placed with the customs authorities in order to defer the payment of import value-added taxes and customs duties. The bank guarantees are posted once based on the estimated monthly value of imports and adjusted if import volume increases or decreases. Currently the Debtors have no additional deposit amounts or bank guarantees they are obligated to post.

137. Regulatory Assessments and Other Miscellaneous Payments. The Debtors incur, in the ordinary course of business, certain regulatory assessments, permitting fees, licensing and registration fees, levies, and other miscellaneous obligations to governmental authorities (collectively, the "**Regulatory Assessments**" and, collectively with the sales taxes, the property taxes, and the foreign taxes, the "**Taxes**") to governmental regulatory bodies (the "**Regulatory Bodies**"). The continued payment of these regulatory assessments, including any amounts due and owing on account of prepetition regulatory assessments, are necessary to satisfy business licensing requirements to conduct business in various jurisdictions and to operate at various airports. I have been informed that the Debtors' owe approximately $100,000 in Regulatory Assessments relating to the period prior to the Petition Date, which the Debtors believe is due and payable in the next thirty (30) days.

138. I understand that ample reasons exist to authorize the payment of the prepetition Taxes, including, among other things, that (i) the failure to pay the prepetition Taxes may interfere with the Debtors' continued operations and successful reorganization efforts; (ii) certain of the prepetition Taxes may not be property of the Debtors' estates; (iii) the failure to

pay prepetition Property Taxes and Foreign Taxes may increase the scope of secured and priority claims held by the applicable Taxing Authorities against the Debtors' estates; (iv) the payment of prepetition Taxes affects only the timing of payments as most, if not all, of the Taxes are afforded priority status under the Bankruptcy Code; and (v) the Court has authority to grant the requested relief under sections 105(a) and 363(b) of the Bankruptcy Code.

139. In summary, as of the Petition Date, the Debtors estimate that approximately $120,000 in Sales Taxes, $50,000 in Property Taxes, $8,100,000 in Foreign Taxes, and $100,000 in Regulatory Assessments are due and owing to the Taxing Authorities and Regulatory Bodies relating to periods prior to the Petition Date. I have been informed that approximately $50,000 of the Property Taxes, $6,700,000 of the Foreign Taxes, and $100,000 of the Regulatory Assessments are due and payable in the next thirty (30) days.

140. Based on the foregoing, I believe that the relief requested in the tax motion is in the best interests of the Debtors, their estates and all parties in interest and should be granted.

I. Employee Wages and Benefits Motion (the "Wages Motion")

MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO PAY (A) CERTAIN EMPLOYEE OBLIGATIONS AND (B) PREPETITION CLAIMS OF INDEPENDENT CONTRACTORS AND (II) DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS PURSUANT TO SECTIONS 105(A), 363(B), AND 507(A) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6003 AND 6004

141. Pursuant to the Wages Motion, the Debtors seek authorization, but not direction, to pay their current employees and independent contractors for work performed prepetition, to honor certain other prepetition employee-related obligations and benefits, and to continue paying their employee and independent contractor obligations in the ordinary course of the Debtors' business. The Debtors also seek modification of the automatic stay with respect to

Exhibit D

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 28, 2017

Barbara J. Houser
United States Bankruptcy Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
CHC GROUP LT.D, *et al.*,	§	BANKR. CASE NO. 16-31854-BJH
	§	(CHAPTER 11)
DEBTORS.	§	
	§	
	§	
ECN CAPITAL (AVIATION) CORP.,	§	CASE NO. 3:17-cv-00075-C
	§	
PLAINTIFF,	§	ADV. PROC. NO. 16-3151-BJH
v.	§	
	§	Related to ECF No. 24
AIRBUS HELICOPTERS SAS,	§	
	§	
DEFENDANT.	§	
	§	

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING DEFENDANT AIRBUS HELICOPTERS, S.A.S.'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER AND PERSONAL JURISDICTION, AND ON THE GROUNDS OF FORUM NON CONVENIENS

Before the Bankruptcy Court is the motion [AP[1] No. 24] (the "**Motion to Dismiss**")[2] filed by Defendant Airbus Helicopters S.A.S. ("**Airbus**"),[3] requesting that the above-captioned adversary proceeding (the "**Adversary Proceeding**") be dismissed for lack of both subject matter and personal jurisdiction and on the grounds of forum non conveniens. Alternatively, Airbus requests that the Bankruptcy Court permissively abstain from hearing the dispute. For the reasons explained below, the Bankruptcy Court concludes that the Motion to Dismiss should be granted; however, it lacks the constitutional authority to enter a final order granting the requested relief. Accordingly, it respectfully submits these Proposed Findings of Fact and Conclusions of Law to the District Court for consideration in accordance with 28 U.S.C. § 157(c)(1).

I. PROPOSED FINDINGS OF FACT[4]

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

[1] 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).

[2] On the same day that Airbus filed the Motion to Dismiss, it also filed a request that the District Court withdraw its referral of the Adversary Proceeding to the Bankruptcy Court [AP No. 23] (the "**Motion to Withdraw Reference**"). In its Report and Recommendation with respect to the Motion to Withdraw Reference, which the Bankruptcy Court issued concurrently with its Proposed Findings of Fact and Conclusions of Law, the Bankruptcy Court recommends that, should this Court not dismiss the Adversary Proceeding or abstain, it immediately withdraw the reference.

[3] The related pleadings include: (i) Airbus's amended brief in support of the Motion to Dismiss [AP No. 32] ("**Airbus's Original Brief**"), (ii) Plaintiff's Opposition to the Defendant's Motion to Dismiss [AP No. 63] ("**ECN's Original Brief**"), (iii) Plaintiff's Supplemental Memorandum of Law in Opposition to Defendant's Motion to Dismiss [AP No. 74] ("**ECN's First Supplemental Brief**"), (iv) Defendant's Supplemental Brief in Support of Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction, and on the Grounds of Forum Non Conveniens [AP No. 75] ("**Airbus's First Supplemental Brief**"), (v) Plaintiff's Second Supplemental Memorandum of Law in Opposition to Defendant's Motion to Dismiss [AP No. 78] ("**ECN Second Supplemental Brief**"), and (vi) Airbus's Supplemental (Corrective) Reply Brief [AP No. 81, as corrected by AP No. 82] ("**Airbus's Second Supplemental Brief**").

[4] Any finding of fact more properly considered a conclusion of law, or any conclusion of law more properly considered a finding of fact, should be so considered.

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 Marignane, France. Airbus Ex. A (Declaration of Michel Gouraud) ¶ 3. 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**"). Complaint ¶ 1; ECN Ex. A ¶¶ 3, 6.

ECN currently owns five Super Puma helicopters manufactured by Airbus—one EC225 and four AS332 L2s (collectively, the "**Helicopters**"). Complaint ¶ 4. The Helicopters were initially purchased in France by two foreign companies—CHC Scotia Limited and CHC Leasing (Ireland) Limited. Airbus Ex. A ¶¶ 6-7. Although the record does not disclose the chain of ownership within the CHC group of companies,[5] the CHC-affiliated entity that last owned the Helicopters was CHC Helicopters (Barbados) SRL ("**CHC (Barbados)**"). Complaint ¶ 12. It was CHC (Barbados) that sold the Helicopters to ECN as part of a sale-leaseback transaction whereby ECN purchased the Helicopters and leased them back to CHC (Barbados) for sublease and operation (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.[6]

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[5] As explained more fully herein, forty-three companies within the CHC group filed voluntary petitions under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court. *See infra* at 4.

[6] 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.

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. Complaint ¶ 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. Hr'g Tr. (2/6/17) 24:19-23 (Katz) [AP No. 73].[7]

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**").[8] 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 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.

During the Bankruptcy Case, CHC (Barbados) rejected the ECN Leases in accordance with § 365 of the Bankruptcy Code. *Id.* ¶ 12. Based on the rejections, ECN filed the following Proofs of Claim in the Bankruptcy Case, each for "[n]o less than [$] 94,070,389" (collectively, the "**ECN Proofs of Claim**"):

[7] Citations to hearing transcripts shall take the form of "Hr'g Tr. (date) pg:line-line (speaker)."
[8] As explained further herein, the Debtors' plan of reorganization was confirmed by Order of the Bankruptcy Court on March 3, 2017 and has now gone effective. *See infra* at 39-40.

Debtor	Case No.	Claim No.	Filing Entity	Basis for Claim
CHC Helicopters (Barbados) SRL	16-31867	543	Element Capital Corporation (n/k/a ECN Capital (Aviation) Corp.)[9]	"Obligations in connection with rejected and/or restructured lease"
CHC Helicopter S.A.	16-31863	545	Element Capital Corporation	"Obligations in connection with a lease pursuant to guarantee"
CHC Helicopter Holding S.A.R.L.	16-31875	549	Element Capital Corporation	"Obligations in connection with a lease pursuant to guarantee"
6922767 Holding SARL	16-31855	556	Element Capital Corporation	"Obligations in connection with a lease pursuant to guarantee"
Heli-One Leasing, ULC	16-31891	575	Element Capital Corporation	"Obligations in connection with a lease pursuant to guarantee"

ECN filed the Complaint 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).[10]

[9] Complaint at 1.

[10] These claims are not set forth in numbered counts, but appear in the Prayer.

II. PROPOSED CONCLUSIONS OF LAW

A. Subject Matter Jurisdiction

1. The Relevant Standard for Ruling on a Federal Rule 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction

A challenge to a bankruptcy court's subject matter jurisdiction under Federal Rule of Civil Procedure ("**Federal Rule**") 12(b)(1), as made applicable by Federal Rule of Bankruptcy Procedure ("**Bankruptcy Rule**") 7012, can be mounted as either a facial or factual challenge. *MC Comm'n Serv., Inc. v. Arizona Tel. Co. (In re Intramta Switched Access Charge Litig.),* 158 F.Supp.3d 571, 574 (N.D. Tex. 2015). When a party files a Federal Rule 12(b)(1) motion without including evidence, the challenge to subject matter jurisdiction is facial. *Id.* The court assesses a facial challenge as it does a Federal Rule 12(b)(6) motion in that it "looks only at the sufficiency of the allegations in the pleading and assumes them to be true. If the allegations are sufficient to allege jurisdiction, the court must deny the motion." *Id*. (citation omitted). If, however, the defendant supports the motion with affidavits, testimony, or other evidentiary materials, the attack is factual and the burden shifts to the plaintiff to prove subject matter jurisdiction by a preponderance of the evidence. *Id*.

Although Airbus submitted evidence in support of the Motion to Dismiss, the evidence relates solely to its challenge under Federal Rule 12(b)(2) for lack of personal jurisdiction, which is addressed below. Thus, the Motion to Dismiss is a facial challenge to subject matter jurisdiction under Federal Rule 12(b)(1). Before turning to the allegations in the Complaint, however, a brief overview of "related to" jurisdiction is helpful to understanding this Court's analysis.

2. Related To Jurisdiction Generally

The District Court for the Northern District of Texas has subject matter jurisdiction over bankruptcy cases and proceedings under 28 U.S.C. § 1334. Although bankruptcy courts do not have independent subject matter jurisdiction over bankruptcy cases and proceedings, 28 U.S.C. § 151 grants bankruptcy courts the power to exercise certain "authority conferred" upon the district courts by title 28. Under 28 U.S.C. § 157, the district courts may refer bankruptcy cases and proceedings to the bankruptcy courts for either entry of a final judgment (core proceedings) or proposed findings and conclusions (noncore, related-to proceedings). Thus, the Bankruptcy Court exercises authority over the Bankruptcy Case and the Adversary Proceeding pursuant to the Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc adopted in this district on August 3, 1984.

28 U.S.C. § 1334(b) lists three types of proceedings over which the District Court has jurisdiction – those "arising under title 11," those "arising in" a case under title 11, and those "related to" a case under title 11. The classification of a proceeding under § 1334 depends on the connection of the proceeding to the bankruptcy case. "Arising under" jurisdiction involves "causes of action created or determined by a statutory provision of title 11." *Faulkner v. Eagle View Capital Mgt. (In re The Heritage Org., L.L.C.)*, 454 B.R. 353, 360 (Bankr. N.D. Tex. 2011) (citing *Wood v. Wood (In re Wood)*, 825 F.2d 90, 96 (5th Cir. 1987)). "Arising in" jurisdiction is "not based on a right expressly created by title 11, but is based on claims that have no existence outside of bankruptcy." *Faulkner*, 454 B.R. at 360 (citing *Wood*, 825 F.2d at 97). "Arising under" and "arising in" proceedings are "core" proceedings. 28 U.S.C. § 157(b); *Stern v. Marshall*, 564 U.S. 462, 476 (2011); *U.S. Brass Corp. v. Travelers Ins. Grp., Inc. (In re U.S. Brass Corp.)*, 301 F.3d 296, 304 (5th Cir. 2002).

In comparison, "related to" jurisdiction exists if "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.6 (1995) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)); *see also U.S. Brass*, 301 F.3d at 304. A claim is related to a bankruptcy case "if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively)." *Kimpel v. Meyrowitz (In re Meyrowitz)*, 2010 WL 5292066, at *5 (Bankr. N.D. Tex. Dec. 20, 2010) (citations omitted). "That state law may affect a proceeding's resolution cannot be the sole basis by which a proceeding is excluded from the otherwise large net cast by 'related to' jurisdiction." *Hartley v. Wells Fargo Bank, N.A. (In re Talsma)*, 509 B.R. 535, 542 (Bankr. N.D. Tex. 2014) (citing 28 U.S.C. § 157(b)(3)). Proceedings that involve merely "related to" jurisdiction and do not otherwise arise under the Bankruptcy Code or arise in a bankruptcy case are "non-core." *Faulkner*, 454 B.R. at 360. In such an instance, a bankruptcy court may not issue a final order adjudicating the claims without the parties' consent. 28 U.S.C. § 157(c).

With this predicate in mind, the Court turns to the allegations in the Complaint.

3. The Court has Related To Jurisdiction Over the Adversary Proceeding

According to ECN's Original Brief [AP No. 63], the paragraphs in its Complaint relevant to subject matter jurisdiction are 8-12 and 40-43.[11] A review of these paragraphs, however, shows that only paragraphs 42 and 43 contain arguably non-conclusory allegations relevant to subject matter jurisdiction.[12] Those paragraphs allege the following:

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[11] *See* ECN's Original Brief [AP No. 63] at 9.

[12] Paragraphs 8 and 9 are comprised of conclusory allegations that the Bankruptcy Court has subject matter jurisdiction. A court need not accept conclusory allegations as true when ruling on a challenge to its subject matter jurisdiction. *Beene v. Aramark Healthcare Support Serv., Inc.*, 2007 WL 1468705, at *2 (N.D. Tex. May 17, 2007) (the court need not strain to find inferences favorable to the plaintiffs nor accept conclusory allegations, unwarranted

> 42. As a result of the CHC Debtors' rejection of their leases with ECN Capital, ECN Capital filed Proofs of Claim Nos. 543, 545, 549, 556, and 575 in the CHC Bankruptcy Cases against certain of the CHC Debtors seeking over $94 million from each such CHC Debtor. Other entities subject to lease rejections by the CHC Debtors filed similar proofs of claim. To the extent that ECN Capital recovers damages against Airbus through this action, the amount of ECN Capital's claims against the CHC Debtors will be reduced by ECN Capital's recovery. Similarly, if other entities subject to lease rejections by the CHC Debtors obtain damages from Airbus on the basis of Airbus's liability in this action, their claims against the CHC Debtors will be reduced by their recovery. Accordingly, the outcome of Plaintiff's claims in this action will: (a) alter the rights, obligations, and choices of action of creditors against the CHC Debtors; (b) alter the rights, obligations, and choices of action by the CHC Debtors against Airbus; (c) impact the CHC Debtors' estates; and (d) have an effect on the administration of the CHC Debtors' estates.
>
> 43. On information and belief, in addition to the Super Pumas for which the CHC Debtors rejected leases in the CHC Bankruptcy Cases, the CHC Debtors own and/or have owned other Super Puma EC225s and/or Super Puma AS332 L2s as well. The CHC Debtors thus could stand to recover damages directly from Airbus for Airbus's negligence, defective design, defective manufacturing, failure to warn, violation of implied warranty of merchantability, negligent misrepresentation, and/or fraud, which recovery would accrue to the benefit of the CHC Debtors' estates.

In its Original Brief, ECN elaborates on its allegations in paragraphs 42(b)-(c) and 43 by explaining that if, "for example, ECN Capital succeeds on any of its claims, Airbus could be liable to the Debtors on collateral estoppel grounds for claims arising from the April 2016 crash and subsequent grounding—which claims the Debtors have expressly preserved [under their plan of reorganization] and which involve substantially similar facts and circumstances to those at issue here." ECN's Original Brief [AP No. 63] at 2.

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deductions, or legal conclusions). Paragraph 10 alleges that the Bankruptcy Court has supplemental jurisdiction over ECN's claims. However, it is the District Court, not the Bankruptcy Court, that would try the Adversary Proceeding, making this argument moot. Paragraphs 11 and 40 contain allegations regarding personal jurisdiction, while paragraph 12 addresses venue. Finally, paragraph 40 only addresses CHC (Barbados)'s rejection of the ECN Leases.

Airbus, however, argues that the Bankruptcy Court must dismiss the Adversary Proceeding because it is a non-core proceeding that will have no effect on the Bankruptcy Case. Airbus's Original Brief [AP No. 32] at 1. According to Airbus:

> ECN's action does not involve claims against the CHC Debtors and does not involve their estates' property. The helicopters are owned by ECN, and the leases have already been rejected by the CHC Debtors. Whether ECN can recover from [Airbus] for its own, separate alleged economic loss caused by the groundings will have no effect on the Debtors' estates. The sources of damages to ECN in the proceedings are completely separate – rejected leases (bankruptcy) versus the grounding (adversary). Moreover, to the extent ECN recovers damages from [Airbus] in this lawsuit, that money would go to ECN, not the CHC Debtors.

Id. at 7-8. Simply put, Airbus believes that ECN's arguments are far too tenuous to support related to jurisdiction. Although the Court agrees that the Adversary Proceeding's potential effect on the bankruptcy estates is tenuous, that effect is still "conceivable" and thus sufficient to confer subject matter jurisdiction, as the Court will now explain.

In its briefs, ECN generically uses the term "collateral estoppel" in describing the conceivable effect that the Adversary Proceeding could have on the bankruptcy estates, without explaining whether it is referring to claim or issue preclusion. Thus, the Court must analyze both. For claim preclusion to apply,

> [f]irst, the parties in a later action must be identical to (or at least be in privity with) the parties in a prior action. Second, the judgment in the prior action must have been rendered by a court of competent jurisdiction. Third, the prior action must have concluded with a final judgment on the merits. Fourth, the same claim or cause of action must be involved in both suits.

U.S. v. Shanbaum, 10 F.3d 305, 310 (5th Cir. 1994). Here, ECN is unable to prove the first element because the Debtors are not a party to the Adversary Proceeding nor is there any allegation that they are in privity with ECN. Thus, claim preclusion could not apply under these facts.

Issue preclusion, however, could apply to the facts as alleged by ECN. As previously explained in *In re Wyly*, issue preclusion binds a party to the determination of an issue that was litigated in a prior judgment if—

> [f]irst, the issue under consideration in a subsequent action must be identical to the issue litigated in a prior action. Second, the issue must have been fully and vigorously litigated in the prior action. Third, the issue must have been necessary to support the judgment in the prior case. Fourth, there must be no special circumstance that would render preclusion inappropriate or unfair.

In re Wyly, 2015 WL 5042756, at *6 (Bankr. N.D. Tex. Aug. 25, 2015) (quotations and citations omitted). As explained by the Fifth Circuit:

> The differences between claim preclusion and issue preclusion are significant. Waiver is not a motivating principle behind issue preclusion. Instead, courts reason that if another court has already furnished a trustworthy determination of a given issue of fact or law, a party that has already litigated that issue should not be allowed to attack that determination in a second action. Moreover, under issue preclusion, unlike claim preclusion, the subject matter of the later suit need not have any relationship to the subject matter of the prior suit.

Shanbaum, 10 F.3d at 311.

As previously described, ECN has sued Airbus alleging various negligence and products liability claims arising from damages associated with its ownership of the Helicopters that were grounded after the 2016 crash. These are the same types of claims likely held by certain of the Debtors that also own Super Puma helicopters that were similarly grounded. If ECN receives a ruling in the Adversary Proceeding that a specific part was defective, that Airbus knew of the defect, or similar rulings encompassed in negligence and/or products liability claims, the applicable Debtor could likely rely on issue preclusion in a subsequent lawsuit brought against Airbus. Although the application of issue preclusion involves a hypothetical scenario at this

point,[13] ECN and the applicable Debtors each hold the right to bring these type of claims against Airbus flowing from the crash and subsequent grounding of the Super Puma helicopters, which means the application of issue preclusion *could* have a *conceivable* effect on the applicable bankruptcy estates by altering the applicable Debtor's rights, options, and freedom of action, thus meeting the very broad definition of related to jurisdiction applicable in the Fifth Circuit. Accordingly, the Court concludes that the Adversary Proceeding is related to the Bankruptcy Case.[14]

B. Personal Jurisdiction

1. The Relevant Standard for Ruling on a Federal Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction

When a nonresident defendant moves to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing the court's jurisdiction. *Stuart v. Spademan*, 772 F.2d 1185, 1192 (5th Cir. 1985). The court may determine the jurisdictional issue by receiving affidavits, interrogatories, depositions, oral testimony, or any combination of the recognized methods of discovery. *Id.* Here, Airbus relied on documents outside of the Complaint to challenge personal jurisdiction, which ultimately resulted in the parties undertaking discovery and the Bankruptcy Court holding an evidentiary hearing on the Motion to Dismiss on February 28, 2017 (the "**Hearing**").[15] Thus, ECN must show, by a preponderance of the evidence, that the Court has

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[13] This is because the applicable Debtors have not sued Airbus and it is unknown if they will ever sue Airbus bringing these same or substantially similar claims.

[14] On March 3, 2017, this Court entered an order [BC No. 1791] approving a settlement between the Debtors and ECN that awarded ECN "separate and distinct stipulated, allowed general unsecured non-priority pre-petition claims" in the amount of $85,700,000 against each of CHC (Barbados) and the ECN Lease Guarantors. Because of this settlement, ECN's other argument, that its recovery in the Adversary Proceeding could reduce its claims against the estates, is moot.

[15] A copy of the Hearing transcript may be found at AP No. 86.

personal jurisdiction over Airbus. *Felch v. Transportes Lar–Mex SA DE CV,* 92 F.3d 320, 326 (5th Cir. 1996).

When analyzing personal jurisdiction, a court must first consider whether a federal statute or rule defines the extent of its personal jurisdiction. *Smith v. Matias (In re IFS Fin. Corp.),* 2007 WL 2692237 (Bankr. S.D. Tex. Sept. 11, 2007) (citing *Federalpha Steel LLC Creditors Trust v. Fed. Pipe & Steel Corp. (In re Federalpha Steel LLC)*, 341 B.R. 872, 887 (Bankr. N.D. Ill. 2006)). Here, Bankruptcy Rule 7004(f) defines personal jurisdiction over defendants in an adversary proceeding, authorizing personal jurisdiction to the extent allowed by the Fifth Amendment Due Process clause. *Id.* (citing cases). Consequently, a bankruptcy court's personal jurisdiction is not affected by a state's long-arm statute or constitution. *Id.*

The Due Process Clause permits the exercise of personal jurisdiction over a nonresident defendant when: (i) the defendant has minimum contacts with the forum, and (ii) the exercise of jurisdiction does not offend "traditional notions of fair play and substantial justice." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985); *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *Paz v. Brush Engineered Materials, Inc.*, 445 F.3d 809, 813 (5th Cir. 2006). Minimum contacts are required to preserve a defendant's Due Process right not to be brought into a forum without "fair warning" that prior conduct subjected them to that forum's jurisdiction. *Burger King Corp.*, 471 U.S. at 471–72. The plaintiff bears the burden of establishing minimum contacts. *Seiferth v. Helicopteros Atuneros, Inc*., 472 F.3d 266, 271 (5th Cir. 2006). If successful, the burden then shifts to the defendant to establish that the exercise of jurisdiction would be unfair or unreasonable. *Id*.

The minimum-contacts analysis used in diversity cases is applied to a foreign defendant in bankruptcy court adversary proceedings based on federal law, with one exception. Instead of

looking only at the defendant's contacts within the forum state, courts aggregate the defendant's contacts within the entire United States. *In re IFS Fin. Corp.*, 2007 WL 2692237, at *3; *Levey v. Hamilton (In re Teknek, LLC)*, 354 B.R. 181, 192 (Bankr. N.D. Ill. 2006).

The Supreme Court has rejected "talismanic jurisdiction formulas" to determine personal jurisdiction. *Burger King Corp.*, 471 U.S. at 485–86. However, the contacts must be "purposeful" as opposed to "fortuitous" or "attenuated," and the contacts must be significant enough that a reasonable person would foresee that their "conduct and connection with the forum State are such that he should reasonably anticipate being haled into the court there." *Id.* at 474 (quoting *World–Wide Volkswagen v. Woodson*, 444 U.S. 286, 297, 299 (1980)).

A defendant's "minimum contacts" may give rise to either general personal jurisdiction or specific personal jurisdiction. A court with general personal jurisdiction over a non-forum defendant has jurisdiction to adjudicate any claim against that defendant, including claims that do not arise in the forum state. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.9 (1984). A court may exercise general personal jurisdiction over any action brought against a defendant if the defendant's contacts with the forum state are "continuous and systematic." *Seiferth*, 472 F.3d at 271. When examining a general personal jurisdiction issue, courts consider the defendant's contacts occurring within the forum "over a reasonable number of years, up to the date the suit was filed." *Access Telecom, Inc., v. MCI Telecomm. Corp.*, 197 F.3d 694, 717 (5th Cir. 1999) (citing *Metro. Life Ins. Co. v. Robertson–Ceco Corp.*, 84 F.3d 560, 569 (2d Cir. 1996)).

Absent general personal jurisdiction, a court may still exercise limited specific personal jurisdiction over a defendant. Unlike general personal jurisdiction, specific personal jurisdiction does not extend to any claim against the non-forum defendant. Instead, specific personal

jurisdiction is limited to causes of action that arise from conduct that occurred in or was directed to the forum location. *Burger King Corp*., 471 U.S. at 472-73 n.15.

Here, ECN has alleged that: (i) by participating in the Bankruptcy Case, Airbus has submitted itself to the personal jurisdiction of the Bankruptcy Court (and thus this Court) for ECN's allegedly related claims, and (ii) the Bankruptcy Court (and thus this Court) has specific personal jurisdiction over Airbus for purposes of hearing the Adversary Proceeding.[16] The Court will address these in turn.

2. This Court Lacks Specific Personal Jurisdiction Over Airbus

a. Airbus Has Not Consented to Personal Jurisdiction in this Court

It is undisputed that Airbus has voluntarily participated in the Bankruptcy Case by, among other things: (i) filing a Notice of Appearance in which it describes itself as a party in interest to the Bankruptcy Case [BC Nos. 339, 1750], (ii) serving on the Official Committee of Unsecured Creditors appointed by the Office of the United States Trustee [BC No. 137], (iii) filing proofs of claim for goods and/or services provided to certain of the Debtors prior to the Petition Date [Claim Nos. 353, 365], and (iv) objecting to prior efforts by ECN to take a Bankruptcy Rule 2004 examination related to certain of the Debtors' potential claims against Airbus [BC No. 862]. Because of this, ECN argues that Airbus has submitted itself to the Bankruptcy Court's jurisdiction for any claim related to the proofs of claim that Airbus filed against certain of the Debtor's bankruptcy estates. ECN's Original Brief [AP No. 63] at 17.

[16] ECN does not argue that this Court has general personal jurisdiction over Airbus independent of Airbus's alleged consent. Hr'g Tr. (2/28/16) 45:21-22 (Flumenbaum) ("I don't believe we would have general jurisdiction but for [Airbus] coming into this Court.").

In support of this argument, ECN cites to various cases where courts have exercised jurisdiction in allegedly "similar circumstances." ECN Second Supplemental Brief [AP No. 78] at 10-13. ECN's cases, however, are clearly distinguishable. For example, ECN cites to *Kriegman v. Cooper (In re LLS American, LLC)*, 2012 WL 2564722, at *7 (Bankr. E.D. Wash. 2012) for the proposition that, by filing a proof of claim and participating in motion practice, a claimant has submitted itself to the bankruptcy court's jurisdiction for related claims. *Id.* at 10-11. *LLS*, however, has several distinguishing characteristics, including that (i) a bankruptcy trustee (asserting claims on behalf of the bankruptcy estate)[17] was the plaintiff, and (ii) the defendant had participated in the adversary proceeding *before* filing a motion to dismiss for lack of personal jurisdiction. *In re LLS American, LLC*, 2012 WL 2564722, at *3. Moreover, the *LLS* defendant's proof of claim was filed for money loaned to or investments in the debtor, and the adversary proceeding against it was for allegedly preferential transfers under 11 U.S.C. § 548 related to the debtor's Ponzi scheme. *Id.* at *4. Among other things,[18] the court in *LLS* relied on the nature of the claim and the adversary, coupled with 11 U.S.C. § 502(d),[19] to find that, by filing the proof of claim, the defendant had submitted to the court's personal jurisdiction. *Id.* at *5-7. ECN's other cases on this point are similarly distinguishable.

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[17] Here, however, no Debtor claim is directly at issue. The claims pled in the Adversary Proceeding are claims of a non-debtor (ECN) against another non-debtor (Airbus).

[18] The *LLS* court also found that the defendant consented to the court's jurisdiction by previously filing and prosecuting a motion to withdraw reference. *Id.* at *7.

[19] 11 U.S.C. § 502(d) states, in relevant part, that "the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title."

For example, *Securities Investor Protections Corp. v. Bernard L. Madoff Investment Securities, Inc.*, 460 B.R. 106 (S.D.N.Y. 2011) *aff'd*, 474 B.R. 76 (S.D.N.Y. 2012), involved an avoidance action brought by a bankruptcy trustee, again asserting claims on behalf of the bankruptcy estate. The court found that it had personal jurisdiction over the foreign defendant because, among other things, (i) the foreign defendant had entered into and performed under an agreement with a New York choice of law clause, (ii) the foreign defendant's "investment manager" had an address in Connecticut, (iii) the foreign defendant directed investments to the United States and had engaged in a series of repeated transactions that intentionally channeled investor money into the debtor's Ponzi scheme in New York, and (iv) several of the trustee's claims arose out of or were related to the defendant's contacts with the United States such that it should reasonably have anticipated any adjudication of the transactions would take place in the United States. *Id.* at 116-19. Although the *Madoff* court took into consideration that the defendant had participated in the underlying bankruptcy case by filing a notice of appearance and attending hearings in New York through counsel, those actions were not the sole basis of its ruling. *Id.* at 119.

In *Deak & Co., Inc. v. Ir. R.M.P Soedjono (In re Deak & Co., Inc.)*, 63 B.R. 442 (Bankr. S.D.N.Y. 1986), the debtor owned substantially all of the stock of a foreign bank ("**FOCO**"). Prepetition, the debtor had pledged 8,000 of those shares to a foreign entity ("**DAMA**"). After filing for bankruptcy, the debtor sought to sell its stock in FOCO free and clear of all liens, claims, and encumbrances, including those arising from the pledge to DAMA, on the basis that the pledge was the subject of a bona fide dispute under 11 U.S.C. § 363(f)(4). *Id.* at 424-25. Prior to the proposed sale, DAMA had filed a notice of appearance in the bankruptcy case, stating that it was "a party in interest and equity security holder in these proceedings." *Id.* at 424. Although DAMA

received notice of the proposed sale and its counsel attended the sale hearing, it filed no objection to the sale. *Id.* at 424-25. The bankruptcy court ultimately approved the sale, which was "free and clear of all liens, claims, pledges, and other encumbrances," with any such interests to attach to the sale proceeds. *Id.* at 425.

After the bankruptcy court approved the sale, DAMA sought and obtained an ex parte injunction from a Swiss court in Zurich restraining the debtor from transferring the FOCO shares to the purchaser. *Id.* at 425-26. The debtor then commenced an adversary proceeding against DAMA in the bankruptcy court seeking to set aside the pledge as a preference or fraudulent conveyance. *Id.* at 426. In response, DAMA filed a motion to dismiss alleging, among other things, that the bankruptcy court lacked personal jurisdiction over it. Although the bankruptcy court held that DAMA had submitted itself to the bankruptcy court's personal jurisdiction by filing a notice of appearance and participating in the bankruptcy case, that court clearly expressed its concerns over DAMA's attempts to thwart the sale despite its knowledge of, and participation in, the bankruptcy case. *Id.* at 432 ("DAMA's commencement of the Swiss action subsequent to Deak's [bankruptcy] filing contravened the letter and spirit of § 362, and is a serious affront to this court's jurisdiction by a party who had already appeared in this bankruptcy case"). Moreover, the court specifically noted that DAMA's counsel appeared at the sale hearing, yet gave no indication of DAMA's intent to challenge the sale:

> Furthermore, DAMA's appearance at the August 6, 1985 [sale] hearing, coupled with his failure to qualify statements made by Deak with regard to DAMA's interest, were further evidence of submission to this court's jurisdiction. Deak stated clearly at the hearing that the DAMA pledge was in dispute and that its validity would be determined at a later date. The present adversary proceeding seeks to determine precisely that matter. Deak further represented that it was "aware of no objection by any of the three lienors with respect to this prong of the application." Transcript, August 6, 1985, at 19. Specifically, Deak sought to have the liens, if their validity was established, to attach to the proceeds of the sale. DAMA had an

> opportunity but never voiced his objection to this court's jurisdiction which he easily could have done. Had an objection been interposed by DAMA at this juncture or by the other lienors, this court may well have structured the order it signed allowing the sale to go forward differently. DAMA's silence throughout estops him from now raising the issue of personal jurisdiction; his acts and non-acts have amounted to a legal submission to the jurisdiction of this court.

Id. at 432-33.

From this Court's perspective, ECN reads *Deak* too broadly. It does not stand for the general proposition that, by filing a notice of appearance and participating in a bankruptcy case, a creditor subjects itself to the personal jurisdiction of the bankruptcy court for all times or for all issues. Notably, the issues in *Deak* each involved the debtor's shares in FOCO. Here, however, ECN's claims in the Adversary Proceeding (negligence and products liability against Airbus, not any Debtor) and those reflected in Airbus's proofs of claims (prepetition goods and/or service provided to certain of the Debtors) are legally distinct and wholly unrelated.

ECN's remaining cases are similarly distinguishable. *See, e.g., Mobley v. Quality Lease and Rental Holdings, LLC (In re Quality Lease & Rental Holdings, LLC)*, 2016 WL 416961 (S.D. Tex. Feb. 1, 2016) (holding in relation to a jury demand that "[fi]ling a proof of claim brings a creditor within the equitable jurisdiction of a bankruptcy court and thereby waives the Seventh Amendment right to a jury trial on issues that are related to the proof of claim."); *Schwinn Plan Committee v. TI Reynolds 531 Limited (In re Schwinn Bicycle Co.*), 182 B.R. 526 (N.D. Ill. 1995) (by filing proof of claim for outstanding invoices, foreign creditor subjected itself to personal jurisdiction in adversary proceeding brought by the Chapter 11 plan committee to recover preferential transfers); *Neese v. First Nat'l Bank of Grayson, Ky. (In re Neese)*, 12 B.R. 968 (W.D. Va. 1981) (by filing proofs of claim, defendants consented to the personal jurisdiction of the bankruptcy court in adversary to disallow those claims); *Glinka v. Abraham and Rose Co. Ltd.*,

199 B.R. 484 (Bankr. D. Vt. 1996) (bankruptcy trustee and debtor's primary secured creditor commenced adversary to set aside allegedly fraudulent transfers; court found that foreign defendant had waived any objection to personal jurisdiction by voluntarily intervening in the adversary proceeding and actively participating in the proceeding for an extended period of time without challenging the court's personal jurisdiction). Thus, Airbus's actions in the Bankruptcy Case are insufficient for this Court to conclude that it has consented to the Bankruptcy Court's (and thus this Court's) personal jurisdiction over it with regard to the claims pled against it by ECN in the Adversary Proceeding.

ECN next argues that Airbus filing proofs of claim in the Bankruptcy Case is the equivalent of Airbus filing a lawsuit in the Bankruptcy Court. And, in Texas, "[v]oluntarily filing a lawsuit in a jurisdiction is a purposeful availment of the jurisdiction's facilities and can subject a party to personal jurisdiction in another lawsuit when the lawsuits arise from the same general transaction." ECN's Original Brief [AP No. 63] at 18 & n.28, 29 (citing *Hess v. Bumbo Int'l Trust*, 954 F.Supp.2d 590, 597 (S.D. Tex. 2013); *Int'l Transactions, Ltd. v. Embotelladora Agral Regionmontana SA de C*V, 277 F.Supp.2d 654, 667–68 (N.D. Tex. 2002)).

As before, ECN's cases are distinguishable from the facts here. First, neither *Int'l Transactions* nor *Hess* involved a bankruptcy case. Moreover, in *Int'l Transactions*, the court found consent to jurisdiction because the foreign defendant had previously filed two separate lawsuits in the forum that were directly related to proceedings the plaintiff filed in the same forum. 277 F.Supp.2d at 667–68. Finally, in *Hess*, the court found general personal jurisdiction based on

the defendant's forum contacts, not its involvement with prior litigation. 954 F.Supp.2d at 593-97.[20]

Moreover, even if this Court were to find that Airbus filing proofs of claim in the Bankruptcy Case is the equivalent of Airbus filing a lawsuit in the Bankruptcy Court, ECN's claims in the Adversary Proceeding do not relate to Airbus's proofs of claim. As previously explained, ECN's claims against Airbus in the Adversary Proceeding are for alleged negligence and products liability related to the Helicopters it owned at the time of the crash. On the other hand, Airbus's proofs of claim are for goods and/or services it provided to Debtors Heli-One Canada ULC (Claim No. 353) and Heli-One (Norway) AS (Claim No. 365) prior to the Petition Date.

Despite this, ECN argues that Airbus has "submitted itself to the specific personal jurisdiction of the Court for claims related to the Bankruptcy Cases in which Airbus filed its own proofs of claim." ECN's Original Brief [AP No. 63] at 18. The mere fact that both ECN and Airbus filed claims in the same jointly-administered bankruptcy cases involving 43 affiliated debtors[21] is insufficient for this Court to find that Airbus has consented to the Bankruptcy Court's personal jurisdiction over it for unrelated claims brought against it by ECN.

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[20] *Praetorian Specialty Ins. Co. v. Auguillard Const. Co.*, 829 F.Supp.2d 456 (W.D. La. 2010), and *Gen. Contracting & Trading Co., LLC v. Interpole, Inc*., 940 F.2d 20 (1st Cir. 1991), are equally distinguishable, as each involved a situation where consent was found because the defendant had filed lawsuits in the same forum based on the same operative facts. Finally, *Fort v. SunTrust Bank (In re Int'l Payment Group, Inc.*), 2011 WL 5330783 (Bankr. D.S.C. Nov. 3, 2011), did not involve a challenge to personal jurisdiction but the constitutionality of the referral of the lawsuit to the bankruptcy court. *Id.* at *1.

[21] As noted previously, ECN filed proofs of claim against CHC (Barbados), CHC Helicopter S.A., CHC Helicopter Holding S.A.R.L., 6922767 Holding SARL, and Heli-One Leasing, ULC related to the ECN Leases and CHC (Barbados)'s rejection of the ECN Leases, while Airbus filed proofs of claim against Heli-One Canada ULC and Heli-One (Norway) AS related to goods and services it provided to those Debtors. And, as noted previously, ECN's claims

Of significance, ECN does not to cite to, nor could this Court find through its own research, a single case where a court has held that a creditor/defendant submitted itself to the personal jurisdiction of the bankruptcy court by filing a proof of claim and/or participating in the underlying bankruptcy case when the subject adversary proceeding (i) was brought by another creditor of debtor asserting its own claims (not claims of the estate), and (ii) the claims asserted in the adversary proceeding were distinct from the claims the creditor/defendant sought to recover on when it filed its proof of claim against the debtor. ECN's argument simply expands the scope of personal jurisdiction in a bankruptcy case too far.

For all of these reasons, the Court concludes that Airbus's participation in the Bankruptcy Case is, standing alone, insufficient to give rise to personal jurisdiction over Airbus in a lawsuit brought against it by ECN and arising from matters unrelated to Airbus's proofs of claim.

b. ECN Has Failed to Show a Close Nexus between Airbus's Alleged Contacts with the United States and the Claims Alleged in the Adversary Proceeding

For specific personal jurisdiction to be proper, Due Process requires (i) minimum contacts by the defendant purposefully directed at the forum state, (ii) a nexus between the defendant's contacts and the plaintiff's claims, and (iii) that the exercise of jurisdiction over the defendant be fair and reasonable. *ITL Int'l, Inc. v. Constenla, S.A.*, 669 F.3d 493, 498 (5th Cir. 2012). The plaintiff has the burden of demonstrating specific personal jurisdiction for each claim asserted against the nonresident defendant. *Seiferth*, 472 F.3d at 274-75.

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against Airbus in the Adversary Proceeding are negligence and products liability type claims relating to Airbus's design, manufacture, and sale of the Helicopters.

For reasons it explains below, the Court will focus on the second prong of the analysis. This is so because, even assuming that ECN could meet its burden to show that Airbus had sufficient minimum contacts with the United States,[22] ECN has failed to prove (or even allege) a nexus between those contacts and its claims in the Adversary Proceeding. ECN's failure on this point is fatal because specific personal jurisdiction is "case-linked" and grants a court only the power to hear "issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918-19 (2011) ("Because the episode-in-suit, the bus accident, occurred in France, and the tire alleged to have caused the accident was manufactured and sold abroad, North Carolina courts lacked specific jurisdiction to adjudicate the controversy."); *see Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 413-16 & n.8; *Jones v. Petty–Ray Geophysical Geosource, Inc.*, 954 F.2d 1061, 1068 (5th Cir.) (specific personal jurisdiction is proper only if the cause of action arises from a particular act or activity in the forum), *cert. denied*, 506 U.S. 867 (1992).

The record before the Court is devoid of any evidence that ECN's claims arise out of or are related to Airbus's contacts with the United States. Indeed, ECN failed to address the nexus prong of specific personal jurisdiction in the Complaint and its pre-Hearing briefs. Accordingly, at the Hearing, ECN's counsel was asked to identify the nexus between ECN's negligence and products liabilities claims and Airbus's alleged contacts with the United States. According to ECN's counsel:

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[22] Because ECN has failed to prove a close nexus between its claims against Airbus and Airbus's alleged contacts with the United States, the Court need not undertake the minimum contacts prong of the personal jurisdiction analysis. This is so because, even if every contact that ECN alleges between Airbus and the United States occurred, ECN has still failed to meet its burden as there is no nexus between such contacts and its claims.

> The nexus is that [ECN's] claims are based on diminution in value of those helicopters, due to Airbus's negligence, product liability, fraud, et cetera. And the reason I have these damages is as a result, in part, of activities that occurred in Texas, with respect to the bankruptcy of CHC…. I've lost lease income, which I'm never going to regain back, because of the grounding.

Hr'g Tr. (2/28/16) 53:12-22 (Flumenbaum) [AP No. 86].

Although not particularly clear, ECN appears to argue that the nexus between ECN's injuries and Airbus's contacts with the United States is the Bankruptcy Case and the Bankruptcy Court's order permitting the rejection of the ECN Leases by CHC (Barbados), which triggered a rejection claim against it and guarantee claims against the ECN Lease Guarantors. However, CHC (Barbados)'s decision to reject the ECN Leases did not give rise to ECN's negligence and products liability claims against Airbus. Indeed, ECN's claims against Airbus (i) existed prior to the Petition Date, (ii) are wholly independent from the Bankruptcy Case, and (iii) would exist whether the ECN Leases were rejected or not. Notably, at the Hearing, ECN's counsel was unable to cite to any portion of the record supporting ECN's argument. *Id.* 53:23-66:19 (Flumenbaum).

Accordingly, this Court concludes that it does not have specific personal jurisdiction over Airbus in relation to the Adversary Proceeding and that the Motion to Dismiss must be granted.

Before moving on to Airbus's request to dismiss the Adversary Proceeding on grounds of forum non conveniens, the Court notes that, on March 20, 2017 (nearly three weeks after the evidentiary record was closed), ECN filed with the Bankruptcy Court a post-hearing brief [AP No. 87] (the "**Post-Hearing Brief**") and a 224 page appendix [AP No. 88] (the "**Appendix**"). The Bankruptcy Court did not request post-Hearing submissions from the parties, and ECN neither requested leave of Court to file its brief nor did it request that the evidentiary record be reopened with respect to the Appendix. Although Airbus moved to strike the Post-Hearing Brief and Appendix [AP No. 90], it also admitted that this Court considering the documents would not cause

it prejudice [AP No. 92 at 2 n.2]. Thus, the Court will consider the Post-Hearing Brief and Appendix.

In its Post-Hearing Brief, ECN alleges that new facts have come to light since the Hearing showing that the Declaration of Michel Gouraurd submitted at the Hearing [Airbus Ex. A] was false in several respects, including how Airbus does business in, and has contacts with, the United States. These new allegations include that: (i) post-Hearing, Airbus consented to the personal jurisdiction of a Texas state court in a lawsuit involving Super Puma helicopters, (ii) in early March 2017, an Airbus executive attended an industry event in Dallas where Airbus showcased its helicopters, and (iii) the same executive stated in a press release that 60 Airbus helicopter orders were placed at the event, and that Airbus reported that several "VIP customers" who are Texas residents testified to their satisfaction with Airbus products and customer service. Post-Hearing Brief at 3.

First, the Court finds unpersuasive ECN's arguments that the Appendix contains evidence showing that the Declaration of Michel Gouraud was false. To the contrary, the Court found portions of the Post-Hearing Brief inaccurate, often presenting documents in the Appendix from a skewed perspective. For example, citing to a press release, ECN states: "On March 10, 2017, Mr. Faury stated that 60 Airbus helicopters orders were placed at the Heli-Expo 2017 [held in Dallas]." Post-Hearing Brief at 3. That is incorrect. What the press release says is: " 'This year's Heli-Expo has shown that 2017 is already off to a good start for our best-selling products, with orders for about 60 helicopters including the H125, H135, H145, and H175 announced at the show,' said Guillaume Faury, Airbus Helicopters CEO." Appendix Ex. G [88-7] at 2. Mr. Faury did not say that 60 orders were "placed" at the Heli-Expo, and his statement did not "directly contradict" the

other evidence in the record that Airbus sells helicopters from its place of business in France, including, most importantly, the Helicopters owned by ECN.

These types of inaccuracies aside, ECN again exclusively focuses its efforts on establishing Airbus's minimum contacts with the United States to the complete exclusion of showing a nexus between those contacts and ECN's claims. Without this nexus, specific personal jurisdiction cannot exist. Thus, as previously explained, even if every contact that ECN alleges between Airbus and the United States occurred, ECN has still failed to carry its burden of proving that specific personal jurisdiction exists over Airbus.

The Court is also unpersuaded that Airbus's decision to consent to personal jurisdiction in a Texas state court with respect to another Super Puma lawsuit shows its consent to the personal jurisdiction of the Bankruptcy Court (and, in turn, this Court) with respect to the Adversary Proceeding. Notably, neither the Debtors nor ECN is a party to the other Texas state court lawsuit, and that lawsuit is wholly unrelated to the Bankruptcy Case. The Court simply sees no relevance between a Texas state court lawsuit involving other plaintiffs and Airbus's actions in the Bankruptcy Case. To the extent that ECN raises this argument in relation to the third prong of specific personal jurisdiction (that the exercise of jurisdiction be fair and reasonable), the Court does not reach that consideration because ECN has failed to establish a nexus between its claims and Airbus's alleged contacts with the United States.

For these reasons, the Post-Hearing Brief and Appendix did not alter this Court's conclusion that it lacks personal jurisdiction over Airbus.

C. Alternatively, the Adversary Proceeding Should be Dismissed on Grounds of Forum Non Conveniens

Because the Court has concluded that it lacks personal jurisdiction over Airbus, it need not consider Airbus's request that the Adversary Proceeding be dismissed on grounds of forum non conveniens. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 504 (1947) (holding that the doctrine of forum non conveniens can never apply if there is an absence of jurisdiction). However, should an appellate court ultimately determine that this Court has both subject matter jurisdiction over the claims asserted in the Adversary Proceeding and personal jurisdiction over Airbus, the Court concludes that the Adversary Proceeding should be dismissed on the grounds of forum non conveniens.

"In all cases in which the doctrine of forum non conveniens comes into play, it presupposes at least two forums in which the defendant is amenable to process; the doctrine furnishes criteria for choice between them." *Id*. at 506–07. If a court determines that an adequate alternative forum exists, then it should consider the private interests of the litigant, including (i) the relative ease of access to proof, (ii) the availability of compulsory process for attendance of unwilling witnesses, and the cost of obtaining attendance of willing witnesses, (iii) the possibility of view of premises, if view would be appropriate to the action, and (iv) all other practical problems that make trial of a case easy, expeditious and inexpensive as well as the enforceability of the judgment. *Id.* at 508. If the private interest factors are not dispositive of the issue, the court should also consider the public interest factors, which include:

> (i) the administrative difficulties flowing from court congestion; (ii) the local interest in having localized controversies resolved at home; (iii) the interest in having the trial of a diversity case in a forum that is familiar with the law that must govern the action; (iv) the avoidance of unnecessary problems in conflicts of law, or in application of foreign law; and (v) the unfairness of burdening citizens in an unrelated forum with jury duty.

DTEX, LLC v. BBVA Bancomer, S.A., 508 F.3d 785, 794 (5th Cir. 2007).

The defendant carries the burden of persuading the court that a lawsuit should be dismissed on forum non conveniens grounds. *Id.* at 795 (citing *In re Ford Motor Co., Bridgestone/Firestone North American Tire*, 344 F.3d 648, 652 (7th Cir. 2003)). Ordinarily, a strong favorable presumption is applied to the plaintiff's choice of forum. *Id.* at 796. "[U]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *Gulf Oil Corp.*, 330 U.S. at 508. The doctrine of forum non conveniens is appropriate in the bankruptcy context. *Baumgart v. Fairchild Aircraft Corp.*, 981 F.2d 824 (5th Cir.), *cert. denied* 508 U.S. 973 (1993).

Thus, the three steps of the forum non conveniens analysis are: (i) determining if an adequate alternative forum exists, (ii) considering the relevant factors of private interest, weighing in the balance the relevant deference given the particular plaintiff's initial choice of forum, and (iii) weighing the relevant public interest factors if the private interests are either nearly in balance or do not favor dismissal. *Marnavi Splendor GMBH & Co., KG v. Alstom Power Conversions, Inc.*, 706 F.Supp.2d 749, 754 (S.D. Tex. 2010) (citing *In re Air Crash Disaster Near New Orleans, La. on July 9, 1982*, 821 F.2d 1147, 1165-66 (5th Cir. 1987) (en banc), *vacated on other grounds sub nom., Pan Am. World Airways, Inc. v. Lopez,* 490 U.S. 1032 (1989)).

The Availability of an Adequate Alternative Forum. In *DTEX*, the Fifth Circuit described the availability of an alternative forum as follows:

> A foreign forum is available when the entire case and all the parties can come within that forum's jurisdiction. *Baumgart*, 981 F.2d at 835 (quoting *In re Air Crash*, 821 F.2d at 1164). A foreign forum is adequate when the parties will not be deprived of all remedies or treated unfairly, even though they may not enjoy the all the benefits of an American court. *Id*. "The substantive law of the foreign forum is presumed to be adequate unless the plaintiff makes some showing to the contrary, or unless conditions in the foreign forum made known to the court, plainly

> demonstrate that the plaintiff is highly unlikely to obtain basic justice there." *Tjontveit v. Den Norske Bank ASA*, 997 F. Supp. 799, 805 (S.D. Tex. 1998) (citing *Empresa Lineas Maritimas v. Schichau–Unterweser*, 955 F.2d 368, 372 (5th Cir. 1992)).

508 F.3d at 796-97. While less favorable standards or a lower potential recovery do not render an alternative forum inadequate, there may exist "rare circumstances" where the remedy offered by a forum is "clearly inadequate," such as when "the alternative forum does not permit litigation of the subject matter of the dispute." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 n.22 (1981); *Gonzalez v. Chrysler Corp.*, 301 F.3d 377, 379–80 (5th Cir. 2002).

In its brief, ECN argues that:

> Airbus also suggests dismissal is appropriate because this matter has "no connection with Texas or the United States." (Airbus Br. 19.) That is patently false. As explained above, this adversary proceeding is closely related to the Bankruptcy Cases, in which both ECN Capital and Airbus are creditors—with each party's proofs of claim concerning the helicopters at issue in this lawsuit—and ECN Capital's claims are intertwined with the claims, liabilities, and property of the Debtors. Airbus also contends that the Court has no familiarity with the facts underlying ECN Capital's claims, but this again is false. From months of presiding over the proceedings in the Bankruptcy Cases, this Court has become familiar with the parties to this action; the factual circumstances giving rise to ECN Capital's claims; and the property that is the subject of, and will be affected by, this adversary proceeding. Airbus claims that none of the evidence relevant to ECN Capital's claims is in the U.S., but this is untrue—among the federal aviation authorities investigating the 2016 Crash is the U.S. Federal Aviation Authority, which issued from Fort Worth, Texas an Emergency Airworthiness Directive requiring the grounding of all EC225s and AS332 L2s in response to the 2016 Crash. Airbus also refers to issues of "comity" and the fact that certain of Airbus's contracts designate France as the governing law and chosen forum for disputes. International comity is an appropriate concern in a forum non conveniens analysis only if the movant shows that a true conflict of law exists, which Airbus has not done. Airbus's grounds for forum non conveniens dismissal are pure pretext.
>
> Airbus's real reason for wanting to escape this Court's jurisdiction and force ECN Capital to adjudicate its claims in France is clear. The government of France owns over 10% of the voting stock in Airbus's parent company, Airbus Group[.] Until recently, France held an even greater stake in Airbus Group. In 2014, France sold off a small portion of its holdings in Airbus Group. Airbus Group's Chief Executive, Thomas Enders, acknowledged that the sale was designed to reduce—

> but not eliminate—the direct influence the French government held over the company, and to help Airbus Group become a more "normal" firm….

ECN's Original Brief [AP No. 63] at 23-24. Basically, ECN argues that this Court[23] is the proper court to hear the Adversary Proceeding because (i) of the allegedly close connection between the Adversary Proceeding and the Bankruptcy Case, and (ii) Airbus's ultimate parent is partially owned by France, leaving ECN unable to receive a fair trial in France. The Court disagrees on both points, as explained below.

First, as discussed above, *see* 8-12, *supra*, the Adversary Proceeding and the Bankruptcy Case are, at the very most, tenuously related due to the potential application of issue preclusion to certain claims that certain of the Debtors *may* choose to bring against Airbus in the future (and there is no guarantee those Debtors will pursue those claims). In addition, despite ECN's allegations that the Bankruptcy Court is familiar with the parties and their claims, that is simply not true in any material respect. While the Bankruptcy 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 Bankruptcy 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. In short, the Bankruptcy Court has no special knowledge regarding the Adversary Proceeding, the parties, or the negligence and products liability claims asserted by ECN

[23] Although the parties direct their arguments towards the Bankruptcy Court, including the jurisdictional challenges and the requests to dismiss or abstain, both have acknowledged that the Bankruptcy Court cannot conduct the trial of the claims asserted in the Adversary Proceeding without the parties' consent, and such consent has not been given.

in the Complaint, and any appropriate forum could quickly become familiar with the parties and the claims by reading the Complaint.

Second, and more importantly, there is nothing in the record indicating that ECN could not receive a fair trial in France. Indeed, a number of federal cases reflect the availability and adequacy of French forums in general, and ECN has cited no cases to the contrary. *See, e.g.*, *Piper Aircraft Co.*, 454 U.S. at 252 n.18; *Gschwind v. Cessna Aircraft Co.*, 161 F.3d 602, 606–07 (10th Cir. 1998); *Magnin v. Teledyne Cont'l Motors*, 91 F.3d 1424, 1429–31 (11th Cir. 1996); *Marnavi Splendor*, 706 F.Supp.2d at 755; *In re Vioxx Prods. Liab. Litig.*, 448 F.Supp.2d 741, 746 (E.D. La. 2006). Although the Court appreciates the fact that France is a minority owner of Airbus's ultimate parent, there is nothing in the record indicating that a French court or other forum could not be impartial.

Thus, this Court concludes that France is an available and adequate alternative forum.

Balance of Private and Public Interest. A careful consideration of the private and public interest factors shows that France would be a much more convenient and proper forum for this litigation, as explained below.

First, it is undisputed that: (i) all parties to the Adversary Proceedings are foreign companies (Airbus is French and ECN is Canadian), (ii) the Helicopters were designed and manufactured by Airbus in France, (iii) Airbus initially sold the Helicopters to foreign CHC affiliates in France, (iii) ECN later purchased the Helicopters from CHC (Barbados), another foreign entity, for operation and sublease, (iv) there is no allegation that the Helicopters have ever been on American soil, and (v) the crash occurred off the coast of Norway. Thus, it appears that a very significant portion of the evidence relevant to ECN's claims against Airbus is located in France, including documents and witnesses related to the design, manufacture, and sale of the

Helicopters; statements made on Airbus's website or in its marketing materials; and Airbus's involvement with the investigation of the Norway accident and related Super Puma technical issues. *See* Airbus Ex. A (Declaration of Michel Gouraud) ¶ 3.

Second, the evidence not located in France is likely located elsewhere in Europe, where the crash occurred, or in Canada, where ECN's headquarters is located. Although documents in certain of the Debtors' possession and located in the United States may be subject to production and/or CHC representatives located in the United States may be called as witnesses, that does not outweigh the simple fact that the vast majority of witnesses and documents will be located abroad. The cost and burden of bringing evidence and witnesses from Europe (or other foreign countries) to Texas for a matter having no connection with Texas or the United States weighs heavily in favor of dismissal. *See, e.g., Camejo v. Ocean Drilling & Exploration*, 838 F.2d 1374, 1381 (5th Cir. 1988) ("Compulsory process for Brazilian witnesses is unavailable in a Texas forum. The cost of bringing Brazilian witnesses to Houston is very high. All the information regarding the Plaintiff's damages is in Brazil. The rig was and still is in Brazil. The local interest of Brazil in determining a case involving the death of one of its citizens is great; Texas courts have no comparable interest in the case."); *Automated Marine Propulsion Sys. v. Aalborg Ciserv Int'l A/S*, 859 F.Supp. 263, 268 (S.D. Tex. 1994) ("The only evidence before the Court indicates that almost all of the activities forming the basis of this lawsuit occurred in Sweden and other European countries . . . Obviously, therefore, access to these sources of proof will be much less burdensome in Sweden than in Galveston.").

Third, third party witnesses and documents located in Europe (or other foreign countries) related to the 2016 accident and subsequent groundings are outside the compulsory subpoena power of this Court. Even if discovery from such witnesses could be obtained under the Court's

auspices, such witnesses could not be compelled to attend trial in Texas, depriving the jury of the opportunity to assess their demeanor and veracity. *See, e.g.*, *Gulf Oil Corp.*, 330 U.S. at 511 ("to fix the place of trial at a point where litigants cannot compel personal attendance and may be forced to try their cases on deposition, is to create a condition not satisfactory to court, jury or most litigants"); *Seguros Comercial Americas, S.A. de C. V. v. American Pres. Lines*, 933 F.Supp. 1301, 1312 (S.D. Tex. 1996) ("conducting a substantial portion of a trial on deposition testimony…precludes the trier of fact from the important function of evaluating the credibility of witnesses").

It is likely that a French court would face far fewer of these problems. *See, e.g.*, *In re Air Crash*, 760 F.Supp.2d at 844 n.8 (finding in lawsuit against French defendants from foreign aircraft accident that "France is also the location of significant amounts of relevant damages evidence, and it will likely be easier in France to obtain damages evidence from the other Europeans in these lawsuits.") (citing European Council Regulation 1206/2001); *Magnin*, 91 F.3d at 1429-30 ("Witnesses such as the crash investigators, eyewitnesses to the crash, the owner of the aircraft, those who maintained it, and the damage witnesses, are all in France.")). In short, this Court is likely to encounter many practical problems causing the disposition of this lawsuit to be harder, slower, and more expensive in the United States than it would be in France. Thus, the Court concludes that the private interest factors clearly weigh in favor of dismissing the Adversary Proceeding so that ECN's claims can be pursued in France.

If the private interest factors weigh in favor of dismissal, the Court may end its inquiry and decline to analyze the public interest factors. *Baumgart*, 981 F.2d at 837 (explaining that a court need not consider certain public interest factors if there is an appropriate alternative forum and the private factors weigh in favor of dismissal); *see also In re Air Crash Disaster*, 821 F.2d at 1164.

Although the private interest factors, standing alone, support dismissal, an analysis of the public interest factors adds further support.

The Administrative Difficulties Flowing From Court Congestion. Neither party addresses this factor relating to congested courts and administrative difficulties. Since neither party has argued this factor in favor of one forum over the other, the Court will not consider this factor in its analysis.

Interest of the Forum in Resolving the Controversy. As previously explained, *see* 2-4, *supra*, both ECN and Airbus are foreign entities; Airbus designed, manufactured, and sold the Helicopters in France to foreign affiliates of CHC (Barbados), who later sold them to CHC (Barbados); ECN purchased the Helicopters from CHC (Barbados) and then leased them back to CHC (Barbados) for operation overseas; and the crash at issue occurred off the coast of Norway. Moreover, nothing in the record indicates that ECN's claims arose from or are in any way related to Airbus's contacts with the United States. In fact, without the Bankruptcy Case, it does not appear that ECN would have a basis to bring its lawsuit before an American court at all. Under these facts, France clearly has the superior interest in resolving this dispute. *See, e.g., Piper Aircraft*, 454 U.S. at 260 (where aircraft accident occurred in foreign country and victims were all citizens of that country, and only the aircraft manufacturer and propeller manufacturer were American citizens, foreign forum had a "very strong interest" in the case); *Baumgart*, 981 F.2d at 837 (where aircraft was designed and manufactured in Texas, but crashed in Germany, Fifth Circuit affirmed the district court's finding that Germany had a stronger interest in the case). Thus, this factor weighs in favor of dismissal.

The Interest in Having the Trial of a Diversity Case in a Forum that is Familiar with the Law that Must Govern the Action; the Avoidance of Unnecessary Problems in Conflicts of Law,

or in Application of Foreign Law. The next two factors weigh heavily in favor of a French forum resolving this conflict.

A choice of law inquiry traditionally involves a two-step process. First, the Court must determine whether federal or state choice of law rules govern. Second, once the Court has determined which choice of law rules apply, it must apply those rules to the facts of the case to determine the appropriate substantive laws that govern the dispute. In *Klaxon*, the Supreme Court of the United States held that a federal court sitting in diversity jurisdiction must apply the choice of law rules of the forum state in which it sits. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). This Court, however, has jurisdiction over the Adversary Proceeding because it is "related to" the Bankruptcy Case under 28 U.S.C. § 1334(b). Thus, the Court does not sit in diversity jurisdiction, but federal question jurisdiction, and is not bound by *Klaxon*. *See Diamond Mortg. Corp. of Ill. v. Sugar*, 913 F.2d 1233, 1244 (7th Cir. 1990) ("Since § 1334 provides federal question jurisdiction, the sovereign exercising its authority over Barron and Jeffe Attorneys is the United States, not the State of Illinois."); *Tow v. Schumann Rafizadeh (In re Cyrus II Partnership*), 413 B.R. 609 (Bankr. S.D. Tex. 2008).

Neither the United States Supreme Court nor the Fifth Circuit has ruled on whether this Court, sitting in bankruptcy jurisdiction, is required to apply federal choice of law rules or is instead to apply the choice of law rules of the forum state. This Court need not resolve this issue here, since application of both the federal choice of law rules and the Texas choice of law rules lead to an analysis of the same factors in determining which forum's substantive law should apply to ECN's claims. *See, e.g., Woods–Tucker Leasing Corp. v. Hutcheson–Ingram Dev. Co.*, 642 F.2d 744, 749 (5th Cir. 1981) ("application of an independent federal choice of law rule and of the forum state's choice of law rule would lead to the same result, and thus 'we do not determine which

road the trial court should have traveled to arrive at the common destination' ") (quoting *Fahs v. Martin*, 224 F.2d 387, 399 (5th Cir. 1955)).

The federal choice-of-law rule is the "independent judgment" test, which is a multi-factor contacts analysis that applies the law of the state with the most significant relationship to the transaction at issue. *MC Asset Recovery, LLC. v. Commerzbank AG*, 675 F.3d 530, 536 (5th Cir. 2012). Texas applies the Restatement (Second) Conflict of Laws' (the "**Restatement**") most-significant relationship test to decide choice-of-law issues. *Id.* The independent-judgment test and the most-significant-relationship test are the same. *Id.*; *see Tow*, 413 B.R. at 615.

ECN's claims for negligence and products liability sound in tort. Therefore, both Texas courts applying Texas choice-of-law rules and federal courts applying federal choice-of-law rules would look to §§ 6 and 145 of the Restatement. *MC Asset Recovery, LLC*, 675 F.3d at 537 ("[T]he Court need not resolve which choice-of-law test applies here. In either case, Sections 6 and 145 of the Restatement (Second) of Conflict of Laws…provide the appropriate analytical framework."); *Tow*, 413 B.R. at 619; *In re The Heritage Organization, LLC*, 413 B.R. at 462.

Section 6 of the Restatement sets forth several factors relevant to the choice of law analysis: (i) the needs of the interstate and international systems, (ii) the relevant policies of the forum, (iii) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue, (iv) the protection of justified expectations, (v) the basic policies underlying the particular field of law, (vi) certainty, predictability, and uniformity of result, and (vii) ease in the determination and application of the law to be applied. Restatement, § 6(2). Specifically in a tort case, § 145 of the Restatement counsels the Court to consider: (i) the place where the injury occurred, (ii) the place where the conduct causing the injury occurred, (iii) the domicile, residence, nationality, place of incorporation, and place of business of the parties,

and (iv) the place where the relationship, if any, between the parties is centered. *Id.* § 145(2). Thus, each of the factors set forth in § 145 of the Restatement is viewed in light of the more general considerations set forth in § 6 of the Restatement. When weighing the factors under § 145, "it is not the number of contacts, but the qualitative nature of those particular contacts that determines which state has the most significant relationship to the occurrence and the parties." *Asarco LLC v. Americas Mining Corp.*, 382 B.R. 49, 62 (S.D. Tex. 2007).

An application of the above factors indicates that France has the most significant relationship to the occurrence and the parties. As discussed above, Airbus is a French company with its primary place of business in France, and it designed, manufactured, and sold the Helicopters in France. On the other hand, ECN is a Canadian company with its primary place of business in Canada. It purchased the Helicopters from, and leased them back to, a foreign Debtor for sublease and operation overseas, and there is nothing in the record to indicate that the Helicopters have ever been on American soil. Indeed, ECN has failed to present any evidence (or even argument) that demonstrates a compelling connection between the Adversary Proceeding and the United States. Thus, it is highly likely that French law would apply, making a French forum the appropriate court to hear ECN's claims. Accordingly, the relevant Restatement factors weigh in favor of dismissal.

Burden on the Citizens. The final public interest factor, the interest in avoiding an unfair burden of jury duty on citizens in an unrelated forum, weighs in favor of dismissal. As explained by the Fifth Circuit, "[j]ury duty should not be imposed on the citizens of Texas in a case that is so slightly connected with this state." *DTEX*, 508 F.3d at 503 (citing cases). As previously noted, both parties to the Adversary Proceeding are foreign entities and ECN's claims do not arise from or relate to Airbus's contacts with the United States. Neither the parties nor the Adversary

Proceeding have any connection to Texas, much less one that would justify burdening its citizens with jury duty.

For the reasons explained above, the Court concludes that France is an adequate and available forum for the claims asserted in the Adversary Proceeding and both the private and public interest factors strongly support dismissal of the Adversary Proceeding for forum non conveniens. Accordingly, in the event that this Court has both subject matter jurisdiction over the claims asserted in the Adversary Proceeding and personal jurisdiction over Airbus, the motion to dismiss on grounds of forum non conveniens should be granted.

D. Alternatively, the Court Should Permissively Abstain from Hearing the Adversary Proceeding

Should the Court have both subject matter jurisdiction over the claims asserted in the Adversary Proceeding and personal jurisdiction over Airbus, and the Adversary Proceeding not be dismissed on grounds of forum non conveniens, Airbus alternatively requests that the Court permissively abstain from hearing the Adversary Proceeding. Before turning to its abstention analysis, the Court notes that both ECN and Airbus have demanded a jury trial and neither has consented to the Bankruptcy Court entering final orders in the Adversary Proceeding. Because of this, although Airbus requests that the Bankruptcy Court abstain, it is this Court that will preside over any trial in the Adversary Proceeding.[24] Accordingly, the Court interprets Airbus's request for abstention as a request that this Court, not the Bankruptcy Court, abstain.

[24] As noted previously, the Bankruptcy Court recommends that if the Motion to Dismiss is denied, the Motion to Withdraw Reference be granted and the reference of the Adversary Proceeding to the Bankruptcy Court be immediately withdrawn. *See* n.2, *supra*.

Permissive abstention is governed by 28 U.S.C. § 1334(c)(1), which states in relevant part that:

> Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

When ruling on a request to abstain, courts typically consider and balance the following factors:

> (1) the effect or lack thereof on the efficient administration of the estate if the court decides to remand or abstain; (2) the extent to which state law issues predominate over bankruptcy issues; (3) the difficult or unsettled nature of applicable law; (4) the presence of a related proceeding commenced in state court or other non-bankruptcy proceeding; (5) the jurisdictional basis, if any, other than § 1334; (6) the degree of relatedness or remoteness of the proceeding to main bankruptcy case; (7) the substance rather than the form of an asserted core proceeding; (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court; (9) the burden on the court's docket; (10) the likelihood that the commencement of the proceeding in the bankruptcy court involves forum shopping by one of parties; (11) the existence of a right to a jury trial; (12) the presence in the proceeding of non-debtor parties; (13) comity; and (14) the possibility of prejudice to other parties in the action.

In re Heritage Southwest Medical Group, P.A., 423 B.R. 809, 815-16 (Bankr. N.D. Tex. 2010) (listing factors). The Court will analyze these in turn.

The Effect or Lack Thereof on the Efficient Administration of the Estate if the Court Decides to Abstain. On March 3, 2017, the Bankruptcy Court entered an Order [BC No. 1794] confirming the Debtors' Chapter 11 plan of reorganization (the "**Plan**"). The Plan went effective on March 24, 2017 [BC No. 1851]. Although the applicable Debtors have retained their claims against Airbus under the Plan, their counsel has stated on the record that they do not intend to bring those claims in the Bankruptcy Court, if they bring the claims at all. Thus, it appears that abstaining from hearing the Adversary Proceeding will have no effect on the efficient

administration of the bankruptcy estates, as the Bankruptcy Case is essentially concluded. This factor weighs in favor of abstention.

The Extent to which State Law Issues Predominate Over Bankruptcy Issues. The Adversary Proceeding, which is comprised of negligence and products liability claims, does not implicate any bankruptcy laws or issues. Thus, this factor also weighs in favor of abstention.

The Difficult or Unsettled Nature of Applicable Law. Because the Adversary Proceeding is in its infancy, the Court is unaware of whether any of the negligence and products liability issues are particularly difficult or involve an unsettled application of law. To the extent that foreign law will govern the Adversary Proceeding, that will be a novel issue but not one that is necessarily difficult or that this Court is incapable of handling. Thus, the Court finds that this factor is either neutral or weighs slightly in favor of abstention.

The Presence of a Related Proceeding Commenced in State Court or Other Non-Bankruptcy Proceeding. There is no related proceeding pending in another forum, making this factor inapplicable.

The Jurisdictional Basis, if any, Other than § 1334. There is no jurisdictional basis other than 28 U.S.C. § 1334, and this Court's jurisdiction over the Adversary Proceeding is based solely on "related to" jurisdiction. Because (i) the Adversary Proceeding is before this Court only as a result of the Bankruptcy Case and its "conceivable" effect on the bankruptcy estates, and (ii) neither of the parties to the Adversary Proceeding is a debtor, this factor also weighs in favor of abstention.

The Degree of Relatedness or Remoteness of the Proceeding to the Main Bankruptcy Case. The Adversary Proceeding is not related in any meaningful way to the Bankruptcy Case. Although certain of the Debtors may hold similar claims against Airbus, they have not asserted those claims

and it is highly unlikely they will do so in the Bankruptcy Court, if they choose to assert them at all. Moreover, the Debtors did not file bankruptcy to address claims related to the 2016 crash. As reflected in the Plan, the Debtors had an enormous debt load they were unable to manage. Under the Plan, which has gone effective, much of that debt has been converted to equity, paving the way for the reorganized Debtors' operations. Thus, other than the potential application of issue preclusion to any negligence and/or products liability claims that certain of the reorganized Debtors may later choose to bring against Airbus, the Adversary Proceeding has, at best, a very remote connection to the Bankruptcy Case. Thus, this factor weighs in favor of abstention.

The Substance Rather than the Form of an Asserted Core Proceeding. The parties both agree that the asserted claims are non-core, making this factor inapplicable.

The Feasibility of Severing State Law Claims from Core Bankruptcy Matters to Allow Judgments to be Entered in State Court with Enforcement Left to the Bankruptcy Court. There are no core bankruptcy matters to sever from the Adversary Proceeding. Instead, the Adversary Proceeding is comprised of negligence and products liability claims that the Court determined can be more properly adjudicated in another court. Thus, this factor weighs in favor of abstention.

The Burden on the Court's Docket. Because the Bankruptcy Court lacks the ability to both hold the demanded jury trial and enter a final order in this non-core proceeding, it is this Court's docket that is the relevant inquiry. Although the Adversary Proceeding is certainly something this Court is capable of handling, its dockets are relatively full and the addition of this case would be an unnecessary burden, particularly given the very tenuous relationship between the Adversary Proceeding and the Bankruptcy Case. Thus, this factor also weighs in favor of abstention.

The Likelihood that the Commencement of the Proceeding in the Bankruptcy Court Involves Forum Shopping by One of the Parties. Although ECN argues that Airbus is forum

shopping in its attempt to avoid the Bankruptcy Court's jurisdiction, 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 entities, 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. Thus, this factor weighs in favor of abstention.

The Existence of a Right to a Jury Trial. Both parties have demanded a jury trial and have not consented to the Bankruptcy Court holding that trial. However, it is this Court that would hold such a trial, mooting the need for the parties' consent. This factor is neutral.

The Presence in the Proceeding of Non-Debtor Parties. All parties to the Adversary Proceeding are non-debtors. This factor favors abstention.

Comity. As discussed above, *see* 31-37, *supra*, it is likely that French law will apply to the claims asserted in the Adversary Proceeding and that France has the most vested interested in determining those claims. Thus, comity also weighs in favor of abstention.

The Possibility of Prejudice to Other Parties in the Action. There are no other parties to the Adversary Proceeding, making this factor inapplicable.

Overall, not a single abstention factor weighs in favor of this Court hearing the claims asserted in the Adversary Proceeding. Accordingly, and in the alternative, this Court concludes that it should permissively abstain from hearing those claims.

III. CONCLUSION

For the reasons explained above, this Court concludes that:

- Although this Court has subject matter jurisdiction over the claims asserted in the Adversary Proceeding, it lacks personal jurisdiction over Airbus. Accordingly, the Motion to Dismiss for lack of personal jurisdiction must be granted.

- Alternatively, if both subject matter jurisdiction over the claims asserted in the Adversary Proceeding and personal jurisdiction over Airbus exist, this Court is not the proper forum to hear those claims, and the Motion to Dismiss should be granted on the grounds of forum non conveniens.

- Further in the alternative, if both subject matter jurisdiction over the claims asserted in the Adversary Proceeding and personal jurisdiction over Airbus exist, this Court should permissively abstain from hearing those claims.

An Order consistent with these findings and conclusions will be entered separately.

 # # # END OF FINDINGS OF FACT AND CONCLUSIONS OF LAW # # #

Exhibit E

(o) Related Information

(1) For more information about this AD, contact Galib Abumeri, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5324; fax: 562–627–5210; email: *galib.abumeri@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(5) and (p)(6) of this AD.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on August 9, 2016.

(i) Boeing Alert Service Bulletin 737–57A1296, Revision 2, dated April 1, 2015.

(ii) Reserved.

(4) The following service information was approved for IBR on April 8, 2008 (73 FR 11538, March 4, 2008).

(i) Boeing Service Bulletin 737–57–1296, dated June 13, 2007.

(ii) Reserved.

(5) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on June 21, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–15355 Filed 7–1–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8032; Directorate Identifier 2016–SW–037–AD; Amendment 39–18578; AD 2016–12–51]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are publishing a new airworthiness directive (AD) for Airbus Helicopters Model AS332L2 and Model EC225LP helicopters, which was sent previously to all known U.S. owners and operators of these helicopters. This AD immediately prohibits flight of all Model AS332L2 and EC225LP helicopters. This AD is prompted by an accident involving an EC225LP helicopter in which the main rotor hub (MRH) detached from the main gearbox (MGB). These actions are intended to prevent failure of the main rotor system and subsequent loss of control of the helicopter.

DATES: This AD becomes effective July 20, 2016 to all persons except those persons to whom it was made immediately effective by Emergency AD 2016–12–51, issued on June 3, 2016, which contains the requirements of this AD.

We must receive comments on this AD by September 6, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8032; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110, email *gary.b.roach@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

On June 3, 2016, we issued Emergency AD 2016–12–51 to correct an unsafe condition for Model AS332L2 and EC225LP helicopters. Emergency AD 2016–12–51 immediately prohibits further flight of Model AS332L2 and EC225LP helicopters. The emergency AD was sent previously to all known U.S. owners and operators of these helicopters.

Emergency AD 2016–12–51 was prompted by Emergency AD No. 2016–0104–E, dated June 2, 2016, issued by EASA, which is the Technical Agent for the Member States of the European

Union, to correct an unsafe condition for Airbus Helicopters Model EC 225 LP helicopters. Following a fatal accident in Norway in which the MRH detached from the MGB in-flight, EASA issued Emergency AD No. 2016–0089–E, dated May 3, 2016, to require a one-time inspection of the MGB and to report findings to EASA and Airbus Helicopters. Review of the findings from the inspections prompted Airbus Helicopters to provide further inspections and replacement instructions for correctly installing the MGB suspension bars and attachment fittings. EASA subsequently issued Emergency AD No. 2016–0103–E, dated June 1, 2016, which superseded Emergency AD No. 2016–0089–E, and required inspecting the MGB suspension bar fittings and related base plate assemblies and replacing the attachment hardware. Soon after Emergency AD No. 2016–0103–E was issued, a preliminary report from the Accident Investigation Board Norway indicated metallurgical findings of fatigue and surface degradation in the outer race of a second stage planet gear of the MGB epi-cyclic module. EASA advises that it could not be determined if the fatigue and surface degradation is a contributing factor or if it resulted from another initiating factor. Therefore, pending further investigation to determine the root cause of the reported damage and pending development of mitigating measures by Airbus Helicopters, EASA decided to temporarily ground the fleet as a precautionary measure and issued Emergency AD No. 2016–0104–E on June 2, 2016. EASA included Model AS 332 L2 helicopters to the applicability due to similarities in design that make it subject to the same unsafe condition.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

AD Requirements

This AD immediately prohibits flight of all Airbus Helicopters Model AS332L2 and EC225LP helicopters.

Interim Action

We consider this AD to be an interim action. Once the design approval holder develops a modification that addresses the unsafe condition identified in this AD, we might consider additional rulemaking.

Costs of Compliance

We estimate that this AD affects five helicopters of U.S. Registry. There are no costs of compliance with this AD because there are no required maintenance actions.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to address this known unsafe condition. Therefore, we find the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the previously described unsafe condition can adversely affect the airworthiness of the helicopter and the prohibition of all flights must begin immediately.

Since it was found that immediate action was required, notice and opportunity for prior public comment before issuing this AD were impracticable and contrary to the public interest and good cause existed for making Emergency AD 2016–12–51 effective immediately on June 3, 2016, to all known U.S. operators of the specified Airbus helicopters. These conditions still exist and the Emergency AD is hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–12–51 Airbus Helicopters: Amendment 39–18578; Docket No. FAA–2016–8032; Directorate Identifier 2016–SW–037–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model AS332L2 and Model EC225LP helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of the main rotor system, which will result in loss of control of the helicopter.

(c) Effective Date

This AD becomes effective July 20, 2016 to all persons except those persons to whom it was made immediately effective by Emergency AD 2016–12–51 issued on June 3,

2016, which contains the requirements of this AD.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Action

Further flight is prohibited.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) Emergency AD 2016–0104–E, dated June 2, 2016. You may view the EASA AD on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2016–8032.

(h) Subject

Joint Aircraft Service Component (JASC) Code: Main Rotor Gearbox: 6320.

Issued in Fort Worth, Texas, on June 23, 2016.

James A. Grigg,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–15624 Filed 7–1–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7422; Directorate Identifier 2016–NM–079–AD; Amendment 39–18579; AD 2016–13–14]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This AD requires an inspection to determine if certain left and right main landing gear (MLG) retract actuator rod ends are installed and repetitive liquid penetrant inspections (LPIs) of affected left and right MLG retract actuator rod ends, and corrective actions if necessary. This AD also provides optional terminating action for the inspections. This AD was prompted by a report of cracked MLG retract actuator rod ends. We are issuing this AD to detect and correct fatigue cracking of the left and right MLG retract actuator rod ends, which could lead to left or right MLG collapse.

DATES: This AD becomes effective July 20, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 20, 2016.

We must receive comments on this AD by August 19, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone: 416–375–4000; fax: 416–375–4539; email: *thd.qseries@aero.bombardier.com;* Internet: *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7422.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7422; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7329; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2016–16, dated May 20, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model DHC–8–400 series airplanes. The MCAI states:

> There has been a single reported case of a cracked MLG retract actuator rod end in service. A supplier disclosure letter and subsequent Bombardier analysis indicate that the MLG retract actuator rod end P/N [part number] P3A2750 and P3A2750–1 may develop fatigue cracking. This condition, if not corrected, could lead to left hand (LH) or right hand (RH) MLG collapse.
>
> This [Canadian] AD mandates the inspection [to determine if certain left and right main landing gear MLG retract actuator rod ends are installed, repetitive LPIs of affected left and right MLG retract actuator rod ends, and corrective actions if necessary], and replacement of the LH and RH MLG retract actuator rod ends P/N P3A2750 and P3A2750–1 [which is terminating action for the repetitive LPIs].

Corrective actions includes replacing cracked MLG retract actuator rod ends. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7422.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc. has issued Service Bulletin 84–32–142, dated May 4, 2016. The service information describes procedures for an inspection to determine if certain left and right MLG retract actuator rod ends are installed, repetitive LPIs of the left and right MLG retract actuator rod ends, and replacement of left and right MLG

Exhibit F

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COUNSEL FOR PLAINTIFF ECN CAPITAL (AVIATION) CORP.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

ECN CAPITAL (AVIATION) CORP., Plaintiff, v. AIRBUS HELICOPTER (SAS) Defendant.	Case No. 3:17-cv-00075-C **Plaintiff's Opposition To Defendant's Motion for Withdrawal of Reference**

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TO THE HONORABLE SAM R. CUMMINGS, DISTRICT COURT JUDGE:

Plaintiff ECN Capital (Aviation) Corp. (f/k/a Element Capital Corp.) ("ECN Capital"), by and through its undersigned counsel, hereby files this opposition to *Defendant Airbus Helicopters S.A.S.'s* ("Airbus") *Motion for Withdrawal of Reference of Adversary Proceeding, and Brief in Support* [Docket No. 23] (the "Withdrawal Motion"), and respectfully would show the Court as follows:

INTRODUCTION

The Withdrawal Motion is Airbus's first step towards achieving its ultimate goal—avoiding the Bankruptcy Court's lawful jurisdiction and attempting to force ECN Capital to litigate its claims in France. Airbus seeks to move ECN Capital's adversary proceeding away from the Bankruptcy Court, which is familiar with the parties and relevant facts regarding the April 2016 Airbus helicopter crash, in the hope that the District Court will be more inclined to transfer ECN Capital's claims to Airbus's forum of choice. But Airbus's brazen attempt at forum shopping is based on mischaracterizations and meritless arguments.

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").[1] The adversary proceeding thus is closely

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the MTD Opposition.

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. And it is true that the parties at this time request a jury trial, but interests of efficiency still weigh heavily in favor of the Bankruptcy Court managing the pre-trial proceedings—especially considering that the Debtors may file *in this Bankruptcy Court* similar product liability claims against Airbus, arising from the same set of facts on which ECN Capital's claims are based. Finally, that Airbus would prefer to defend against this litigation in France is of no moment because the other withdrawal factors weigh strongly in favor of keeping this proceeding in the Bankruptcy Court. Accordingly, for the reasons set forth herein, Airbus's Withdrawal Motion should be denied.

BACKGROUND

ECN Capital's claims arise out of the April 2016 crash of an Airbus-manufactured EC225 helicopter operated by an affiliate of CHC Group Ltd. (together with its affiliated debtors,

the "Debtors"), the investigations and groundings resulting therefrom, and the subsequent chapter 11 cases filed by the Debtors, in which both ECN Capital and Airbus are creditors. The facts underlying ECN Capital's claims are set forth in the *Complaint by ECN Capital (Aviation) Corp. against Airbus Helicopters (SAS)* [Docket. No. 1] (the "Complaint") and the MTD Opposition. ECN Capital sets forth here the salient facts relating to the Withdrawal Motion.

The Parties to the Adversary Proceeding

ECN Capital, an Ontario corporation, is a commercial financing business with headquarters in Toronto, Canada. (¶ 5.)[2] With its principal place of operations in North America, ECN Capital serves customers in the transportation and energy sectors throughout Canada and the United States, including in Texas. (*Id.*)

Airbus is organized under the laws of France with its principal place of business in Marignane, France. (¶ 6.) Airbus designs, manufactures, markets, and sells aircraft, including two models of utility helicopters sold under the name "Super Puma"—the Eurocopter EC225 ("EC225") and the Eurocopter AS332 L2 ("AS332 L2"). (¶ 1.) Airbus markets EC225 and AS332 L2 helicopters for distribution and services for operation around the world and throughout the United States, including in Texas. (¶ 6.) Airbus is primarily owned by its parent company, Airbus Group, S.E. ("Airbus Group").[3] France has a significant ownership interest in Airbus Group, holding over 10% of its voting stock.[4] Airbus Group is the direct parent company of Airbus Group, Inc., a Delaware corporation headquartered in Virginia, which is the direct parent of Airbus Helicopters, Inc. ("AHI"), a Delaware corporation headquartered in Texas.[5]

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[2] All references herein to "¶ __" are to the Complaint. All references herein to "Ex. __" are to the Declaration of Pietro J. Signoracci in Support of the MTD Opposition dated January 27, 2017 [Docket No. 64].

[3] *See* Ex. A (Airbus Helicopters SAS: Private Company Information).

[4] *See* Ex. B (Airbus Group Registration Document 2015) p. 7.

[5] *See* Ex. C (Airbus Group Inc. Corporate Tree).

Airbus sells and delivers EC225 and AS332 L2 helicopters to AHI for sale, delivery, and operation in the United States, including in Texas.[6]

2016 Crash and Grounding

On April 29, 2016, an EC225 crashed near Turøy, Norway, killing all 13 individuals on board (the "2016 Crash"). (¶ 1.) Preliminary investigative reports from the 2016 Crash identified unsafe conditions in the design of the main gear box of AS332 L2s and EC225s, which connects to the helicopter frame the main rotor head that is attached to the main rotor blades. (¶¶ 3, 17–21.) The 2016 Crash and related investigations led various civil aviation authorities to issue regulations and directives that caused a total grounding of all AS332 L2s and EC225s (the "2016 Grounding"). (¶¶ 3, 17–25.)

CHC Bankruptcy

Approximately one week after the 2016 Crash, on May 5, 2016, CHC and certain of its affiliates (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, jointly administered in the Bankruptcy Court under the caption *In re CHC Group Ltd., et al.*, No. 16-31854 (BJH) (the "Bankruptcy Cases"). (¶ 37.)

ECN Capital, a creditor in the Bankruptcy Cases, filed five separate proofs of claim against certain of the Debtors seeking a total of over $94 million from each such Debtor. (¶ 42.) These claims relate to the rejection by certain Debtors of outstanding leases between those Debtors and ECN Capital, including leases of four AS332 L2s and one EC225 owned by ECN Capital, which were subject to the 2016 Grounding. (*Id.*; *see also* ¶¶ 4, 34.)

In May 2016, the United States Trustee appointed Airbus to the Official Committee of Unsecured Creditors (the "Creditors' Committee"), care of Kevin Cabaniss in

[6] *See* Ex. O (Special Appearance [*Era Group Inc.* v. *Airbus Helicopters Inc., et al.*, DC-16-15017 (Tex. Dist. Ct., filed Nov. 21, 2016) Dkt. No. 20]) at 4).

Grand Prairie, TX. (¶ 11.) In June 2016, Airbus's United States counsel filed notices of appearance in the Bankruptcy Cases on behalf of Airbus. (¶ 40.) In August 2016, Airbus filed proofs of claim in the Bankruptcy Cases against certain of the Debtors seeking a total of over $6.2 million for claims relating to EC225s and AS332 L2s owned, leased, and/or operated by CHC. (*Id.*) Airbus also filed briefing in connection with discovery motions in the Bankruptcy Cases. (*Id.*)

The Debtors owned, leased, and/or operated dozens of EC225s and AS332 L2s affected by the 2016 Crash and the 2016 Grounding, causing substantial harm to the Debtors' operations and restructuring.[7] The Debtors have explained that they suffered harm as a result. At a May 6, 2016 hearing in the Bankruptcy Cases, counsel for the Debtors stated: "[The EC225] has been temporarily grounded in certain jurisdictions and that has had an impact on our fleet reconfiguration, which is central to our restructuring."[8] The Chief Restructuring Officer of CHC stated at the same hearing that a halt on flight of EC225s "could have a major difference on the aircraft values" of the Debtors' fleet.[9] In its 2016 Form 10-K filing with the Securities and Exchange Commission, CHC stated:

- "A significant portion of our property and equipment, funded residual value guarantees and related assets is tied to the aircraft type H225." (Ex. I at p. 9.)
- "We have also suffered costs due to . . . [the April 2016] accident . . . ." (*Id.* at p. 3.)
- "[The 2016 Grounding] will adversely impact our business, financial condition and results of operations . . . . We may lose revenue . . . due [to] the [2016 Grounding]." (*Id.* at p. 6.)

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[7] ¶¶ 41, 43. The Debtors owned or leased at least 51 EC225s or AS332 L2s after the 2016 Grounding commenced. *See* Ex. D (Debtors' First Omnibus Motion [Dkt. No. 20]); Ex. E (Debtors' Second Omnibus Motion [Dkt. No. 210]); Ex. F (Debtors' Third Omnibus Motion [Dkt. No. 250]); Ex. G (Debtors' Omnibus Motion [Dkt. No. 275]). The original purchase price of these 51 helicopters likely exceeded $1 billion.

[8] *See* Ex. H (Excerpt of Tr. of 5/6/2016 H'r'g [Dkt. No. 105]) 17:25–18:3.

[9] *Id.*

On December 19, 2016, the Debtors filed a second amended reorganization plan (the "Plan") and a related disclosure statement (the "Disclosure Statement"). In the Disclosure Statement, the Debtors expressly stated that neither the Disclosure Statement nor the Plan:

> attempts to alter any rights or claims (whatever such rights or claims may be) that any debtor, creditor, lessor, or third party may have against any OEM (original equipment manufacturer) of any helicopter or helicopter component arising out of accidents involving the "EC 225" and "AS 332 L2" helicopter types and resulting regulatory actions, including, without limitation, the April 29, 2016 EC 225 helicopter type accident near the Flesland Airport in Bergen, Norway and resulting regulatory suspension of flight operations.[10]

On January 24, 2017, the Debtors filed a motion for an order authorizing the Debtors to settle certain claims between the Debtors and Airbus. The proposed settlement similarly reserves the Debtors' claims against Airbus arising out of the 2016 Crash and the 2016 Grounding.[11]

ECN Capital's Complaint

The Complaint asserts, among other things, claims against Airbus for defective design and breach of implied warranty of merchantability regarding Airbus's manufacturing, marketing, and sale of the EC225 and the AS332 L2. (*See* ¶¶ 46–111.) The Complaint includes uncontroverted allegations demonstrating that ECN Capital's claims would likely have an impact on the rights, liabilities, and/or property of the Debtors' estates (and, at the very least, "could conceivably have an effect" on the Debtors' estates), and thus are related to the Bankruptcy Cases. (*See, e.g.*, ¶¶ 8, 43.) The Complaint also includes uncontroverted allegations demonstrating the Bankruptcy Court's personal jurisdiction over Airbus. (*See, e.g.*, ¶¶ 11, 40.)

Related Actions Against Airbus and Its Affiliates

Other owners of EC225s filed similar claims against Airbus and/or its affiliates in Texas state court. (¶ 11.) On July 28, 2016, Wells Fargo filed breach of warranty and contract

[10] *See* Ex. J (Disclosure Statement [Dkt. No. 1379]) p. 39.
[11] *See* Ex. K (Motion for Order [Dkt. No. 1536]) p. 37 § 8(g).

claims against AHI regarding three EC225s Wells Fargo purchased from AHI.[12] On November 21, 2016, Era Group Inc. ("Era") filed breach of express and implied warranty claims against AHI and Airbus regarding ten EC225s Era purchased from AHI (the "Era Complaint").[13] Like ECN Capital's Complaint, the Wells Fargo Complaint and the Era Complaint state claims for, among other things, damages suffered by the plaintiffs relating to the 2016 Grounding. Further, as part of its proposed settlement with Airbus and the jurisdiction retention provision under the Plan, the Debtors have expressly reserved the right to bring suit against Airbus in this bankruptcy forum for claims similar to those that ECN Capital has brought against Airbus.[14]

ARGUMENT

Airbus fails to meet the burden it bears for demonstrating that cause exists to withdraw the reference from the Bankruptcy Court. *See* 28 U.S.C. § 157(d) (requiring a showing of "cause" for permissive withdrawal of the reference); *Holland America Ins. Co.* v. *Roy*, 777 F.2d 992, 998 (5th Cir. 1985) (stating that the movant bears the burden of establishing a "sound, articulated foundation" for permissive withdrawal). In determining whether cause exists to withdraw the reference, courts in the Fifth Circuit generally consider whether: (1) withdrawal will promote uniformity in bankruptcy administration and economical use of estate resources, and will expedite the bankruptcy process; (2) the underlying claims are core or non-core; (3) a party has demanded a jury trial; and (4) forum shopping and confusion will be reduced. *See Holland*, 777 F.2d at 999; *see also Mirant Corp.* v. *Southern Co.*, 337 B.R. 107, 115 (N.D. Tex.

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12 *See* Ex. L (Wells Fargo Complaint [*Wells Fargo Bank Northwest N.A.* v. *Airbus Helicopters Inc.*, DC-16-09090 (Tex. Dist. Ct., filed Jul. 28, 2016) Dkt. No. 2]).

13 *See* Ex. M (Era Complaint [*Era Group Inc.* v. *Airbus Helicopters Inc., et al.*, DC-16-15017 (Tex. Dist. Ct., filed Nov. 21, 2016) Dkt. No. 2]).

14 *See* Ex. K (Airbus Restructuring Motion) at 37; Ex. N (Second Amended Joint Chapter 11 Plan [Docket No. 1371]) at § 11.1.

2006). These factors, on balance, weigh heavily in favor of denying Airbus's Withdrawal Motion.

I. Judicial Economy Would Best Be Served by the Bankruptcy Court Overseeing Pre-Trial Proceedings

Efficiency is a "critical factor" in the withdrawal analysis. *City Bank* v. *Compass Bank*, 2011 WL 5442092, at *5 (W.D. Tex. Nov. 9, 2011). Where, as here, the Bankruptcy Court has institutional knowledge with respect to the parties involved in the action, the events giving rise to the underlying claims, and the products that are the subject of the claims, efficiency considerations mandate that the adversary proceeding remain with the Bankruptcy Court. *See, e.g.*, *Barry* v. *Santander Bank, N.A.* (*In re Liberty State Benefits of Delaware, Inc.*), 2015 WL 1137591, at *3 (D. Del. Mar. 12, 2015) (holding that bankruptcy court should maintain the reference because it had more knowledge of the relevant facts of the case and was "clearly more informed about the underlying facts and issues" than district court); *City Bank* v. *Compass Bank*, 2011 WL 5442092, at *4 (W.D. Tex. Nov. 9, 2011) (declining to withdraw reference as to non-core claims where bankruptcy court was familiar with the facts of the case and, thus, in the best position to monitor discovery and narrow issues to be resolved trial); *Enron Power Mktg., Inc.* v. *Va. Elec. & Power Co.* (*In re Enron Corp.*), 318 B.R. 273, 275 (S.D.N.Y. 2004) (declining to withdraw the reference because bankruptcy court was in superior position to manage complex pretrial proceedings, had extensive familiarity with contracts of the type at issue and the facts and circumstances concerning the events leading to the debtor's bankruptcy filing).

Airbus argues that concerns of judicial economy warrant withdrawal because this matter has "no United States connection." (Withdrawal Mot. 9.) However, many of the events giving rise to ECN Capital's claims (and its grounds for jurisdiction) occurred in the United States, meaning that some of the critical evidence ECN Capital will present in support of its

claims is in the United States. For example, the United States Federal Aviation Authority is among the federal aviation authorities investigating the 2016 Crash, and it issued from Fort Worth, Texas an Emergency Airworthiness Directive requiring the grounding of all EC225s and AS332 L2s in response to the 2016 Crash.[15] And Airbus's argument completely ignores that the claims in this adversary proceeding are closely connected to the Bankruptcy Cases pending in the Bankruptcy Court. As explained in the MTD Opposition, ECN Capital's claims arise from the accident that triggered the Debtors' chapter 11 filing and the grounding of the Airbus-manufactured helicopters that once formed the backbone of the Debtors' business. (*See* MTD Opp. 10–11.) More importantly, and also as explained in the MTD Opposition, ECN Capital's claims have the potential to provide the Debtors' stakeholders with a major windfall if the reorganized Debtors (or a litigation trust) rely on ECN Capital's action to bring their own successful claims against Airbus. *Id.* Any recovery from such causes of action will accrue to the benefit of the Debtors' creditors by virtue of their new equity interests in the reorganized Debtors (or, if a litigation trust is established, the proceeds of any recovery would directly benefit the Debtors' creditors). Moreover, it was the Debtors that sold the Super Pumas to ECN Capital, and it was the Debtors that rejected the leases in the Bankruptcy Cases that caused the damages to ECN Capital that are the subject of ECN Capital's proofs of claim in the Bankruptcy Cases. As such, ECN Capital's claims in this adversary proceeding are "related to" the Bankruptcy Cases, and judicial economy thus will be served by the Bankruptcy Court retaining the reference.

Airbus also argues that withdrawal would be in the interest of judicial economy simply because the parties are non-debtors. But Airbus and ECN Capital are no strangers to the Bankruptcy Court. Both parties filed proofs of claim in the Bankruptcy Cases and participated in motion practice with respect to ECN Capital's motion requesting discovery from the Debtors.

[15] *See* Ex. Q (June 3, 2016 FAA Airworthiness Directive).

And the Bankruptcy Court also has substantial familiarity with the events that gave rise to the Debtors' chapter 11 filings, including the 2016 Crash and the 2016 Grounding, which form the basis of ECN Capital's Complaint. The Debtors owned, leased and/or operated dozens of EC225 and AS332 L2 helicopters that were affected by the 2016 Crash and the 2016 Grounding, which, as the Debtors acknowledged at the first-day hearing and in SEC filings, caused substantial harm to their operations. Moreover, Airbus actively participated in the Bankruptcy Cases as a member of the Creditors' Committee. Because the Bankruptcy Court is more familiar with the facts and circumstances surrounding ECN Capital's claims than the District Court, withdrawal of the reference would only cause additional expense and delay.

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.[16] 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.[17] 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

[16] *See* Ex. K (Motion for Order [Dkt. No. 1536]) at 37.
[17] *See* Ex. N (Second Amended Joint Chapter 11 Plan [Docket No. 1371]) at § 11.1.

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

Allowing the Bankruptcy Court to oversee pre-trial matters will also promote efficiency considerations given the potential importance of ECN Capital's claims to the Debtors' estates. As discussed herein and in the MTD Opposition, ECN Capital's claims could pave the way for an action against Airbus by the reorganized Debtors or a litigation trust, and any recovery therefrom would either indirectly (via equity interests in the reorganized Debtors) or directly (via stakes in a litigation trust) benefit the Debtors' stakeholders. Thus, the Bankruptcy Court has an interest in quickly and efficiently resolving the present dispute between ECN Capital and Airbus so that any potential recovery for the Debtors' creditors is realized as soon as possible.

II. The District Court Should Not Withdraw the Reference Even Though ECN Capital's Claims Are Non-Core

ECN Capital does not dispute that its claims against Airbus are non-core. Nevertheless, the fact that such claims are non-core is insufficient to justify withdrawal of the reference. *See, e.g.*, *In re Liberty State Benefits of Delaware*, 2015 WL 1137591, at *3 (holding that cause did not exist to withdraw reference as to non-core claims because bankruptcy court could serve in a role similar to that of a magistrate for pre-trial issues and was more informed about underlying facts and issues in the case than district court); *Lehman Bros. Holdings Inc.* v. *JPMorgan Chase Bank, N.A.* (*In re Lehman Bros. Holdings Inc.*), 480 B.R. 179, 195 (S.D.N.Y. 2012) (concluding that bankruptcy court could issue report and recommendation and need not decide whether claims at issue were core or non-core as it was not "dispositive"); *City Bank*, 2011 WL 5442092, at *4, *6 (declining to withdraw reference as to non-core claims given weight of efficiency and forum shopping factors); *Morrison* v. *Amway Corp.* (*In re Morrison*),

409 B.R. 384, 389 (S.D. Tex. 2009) (noting that the "non-core" factor, while important, is "not alone determinative").

In *Morrison*, the court declined to withdraw the reference with respect to an adversary proceeding that presented solely non-core claims (and hypothetical core claims) because a portion of the recovery would benefit some of debtors' estates and, thus, "could conceivably affect" such estates. 409 B.R. at 396. *Morrison* emphasized that, "if Congress intended for all non-core matters to be heard by district courts, then it would have stripped bankruptcy courts of all jurisdiction over non-core matters." *Id.* Instead, "Congress expressly authorized bankruptcy courts to resolve 'related to' non-core matters." *Id.* (noting that a finding of "cause" for withdrawal based solely on inefficiency of having a bankruptcy court issue a report and recommendation "would be inconsistent with Congressional intent").

The claims presented in the Complaint, like the non-core claims in *Morrison*, could "conceivably affect" the Debtors' estates by enhancing the reorganized Debtors' enterprise value for the benefit of their creditors who will own substantially all of the Debtors' post-emergence equity (or by creating a pool of recovery for the benefit of a litigation trust) or reducing the Debtors' liability on proofs of claim. If any of ECN Capital's claims against Airbus are successful, the reorganized Debtors (or a litigation trust or similar structure established for the benefit of creditors) could rely on collateral estoppel to recover from Airbus for similar causes of action. Such recovery would yield indirect economic benefits for the Debtors' creditors by virtue of their new membership interests in the reorganized Debtors, or direct economic benefits if the Bankruptcy Court requires that the Debtors establish a litigation trust or similar structure. The outcome of ECN Capital's litigation could also reduce the Debtors' liability to those creditors who rely on collateral estoppel to bring their own successful actions

against Airbus. Thus, ECN Capital's claims could impact the Debtors' estates, and the Bankruptcy Court has an interest in presiding over this adversary proceeding.

III. Although ECN Capital and Airbus Have Each Demanded a Jury Trial at This Time, the Bankruptcy Court Should Manage Pre-Trial Proceedings

Airbus argues that the reference should be withdrawn simply because the parties have demanded a jury trial and Airbus does not consent to a jury trial before the Bankruptcy Court. (Withdrawal Mot. 7.) Even if a party has demanded a jury trial, however, district courts often decline to withdraw the reference where the bankruptcy court is better positioned to conduct pre-trial matters. *See, e.g.*, *DeBaillon* v. *Goldking Capital Mgmt. LLC*, 2015 WL 3791536, at *4 (W.D. La. June 17, 2015) ("[D]emand does not mandate *immediate* withdrawal of a reference to bankruptcy court, as judicial economy may be better served by the bankruptcy court resolving pretrial matters."); *Levine* v. *M & A Custom Home Builder & Developer, LLC*, 400 B.R. 200, 206–07 (S.D. Tex. 2008) (declining to withdraw the reference where party demanded a jury trial because "[a] right to a jury trial does not arise until jury issues are presented" and noting that "a party can not use the jury right as a tool for forum shopping"). Courts reason that, during the early stages of a proceeding, efficiency concerns outweigh a jury trial request because the claims at issue "may be resolved before the matter is ripe for a trial before a jury." *In re Lehman Bros.*, 480 B.R. at 194 (quoting *In re Arbco Capital Mgmt.*, 479 B.R. 254, 267 (S.D.N.Y. 2012)). Moreover, in the context of abstention, courts have held that a party, like Airbus, should not be rewarded for its refusal to consent to a jury trial before the bankruptcy court in furtherance of its attempt to avoid the bankruptcy court's jurisdiction. *In re Schlotzky's, Inc.*, 351 B.R. 430, 437 (Bankr. W.D. Tex. 2006) ("Nor ought we to institute a rule of decision that in effect rewards the party seeking abstention if that party insists on being as obstructionist as possible by refusing to consent either to the entry of final judgment by the

bankruptcy judge or the conduct of a jury trial by that court."). The same holds true here, in the context of Airbus's Withdrawal Motion, by which Airbus seeks to avoid the Bankruptcy Court's lawful jurisdiction.

As explained above, the Bankruptcy Court is in the best position to conduct pre-trial matters relating to ECN Capital's claims, and likely will preside over any claims the Debtors file against Airbus arising out of the same set of facts that underlies ECN Capital's claims. Accordingly, immediate withdrawal of the reference should not be permitted. If, following dispositive motions and the conclusion of pre-trial proceedings, ECN Capital's claims still have not been resolved, and if Airbus continues to withhold its consent to have a jury trial before the Bankruptcy Court, ECN Capital's claims can be transferred to the District Court at such time.[18] Transferring ECN Capital's claims today, however, would only cause further cost and delay given the time it would take the District Court to gain the knowledge that the Bankruptcy Court already has with respect to the facts underlying ECN Capital's claims.

IV. Airbus's Forum Shopping Should Not Be Permitted

Airbus states that ECN Capital's grounds for pursuing its claims in the Bankruptcy Court is "the purported relationship [of the claims] to the CHC Debtors' bankruptcy." (Withdrawal Mot. 7.) As explained above, the facts here establish more than just a "purported relationship" between the adversary proceeding and the Bankruptcy Cases. ECN Capital, a creditor in the Bankruptcy Cases, brought claims against Airbus, another creditor in the Bankruptcy Cases, regarding property that is the issue of proofs of claim filed in the Bankruptcy Cases. Moreover, the outcome of ECN Capital's claims will impact the rights, liabilities, and property of the Debtors and the administration of the Debtors' estates. Of course,

[18] ECN Capital would consent to a jury trial before the Bankruptcy Court if Airbus also consents to such jury trial. *See* 28 U.S.C. § 157(c)(2).

claimants in similar circumstances often file adversary proceedings in the court that is overseeing the debtor's bankruptcy case, particularly where such an adversary proceeding raises claims that are inextricably linked to the bankruptcy case and creditor recovery. *See, e.g., In re Liberty State Benefits*, 2015 WL 1137591, at *4. Airbus should not be surprised that a co-creditor plaintiff has filed suit against it in the Bankruptcy Court concerning claims that involve the same property and underlying facts that are at issue in the Bankruptcy Cases, especially considering that Airbus filed proofs of claim in the Bankruptcy Cases, entered into a settlement agreement with the Debtors, objected to ECN Capital's motion requesting discovery from the Debtors, and participated in the Bankruptcy Cases as a member of the Creditors' Committee.

Airbus's desire to litigate ECN Capital's claims in France is not "cause" to withdraw the reference. Airbus makes no effort to hide its strong desire to transfer this adversary proceeding to its preferred forum—France. That the French government owns an equity stake in Airbus raises additional fairness concerns in the event that ECN Capital is forced to bring its claims overseas. *See City Bank*, 2011 WL 5442092, at *6 (noting that forum shopping "raises fairness concerns—*i.e.*, it is unfair for a party to have a better chance of winning the case because of the forum when the underlying law should be the same"). Accordingly, ECN Capital's claims should proceed in the Bankruptcy Court until a jury trial is necessary.

CONCLUSION

For the foregoing reasons, the Withdrawal Motion should be denied.

Dated: February 2, 2017
Dallas, Texas

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN PC

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CERTIFICATE OF SERVICE

I hereby certify that, on February 2, 2017, I caused the foregoing Opposition to Defendant Airbus Helicopters, S.A.S's Motion for Withdrawal of the Reference of Adversary Proceeding, and Brief in Support to be served via electronic mail and First Class U.S. Mail, postage prepaid, to the following counsel of record for the Defendant:

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Exhibit G

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

In Re:	Case No. 16-31854-bjh-11
	Dallas, Texas
CHC GROUP LTD., et al.,	
Debtors.	February 13, 2017
	9:02 a.m.

TRANSCRIPT OF HEARING ON:

[#1633] CONFIRMATION HEARING RE: AMENDED CHAPTER 11 PLAN FILED BY DEBTOR CHC GROUP LTD.

[#1090] DEBTORS' FIFTH OMNIBUS MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO REJECT CERTAIN EQUIPMENT LEASES AND SUBLEASES PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE

[#1314] DEBTORS' SIXTH OMNIBUS MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO REJECT CERTAIN EQUIPMENT LEASES AND SUBLEASES PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE

[#1406] DEBTORS' SEVENTH OMNIBUS MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO REJECT CERTAIN EQUIPMENT LEASES AND SUBLEASES PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE

[#1477] DEBTORS' THIRD MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. SECTION 1121(D) AND LOCAL RULE 3016-1 EXTENDING THE EXCLUSIVE PERIOD FOR THE FILING OF A CHAPTER 11 PLAN

[#1479] MOTION OF DEBTORS FOR ENTRY OF ORDER PURSUANT TO 11 U.S.C. SECTION 365(A) AND FED. R. BANKR. P. 6006(A) AND 9019(A) (I) APPROVING SETTLEMENT AGREEMENT AMONG CERTAIN DEBTORS, CHC HELICOPTER SUPPORT SERVICES (US) INC., AND SIKORSKY AIRCRAFT CORPORATION AND CERTAIN OF ITS AFFILIATES, AND (II) AUTHORIZING DEBTORS TO ASSUME CERTAIN EXECUTORY CONTRACTS WITH SIKORSKY AIRCRAFT CORPORATION AND CERTAIN OF ITS AFFILIATES

[#1480] MOTION OF DEBTORS FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. SECTIONS 105(A) AND 107(B) AND FED. R. BANKR. P. 9018 AUTHORIZING THE FILING OF CERTAIN INFORMATION UNDER SEAL IN CONNECTION WITH MOTION OF DEBTORS FOR ENTRY OF ORDER PURSUANT TO 11 U.S.C. SECTION 365(A) AND FED. R. BANKR. P. 6006(A) AND 9019(A) (I) APPROVING SETTLEMENT AGREEMENT AMONG CERTAIN DEBTORS, CHC HELICOPTER SUPPORT SERVICES (US) INC., AND SIKORSKY AIRCRAFT CORPORATION AND CERTAIN OF ITS AFFILIATES,

AND (II) AUTHORIZING DEBTORS TO ASSUME CERTAIN EXECUTORY CONTRACTS WITH SIKORSKY AIRCRAFT CORPORATION AND CERTAIN OF ITS AFFILIATES

[#1481] MOTION OF DEBTORS FOR ENTRY OF ORDER PURSUANT TO 11 U.S.C. SECTION 365(A) AND FED. R. BANKR. P. 6006(A) AND 9019(A) (I) APPROVING SETTLEMENT AGREEMENT AMONG CERTAIN DEBTORS AND LEONARDO S.P.A. AND (II) AUTHORIZING DEBTORS TO ASSUME CERTAIN EXECUTORY CONTRACTS WITH LEONARDO S.P.A.

[#1482] MOTION OF DEBTORS FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C SECTIONS 105(A) AND 107(B) AND FED. R. BANKR. P. 9018 AUTHORIZING THE FILING OF CERTAIN INFORMATION UNDER SEAL IN CONNECTION WITH MOTION OF DEBTORS FOR ENTRY OF ORDER PURSUANT TO 11 U.S.C. SECTION 365(A) AND FED. R. BANKR. P. 6006(A) AND 9019(A) (I) APPROVING SETTLEMENT AGREEMENT AMONG CERTAIN DEBTORS AND LEONARDO S.P.A., AND (II) AUTHORIZING DEBTORS TO ASSUME CERTAIN EXECUTORY CONTRACTS WITH LEONARDO S.P.A.

[#1500] DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 6004(H) AND 9019 AUTHORIZING THE DEBTORS TO (I) ENTER INTO AND PERFORM UNDER RESTRUCTURING LEASE TERM SHEETS WITH LOMBARD NORTH CENTRAL PLC WITH RESPECT TO AIRCRAFT WITH MANUFACTURER'S SERIAL NUMBERS 31155, 920034, AND 920127 AND (II) ENTER INTO AND PERFORM UNDER SETTLEMENT AGREEMENTS WITH LOMBARD NORTH CENTRAL PLC WITH RESPECT TO AIRCRAFT WITH MANUFACTURER'S SERIAL NUMBERS 2707 AND 760720

[#1531] DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTIONS 105, 363 AND 365 OF THE BANKRUPTCY CODE AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 6004(H), 6006 AND 9019 AUTHORIZING THE DEBTORS TO (I) ENTER INTO AND PERFORM UNDER A RESTRUCTURING LEASE TERM SHEET WITH WAYPOINT LEASING (IRELAND) LIMITED AND (II) ASSUME CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS WITH WAYPOINT LEASING (IRELAND) LIMITED AND CERTAIN OF ITS AFFILIATES

[#1536] DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTIONS 105, 363, AND 365 OF THE BANKRUPTCY CODE AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 6004(H), 6006, AND 9019 AUTHORIZING THE DEBTORS TO ENTER INTO AND PERFORM UNDER THE 2017 OMNIBUS RESTRUCTURE AGREEMENT WITH AIRBUS HELICOPTERS (SAS) REGARDING CERTAIN OF THE DEBTORS' EXECUTORY CONTRACTS

[#1538] DEBTORS' MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. SECTIONS 105(A) AND 107(B) AND FED. R. BANKR. P. 9018 AUTHORIZING THE FILING OF CERTAIN INFORMATION UNDER SEAL IN CONNECTION WITH THE DEBTORS' MOTION FOR AN ORDER PURSUANT TO

SECTIONS 105, 363, AND 365 OF THE BANKRUPTCY CODE AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 6004(H), 6006, AND 9019 AUTHORIZING THE DEBTORS TO ENTER INTO AND PERFORM UNDER THE 2017 OMNIBUS RESTRUCTURE AGREEMENT WITH AIRBUS HELICOPTERS (SAS) REGARDING CERTAIN OF THE DEBTORS' EXECUTORY CONTRACTS

[#1543] DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTIONS 105, 362, 363 AND 364 OF THE BANKRUPTCY CODE AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 6004(H) AND 9019 AUTHORIZING THE DEBTORS TO (I) ENTER INTO AND PERFORM UNDER FRAMEWORK AGREEMENTS WITH EXPORT DEVELOPMENT CANADA, LOMBARD NORTH CENTRAL PLC, AND THE ROYAL BANK OF SCOTLAND PLC WITH RESPECT TO AIRCRAFT WITH MANUFACTURER'S SERIAL NUMBERS 2053, 2067, 2139, 31209, 920051, 920052, AND 920097, (II) OBTAIN POST-PETITION FINANCING IN ACCORDANCE WITH THE LOAN AGREEMENTS ATTACHED TO THE FRAMEWORK AGREEMENTS, AND (III) ENTER INTO AND PERFORM UNDER SETTLEMENT AGREEMENTS WITH EXPORT DEVELOPMENT CANADA, LOMBARD NORTH CENTRAL PLC, AND THE ROYAL BANK OF SCOTLAND PLC WITH RESPECT TO AIRCRAFT WITH MANUFACTURER'S SERIAL NUMBERS 2395, 2567, 760687, 760711, 760743 AND 760697

EXPEDITED MOTION TO EXTEND TIME TO / MOTION TO DEEM LATE FILED BALLOT AS TIMELY FILED, FILED BY CREDITOR ECN CAPITAL (AVIATION) CORP. (1626)

BEFORE THE HONORABLE BARBARA J. HOUSER
CHIEF UNITED STATES BANKRUPTCY COURT

Transcription Services: eScribers, LLC
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Suite #607
New York, NY 10040
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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE

MR. FINK: Thank you, Your Honor.
THE COURT: Mr. Fink, I was going to say if you now tell me you have no cross.
MR. FINK: I might be in trouble at that point, Your Honor?
THE COURT: No. No trouble but it would note -- I would be noting some amusement. All right.
CROSS-EXAMINATION
BY MR. FINK:
Q. Morning, Mr. Del Genio.
A. Good morning.
Q. I'm sure you heard already, but let me introduce myself.
My name is Steve Fink and I'm with the Orrick, Herrington firm in New York representing ECN.
A. Thank you.
Q. Sir, the plan reserves causes of action for the reorganized debtors; does it not?
A. It does.
Q. And that includes claims that the debtors have, and potential claims, against Airbus arising out of a helicopter crash in Norway in April 2016?
A. Yes.
Q. Also includes what are sometimes referred to as Chapter 5 claims, preference claims, and fraudulent transfer claims?
A. Possibly.

Q. And why do you say possibly, sir?
A. Until they are proven, it's hard for me to say.
Q. Let me phrase it slightly differently than maybe the word "claims." To the extent that the debtors' have Chapter 5 claims, those claims are riding through under the plan to the reorganized debtors; isn't that right?
A. That is correct.
Q. And have you done any evaluation of the extent to which the debtors, in fact, do have Chapter 5 claims?
A. No.
Q. Have you done any valuation of the extent to which the debtors have claims against Airbus?
A. No.
Q. Have you been involved in conversations about claims that the debtors may have against Airbus?
A. Yes.
Q. And what conversations are those?
A. In conversations that I've had with the company's general counsel about potential claims which, obviously, are confidential.
MR. GENENDER: And Your Honor, I'm going to assert a privilege objection to that conversation and any like that, and ask if the Court -- Mr. Del Genio can flag -- give the conversation to both counsel so that I can have an opportunity to object.

THE COURT: Mr. Del Genio, Mr. Genender is concerned that he wants to preserve the attorney-client privilege. So, before you go into the substances of any conversation, if you would identify the participants of the conversation so that if he has an objection he can state that objection.

THE WITNESS: Okay.

Q. Have you --

THE COURT: And you did fine there, because you said with general counsel. So --

Q. Have you been involved in conversations with anybody other than the debtors' general counsel about Airbus claims?

A. No.

Q. And just to make sure, you haven't been present for conversations that other people have had on that topic?

A. No, I have not.

Q. Have you reviewed any writings that discuss potential claims against Airbus?

A. No.

Q. And what about Chapter 5 claims? Have you discussed Chapter 5 claims with anybody?

A. No.

Q. Reviewed any writings?

A. No.

Q. Been present for conversations?

A. No.

Q. And the -- and why don't we have your declaration in front of you just because some of the things that I might ask you about are there and it would be a shortcut.

Your declaration is Exhibit 3.

MR. GENENDER: I think there's a notebook in front of the witness but it doesn't have --

MR. FINK: Oh.

MR. GENENDER: -- the markings.

THE COURT: That's fine.

MR. FINK: We can navigate that, I think. Thank you, Mr. Genender.

Q. Sir, if you were to turn, please, to paragraph 76 of your declaration?

A. Yes, I'm there.

Q. All right. On the carryover part on page 29, at the top it says, "The proceeds of any such causes of action, if litigated or settled will benefit the debtors and their stakeholders as a whole, including their new equity owners." Do you see that?

A. I do.

Q. And just to be really clear, when you say the debtors there, you're talking about the reorganized debtors, correct?

A. That is correct.

Q. Have you formed any view as to what the debtors' claims and potential claims against Airbus are worth?

A. I have not.
Q. Do you know the helicopter that crashed, I think, that was called a Super Puma; is that right?
A. That is correct.
Q. Okay. And the debtors had, I think, fifty-six Super Pumas either that they owned or leased as of the petition date; is that right?
A. Yeah, I know it was around fifty. I don't have the exact number, but yes.
Q. Okay.
A. Somewhere in that neighborhood.
Q. I think Mr. Fowkes has more details --
A. Um-hum.
Q. -- so, that's fine.
Do you have an understanding of what each one of these helicopters cost?
A. New?
Q. Yes.
A. A new helicopter is probably around twenty million dollars.
Q. And after the accident in Norway, that entire fleet of fifty-ish Super Pumas were grounded, right?
A. That's correct.
Q. By regulators?
A. That's correct.

Q. And same question about Chapter 5 claims, do you have any view as to the value of Chapter 5 claims that the debtors have?
A. I do not.
Q. Okay. Take a look, for a moment, at paragraph 42 of your declaration, please? Do you see, starting on the third line, you talk about adequate protection dispute that involved complicated questions about asset value diminution including the impact of the grounding of the debtor's EC225 helicopter's?
A. Yes.
Q. The EC225s, that's one of two model numbers of Airbus helicopters which collectively are referred to as Super Pumas, right?
A. That's correct.
Q. So, what's the adequate protection dispute you're talking about?
A. The adequate protection dispute would be as the helicopters are grounded, how does that affect the value of the business, respective collateral. You had to change the fleet as it related to the aircraft being grounded to provide to the customers, and there was an impact on that.
Q. And what was that impact?
A. It really depends on what aspect you look at, whether it's the value of those aircraft, or the costs that are

incurred in terms of swapping out the aircraft, and the additional time and effort the company had to spend to get that business -- really, to service the customers there.
Q. Okay. So, let's take each of those. What was the value of the aircraft?
A. Well, the aircraft, right now, I think those values are challenged from what I've seen in terms of appraisals, because they're not flying. So, the market's trying to determine what the value is, and it can be anywhere from parts value to if there's a use for those aircraft in something else besides the oil and gas market, and I think that's a pretty fluid number right now.

In terms of the impact on the company, what we said in the business plan is that number from a cash standpoint was about thirty-four million dollars, and its impact on -- we really need a dollar in cash from the EC -- what we call the EC225 impact on the company's business line.
Q. And you said that the value of these helicopters is currently -- I don't remember the word that you used -- distress but --
A. I said from parts value to a value that if it could be used in another form except for oil and gas because they are grounded for -- in most regions, now, from what I understand.
Q. Right. So, the current value of these helicopters is less than it was prior to the crash?

A. Yes.
Q. Significantly less?
A. I would -- based on just appraisal information I've seen, but I would caution you to say that I think that's a pretty fluid market right now until people figure out how they're going to use these helicopters because if they're sitting on the ground they don't have a lot of value.
Q. And right now, they're sitting on the ground?
A. In most cases, yes.
Q. And that's because the regulatory action that was taken in reaction to the crash?
A. That's correct.
Q. Later in that same paragraph, sir -- we were looking at paragraph 42 -- there's a sentence that carries over, and at the end of that, you talk about "the precise recoverable unencumbered value at each debtor." Do you see that?
A. Yes.
Q. And what you're talking about there by unencumbered value, you're talking about the value of unencumbered assets; is that right?
A. Yes.
Q. And that includes these Airbus terms?
A. Unencumbered value? There's a big debate in terms of what's encumbered and unencumbered. This plan has to resolve that through a settlement. So, there's lots of different

asset categories that people had strong views on which, quite frankly, were never really agreed to, but the settlement of the plan brought them to agreement. So, I can't tell you everyone in this room would agree with me if what I said was encumbered and unencumbered, but I can tell you they agree with the plan is correct.

Q. Right. So -- but as of the effective date they'll proceed with a plan, right?

A. As of according to the plan.

Q. Right.

A. Yes.

Q. Right, if the plan's confirmed by then.

A. Yes.

Q. Right. Okay. The unsecured-creditors' committee filed a statement in support of plan confirmation. Is that something that you've seen?

A. Yes.

Q. Okay.

MR. FINK: Your Honor, I'd like to show the document to the witness if I may --

THE COURT: You may.

MR. FINK: -- and if you'd like a copy, I've got one for you.

THE COURT: Please.

THE WITNESS: Thank you.

THE COURT: Thank you, Mr. Fink.

MR. FINK: Your Honor, I don't plan to offer this document into evidence. It's in the court file, and I think the Court can take judicial notice of it, but I do have a couple questions for the witness.

THE COURT: Of course.

MR. FINK: Let me just find my copy while I've got my notes.

THE COURT: No problem.

Q. So, if you look at paragraph 7 which begins on page 3, do you see that the creditors' committee statement says that "Contrary to ECN's contentions, both the committee and the debtors spent significant time analyzing all potential unencumbered assets available through unsecured creditors, including various pre-petition causes of action that can be asserted by the debtors against Airbus relating to certain of their aircraft, as well as the risks and costs pertaining to the litigation of bringing such claims." Do you see that?

A. I do.

Q. You agree with that statement?

A. I do.

Q. Were there discussions as between the debtors and the creditors' committee?

A. Discussions on what?

Q. About -- I'm sorry; I hadn't finished the

question -- about those unencumbered assets and in particular, the Airbus claims?

A. I remember there were discussions between the company's litigation counsel, basically, on the Airbus claims general counsel talked to the Weil litigation team.

Weil litigation team, I believe, had conversations -- at least what I was told -- had conversations with the unsecured creditors, but I wasn't involved in those because they were trying to maintain privilege.

Q. Well, to the extent -- and I'm going to go very slowly and ask you to go slowly because there's going to be an objection and the Court -- I don't know what the Court will do --

A. Fine.

Q. -- but were you -- just yes or no -- was there a report given to you on the substance of the communications that were had between counsel for the debtors and counsel for the creditors?

A. No.

Q. So, you have no information about the substance of those conversations?

A. I do not.

Q. Okay. So, we avoided the objection.

You were not a party to any conversations with the creditors' committee about what those claims were worth?

A. I was not.
Q. All right. We're going to move on, then, to a different topic.
You're familiar with what sometimes is referred to as the good faith requirement for plan confirmation?
A. Yes.
Q. And I'm not going to ask you about any of your opinions on it; I ask the Court to exclude them, but I just use that as a point of reference to what we're going to be talking about, and I'm going to ask you to look at paragraph 95.
A. In my declaration?
Q. In your declaration, yes, sir. You there with me, sir?
A. I am.
Q. Okay. The first sentence talks about my clients' objection, right?
A. That's correct.
Q. And in particular the fact that we've objected to what you've described here as the preservation certain causes of action for the reorganized debtors?
A. That's correct. That's what it says?
Q. Right? Yes. That's what it says.
And then the introduction to the next sentence you say that "This is a component of the global, integrated settlement underlying the plan," right?
A. Yes.

Q. Okay. So, that's just to orient us for what my questions are.

If you then go to the last sentence of this paragraph, you say that, "Without the settlement, particularly the waiver of the senior secured notes deficiency claim, the recovery available to the general unsecured claims would be substantially smaller than what is provided for under the plan." You see there?

A. Yes.

Q. So, was this -- was there an express condition in negotiations with creditors' committee or others, we, debtors are going to retain these claims; in exchange, you, creditors' committee, or whoever the counterparty was is going to give us something in return?

A. It was a fairly exhaustive negotiation on a variety of points. This was one of the points that were on the table in terms of claims staying in, claims staying out. So, that's why I referred to it as a global resolution. I don't remember this being traded for one specific point that we traded this, and we received that. This was clearly one of the numerous topics that were discussed during the plan negotiations.

Q. Do you remember any details of discussions around the retention of these claims as part of those discussions?

A. The only thing that I -- one of the things that we did is provide the liquidation value, and PJT provided the valuation.

MR. FINK: Let me ask -- Mr. Genender, is there a --
MR. GENENDER: Third folder?
MR. FINK: -- third binder?
MR. GENENDER: There is. There is.
MR. FINK: Okay, great.
MR. GENENDER: And it should be tab 3 in that binder.
THE COURT: No, 3 was --
MR. GENENDER: Tab 3.
THE WITNESS: Yep. I have it.
MR. GENENDER: Not Exhibit --
THE COURT: What debtor exhibit?
MR. FINK: 5. 5.
THE COURT: Thank you.
MR. GENENDER: He's got a different notebook, Your Honor, so.
THE COURT: Okay. But I want to refer to it by the --
MR. GENENDER: Yes.
THE COURT: -- exhibit number.
Q. You're the helicopters guy?
A. Yes, sir.
Q. All right. Great. So, on the petition date, the debtors had a fleet of fifty-six Super Pumas; is that right?
A. Technically, no.
Q. Why is that?

A. Super Puma is a general description of a number of airbus aircraft, both military and commercial. So, the ones that are covered in here are all Super Pumas, both EC225 and AS332 L2 starts with the Pumas. In addition to that, the company also had AS332s and AS332 Ls in their fleet.
Q. I see. So, actually the debtors had more than fifty-six Super Pumas in their fleet, but not all of them were affected --
A. Correct.
Q. -- by the regulatory shutdown --
A. Correct.
Q. -- after the crash?
A. Correct.
Q. And the reason I made you do that again is you have to wait until I finish talking, just so the court reporter can get your answer.
Okay. So, focusing, then, on the EC225s and the AS332 L2s -- those are the two models that were affected by the regulatory shutdown after the crash, correct?
A. Yes.
Q. The debtors had fifty-six of those two models in their fleet as of the petition date, either that they owned or that they leased, correct?
A. Yes.
Q. And both of those models were grounded by regulators

after the crash that occurred in Norway in April 2016?
A. Yes.
Q. Nine of those fifty-six helicopters were owned by one or -- by the debtors on the petition date, right?
A. Yes.
Q. And the debtors now own five of them?
A. Yes.
Q. So, if you can turn your declaration, please, to the chart that appears on page 5 of 10, that number that's in the upper right-hand corner, and I don't want to spend too much time on this, but I'd like you to just explain to me quickly, if you would, what this chart represents by telling us what each of the columns is.
A. Sure. It's -- the columns are aircraft type; the MSN, which is the manufacturer's serial number; YOM, which is the year of manufacture; a leased/own column, which describes the type of financing that was on it or the fact that it was owned; who the third-party lessor was; who -- which entity within CHC owned it; the current status of that aircraft; and the effective date of any rejection or abandonment.
Q. Okay. And which of these aircraft was the one that was involved in the accident?
A. I don't know.
Q. Wasn't 2721 the third one here on your chart?
A. Oh. Hm.

Q. Let me show you something to try to refresh your recollection.

MR. FINK: Excuse me one moment, Your Honor.

THE COURT: Of course.

MR. FINK: Let's see.

(Pause)

MR. FINK: May I approach both the witness and Your Honor?

THE COURT: You may. Thank you.

Q. Sir, I've placed in front of you a preliminary report on accident -- I'm not going to read the rest of it because I can't pronounce the name of the place -- from the Accident Investigation Board of Norway. Do you see that there's information there about the serial number?

A. Yes.

Q. Does that refresh your recollection as to --

A. Yes, it does.

Q. -- which aircraft? And looking back at your chart, sir, which aircraft was it?

A. It was manufacturer's serial number 2721.

Q. Okay. And as reflected in the chart in your declaration, that was an aircraft that was on lease by Parilease SAS to CHC Helicopters (Barbados) SRL, correct, sir?

A. Correct.

Q. And the pilots of the aircraft, where they CHC employees?

MR. GENENDER: Your Honor, I'm going to object. This is outside of the scope of his declaration.

MR. FINK: Your Honor, I'm trying to --

THE COURT: It seems like it is, but --

MR. FINK: Yeah.

THE COURT: Sustained.

MR. FINK: I don't think it's too far. I guess I -- I guess I wasn't persuasive on that one.

THE COURT: Well, show me where in his declaration that he talks about who the pilots were.

MR. FINK: Fair enough, Your Honor.

I'm not sure that it's in here, Your Honor. All right, I'll move on.

Q. So, looking at the chart, my question to you, and I apologize for having you go through a counting exercise, but I'd like to know how many of these helicopters -- these airbus helicopters that we're looking at were owned or leased by the Barbados SRL entity as of the petition date.

A. I think I count twenty-seven.

Q. Okay. And I'll just represent for the record, because I know it's hard to do this on the fly, that I counted twenty-two, and that there are a few that are under a Barbados Limited entity, which may be causing a little bit of confusion. But your answer will stand. So --

THE COURT: Well, I'd like us to figure out --

MR. FINK: You want us to figure it out, Your Honor?
THE COURT: -- which one is correct. Yes, I would.
MR. FINK: But let me do this -- maybe it's quicker.
Q. Aircraft 2708, sir, is the first one on the chart. That's Barbados SRL?
A. Um-hum.
Q. 2715, also?
A. Yes.
Q. And 2721?
A. Yes.
Q. 2725?
A. Yes.
Q. 2739?
A. Yes.
Q. 2744?
A. Yes,
Q. 2745?
A. Yes.
Q. 2722?
A. Yes.
Q. 2729?
A. Yes.
Q. 2740?
A. Yes.
Q. And 2747?

A. Yes.
Q. All right. So, on this page, we have one, two, three --
THE COURT: Eleven.
MR. FINK: Thank you, Your Honor.
Q. Eleven on this page. On the next page, 2878?
A. Yes.
Q. 2902?
A. Yes.
Q. 2702?
A. Yes.
Q. And 2890?
A. Yes. I'm sorry that I counted the one above the 2 that didn't have the SRL.
Q. Yeah, no, I had the same problem the first time I did. So, all right. So, that's four on this page; do you agree?
A. Yes.
Q. Okay. On the next page, we've got 2911?
A. Yes.
Q. 2675?
A. Yes.
Q. 2395?
A. Yes.
Q. 2467?
A. Yes.
Q. That's another one, two, three four on this page; do you

agree?
A. Yes.
Q. And on the final page, we've got 2474?
A. Yes.
Q. 2477?
A. Yes.
Q. 2504?
A. Yes.
Q. So, that's three on that page?
A. Yes.
Q. So, we've got eleven plus four plus four plus three. And you agree with me, that's twenty-two?
A. Yes.
Q. Thank you, sir. And all of the EC225s and AS332 L2s were grounded in the aftermath of the accident, right?
A. Yes.
Q. And they're still not flying today?
A. They're still not flying an oil and gas service, yes.
Q. Now, sir, my client, I mentioned earlier, is ECN Capital. Are you familiar with the fact that ECN Capital previously was named Element Capital Corporation?
A. Yes.
Q. Element Capital Corporation was a lessor of airbus helicopters to certain CHC debtors, correct?
A. Yes.

Q. And that includes, in particular, the Barbados SRL entity that we've been talking about?
A. Yes.
Q. Okay. So, if you look on second page of the chart -- it's page 6 of 10 of your declaration -- do you see that aircraft 2878 was on lease from Element Capital to Barbados SRL?
A. Yes.
Q. Okay. And if you look on -- hold on one second because I'm missing it here. If you look on the next page, aircraft 2467 --
A. Yes.
Q. -- was also on lease from Element Capital Corp. to Barbados SRL?
A. Yes.
Q. And on the next page, there are three more: 2474, 2477, and 2504, all of which were on lease from my client to Barbados SRL, correct, sir?
A. Yes.
Q. And Barbados SRL also continues to own one EC225 outright, correct, sir? And if it makes things easier, if you look at aircraft 2675 on page 7 of 10?
A. Yes.
THE COURT: I'm sorry. Which one?
MR. FINK: 2675. It's on page 7 of 10, a little more

than halfway down.

THE COURT: Okay.

Q. And Mr. Fowkes, what we see there is that in that second to last column, that shows that as being owned?

A. Yes.

Q. Incidentally, those that were on lease from my client to Barbados SRL, all of those leases were rejected, right?

A. Yes.

Q. What was the impact on the debtors at the grounding of its fleet of EC225s and AS332 L2s?

MR. GENENDER: Your Honor, I'm going to object. Your Honor, it's outside the declaration.

MR. FINK: I'm not sure that's right, Your Honor, but please give me a moment.

THE COURT: Okay.

(Pause)

MR. FINK: Well, Your Honor, what I will say is that in our exhibit list, I believe that we reserve the right to call as witnesses anybody who was called by anybody else, and so I call Mr. Fowkes for the limited purposes of these couple of questions.

MR. GENENDER: Your Honor, it's our case and his cross is limited to the direct testimony.

THE COURT: Well, it is, but do you want to have him call --

MR. GENENDER: Well --

THE COURT: Mr. Fowkes later? Do you disagree that he listed him as a witness on his exhibit list?

MR. GENENDER: I'd have to look at his exhibit list.

THE COURT: And certainly, we can do that, but it seems like he's here, and if he did list him --

MR. GENENDER: We're talking about one question?

THE COURT: I don't know.

MR. FINK: I was going to back to the question in the beginning with the two pilots, and then I'm going to ask a few questions about the impact of the grounding of the fleet.

THE COURT: I assume you have his witness and exhibit list.

MR. GENENDER: Objection. Relevance, number one. And number two, they did not provide a witness list, I'm being told. It's just an exhibit list.

MR. FINK: All right. That may be right, Your Honor, in which case, I guess I'm done.

THE COURT: Seems like you are.

MR. FINK: Seems like I am. All right. I pass the witness, Your Honor.

THE COURT: Very well.

Anyone else have questions for Mr. Fowkes?

Any further redirect?

MR. GENENDER: No, Your Honor.

C E R T I F I C A T I O N

I, Clara Rubin, the court approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

February 15, 2017

CLARA RUBIN — DATE

Exhibit H

From: Strain, Eric <estrain@nixonpeabody.com>
Sent: Thursday, February 16, 2017 6:36 PM
To: Signoracci, Pietro J
Cc: Flumenbaum, Martin; George Barber; Kaplan, Roberta A; Ortego, Joseph J.; 'Jason Katz'; Christmas, Robert; Shah, Shainee
Subject: RE: ECN v. Airbus Helicopters

Pietro,

Please find below answers to your questions, with the names of key people involved.

Please let us know if you have questions.

Thank you, Eric

1. The identity (name, job title, employer, location) of individuals involved in preparing and/or filing AH's proofs of claim.

   Laurent Tagarian, Alain Vigneau, Eric Chartier and Valerie Le-Gall (Airbus Helicopters, S.A.S., Marignane, France)
   Brian Hall and Steve Rossum (Smith Gambrell & Russell LLP, Atlanta, GA)

2. The identity (name, job title, employer, location) of individuals involved in AH's efforts to become a member of the UCC and/or AH's participation as a UCC member.

   Brian Hall, Ron Barab and Steve Rossum (Smith Gambrell & Russell LLP, Atlanta, GA)
   Laurent Tagarian and Alain Vigneau (Airbus Helicopters, S.A.S., Marignane, France)
   Kevin Cabaniss (Airbus Helicopters, Inc., Grand Prairie, Texas)

3. The identity (name, job title, employer, location) of individuals involved in negotiating, preparing, and/or filing the Plan Support Agreement dated as of October 11, 2016 (as amended, restated, or otherwise modified from time to time), by and among the Debtors and the Consenting Creditor Parties (as defined therein).

   Committee Counsel for the UCC and other Committee professionals negotiated and assisted in preparation of the agreement on behalf of unsecured creditors. The identities of Committee Counsel and other Committee professionals are matter of public record. Kramer Levin firm is lead Committee Counsel and Gardere Wynne firm is local counsel. Greenhill and VLC were the other Committee professionals who would have been involved in activities relating to negotiation or preparation of PSA.

4. The identity (name, job title, employer, location) of individuals involved in negotiating, preparing, and/or filing any chapter 11 plan of reorganization of the Debtors (including any appendices, exhibits, schedules, and supplements thereto).

   Same answer as on 3.

5. The identity (name, job title, employer, location) of individuals involved in preparing and/or filing AH's Objection to Element Capital Corp.'s Motion for Order Directing 2004 Examination of Debtors.

Laurent Tagarian and Alain Vigneau (Airbus Helicopters, S.A.S., Marignane, France)
Brian Hall and Jason Bell (Smith Gambrell & Russell LLP, Atlanta, GA)

6. The identity (name, job title, employer, location) of individuals involved in negotiating, preparing, and/or filing (a) the Debtors' Motion for an Order Authorizing the Debtors to Enter Into and Perform Under the 2017 Omnibus Restructure Agreement with AH Regarding Certain of the Debtors' Executory Contracts, and/or (b) the 2017 Omnibus Restructure Agreement with AH.

   Laurent Tagarian and Alain Vigneau (Airbus Helicopters, S.A.S., Marignane, France)
   Brian Hall (Smith Gambrell & Russell LLP, Atlanta, GA)

7. How AH was appointed as a member of the UCC.

   AH was selected by the U.S. Trustee.

8. How Mr. Cabaniss was selected to represent AH on the UCC.

   Mr. Cabaniss was selected based on his proximity to court in which bankruptcy filed, role in Legal department of AH's U.S. affiliate Airbus Helicopters, Inc., and litigation experience.

9. The scope of Mr. Cabaniss's responsibilities as AH's representative on the UCC.

   Attend UCC meetings, which consisted primarily of weekly conference calls, serve as AH's liaison (along with Smith Gambrell) on communications with and from the UCC and its counsel and professionals, to attend proceedings in the bankruptcy as needed, and to cast vote on behalf of AH when votes taken by UCC.

10. The scope of any other responsibilities Mr. Cabaniss has with respect to AH.

    None.

11. The scope of responsibilities of any AH personnel other than Mr. Cabaniss in connection with AH's participation in UCC.

    Laurent Tagarian had responsibilities for AH; specific information about his responsibilities is privileged.

12. The nature of communications and meetings between Mr Cabaniss and AH personnel, including:

    a. The number and dates of trips Mr. Cabaniss has made to Airbus locations in France since 2011, specifying which of those trips concerned AH's involvement in the CHC bankruptcy cases;

       None related to the bankruptcy.

    b. The number and dates of trips AH representatives made to the United States to meet with Mr. Cabaniss since 2011, specifying which of those trips concerned AH's involvement in the CHC bankruptcy cases; and

       Laurent Tagarian and Alain Vigneau came to the U.S. the week of June 27, 2016 in connection with a hearing in the bankruptcy, and Laurent Tagarian met with Mr. Cabaniss on June 28, 2016 in connection with the bankruptcy.

    c. The frequency of conference calls or other meetings between Mr. Cabaniss and AH personnel regarding the CHC bankruptcy cases.

It is estimated there have been between 5 and 6 such calls in total.

13. Whether Mr. Cabaniss recused himself from participation in UCC meetings, discussions, or other activities that related to any claims that the Debtors or other creditors may have against Airbus, and how those claims would be treated in the Plan.

    Yes.

14. Whether Mr. Cabaniss is an AH employee.

    No.

15. Whether Mr. Cabaniss is an AH agent.

    No.

16. Whether Mr. Cabaniss is an AH representative.

    No, except as defined by proxy for purposes of bankruptcy.

17. How Mr. Cabaniss is compensated in his role as AH's representative on the UCC.

    Mr. Cabaniss is not compensated by AH for that role and does not receive additional compensation from AHI for that role.

18. Whether Mr. Cabaniss receives any compensation from AH.

    No.

From: Signoracci, Pietro J [mailto:psignoracci@paulweiss.com]
Sent: Tuesday, February 14, 2017 3:33 PM
To: Strain, Eric
Cc: Flumenbaum, Martin; George Barber; Kaplan, Roberta A; Ortego, Joseph J.; 'Jason Katz'; Christmas, Robert; Shah, Shainee
Subject: RE: ECN v. Airbus Helicopters

Thanks, Eric.

Pietro J. Signoracci | Associate
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From: Strain, Eric [mailto:estrain@nixonpeabody.com]
Sent: Tuesday, February 14, 2017 6:17 PM
To: Signoracci, Pietro J <psignoracci@paulweiss.com>
Cc: Flumenbaum, Martin <mflumenbaum@paulweiss.com>; George Barber <gbarber@krcl.com>; Kaplan, Roberta A <rkaplan@paulweiss.com>; Ortego, Joseph J. <JOrtego@nixonpeabody.com>; 'Jason Katz' <Jkatz@hhdulaw.com>;

Christmas, Robert <RChristmas@nixonpeabody.com>; Shah, Shainee <sshah@nixonpeabody.com>
Subject: RE: ECN v. Airbus Helicopters

Pietro,

Corporate Relationship

As explained in the declaration of Michel Gouraud that was filed with Airbus Helicopters, S.A.S.'s ("AH's") motion to dismiss, AH and Airbus Helicopters, Inc. ("AHI") are separate and independent companies, each with its own separate management, employees, facilities, bank accounts and operational control. AH does not own AHI. AH is 95% owned by Airbus Helicopters Holding (France) and 5% by EADS CASA Holding (France). Airbus Helicopters Holding is owned by Airbus Group S.E. (The Netherlands). EADS CASA Holding is owned by Airbus Defence & Space S.A. (Spain), which is owned by Airbus Group S.E. AHI is a subsidiary of Airbus Group, Inc., (Virginia), which is owned by Airbus Group S.E.

AH Sales

I have attached an Excel spreadsheet from which the PDFs came from. Hopefully this takes care of the formatting issues. I am waiting to hear back on your other specific questions.

AHI Sales

"LUH" refers to the UH-72 Lakota helicopter, which is a militarized version of the EC145 sold to the US Army. "PL" refers to "Production Line" and "LAL" refers to "Light Assembly Line." The LUH is produced at the AHI facility in Columbus, Mississippi.

I am still gathering information on the bankruptcy involvement questions.

If additional questions, let me know.

Thank you, Eric

From: Signoracci, Pietro J [mailto:psignoracci@paulweiss.com]
Sent: Tuesday, February 14, 2017 11:59 AM
To: Strain, Eric
Cc: Flumenbaum, Martin; George Barber; Kaplan, Roberta A; Ortego, Joseph J.; 'Jason Katz'; Christmas, Robert; Shah, Shainee
Subject: RE: ECN v. Airbus Helicopters

Eric,

Please let us know if you've had an opportunity to review the requests in my email below regarding the discovery Airbus has provided, and please let us know if we will be receiving today additional discovery regarding AH's corporate relationship and its involvement in the CHC bankruptcy cases.

Thank you,
Pietro

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From: Signoracci, Pietro J
Sent: Monday, February 13, 2017 12:54 PM
To: 'Strain, Eric' <estrain@nixonpeabody.com>
Cc: Flumenbaum, Martin <mflumenbaum@paulweiss.com>; 'George Barber' <gbarber@krcl.com>; Kaplan, Roberta A <rkaplan@paulweiss.com>; 'Ortego, Joseph J.' <JOrtego@nixonpeabody.com>; 'Jason Katz' <Jkatz@hhdulaw.com>; 'Christmas, Robert' <RChristmas@nixonpeabody.com>; 'Shah, Shainee' <sshah@nixonpeabody.com>
Subject: RE: ECN v. Airbus Helicopters

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We have a few questions/requests regarding the attached documents.

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I’m available if you have any questions.

Thank you,
Pietro

Pietro J. Signoracci | Associate
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Corporate Relationship

I will get this to you on Monday.

Bankruptcy Involvement

I hope to get back to on Monday.

If questions, let me know.

Thank you, Eric

Eric C. Strain
Partner
estrain@nixonpeabody.com
T 212-940-3043 | C 415-244-3393 | F 866-741-1485
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Exhibit I

From: Strain, Eric <estrain@nixonpeabody.com>
Sent: Tuesday, February 14, 2017 6:17 PM
To: Signoracci, Pietro J
Cc: Flumenbaum, Martin; George Barber; Kaplan, Roberta A; Ortego, Joseph J.; 'Jason Katz'; Christmas, Robert; Shah, Shainee
Subject: RE: ECN v. Airbus Helicopters
Attachments: Bookings 2011-2016 (USA & CHC).xlsx

Pietro,

Corporate Relationship

As explained in the declaration of Michel Gouraud that was filed with Airbus Helicopters, S.A.S.'s ("AH's") motion to dismiss, AH and Airbus Helicopters, Inc. ("AHI") are separate and independent companies, each with its own separate management, employees, facilities, bank accounts and operational control. AH does not own AHI. AH is 95% owned by Airbus Helicopters Holding (France) and 5% by EADS CASA Holding (France). Airbus Helicopters Holding is owned by Airbus Group S.E. (The Netherlands). EADS CASA Holding is owned by Airbus Defence & Space S.A. (Spain), which is owned by Airbus Group S.E. AHI is a subsidiary of Airbus Group, Inc., (Virginia), which is owned by Airbus Group S.E.

AH Sales

I have attached an Excel spreadsheet from which the PDFs came from. Hopefully this takes care of the formatting issues. I am waiting to hear back on your other specific questions.

AHI Sales

"LUH" refers to the UH-72 Lakota helicopter, which is a militarized version of the EC145 sold to the US Army. "PL" refers to "Production Line" and "LAL" refers to "Light Assembly Line." The LUH is produced at the AHI facility in Columbus, Mississippi.

I am still gathering information on the bankruptcy involvement questions.

If additional questions, let me know.

Thank you, Eric

From: Signoracci, Pietro J [mailto:psignoracci@paulweiss.com]
Sent: Tuesday, February 14, 2017 11:59 AM
To: Strain, Eric
Cc: Flumenbaum, Martin; George Barber; Kaplan, Roberta A; Ortego, Joseph J.; 'Jason Katz'; Christmas, Robert; Shah, Shainee
Subject: RE: ECN v. Airbus Helicopters

Eric,

Please let us know if you've had an opportunity to review the requests in my email below regarding the discovery Airbus has provided, and please let us know if we will be receiving today additional discovery regarding AH's corporate relationship and its involvement in the CHC bankruptcy cases.

Thank you,
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Exhibit J

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Facsimile: (212) 757-3990

COUNSEL FOR PLAINTIFF ECN CAPITAL (AVIATION) CORP.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	**Chapter 11**
CHC GROUP LTD., *et al.*,	**Case No. 16-31854(BJH)**
Debtors,	**(Jointly Administered)**
ECN CAPITAL (AVIATION) CORP.,	**Adv. No. 16-03151-bjh**
Plaintiff,	**Plaintiff's Second Supplemental Memorandum of Law in Opposition To Defendant's Motion To Dismiss**
v.	
AIRBUS HELICOPTERS (SAS),	
Defendant.	

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CASES

Plaintiff ECN Capital (Aviation) Corp. (f/k/a Element Capital Corp.) ("ECN Capital"), by its undersigned attorneys, files this Second Supplemental Memorandum of Law in Opposition to Defendant Airbus Helicopters S.A.S.'s ("Airbus") Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction and *Forum non Conveniens* ("Motion to Dismiss"), to describe the results of jurisdictional discovery and to provide additional authority requested by the Court since Plaintiff filed its Opposition to the Motion to Dismiss (the "MTD Opposition").[1]

PRELIMINARY STATEMENT

ECN Capital adequately alleged in its Complaint that this Court has subject matter jurisdiction over ECN Capital's claims and personal jurisdiction over Airbus for purposes of this Adversary Proceeding. Now, with the benefit of discovery produced by Airbus on jurisdictional issues, together with argument and filings in the Bankruptcy Cases, the record bolsters the Complaint's allegations and proves that this Court has subject matter and personal jurisdiction.

This Court has subject matter jurisdiction over ECN Capital's claims because the claims could conceivably affect the Debtors' estates—as verified by testimony at the plan confirmation hearing in the Bankruptcy Cases and the discovery obtained from Airbus by ECN Capital.

This Court has personal jurisdiction over Airbus because of Airbus's substantial participation in the Bankruptcy Cases before this Court, combined with Airbus's purposeful presence in Texas regarding the very Super Puma helicopters at issue—both of which are verified by the documents and information produced and stipulated to by Airbus.

The jurisdictional discovery from Airbus, together with testimony provided by the Debtors in the Bankruptcy Cases, further demonstrates why this Court should deny Airbus's requests for dismissal on grounds of *forum non conveniens* or for abstention. Airbus's discovery

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the MTD Opposition. All references herein to "¶ __" are to the Complaint.

shows that Airbus sent executives from France to this jurisdiction and coordinated with its U.S. affiliates in order to pursue its interests in litigation in this forum, as well as for the purpose of conducting business in Texas. The Debtors' testimony and the data produced by Airbus regarding Airbus's direct sales of Super Puma helicopters to the Debtors, show that the Debtors have claims for damages against Airbus relating to the same models of Super Puma helicopters at issue in this Adversary Proceeding. Those claims of the Debtors—and thus the rights, liabilities, and value of property of the Debtors—will be directly affected by the outcome of ECN Capital's claims in this Adversary Proceeding. Based on this record, neither dismissal on grounds of *forum non conveniens* nor abstention would be appropriate, and Airbus's attempts to avoid this Court's jurisdiction should be denied.

Numerous precedents support this Court's exercise of its subject matter and personal jurisdiction in this Adversary Proceeding. In similar adversary proceedings, bankruptcy courts have exercised personal jurisdiction over a foreign non-debtor defendant in a non-core proceeding that was related to an underlying bankruptcy case. Additionally, in the analogous context of civil litigation, district courts have found that a claimant submits itself to the personal jurisdiction of the district court in which its claims were filed for all related suits and countersuits—including those pursued by entities that were not parties to the original litigation.

This Court's subject matter and personal jurisdiction is established by the facts in the record and supported by case law. Accordingly, ECN Capital respectfully submits that this Court should exercise its jurisdiction and deny Airbus's Motion to Dismiss.

BACKGROUND[2]

Pleadings and Motions

ECN Capital filed the Complaint against Airbus in this Adversary Proceeding on November 17, 2016, asserting claims against Airbus for defective design and breach of implied warranty of merchantability regarding Airbus's manufacturing, marketing, and sale of the EC225 and the AS332 L2 helicopters. *See* ¶¶ 46–111. The allegations in the Complaint sufficiently demonstrate that ECN Capital's claims "could conceivably have an effect" on the Debtors' estates, and thus are related to the Bankruptcy Cases. *See, e.g.*, ¶¶ 8, 43.[3] The Complaint also sufficiently alleges facts demonstrating this Court's personal jurisdiction over Airbus for the purpose of this Adversary Proceeding. *See, e.g.*, ¶¶ 11, 40.

On January 3, 2017, Airbus filed its Motion to Dismiss [Docket No. 24], asking this Court to hold that it lacked subject matter jurisdiction over ECN Capital's claims or personal jurisdiction over Airbus. In the alternative, the Motion to Dismiss requested that the Court abstain from exercising its jurisdiction or dismiss the Complaint on grounds of *forum non conveniens*. In support of its Motion to Dismiss, Airbus submitted a declaration from its executive, Michel Gouraud, dated December 23, 2016 [Docket No. 26] ("Gouraud Declaration"). The Gouraud Declaration stated that Airbus "does not transact its business in the United States," Gouraud Decl. ¶ 5, that Airbus "does not sell Super Puma helicopters in the United States," *id.* ¶ 9, and that Airbus does not own Airbus Helicopters, Inc. ("AHI"), *id.* ¶ 11.

Also on January 3, 2017, Airbus filed its Motion for Withdrawal of Reference of Adversary Proceeding, and Brief in Support [Docket No. 23] (the "Withdrawal Motion").

---

[2] The facts underlying ECN Capital's claims are set forth in the Complaint and in ECN Capital's MTD Opposition. ECN Capital sets forth here the salient facts relating to this Second Supplemental Memorandum of Law in Opposition to the Motion to Dismiss.

[3] As this Court recognized, for purposes of deciding Airbus's Motion to Dismiss, the factual allegations in the Complaint must be taken as true. *See* Transcript of 2/6/2017 H'r'g on Withdrawal Motion ("Tr.") 56:3-7.

On January 27, 2017, ECN Capital filed its MTD Opposition, demonstrating that this Court has personal jurisdiction over Airbus and subject matter jurisdiction to hear ECN Capital's claims against Airbus in the Adversary Proceeding, which are related to the Bankruptcy Cases.

On February 6, 2017, the Court held a hearing on Airbus's Withdrawal Motion (the "February 6 Hearing"). The Court recognized that the Motion to Dismiss raised issues that were intertwined with the Bankruptcy Cases, making it appropriate for the Court to retain the reference at least through the adjudication of the Motion to Dismiss. *See* Tr. 7:5-24; 19:4-9.

Jurisdictional Discovery

On December 30, 2016, ECN Capital served Airbus with ECN Capital's First Request for Production of Documents. On January 23, 2017, ECN Capital served Airbus with notices of depositions for Airbus employees and representatives, and a notice of a subpoena for the deposition of an employee of Airbus's U.S.-based affiliate, AHI. ECN Capital's document requests and deposition notices and subpoena were aimed in part at eliciting information regarding Airbus's presence in the U.S., including in Texas, and its substantial participation in the Bankruptcy Cases. Airbus opposed ECN Capital's discovery requests, filing a motion to stay discovery and a separate motion for a protective order seeking to quash and/or limit ECN Capital's depositions of Airbus or AHI employees. At the February 6 Hearing, the Court ruled that ECN Capital was entitled to discovery on the jurisdictional issues that were the subject of Airbus's Motion to Dismiss. *See* Tr. 36:2-3, 40:2-5.

After the February 6 Hearing, Airbus agreed to produce to ECN Capital documents and information concerning Airbus's presence in the U.S., including in Texas, and its substantial participation in the Bankruptcy Cases. Airbus produced information describing its corporate structure, which revealed that French-based Airbus and its U.S.-based affiliate AHI share the

same ultimate corporate parent, Airbus Group S.E. *See* Ex. A.[4] Airbus provided information regarding sales from 2011 to 2016 of helicopters manufactured by Airbus in France to U.S.-based customers made directly by Airbus. *See* Ex. B. The data show that Airbus directly sold 30 helicopters (each costing millions of dollars) to U.S.-based customers. The majority of this business was directed at Texas—Airbus sold 28 helicopters, including six Super Pumas, to customers headquartered in Texas. *Id.* The data also show that from 2011 to 2016, Airbus indirectly sold 58 Airbus-manufactured helicopters to Texas-based customers through its U.S.-based affiliate distributor AHI. *Id.* Airbus sold another 649 helicopters for AHI to distribute to U.S.-based customers outside of Texas. *Id.* Airbus's sales data also show that Airbus sold 19 Super Pumas to CHC Leasing (Ireland) Limited, one of the Debtors in the Bankruptcy Cases.[5] According to filings in the Bankruptcy Cases, CHC Ireland's business is run by its parent company, CHC Group, Ltd., out of Irving, Texas.[6] Airbus produced discovery regarding its maintenance operations, and revealed that Airbus ships Super Pumas owned by U.S. customers to France in order to perform any necessary main gearbox overhauls. *See* Ex. C.

ECN Capital also requested information from Airbus regarding its participation in the Bankruptcy Cases. *See* Ex. D. Airbus explained that four of its executives—Laurent Tagarian, Alain Vigneau, Eric Chartier and Valerie Le-Gall—based in Marignane, France, worked with U.S. counsel to prepare Airbus's proofs of claim in the Bankruptcy Cases. *Id.* Messrs. Tagarian and Vigneau were involved, together with Airbus's representative Kevin Cabaniss, an employee of AHI, in Airbus's efforts to become a member of the Creditors' Committee. Messrs. Tagarian

---

4 All references herein to "Ex. __" are to the accompanying Declaration of Martin Flumenbaum dated February 23, 2017.

5 *Id.*; *see* Motion of Debtors for Entry of an Order Waiving the Requirement to File a List of Creditors . . . [16-31854 Docket No. 4] ("First Day Motion") Exhibit A (listing CHC Leasing (Ireland) Limited as a Debtor).

6 *See* First Day Motion ¶ 6 ("CHC manages its domestic and overseas businesses from Irving, Texas."); *see id.* (defining "CHC" to include "[t]he Debtors, together with their non-debtor affiliates").

and Vigneau traveled from Marignane, France to the U.S. the week of June 27, 2016 in connection with a hearing in the Bankruptcy Cases, and Mr. Tagarian met with Mr. Cabaniss on June 28, 2016 in connection with Airbus's participation in the Bankruptcy Cases. *Id.* Airbus's discovery also revealed that Mr. Tagarian had responsibilities for Airbus "in connection with [Airbus's] participation in the [Creditors' Committee]," but Airbus withheld specific information about Mr. Tagarian's responsibilities on grounds of privilege. *Id.* Airbus noted that Messrs. Tagarian and Vigneau contributed to the preparation of key filings by Airbus in the Bankruptcy Cases, including Airbus's Objection to ECN Capital's Motion for Order Directing 2004 Examination of Debtors and the Debtors' 2017 Omnibus Restructure Agreement with Airbus.

In addition to the jurisdictional discovery produced by Airbus, publicly available sources reveal that Airbus frequently sends executives to the U.S., including to Texas, to attend and present at industry events. For example, Airbus is a Gold Level sponsor of the HAI Heli-Expo, a major helicopter industry event taking place in Dallas, Texas. *See* Ex. E. (CHC is also a Gold Level sponsor of the event. *Id.*) Airbus's logo is prominently featured on the front page of the HAI Heli-Expo website, along with a link to Airbus's webpage that directs visitors to sales and marketing materials for Airbus's helicopters, including the Super Pumas. Airbus regularly sends executives to attend and present at the HAI Heli-Expo in the U.S. For example, in 2014, Airbus's President and CEO Guillaume Faury spoke about Airbus's customer service at a breakfast during the HAI Heli-Expo in Anaheim, California. *See* Ex. F. In 2016, Airbus executive Gilles Bruniaux delivered a presentation regarding helicopter accidents on behalf of Airbus and others at the HAI Heli-Expo in Orlando, Florida. *See* Ex. G. Last year, Mr. Faury, attended the HAI Heli-Expo when it was held in Orlando, Florida. *See* Ex. H. According to a March 4, 2015 press release on Airbus's website, Airbus announced at the Heli-Expo that it had

signed a contract for the sale of helicopters to Bristow Group, a helicopter owner and operator based in Houston, Texas with a fleet of Airbus-manufactured helicopters including multiple Super Pumas. *Id.*

Plan Confirmation Hearing

Further information regarding jurisdictional issues was produced by Airbus and elicited by ECN Capital at the February 13, 2017 Plan Confirmation Hearing ("Confirmation Hearing") held before this Court in the Bankruptcy Proceedings. At the Confirmation Hearing, David W. Fowkes of Seabury Group, restructuring advisors to the Debtors, testified that the Debtors had 56 Super Pumas in their fleet at the time of the 2016 Grounding, nine of which were owned outright by the Debtors at the time and four of which remain owned outright by the Debtors. *See* Ex. I (Confirmation H'r'g Tr.) 197:21–198:7. Mr. Fowkes also testified that CHC Helicopters (Barbados) SRL—the Debtor to which ECN Capital leased the five Super Pumas it owned—owned or leased a total of 22 helicopters impacted by the 2016 Grounding, rejected its leases on all five of ECN Capital's Super Pumas, and continues to own one Super Puma. *Id.* 200:14–205:8. Robert A. Del Genio, CHC's Chief Restructuring Officer, also testified that CHC suffered injury to its business operations of approximately $34 million as a result of the 2016 Grounding, *id.* 108:5–109:17, and that CHC suffered injury to the value of the Super Pumas in its fleet as a result of the 2016 Grounding, but that CHC is unsure of the value of its claims against Airbus arising out of the 2016 Grounding, *id.* 104:11-13, 112:22–114:1.

ARGUMENT

I. This Court's Subject Matter Jurisdiction over ECN Capital's Claims Is Established by the Debtors' Testimony and the Discovery ECN Capital Obtained from Airbus.

The Debtors' testimony at the Confirmation Hearing proved what the Complaint adequately alleged: this Adversary Proceeding is "related to" the Bankruptcy Cases because the outcome of ECN Capital's claims could conceivably impact the rights, liabilities, causes of

action, and/or value of property of the Debtors. The Debtors suffered two types of injury as a result of the 2016 Grounding. *First*, the Debtors were harmed by the detrimental impact to their business, which contributed to their need to reject their leases on the five Super Pumas owned by ECN Capital. The Debtors calculated this harm to be approximately $34 million, *id.* 109:13-15, and this impact also led to a number of creditor proofs of claim filed against the Debtors in the Bankruptcy Cases. *Second*, the Debtors were harmed by the decrease in the value of the 56 helicopters in their fleet, including the four Super Pumas the Debtors continue to own outright. *Id.* 108:5–109:17. While the Debtors could not place a value on these claims, they acknowledged that each helicopter is valued at "around $20 million." *Id.* 107:19-20.

With respect to each of these harms, the outcome of ECN Capital's claims against Airbus likely would impact the Debtors' rights and/or liabilities. If ECN Capital establishes liability against Airbus for the 2016 Grounding, the reorganized Debtors would be able to rely on collateral estoppel to recover from Airbus for the injuries the Debtors incurred as a result of the 2016 Grounding, which recovery would inure to the benefit of the Debtors' creditors by virtue of the equity interests in the reorganized Debtors that such creditors are to receive under the Plan. The Debtors also potentially could offset claims by ECN Capital and other creditors arising out of lease rejections that resulted from the 2016 Grounding. Courts in the Fifth Circuit and elsewhere have found this type of potential impact on a debtor's rights or liabilities to be sufficient to establish "related to" jurisdiction over claims in an adversary proceeding brought by one non-debtor against another non-debtor. *See Passmore* v. *Baylor Health Care Sys.*, 823 F.3d 292, 296 (5th Cir. 2016) (finding "related to" subject matter jurisdiction where outcome of adversary proceeding could lead to claims by other parties impacting the estate); *8300 Newburgh Rd. Partnership* v. *Time Constr., Inc.* (*In re Time Constr., Inc.*), 43 F.3d 1041, 1045 (6th Cir.

1995) (explicitly applying same standard as Fifth Circuit and noting that third-party action was related to bankruptcy because outcome of action would affect value of debtor's property).[7]

Moreover, the discovery that Airbus produced to ECN Capital further substantiates the relatedness of the Adversary Proceeding to the Bankruptcy Cases. Airbus explained that its executives, Laurent Tagarian and Alain Vigneau, were responsible for preparing the proofs of claim Airbus filed against the Debtors in the Bankruptcy Cases—which concerned the same models of Super Pumas at issue in this Adversary Proceeding. Ex. D. Messrs. Tagarian and Vigneau also were responsible for preparing Airbus's objection to ECN Capital's requests for discovery from the Debtors in the Bankruptcy Cases regarding the Super Pumas the Debtors owned or leased, and the potential claims the Debtors might have against Airbus in connection with those Super Pumas. *Id.* Airbus's discovery now proves that Airbus sold 19 Super Pumas directly to the Debtors in the last five years, *see* Ex. B; the Debtors acknowledge that they have suffered harm in connection with those Super Pumas (and other Super Pumas the Debtors leased or owned) as a result of the 2016 Grounding, and the Debtors have claims against Airbus as a result. *See* Ex. I 104:11-13, 112:22–114:1; *see also* Ex. J 48:3-11. The outcome of ECN Capital's claims against Airbus could impact the rights, liabilities, and property value of the Debtors with respect to these Super Pumas. This Court accordingly has "related to" subject matter jurisdiction under § 1334(b) over this Adversary Proceeding.

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[7] *See also In re Canion*, 196 F.3d 579, 586–87 (5th Cir. 1999) (finding "related to" jurisdiction, since the outcome of an adversary proceeding between two non-debtors could have affected the bankruptcy estate at the time the district court referred the case to the bankruptcy court); *In re Mission Bay Ski & Bike, Inc.*, 398 B.R. 250, 253–55 (Bankr. N.D. Ill. 2010) (explaining that while "the Seventh Circuit interprets 'related to' jurisdiction more narrowly than other circuits," "related to" jurisdiction exists "when the non-debtor plaintiff is a creditor in the bankruptcy case and recovery in the action will reduce its claim against the bankruptcy estate"); *In re WorldCom, Inc. Secs. Litig.*, 293 B.R. 308, 323 (Bankr. S.D.N.Y. 2003) (finding "related to" jurisdiction over a claim against defendants connected to the debtor, because of "[t]he potential alteration of the liabilities of the estate and change in the amount available for distribution to other creditors"); *In re Edwards*, 100 B.R. 973, 982 (Bankr. E.D. Tenn. 2001) (finding "related to" jurisdiction over plaintiff's claims against a third-party lender "because of the impact a judgment against the [defendant] could have upon the bankruptcy estate").

II. This Court's Personal Jurisdiction over Airbus Is Established by Airbus's Significant Participation in the Bankruptcy Cases, Combined with Its Substantial Business in the U.S.

Airbus has submitted to this Court's personal jurisdiction through its substantial participation in the Bankruptcy Cases in this forum, where Airbus filed proofs of claim, participated as a member of the Creditors' Committee, and objected to ECN Capital's Motion for an Order Directing 2004 Examination of Debtors. *See* MTD Opp. 2–3, 25–26. The discovery shows that Airbus's actions were directed from France toward this forum, where Airbus availed itself of the benefits and protections of this Court's jurisdiction. Airbus's executives worked with U.S. counsel to prepare the filings in the Bankruptcy Cases. *See* Ex. D. The same Airbus executives traveled to this district to participate in the Bankruptcy Cases, including in connection with the Creditors' Committee meetings. *Id.* Airbus also has directed relevant business into this forum, directly selling hundreds of millions of dollars' worth of Super Pumas and other helicopters to U.S. customers based in this district, and using its U.S.-based affiliate to distribute even more helicopters in this district and to other U.S.-based customers. *See* Ex. B. This evidence—voluntarily produced and stipulated to by Airbus—directly contradicts the statements in the Gouraud Declaration submitted by Airbus in support of its attempt to avoid this Court's jurisdiction. *See* Gouraud Decl. ¶¶ 5, 9.

Courts have exercised personal jurisdiction over a creditor in an adversary proceeding in similar circumstances—where the defendant participated in the bankruptcy case and the claims in the adversary proceeding were related to the facts underlying the bankruptcy cases. *See*, *e.g.*, *In re LLS America, LLC*, 2012 WL 2564722, *7 (Bankr. E.D. Wash. 2012) (holding that by filing proof of claim and participating in motion practice, claimant submitted to bankruptcy court's jurisdiction for related claims); *Glinka* v. *Abraham and Rose Co. Ltd.*, 199 B.R. 484 (Bankr. D. Vt. 1996) (finding extensive participation in adversary proceeding, coupled with

contacts in relevant forum, sufficient for bankruptcy court to exercise personal jurisdiction over foreign non-debtor defendant); *In re Schwinn Bicycle Co.*, 182 B.R. 526, 531–32 (Bankr. N.D. Ill. 1995) (finding jurisdiction over creditor defendant for adversary proceedings and noting that "[e]stablishing jurisdiction over a party already voluntarily before a court is markedly different from doing so over a party not before it because he or she must first be hailed into court"); *In re Neese*, 12 B.R. 968, 971 (Bankr. W.D. Va. 1981) ("Having filed their proofs of claims in the underlying bankruptcy case, the defendants cannot now deny this Court's personal jurisdiction over them in a proceeding directly related to that case.").[8]

In the highly analogous district court context, courts have expressly held that filing a claim in one lawsuit subjects the claimant to the personal jurisdiction of the court in a subsequent related case, *even if the subsequent case is brought by an entity that was not a party to the first lawsuit.* For example, in *Int'l Transactions, Ltd.* v. *Embotelladora Agral Regionmontana SA de CV*, 277 F. Supp. 2d 654 (N.D. Tex. 2002), the court held that the defendant had purposefully availed itself of the forum court because it had brought two lawsuits in the same district against a third party relating to a dispute arising out of similar facts. 277 F. Supp. 2d at 667–68 ("Voluntarily filing a lawsuit in a jurisdiction is a purposeful availment of the jurisdiction's facilities and can subject a party to personal jurisdiction in another lawsuit when the lawsuits arise from the same general transaction."). That a party has previously chosen to litigate in a court eliminates any claim it has that defending a subsequent case filed in that forum—even if the subsequent case is brought by litigants who were not involved in the first case—would be "unreasonably burdensome." *See Hess* v. *Bumbo Int'l Trust*, 954 F. Supp. 2d 590, 597 (S.D.

[8] While some courts have held that submitting a proof of claim in a bankruptcy case does not subject an entity to general jurisdiction in the forum, those holdings have been limited to situations where "the bankruptcy proceeding was unrelated to" the subsequent action in which personal jurisdiction was challenged. *See Encompass Holdings, Inc.* v. *Daly*, No. C09–1816 BZ, 2010 WL 5088878, at n.9 (N.D. Cal. Dec. 8, 2010).

Tex. 2013) (holding that foreign entity purposefully availed itself of the forum court, for purposes of consumer product liability claim, when it filed litigation against its prior distributor in the federal court in Texas).

District courts outside the Fifth Circuit also have exercised personal jurisdiction over a party because it filed a related suit in the same jurisdiction against a third party. For example, in *Praetorian Specialty Ins. Co.* v. *Auguillard Const. Co.*, 829 F. Supp. 2d 456 (W.D. La. 2010), plaintiffs who filed a suit for permanent injuries suffered in a car accident moved to dismiss for lack of personal jurisdiction a separate action filed against them by a non-party insurer seeking a declaratory judgment recognizing that its insurance policies did not cover the accident. *Id.* at 460–61. The court followed the First Circuit Court of Appeals' analysis from *Gen. Contracting & Trading Co., LLC* v. *Interpole, Inc.*, 940 F.2d 20 (1st Cir. 1991), and held that the plaintiffs "waived objection to or consented to the personal jurisdiction" of the court by electing to file a lawsuit in the same forum arising from the same nucleus of operative facts. *Id.* at 465.[9]

It is well-established law that "the filing of a proof of claim" in a bankruptcy proceeding is "analogous to the filing of a complaint in a civil action." *O'Neill* v. *Cont'l Airlines* (*Matter of Cont'l Airlines*), 928 F.2d 127, 129 (5th Cir. 1991); *see also Simmons* v. *Savell,* (*In re Simmons*),

[9] Courts have continued to apply this principle after the issuance of the Supreme Court's ruling in *Daimler AG* v. *Bauman*, 134 S. Ct. 746 (2014). *Daimler* concerns *general* jurisdiction over a foreign corporation, *see* 134 S. Ct. at 754–58. When a defendant has consented to the personal jurisdiction of a court by filing a separate lawsuit arising from the same general transaction, it has not submitted itself to the court's general jurisdiction, but has rather submitted itself to jurisdiction of that court on the specific transaction at issue. *See Int'l Transactions, Ltd.*, 277 F. Supp. 2d at 667–68 (recognizing that filing a lawsuit voluntary constitutes "purposeful availment" of the jurisdiction in the context of a specific personal jurisdiction analysis). Since *Daimler*, courts have continued to recognize the principle that a defendant consents to the personal jurisdiction of a court when it has availed itself of the court's jurisdiction in a case arising out of similar facts. *See Furnari* v. *Wallpang, Inc.*, 2014 WL 1678419, at *11 (Del. Super. Ct. Apr. 16, 2014) (defendant consented to personal jurisdiction by filing suit on a related matter, since "[a] party may waive personal jurisdiction 'on the ground that the party consented to jurisdiction by submitting itself to a court's jurisdiction by instituting another, related suit'") (quoting *Foster Wheeler Energy Corp.* v. *Metallgesellschaft AG*, 1993 WL 669447, at *1 (D. Del. Jan. 4, 1993)); *New Media Holding Co., LLC* v. *Kagalovsky*, 985 N.Y.S.2d 216, 222 (2014) (finding that defendants "waived the right to challenge personal jurisdiction by freely using the protections of the New York courts when pursuing rights related to the partnership [at issue in the present case]").

765 F.2d 547, 552 (5th Cir. 1985) (stating that "the filing of a proof of claim is tantamount to the filing of a complaint in a civil action").[10]

In *In re Int'l Payment Grp., Inc.*, 2011 WL 5330783 (Bankr. D.S.C. Nov. 3, 2011), a federal bankruptcy court denied a motion to dismiss an adversary proceeding asserting "causes of action unrelated to or far beyond the scope of Defendant's claims against the estate," which was brought by the debtor's trustee against a creditor. *Id.* at *1. The court concluded that a creditor's proof of claim was akin to filing a complaint for the purposes of an adversary proceeding of a non-debtor against a creditor, even though "resolution of Defendant's claim against the estate [would] not result in a resolution of the disputes raised in this lawsuit," and the claims made in the adversary proceeding "dwarf[ed] those involved in any dispute that may arise over allowance of the proof of claim." *Id.* at *2.

District courts exercise personal jurisdiction over parties that have availed themselves of the court in related lawsuits, and claimants submit to bankruptcy courts' personal jurisdiction in the same respect as complainants in civil actions before district courts. Thus, a bankruptcy court also has personal jurisdiction over a creditor in an adversary proceeding brought by a non-debtor, when the non-debtor's claims are sufficiently related to the issues underlying the creditor-defendant's proofs of claim in the bankruptcy cases.

III. The Jurisdictional Discovery Demonstrates That the Court Should Deny Airbus's Requests for *Forum Non Conveniens* Dismissal and Abstention.

The discovery ECN Capital obtained from Airbus further shows that Airbus's attempts to avoid this Court's jurisdiction should be denied.

[10] *See also* U.S. Dep't of Justice, U.S. Attorneys' Manual § 1-188, https://www.justice.gov/usam/civil-resource-manual-188-bankruptcy-jurisdiction-personal-jurisdiction ("[A] foreigner filing a proof of claim submits to the personal jurisdiction of the bankruptcy court because a proof of claim is analogous to a complaint.").

Airbus seeks dismissal on the grounds of *forum non conveniens*, arguing in its Motion to Dismiss that it would be significant cost and burden for Airbus to bring witnesses to Texas and that this Adversary Proceeding has "no connection with Texas or the United States." Am. Br. in Supp. of Mot. to Dismiss 28. The record proves otherwise. Airbus voluntarily sent executives from France to this district for purposes of participating in the Bankruptcy Cases to which this Adversary proceeding is related. *See* Ex. D. And Airbus frequently sends executives to Texas for business purposes, including to attend industry events and to market and sell the very same models of Super Puma helicopters that are at issue here. *See* Ex. E. Further, Airbus sells helicopters to customers based in this district, and Airbus works with AHI—its U.S. affiliate based in Grand Prairie, Texas—to sell and distribute even more helicopters to customers in Texas and throughout the U.S. Along with sending its executives from France to Texas, Airbus's coordination with Mr. Cabaniss of AHI (together with U.S. counsel) for purposes of representing Airbus's interest in the Bankruptcy Cases further ties Airbus to this district and demonstrates Airbus's ability and willingness to appear in this district for legal proceedings. *See* Ex. D.

The discovery ECN Capital has obtained and the Debtors' testimony also support denial of Airbus's request that this Court abstain from exercising the jurisdiction it has to hear the Adversary Proceeding. In its MTD Opposition, ECN Capital set forth the criteria for the Court's consideration of Airbus's abstention request, which include "the degree of relatedness [] of the proceeding to the main bankruptcy case." MTD Opp. 22 (quoting *In re MontCrest*, 2014 WL 6982643, at *7 (Bankr. N.D. Tex. Dec. 9, 2014)). As explained in Section I above, Mr. Del Genio's testimony makes clear that the Debtors were harmed by the 2016 Grounding, which contributed to their need to cancel leases on certain helicopters, including the Super Pumas

owned by ECN Capital that are the subject of ECN Capital's proofs of claim in the Bankruptcy Cases. *See* Ex. I 108:5–109:17. And Airbus's jurisdictional discovery shows that Airbus sold 19 Super Pumas directly to certain of the Debtors, and the Debtors may have product liability or express or implied warranty claims to bring against Airbus with respect to these helicopters (along with others the Debtors owned or leased). *See* Ex. B. Thus, the testimony and discovery prove that the outcome of ECN Capital's claims in this Adversary Proceeding could significantly impact the rights, liabilities, and/or value of property of the Debtors: If ECN Capital establishes liability against Airbus, the Debtors could rely on collateral estoppel to recover significant damages from Airbus, and the Debtors potentially could offset proofs of claims from various creditors to the extent they relate to the Super Pumas. For these reasons and the reasons set forth in ECN Capital's MTD Opposition (pp. 13–16), this Court should deny Airbus's request for abstention.

CONCLUSION

For the foregoing reasons, and the reasons stated in ECN Capital's MTD Opposition and MTD Opposition Supplement, this Court should deny Defendant's Motion to Dismiss the Complaint.

Dated: February 23, 2017
Dallas, Texas

Respectfully submitted,

By: /s/ *Martin Flumenbaum*
Martin Flumenbaum

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CERTIFICATE OF SERVICE

I hereby certify that, on February 23, 2017, I caused the foregoing Second Supplemental Memorandum of Law in Opposition to Defendant's Motion to Dismiss to be filed with the Court via CM/ECF and served on all parties requesting electronic notification, including the following counsel of record for the Defendant:

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Exhibit K

ORDER BOOKINGS - AH GROUP

FROM 01/01/2011 TO 31/12/2016

DATE of the CONTRACT in force	FROM	TO			AIRCRAFT	QTY
		REGION	COUNTRY	CUSTOMER	TYPE	
June 2011	AH-AHD	EBRG	USA	BRISTOW	EC225	1
June 2011	AH-AHD	EBRG	USA	BRISTOW	EC225	1
October 2011	AH-AHD	EBRG	USA	WELLS FARGO / OMNI (Portugal)	EC225	2
TOTAL SUPER PUMA / COUGAR						**4**
March 2011	AHI	EBU	USA	US ARMY LUH CONTRACT*	EC145 UH	4
March 2011	AHI	EBU	USA	Vulcan Flight Inc*	EC145	1
June 2011	AHI	EBU	USA	US ARMY LUH CONTRACT*	EC145 UH	14
July 2011	AHI	EBU	USA	WEST PENN ALLEGHENY*	EC145	1
August 2011	AHI	EBU	USA	Sanford Health*	EC145	1
August 2011	AHI	EBU	USA	OSF Aviation*	EC145	4
September 2011	AHI	EBU	USA	Heli Transport*	EC145	1
October 2011	AHI	EBU	USA	Duke University Health System Inc*	EC145	2
October 2011	AHI	EBU	USA	Sanford Health*	EC145	2
December 2011	AHI	EBU	USA	US ARMY LUH CONTRACT*	EC145 UH	39
December 2011	AHI	EBU	USA	University of Utah*	EC145	1
December 2011	AHI	EBU	USA	Metro Aviation INC*	EC145	1
TOTAL H145						**71**
May 2011	AHI	EBU	USA	HMA*	EC135	3
May 2011	AHI	EBU	USA	Air Methods Corporation (AMC)*	EC135	-1
August 2011	AHI	EBU	USA	Era Helicopters LLC*	EC135	3
October 2011	AHI	EBU	USA	Massachusetts State Police*	EC135	1
November 2011	AHI	EBU	USA	Era Helicopters LLC*	EC135	4
November 2011	AHI	EBU	USA	Med-Trans Corporation*	EC135	2
December 2011	AHI	EBU	USA	REACH, dba Mediplane*	EC135	1
TOTAL H135						**13**
May 2011	AHI	EBU	USA	Air Commander International Ltd*	EC130	1
September 2011	AHI	EBU	USA	Mustang Leasing* / Maverick	H130	3
September 2011	AHI	EBU	USA	Mustang Leasing* / Maverick	H130	7
October 2011	AHI	EBU	USA	Milestone Aviation Group LLC*	EC130	5
TOTAL H130						**16**
January 2011	AHI	EBU	USA	WINCO INC*	AS350 B3	1
January 2011	AHI	EBU	USA	NS Air Leasing LLC*	AS350 B3	1
February 2011	AHI	EBU	USA	Veracity Aviation*	AS350 B2	1
February 2011	AHI	EBU	USA	Extreme Crafts LLC*	AS350 B3	-1
February 2011	AHI	EBU	USA	Helicopter Express Inc*	AS350 B3	-1
February 2011	AHI	EBU	USA	NS Air Leasing LLC*	AS350 B3	1
February 2011	AHI	EBU	USA	NS Air Leasing LLC*	AS350 B3	1
February 2011	AHI	EBU	USA	Shier Aviation Corporation*	AS350 B3	1
March 2011	AHI	EBU	USA	Air Medical Resources Group*	H125	3
March 2011	AHI	EBU	USA	Air Commander International Ltd*	H125	1
March 2011	AHI	EBU	USA	BHI Helicopters Inc* / BRAINERD	H125	1
March 2011	AHI	EBU	USA	Spiegel Aviation*	H125	1

April 2011	AHI	EBU	USA	Rotor Aviation Inc*	AS350 B2	1
April 2011	AHI	EBU	USA	Veracity Aviation*	AS350 B2	1
May 2011	AHI	EBU	USA	Air Methods Corporation (AMC)*	AS350 B3	4
May 2011	AHI	EBU	USA	DHS/CBP National Air Training Center*	AS350 B3	3
May 2011	AHI	EBU	USA	Shier Aviation Corporation*	H125	1
May 2011	AHI	EBU	USA	Shier Aviation Corporation*	AS350 B2	1
May 2011	AHI	EBU	USA	Shier Aviation Corporation*	AS350 B2	1
May 2011	AHI	EBU	USA	Shier Aviation Corporation*	H125	1
June 2011	AHI	EBU	USA	Papillon Airways Inc*	H125	1
June 2011	AHI	EBU	USA	Papillon Airways Inc*	H125	1
June 2011	AHI	EBU	USA	Papillon Airways Inc*	H125	1
June 2011	AHI	EBU	USA	Papillon Airways Inc*	H125	1
June 2011	AHI	EBU	USA	Papillon Airways Inc*	H125	1
August 2011	AHI	EBU	USA	Kenneth Lian Corp*	AS350 B2	1
August 2011	AHI	EBU	USA	Central Copters Inc*	AS350 B2	1
August 2011	AHI	EBU	USA	The Boeing Company*	AS350 B3	1
August 2011	AHI	EBU	USA	Heli LLC*	AS350 B3	1
August 2011	AHI	EBU	USA	LLOYD HELICOPTERS US INC*	AS350 B3	1
August 2011	AHI	EBU	USA	Veracity Aviation*	AS350 B2	1
August 2011	AHI	EBU	USA	Eaglemed LLC*	AS350 B3	1
August 2011	AHI	EBU	USA	Air Medical Resources Group*	H125	2
September 2011	AHI	EBU	USA	Pima Co Sheriff's Department*	AS350 B3	1
September 2011	AHI	EBU	USA	Saguaro Rentals LLC*	AS350 B2	1
November 2011	AHI	EBU	USA	Mountain West Helicopters LLC*	H125	1
December 2011	AHI	EBU	USA	Veracity Aviation*	AS350 B2	1
December 2011	AHI	EBU	USA	LA Grant Aviation Inc*	H125	1
December 2011	AHI	EBU	USA	DHS/CBP National Air Training Center*	H125	5
December 2011	AHI	EBU	USA	NS Air Leasing LLC*	H125	2
December 2011	AHI	EBU	USA	Veracity Aviation*	AS350 B2	1
December 2011	AHI	EBU	USA	RAI LLC*	AS350 B2	2
December 2011	AHI	EBU	USA	Pratte Transportation Inc*	H125	2
TOTAL ECUREUIL I / FENNEC						**54**
October 2011	AHI	EBU	USA	Baltimore Police Department*	H120	4
November 2011	AHI	EBU	USA	Icarus Copters LLC*	H120	1
TOTAL COLIBRI						**5**
TOTAL 2011						**163**
September 2012	AH-AHD	EBRG	USA	BRISTOW	EC225	1
September 2012	AH-AHD	EBRG	USA	BRISTOW	EC225	1
September 2012	AH-AHD	EBRG	USA	BRISTOW	EC225	1
TOTAL SUPER PUMA / COUGAR						**3**
February 2012	AHI	EBU	USA	Shier Aviation Corporation*	H155	1
July 2012	AHI	EBU	USA	Shands Hospital*	H155	1
November 2012	AHI	EBU	USA	Miami valley*	AS365	1
TOTAL DAUPHIN / PANTHER						**3**
April 2012	AHI	EBU	USA	Metro Aviation INC*	EC145	2
August 2012	AHI	EBU	USA	Dare County*	H145	1
September 2012	AHI	EBU	USA	Speedway Aviation*	EC145	1
September 2012	AHI	EBU	USA	University of Pennsylvania*	EC145	1

September 2012	AHI	EBU	USA	US ARMY LUH CONTRACT*	EC145 UH	2
November 2012	AHI	EBU	USA	US ARMY LUH CONTRACT*	EC145 UH	34
November 2012	AHI	EBU	USA	Geisinger Medical Center Attn: Gerald Splitt*	EC145	1
December 2012	AHI	EBU	USA	Boston Medflight*	EC145	1
December 2012	AHI	EBU	USA	Metro Aviation INC*	EC145	1
December 2012	AHI	EBU	USA	Caribbean Buzz LLC*	EC145	1
TOTAL H145						**45**
February 2012	AHI	EBU	USA	Broward County Sheriff's Deptartment*	EC135	1
June 2012	AHI	EBU	USA	CALSTAR*	EC135	2
July 2012	AHI	EBU	USA	Metro Aviation INC*	EC135	1
August 2012	AHI	EBU	USA	Med-Trans Corporation*	EC135	2
August 2012	AHI	EBU	USA	Med-Trans Corporation*	EC135	4
August 2012	AHI	EBU	USA	Med-Trans Corporation*	EC135	2
August 2012	AHI	EBU	USA	Med-Trans Corporation*	EC135	2
September 2012	AHI	EBU	USA	Massachusetts State Police*	EC135	1
November 2012	AHI	EBU	USA	Med-Trans Corporation*	EC135	1
December 2012	AHI	EBU	USA	CALSTAR*	EC135	2
December 2012	AHI	EBU	USA	HMA*	EC135	2
December 2012	AHI	EBU	USA	Med-Trans Corporation*	EC135	1
December 2012	AHI	EBU	USA	Med-Trans Corporation*	EC135	1
December 2012	AHI	EBU	USA	Air Methods Corporation (AMC)*	EC135	3
December 2012	AHI	EBU	USA	Air Methods Corporation (AMC)*	EC135	3
TOTAL H135						**28**
February 2012	AHI	EBU	USA	Papillon Airways Inc*	H130	6
February 2012	AHI	EBU	USA	Nevada Helicopter Leasing LLC* / Blue Hawaiian	H130	10
February 2012	AHI	EBU	USA	Second Wind LLC*	H130	1
February 2012	AHI	EBU	USA	Enloe Flightcare*	H130	1
February 2012	AHI	EBU	USA	Air Commander International Ltd*	H130	1
February 2012	AHI	EBU	USA	Laughlin Aviation Inc*	H130	2
February 2012	AHI	EBU	USA	Indiana Helicopters LLC* / N13C LLC	H130	1
March 2012	AH-AHD	EBE	USA	Highland Copter LLC / M. LAIDLAW	EC130	1
March 2012	AHI	EBU	USA	Modern Industrial Services Inc*	EC130	1
March 2012	AHI	EBU	USA	CNH LLC*	EC130	-1
April 2012	AHI	EBU	USA	EC 130 LLC*	EC130	1
May 2012	AHI	EBU	USA	Helicopter Flight Services*	H130	1
June 2012	AHI	EBU	USA	Pylon Aviation Holdings LLC*	EC130	2
June 2012	AHI	EBU	USA	Pylon Aviation Holdings LLC*	H130	2
June 2012	AHI	EBU	USA	Papillon Airways Inc*	H130	1
June 2012	AHI	EBU	USA	Papillon Airways Inc*	H130	1
June 2012	AHI	EBU	USA	Papillon Airways Inc*	H130	1
June 2012	AHI	EBU	USA	Papillon Airways Inc*	H130	1
August 2012	AHI	EBU	USA	Saguaro Rentals LLC*	H130	2
December 2012	AHI	EBU	USA	Air Methods Corporation (AMC)*	EC130	-4
December 2012	AHI	EBU	USA	Air Methods Corporation (AMC)*	H130	3
December 2012	AHI	EBU	USA	Air Methods Corporation (AMC)*	H130	7
December 2012	AHI	EBU	USA	Memphis Medical Center*	EC130	1
TOTAL H130						**42**
February 2012	AHI	EBU	USA	Veracity Aviation*	AS350 B2	1
February 2012	AHI	EBU	USA	Cathexis Oil and Gas LLC*	H125	1

February 2012	AHI	EBU	USA	Texas DPS*	H125	1
April 2012	AHI	EBU	USA	NS Air Leasing LLC*	H125	2
April 2012	AHI	EBU	USA	Chase Farms*	H125	1
May 2012	AHI	EBU	USA	Elling Halvorson Inc*	H125	1
June 2012	AHI	EBU	USA	Elling Halvorson Inc*	H125	2
June 2012	AHI	EBU	USA	Pylon Aviation Holdings LLC*	AS350 B2	2
June 2012	AHI	EBU	USA	State of Utah*	H125	1
June 2012	AHI	EBU	USA	DHS/CBP National Air Training Center*	H125	1
June 2012	AHI	EBU	USA	NS Air Leasing LLC*	H125	2
August 2012	AHI	EBU	USA	Saguaro Rentals LLC*	AS350 B2	2
August 2012	AHI	EBU	USA	NS Air Leasing LLC*	H125	1
August 2012	AHI	EBU	USA	US Helicopters Inc*	AS350 B2	1
August 2012	AHI	EBU	USA	Eaglemed LLC*	AS350 B2	1
August 2012	AHI	EBU	USA	Saguaro Rentals LLC*	AS350 B2	2
August 2012	AHI	EBU	USA	NS Air Leasing LLC*	H125	1
August 2012	AHI	EBU	USA	Eaglemed LLC*	H125	1
August 2012	AHI	EBU	USA	AUSTIN POLICE DEPARTMENT*	H125	1
September 2012	AHI	EBU	USA	NS Air Leasing LLC*	H125	1
October 2012	AHI	EBU	USA	Alaska DPS*	H125	1
November 2012	AHI	EBU	USA	Bear Defense Services*	AS350 B2	1
November 2012	AHI	EBU	USA	Brevard County Mosquito Control*	H125	2
November 2012	AHI	EBU	USA	Happyheight Inc*	AS350 B2	1
December 2012	AHI	EBU	USA	NiSource Corporate Services Company*	AS350 B2	1
December 2012	AHI	EBU	USA	Pylon Aviation Holdings LLC*	H125	2
December 2012	AHI	EBU	USA	Reeder Flying service*	H125	1
December 2012	AHI	EBU	USA	Air Methods Corporation (AMC)*	H125	2
December 2012	AHI	EBU	USA	Air Methods Corporation (AMC)*	H125	4
December 2012	AHI	EBU	USA	Oklahoma DPS*	H125	1
TOTAL ECUREUIL I / FENNEC						**42**
TOTAL 2012						**163**
December 2013	AHI	EBU	USA	CHI Aviation*	H175	1
TOTAL H175						**1**
October 2013	AHI	EBU	USA	Helicopter Exchange Ltd*	H155	1
TOTAL DAUPHIN / PANTHER						**1**
July 2013	AHI	EBU	USA	Speedway Aviation*	EC145	-1
August 2013	AHI	EBU	USA	Boston Medflight*	EC145	1
August 2013	AHI	EBU	USA	US ARMY LUH CONTRACT*	EC145 UH	1
November 2013	AHI	EBU	USA	Air Commander International Ltd*	EC145	1
December 2013	AHI	EBU	USA	US ARMY LUH CONTRACT*	EC145 UH	6
TOTAL H145						**8**
January 2013	AHI	EBU	USA	WASHINGTON CORP*	EC135	1
February 2013	AHI	EBU	USA	Midwest Medical Transport Company*	EC135	1
February 2013	AHI	EBU	USA	Valkyrie*	EC135	1
March 2013	AHI	EBU	USA	Med-Trans Corporation*	EC135	1
April 2013	AHI	EBU	USA	Med-Trans Corporation*	EC135	1
April 2013	AHI	EBU	USA	Tentacle Corp*	EC135	2
April 2013	AHI	EBU	USA	CALSTAR*	EC135	1
June 2013	AHI	EBU	USA	Med-Trans Corporation*	EC135	1

July 2013	AHI	EBU	USA	Healthnet Aeromadical Services*	EC135	1
August 2013	AHI	EBU	USA	CALSTAR*	EC135	1
September 2013	AHI	EBU	USA	Massachusetts State Police*	EC135	1
December 2013	AHI	EBU	USA	IHL Acquisition*	EC135	2
TOTAL H135						**14**
January 2013	AHI	EBU	USA	Advantage Systems Inc*	EC130	1
August 2013	AHI	EBU	USA	Sundance Helicopters Inc*	H130	4
August 2013	AHI	EBU	USA	DBD Properties LLC*	H130	1
November 2013	AHI	EBU	USA	Elling Halvorson Inc*	H130	4
November 2013	AHI	EBU	USA	Pylon Aviation Holdings LLC*	H130	1
November 2013	AHI	EBU	USA	Sundance Helicopters Inc*	H130	16
December 2013	AHI	EBU	USA	Air Commander International Ltd*	H130	1
December 2013	AHI	EBU	USA	Air Commander International Ltd*	H130	1
TOTAL H130						**29**
January 2013	AHI	EBU	USA	DHS/CBP National Air Training Center*	H125	1
February 2013	AHI	EBU	USA	MacNeil Aviation LLC*	H125	1
February 2013	AHI	EBU	USA	Timberline Helicopters Inc*	H125	1
March 2013	AHI	EBU	USA	US Helicopters Inc*	AS350 B2	1
April 2013	AHI	EBU	USA	Air Methods Corporation (AMC)*	H125	1
April 2013	AHI	EBU	USA	Pylon Aviation Holdings LLC*	H125	2
April 2013	AHI	EBU	USA	Pylon Aviation Holdings LLC*	AS350 B2	4
April 2013	AHI	EBU	USA	Air Medical Resources Group*	H125	7
May 2013	AHI	EBU	USA	Eaglemed LLC*	AS350 B2	1
May 2013	AHI	EBU	USA	Elling Halvorson Inc*	H125	2
June 2013	AHI	EBU	USA	Alaska DPS*	H125	1
June 2013	AHI	EBU	USA	Commonwealth of Pennsylvania*	AS350 B2	1
July 2013	AHI	EBU	USA	PHI Air Medical*	H125	6
July 2013	AHI	EBU	USA	BHI Helicopters Inc*	H125	1
August 2013	AHI	EBU	USA	Saguaro Rentals LLC*	AS350 B2	-2
August 2013	AHI	EBU	USA	Meridian Consulting Company*	AS350 B2	1
August 2013	AHI	EBU	USA	Seminole County Sheriff's Office*	H125	1
September 2013	AHI	EBU	USA	Central Copters Inc*	H125	1
September 2013	AHI	EBU	USA	City of Philadelphia*	AS350 B2	1
September 2013	AHI	EBU	USA	Seminole Tribe of Florida*	H125	1
September 2013	AHI	EBU	USA	City of Tulsa*	AS350 B2	1
September 2013	AHI	EBU	USA	Meridian Consulting Company*	AS350 B2	1
October 2013	AHI	EBU	USA	Island Helicopter Kauai*	AS350 B2	1
October 2013	AHI	EBU	USA	Reeder Flying service*	H125	1
October 2013	AHI	EBU	USA	NS Air Leasing LLC*	H125	1
November 2013	AHI	EBU	USA	Elling Halvorson Inc*	H125	3
November 2013	AHI	EBU	USA	Oklahoma DPS*	H125	2
November 2013	AHI	EBU	USA	University of Miami*	H125	1
December 2013	AHI	EBU	USA	Mississippi DPS*	H125	1
December 2013	AHI	EBU	USA	LAG AVIATION*	H125	1
December 2013	AHI	EBU	USA	NS Air Leasing LLC*	H125	1
December 2013	AHI	EBU	USA	Caribbean Helicorp Inc*	H125	1
December 2013	AHI	EBU	USA	US Helicopters Inc*	AS350 B2	1
December 2013	AHI	EBU	USA	Air Medical Resources Group*	H125	3
TOTAL ECUREUIL I / FENNEC						**52**

June 2013	AHI	EBU	USA	City of San Antonio*	H120	2
TOTAL COLIBRI						**2**
TOTAL 2013						**107**
April 2014	AHI	EBU	USA	Macquarie Bank Limited* / PHOENIX	EC225	3
October 2014	AH-AHD	EBRG	USA	BRISTOW	EC225	1
TOTAL SUPER PUMA / COUGAR						**4**
February 2014	AHI	EBU	USA	CHI Aviation*	H175	1
TOTAL H175						**1**
February 2014	AHI	EBU	USA	US ARMY LUH CONTRACT*	EC145 UH	4
March 2014	AHI	EBU	USA	US ARMY LUH CONTRACT*	EC145 UH	6
April 2014	AHI	EBU	USA	July 10 LLC*	H145	1
May 2014	AHI	EBU	USA	AVALON CAPITAL GROUP INC*	H145	1
May 2014	AHI	EBU	USA	US ARMY LUH CONTRACT*	EC145 UH	10
May 2014	AHI	EBU	USA	Air Methods Corporation (AMC)*	EC145	1
September 2014	AHI	EBU	USA	Vulcan Flight Inc*	H145	1
October 2014	AHI	EBU	USA	US ARMY LUH CONTRACT*	EC145 UH	17
November 2014	AHI	EBU	USA	US ARMY LUH CONTRACT*	EC145 UH	12
November 2014	AHI	EBU	USA	US ARMY LUH CONTRACT*	EC145 UH	2
November 2014	AHI	EBU	USA	Suffolk County Police Department*	EC145	1
TOTAL H145						**56**
May 2014	AHI	EBU	USA	CALSTAR*	EC135	2
June 2014	AHI	EBU	USA	Air Methods Corporation (AMC)*	EC135	-6
November 2014	AHI	EBU	USA	Metro Aviation INC*	EC135	1
TOTAL H135						**-3**
March 2014	AHI	EBU	USA	TUDOR INVESTMENT CORPORATION*	AS355	1
TOTAL ECUREUIL II / FENNEC						**1**
January 2014	AHI	EBU	USA	Mustang Leasing* / Maverick	H130	3
March 2014	AHI	EBU	USA	Memphis Medical Center*	H130	1
April 2014	AHI	EBU	USA	Liautaud Development Group*	H130	1
June 2014	AHI	EBU	USA	Air Methods Corporation (AMC)*	H130	6
June 2014	AHI	EBU	USA	Pylon Aviation Holdings LLC*	H130	3
June 2014	AHI	EBU	USA	Air Methods Corporation (AMC)*	H130	6
December 2014	AHI	EBU	USA	Mustang Leasing*	H130	5
TOTAL H130						**25**
January 2014	AHI	EBU	USA	Petr Lukes*	H125	1
February 2014	AHI	EBU	USA	Air Commander International Ltd*	AS350 B2	1
February 2014	AHI	EBU	USA	Elling Halvorson Inc*	H125	3
February 2014	AHI	EBU	USA	Helicopter Express Inc*	H125	3
March 2014	AHI	EBU	USA	Helotex Aviation LLC*	H125	1
March 2014	AHI	EBU	USA	Valion Holdings LLC*	H125	1
March 2014	AHI	EBU	USA	Hillsborough County Sheriff's Office*	AS350 B2	1
May 2014	AHI	EBU	USA	PHI*	H125	1
May 2014	AHI	EBU	USA	Texas Parks & Wildlife*	H125	1
May 2014	AHI	EBU	USA	Eaglemed LLC*	H125	1
June 2014	AHI	EBU	USA	Pylon Aviation Holdings LLC*	AS350 B2	3
June 2014	AHI	EBU	USA	Air Methods Corporation (AMC)*	H125	-6
June 2014	AHI	EBU	USA	Pylon Aviation Holdings LLC*	H125	-2
August 2014	AHI	EBU	USA	CALIFORNIA HIGHWAY PATROL*	H125	3

August 2014	AHI	EBU	USA	Elling Halvorson Inc*	H125	1
August 2014	AHI	EBU	USA	Bear Defense Services*	H125	1
September 2014	AHI	EBU	USA	Eaglemed LLC*	H125	1
September 2014	AHI	EBU	USA	DB Projects LLC*	H125	1
September 2014	AHI	EBU	USA	JR Helicopters LLC*	H125	1
October 2014	AHI	EBU	USA	US Helicopters Inc*	AS350 B2	1
November 2014	AHI	EBU	USA	Pylon Aviation Holdings LLC*	H125	1
November 2014	AHI	EBU	USA	The Boeing Company*	H125	1
December 2014	AHI	EBU	USA	Sky High Leasing*	H125	1
December 2014	AHI	EBU	USA	Riverside County Sheriff Department*	H125	2
December 2014	AHI	EBU	USA	LAPD*	H125	1
December 2014	AHI	EBU	USA	Hillsboro Aviation*	H125	1
December 2014	AHI	EBU	USA	Indiana Helicopters LLC*	H125	1
December 2014	AHI	EBU	USA	Helicopter Express Inc*	H125	2
December 2014	AHI	EBU	USA	Eaglemed LLC*	AS350 B2	1
December 2014	AHI	EBU	USA	COASTAL HELICOPTERS*	H125	1
TOTAL ECUREUIL I / FENNEC						**30**
June 2014	AHI	EBU	USA	Tennessee Valley Authority*	H120	2
TOTAL COLIBRI						**2**
TOTAL 2014						**116**
March 2015	AH-AHD	EBRG	USA	BRISTOW	H175	17
December 2015	AHI	EBU	USA	CHI Aviation*	H175	-1
December 2015	AHI	EBU	USA	CHI Aviation*	H175	-1
TOTAL H175						**15**
February 2015	AHI	EBU	USA	US ARMY LUH CONTRACT*	EC145 UH	41
March 2015	AHI	EBU	USA	Air Methods Corporation (AMC)*	EC145	1
April 2015	AHI	EBU	USA	Metro Aviation INC*	EC145	1
May 2015	AHI	EBU	USA	Tennessee Valley Authority*	EC145	1
June 2015	AHI	EBU	USA	Buckeye Leasing LLC*	EC145	5
July 2015	AHI	EBU	USA	FLIGHT MANAGEMENT LLC*	H145	1
August 2015	AHI	EBU	USA	Air Medical Resources Group*	EC145	2
November 2015	AHI	EBU	USA	US ARMY LUH CONTRACT*	EC145 UH	12
December 2015	AHI	EBU	USA	Air Medical Resources Group*	EC145	-2
TOTAL H145						**62**
June 2015	AHI	EBU	USA	Stat-Medevac*	H135	2
August 2015	AH-AHD	EBE	USA	AEROHEAD AVIATION	H135	1
September 2015	AHI	EBU	USA	CALSTAR*	H135	3
October 2015	AHI	EBU	USA	CALSTAR*	H135	2
October 2015	AHI	EBU	USA	Air Medical Group Holdings*	H135	6
December 2015	AHI	EBU	USA	Dartmouth Hitchcock*	H135	1
December 2015	AHI	EBU	USA	Air Medical Group Holdings*	H135	1
TOTAL H135						**16**
June 2015	AHI	EBU	USA	Nevada Helicopter Leasing LLC*	H130	1
September 2015	AHI	EBU	USA	Richardson Aviation*	H130	1
November 2015	AHI	EBU	USA	Air Methods Corporation (AMC)*	H130	-1
December 2015	AHI	EBU	USA	Air Medical Resources Group*	H130	4
December 2015	AHI	EBU	USA	Ten X Inc*	H130	1
TOTAL H130						**6**

February 2015	AHI	EBU	USA	PETER FENTON*	H125	1
May 2015	AHI	EBU	USA	CALIFORNIA HIGHWAY PATROL*	H125	2
May 2015	AHI	EBU	USA	OHIO STATE HIGHWAY PATROL*	H125	1
July 2015	AHI	EBU	USA	PHI*	H125	2
August 2015	AHI	EBU	USA	ONTARIO POLICE AIR SUPPORT UNIT*	H125	1
August 2015	AHI	EBU	USA	PHI*	H125	2
August 2015	AHI	EBU	USA	Air Medical Resources Group*	H125	3
September 2015	AHI	EBU	USA	LAPD*	H125	1
November 2015	AHI	EBU	USA	PINELLAS SHERIFF'S OFFICE*	AS350 B2	1
November 2015	AHI	EBU	USA	Lee County Sheriff's Office*	H125	1
November 2015	AHI	EBU	USA	Air Methods Corporation (AMC)*	H125	1
December 2015	AHI	EBU	USA	Raven Aviation LLC*	AS350 B2	1
December 2015	AHI	EBU	USA	Hillsboro Aviation*	H125	1
December 2015	AHI	EBU	USA	State of Utah*	H125	1
December 2015	AHI	EBU	USA	Air Medical Resources Group*	H125	4
December 2015	AHI	EBU	USA	SG Equipment Finance*	AS350 B2	1
December 2015	AHI	EBU	USA	Helicopter Express Inc*	H125	-2
TOTAL ECUREUIL I / FENNEC						**22**
August 2015	AHI	EBU	USA	City of San Antonio*	H120	1
TOTAL COLIBRI						**1**
TOTAL 2015						**122**
September 2016	AH-AHD	EBRG	USA	BRISTOW	H175	5
TOTAL H175						**5**
March 2016	AHI	EBU	USA	MacNeil Aviation LLC*	H145	1
March 2016	AHI	EBU	USA	Las Vegas Metro Police Department*	H145	1
April 2016	AHI	EBU	USA	JS Leasing* / Dallas Cowboys	H145	1
April 2016	AHI	EBU	USA	Mayo Medical Transport*	EC145	1
April 2016	AHI	EBU	USA	Air Methods Corporation (AMC)*	EC145	1
May 2016	AHI	EBU	USA	Han-Mac Holdings International*	H145	1
June 2016	AHI	EBU	USA	Stat-Medevac*	EC145	1
September 2016	AHI	EBU	USA	Air Methods Corporation (AMC)*	EC145	2
October 2016	AHI	EBU	USA	PHI*	H145	2
December 2016	AHI	EBU	USA	Palantir Technologies*	H145	1
TOTAL H145						**12**
March 2016	AHI	EBU	USA	Air Medical Group Holdings*	H135	1
August 2016	AHI	EBU	USA	CALSTAR*	H135	-1
August 2016	AHI	EBU	USA	CALSTAR*	H135	-2
August 2016	AHI	EBU	USA	Air Medical Group Holdings*	H135	1
August 2016	AHI	EBU	USA	Air Medical Group Holdings*	H135	1
August 2016	AHI	EBU	USA	Air Medical Group Holdings*	H135	1
December 2016	AHI	EBU	USA	Stat-Medevac*	H135	3
TOTAL H135						**4**
January 2016	AHI	EBU	USA	Lightnin Production Rental*	H130	1
May 2016	AHI	EBU	USA	Air Medical Resources Group*	H130	3
June 2016	AHI	EBU	USA	H&J Aviation LLC*	H130	1
July 2016	AHI	EBU	USA	Memphis Medical Center*	H130	1
October 2016	AHI	EBU	USA	Sundance Helicopters Inc*	H130	-10
October 2016	AHI	EBU	USA	Air Methods Corporation (AMC)*	H130	-9

December 2016	AHI	EBU	USA	WFP Aviation*	H130	1
December 2016	AHI	EBU	USA	Palantir Technologies*	H130	1
TOTAL H130						**-11**
February 2016	AHI	EBU	USA	CHI Aviation*	H125	1
February 2016	AHI	EBU	USA	CHI Aviation*	H125	1
March 2016	AHI	EBU	USA	County of Orange Sheriff*	H125	1
March 2016	AHI	EBU	USA	Comanche Maverick Air*	H125	1
March 2016	AHI	EBU	USA	CALIFORNIA HIGHWAY PATROL*	H125	3
April 2016	AHI	EBU	USA	Spurr Mountain*	H125	1
June 2016	AHI	EBU	USA	Miami Dade Police*	AS350 B2	1
August 2016	AHI	EBU	USA	RW Aviation*	H125	1
August 2016	AHI	EBU	USA	LADWP*	H125	2
August 2016	AHI	EBU	USA	Pylon Aviation Holdings LLC*	AS350 B2	-1
September 2016	AHI	EBU	USA	Dement Construction Company*	H125	1
September 2016	AHI	EBU	USA	San Bernardino County Sheriff*	H125	2
October 2016	AHI	EBU	USA	Sky High Leasing*	H125	1
November 2016	AHI	EBU	USA	SG Equipment Finance*	H125	1
November 2016	AHI	EBU	USA	LAPD*	H125	2
November 2016	AHI	EBU	USA	Conrad & Bischoff*	H125	1
December 2016	AHI	EBU	USA	Air Medical Group Holdings*	H125	5
December 2016	AHI	EBU	USA	Studer Fertilizer Inc*	H125	1
December 2016	AHI	EBU	USA	Metro Aviation INC*	H125	1
TOTAL ECUREUIL I / FENNEC						**26**
November 2016	AHI	EBU	USA	Shier Aviation Corporation*	H120	2
TOTAL COLIBRI						**2**
TOTAL 2016						**38**

ORDER BOOKINGS - AH GROUP

FROM 01/01/2011 TO 31/12/2016

DATE of the CONTRACT in force	FROM	TO			AIRCRAFT	QTY
		REGION	COUNTRY	CUSTOMER	TYPE	
February 2011	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
February 2011	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
August 2011	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
November 2011	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
November 2011	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
TOTAL SUPER PUMA / COUGAR						5
TOTAL 2011						**5**
January 2012	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
May 2012	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
June 2012	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
June 2012	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
June 2012	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
August 2012	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
November 2012	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
TOTAL SUPER PUMA / COUGAR						7
TOTAL 2012						**7**
February 2013	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
May 2013	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
May 2013	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
August 2013	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
August 2013	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
TOTAL SUPER PUMA / COUGAR						5
TOTAL 2013						**5**
January 2014	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
January 2014	AH-AHD	EBRG	Ireland	CHC Leasing (Ireland) Limited	EC225	1
TOTAL SUPER PUMA / COUGAR						2
TOTAL 2014						**2**
TOTAL 2015						**0**
TOTAL 2016						**0**

Exhibit L

From: Strain, Eric <estrain@nixonpeabody.com>
Sent: Friday, February 10, 2017 4:13 PM
To: Signoracci, Pietro J
Cc: Flumenbaum, Martin; George Barber; Kaplan, Roberta A; Ortego, Joseph J.; 'Jason Katz'; Christmas, Robert; Shah, Shainee
Subject: ECN v. Airbus Helicopters
Attachments: AH Sales to USA 2011-2016.pdf; AH Sales to CHC 2011-2016.pdf; AHI Sales 2011-2016.pdf

Pietro,

Aircraft Sales

Attached are:

1. A spreadsheet showing sales by Airbus Helicopters, S.A.S. ("AH") to customers having a US address on the purchase agreement for the years 2011 through 2016. The sales were made by AH to the companies listed under the "From" heading, not the "Customer" heading. Thus, you will see that the sales were made by AH to Airbus Helicopters, Inc. ("AHI"). The "Customer" heading refers to the customers to whom AHI sold and delivered the helicopters in the US.

2. A spreadsheet showing sales by AH to CHC entities.

3. Documents summarizing AHI's sales to customers having US addresses on the purchase agreements. The entries that are blacked out were sales to customers not having US addresses.

Maintenance

1. AH does not perform maintenance in the US.

2. If a Super Puma customer in the US needs a main gearbox overhaul, the overhaul would be done by AH in France (or Helibras in Brazil); AHI does not perform Super Puma main gearbox overhauls.

3. AH, not AHI, would perform retrofit work to bring Super Pumas into compliance with the EASA AD and FAA approved AMOC allowing return to service following the groundings.

Corporate Relationship

I will get this to you on Monday.

Bankruptcy Involvement

I hope to get back to on Monday.

If questions, let me know.

Thank you, Eric

Eric C. Strain
Partner
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Please consider the environment before printing this email.

Exhibit M

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COUNSEL FOR PLAINTIFF ECN CAPITAL (AVIATION) CORP.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	**Chapter 11**
CHC GROUP LTD., *et al.*,	**Case No. 16-31854(BJH)**
Debtors,	**(Jointly Administered)**
ECN CAPITAL (AVIATION) CORP.,	**Adv. No. 16-03151-bjh**
Plaintiff,	**Plaintiff's Supplemental Memorandum on Post-Hearing Developments Related to Personal <u>Jurisdiction and Abstention</u>**
v.	
AIRBUS HELICOPTERS (SAS),	
Defendant.	

Plaintiff ECN Capital (Aviation) Corp. ("ECN Capital") files this Supplemental Memorandum to bring to the Court's attention new facts critical to the personal jurisdiction and abstention issues raised in Defendant Airbus Helicopters S.A.S.'s ("Airbus") Motion to Dismiss.[1] These new facts, developed after the Court held argument on the Motion to Dismiss, directly contradict representations Airbus made to the Court in briefing and argument.

BACKGROUND

On January 3, 2017, Airbus filed its Motion to Dismiss asking this Court to hold that it lacked personal jurisdiction over Airbus, or to abstain from exercising its jurisdiction. Airbus also submitted a declaration from its executive, Michel Gouraud (the "Gouraud Declaration"), which stated that: Airbus "does not transact its business in the United States," Gouraud Decl. ¶ 5; Airbus "does not sell Super Puma helicopters in the United States," *id.* ¶ 9; and Airbus Helicopters, Inc. ("AHI") "is a separate and independent company from [Airbus]," *id.* ¶ 11. On February 28, 2017, the Court held a hearing on the Motion to Dismiss (the "MTD Hearing"), during which Airbus's counsel Eric Strain stated that "[Airbus] . . . doesn't transact [] business in the United States," and "when [Airbus] sells its helicopters . . . it does so from its place of business in France."[2]

On November 21, 2016, Era Group Inc. ("Era"), a Texas-based owner of ten EC225s, filed a complaint (the "Era Complaint") in Texas state court against Airbus and AHI alleging that the EC225s were defectively designed.[3] On January 12, 2017, Airbus filed a Special

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in ECN Capital's Opposition to Defendant's Motion to Dismiss [Dkt. No. 63] (the "MTD Opposition").

[2] *See* Tr. of 2/28/2017 H'r'g [Dkt. No. 86] 17:23-24; 18:2-3.

[3] *See* Era Complaint (Ex. M to Declaration of Pietro J. Signoracci in Support of Plaintiff's MTD Opposition dated Jan. 27, 2017 [Dkt. No. 64 Attach. 13]).

Appearance (the "SA") in response to the Era Complaint objecting to personal jurisdiction.[4] Airbus stated: "[Airbus] does not have a place of business in Texas and does not transact business in Texas." SA at 1. Airbus attached to the SA a declaration from Michel Gouraud (the "Era Gouraud Declaration").[5] Mr. Gouraud declared that Airbus "does not sell Super Puma helicopters in Texas," *id.* ¶ 7, and that "[Airbus] and AHI are separate and independent companies," *id.* ¶ 9. Airbus relied on the Era Gouraud Declaration in stating that Airbus: "has never – even temporarily – had offices or operational activities in Texas" and "does not sell Super Puma or any other helicopters in Texas." SA at 2. These statements from the Era Gouraud Declaration are nearly identical to statements in the Gouraud Declaration that Airbus filed in this Adversary Proceeding.

On July 28, 2016, Wells Fargo Bank Northwest, National Association ("Wells Fargo") filed breach of warranty and contract claims in Texas state court against AHI regarding three EC225s Wells Fargo purchased from AHI.[6] On February 7, 2017, Wells Fargo added Airbus as a defendant in its Texas state court case by filing an Amended Petition.[7]

ARGUMENT

New facts have developed regarding Airbus's activities in the U.S., including in Texas, and the ability of Texas courts to exercise personal jurisdiction over Airbus—*specifically with regard to product liability claims concerning Super Pumas purchased through an intermediary*.

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[4] *See* Ex. A (Special Appearance of Defendant Airbus Helicopters, S.A.S. [*Era Group Inc.* v. *Airbus Helicopters Inc. et al.*, DC-16-15017 (Tex. Dist. Ct., filed Nov. 21, 2016) filed on Jan. 12, 2017]). Unless otherwise stated herein, all references herein to "Ex. __" are to the accompanying Declaration of Pietro Signoracci dated March 20, 2017.

[5] *See* Ex. B (Declaration of Michel Gouraud in Support of Defendant Airbus Helicopters, S.A.S.'s Special Appearance [*Era Group Inc.* v. *Airbus Helicopters Inc. et al.*, DC-16-15017 (Tex. Dist. Ct., filed Nov. 21, 2016) filed on Jan. 12, 2017]).

[6] *See* Ex. C (Wells Fargo Complaint [*Wells Fargo Bank Northwest N.A.* v. *Airbus Helicopters Inc. et al.*, DC-16-09090 (Tex. Dist. Ct., filed Jul. 28, 2016) filed on Jul. 28, 2016]).

[7] *See* Ex. D (Wells Fargo First Amended Petition [*Wells Fargo Bank Northwest N.A.* v. *Airbus Helicopters Inc. et al.*, DC-16-09090 (Tex. Dist. Ct., filed Jul. 28, 2016) filed on Feb. 7, 2017]).

These facts directly contradict representations Airbus made to the Court in its Motion to Dismiss briefing and argument. They also demonstrate that this Court has personal jurisdiction over Airbus, which the Court should exercise here.

The following facts developed since the MTD Hearing:

- On March 17, 2017, Airbus withdrew the Era Gouraud Declaration and the SA and consented to the personal jurisdiction of the state court of Texas in the Era case for product liability claims regarding Super Pumas that were not purchased directly from Airbus.[8]

- On March 8 and 9, 2017, Airbus's CEO Guillaume Faury attended Heli-Expo 2017, an industry event at the Kay Bailey Hutchison Convention Center *in Dallas, Texas*. *Id.* The event was sponsored by Airbus and attended by over 15,000 customers from around the world and in the U.S., including Texas.[9] At the event, Airbus showcased to customers four models of Airbus helicopters.[10]

- On March 10, 2017, Mr. Faury stated that 60 Airbus helicopter orders were placed at the Heli-Expo 2017. *Id.* Airbus further reported that new "VIP customers," such as Dallas Cowboys Owner and CEO Jerry Jones and Texas-based oil business executive Mike Wallace, had "testif[ied] to their satisfaction with [Airbus] products and customer service," based on "their experiences operating Airbus helicopters and working with the [AHI] team." *Id.* Airbus pointed to this customer service, provided by AHI, to assert that Airbus is "[e]ver committed to improving customer satisfaction." *Id.*

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[8] *See* Ex. E (Defendant Airbus Helicopters, S.A.S.'s Notice of Withdrawal of Special Appearance [*Era Group Inc.* v. *Airbus Helicopters Inc. et al.*, DC-16-15017 (Tex. Dist. Ct., filed Nov. 21, 2016) filed on Mar. 17, 2017]).

[9] *See* Ex. F (Hai-Heli-Expo, http://heliexpo.rotor.org/ (last visited Mar. 17, 2017)).

[10] *See* Ex. G (Press Release, Airbus, Airbus Helicopters wraps up a successful Heli-Expo 2017 in Dallas (Mar. 10, 2017), *available at* http://www.airbushelicopters.com/website/en/press/Airbus-Helicopters-wraps-up-a-successful-Heli-Expo-2017-in-Dallas_2100.html).

- On March 8, 2017, Mr. Faury was served directly in the State of Texas, while attending the Heli-Expo at the Kay Bailey Hutchinson Convention Center, with a subpoena to attend a deposition in the Wells Fargo case in Dallas, Texas on April 24, 2017.[11]

These newly available facts directly contradict statements in the Gouraud Declaration and representations Airbus made to this Court in an attempt to avoid this Court's jurisdiction. Mr. Gouraud's statement that AHI "is a separate and independent company from [Airbus]" is directly contradicted by the fact that Airbus and AHI appeared together at the Heli-Expo 2017 to market and sell helicopters and meet with "VIP customers" of Airbus *and* AHI.[12] Mr. Gouraud's statement also is undermined by Airbus's consent to personal jurisdiction in Texas in a case brought by a customer of AHI that did not purchase Super Pumas directly from Airbus. Further, Mr. Gouraud's statement that Airbus "does not transact its business in the United States" is directly contradicted by Airbus's recent press release stating that 60 helicopters were sold by Airbus at the 2017 Heli-Expo in Dallas, Texas.[13] The Gouraud Declaration is the only evidence Airbus has advanced in its attempt to avoid this Court's jurisdiction. The record now makes clear the Gouraud Declaration is contradicted by fact, and it should be ignored.

These new facts also support ECN's well-pleaded allegations that this Court has personal jurisdiction over Airbus, which this Court should exercise. *See Glinka* v. *Abraham and Rose Co. Ltd.*, 199 B.R. 484 (Bankr. D. Vt. 1996) (exercising personal jurisdiction over foreign non-debtor

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[11] *See* Ex. H (Notice of Deposition of Guillaume Faury [*Wells Fargo Bank Northwest N.A.* v. *Airbus Helicopters Inc. et al.*, DC-16-09090 (Tex. Dist. Ct., filed Jul. 28, 2016) served on Mar. 8, 2017]).

[12] *See* Ex. B. This is consistent with the information ECN Capital obtained from Airbus regarding its corporate structure, which revealed that French-based Airbus and its U.S.-based affiliate AHI share the same ultimate corporate parent, Airbus Group S.E. *See* Ex. I (E-mail from Eric Strain to Pietro Signoracci (Feb. 14, 2017)).

[13] *See* Exs. B, G. These new sales demonstrate personal jurisdiction especially when viewed in context of the evidence ECN Capital obtained through jurisdictional discovery, which shows that from 2011 to 2016 Airbus directly sold 30 helicopters to U.S.-based customers, including six Super Pumas and 22 other helicopters to customers headquartered in Texas; indirectly sold 58 helicopters to Texas-based customers through its U.S.-based affiliate distributor AHI; and sold another 649 helicopters for AHI to distribute to U.S.-based customers outside of Texas. *See* Ex. J. (Order Bookings – AH Group).

defendant in adversary proceeding in light of defendant's extensive participation in the bankruptcy, coupled with its contacts in the relevant forum). In addition to Airbus's extensive participation in the Bankruptcy Cases, this Court's personal jurisdiction over Airbus is evident from Airbus's strong U.S. and Texas contacts. Airbus sold Super Pumas to a foreign subsidiary of CHC. CHC, which is based in Texas, submitted testimony by declaration in the Bankruptcy Cases acknowledging that it manages its businesses from Irving, Texas—including the business of its foreign subsidiaries.[14] CHC entities subsequently sold those Super Pumas to ECN Capital, entered into leases on the Super Pumas, and rejected the leases of the Super Pumas in Texas in the Bankruptcy Cases. Airbus also has a close strategic relationship with AHI for purposes of marketing and selling Super Pumas to U.S.- and Texas-based customers. Airbus even sent its CEO into this forum last week for the purpose of collaborating with AHI to market and sell Super Pumas to U.S- and Texas-based customers. The strength of Airbus's contacts with this forum is demonstrated by the fact that Airbus conceded personal jurisdiction in Texas state court regarding claims brought by a U.S.-based customer that purchased Super Pumas from AHI.

The same facts that give rise to this Court's personal jurisdiction over Airbus also weigh heavily in favor of this Court exercising its jurisdiction over Airbus, rather than abstaining. Airbus has misrepresented its business contacts in the U.S. and Texas in an effort to avoid this Court's personal jurisdiction and to engage in forum-shopping. Airbus has a substantial presence in the U.S. and Texas—despite its misrepresentations to this Court designed to avoid jurisdiction and shop for a more favorable forum. If this Court is inclined to abstain, it should abstain only on the condition that Airbus consents to personal and subject matter jurisdiction in Texas state court for ECN Capital's claims this case. Since Airbus is now litigating in Texas state court,

[14] *See* Ex. K (Declaration of Robert A. Del Genio in Support of the Debtors' Chapter 1 Petitions and First Day Relief [16-31854 Dkt. No. 13]) ¶ 10.

Airbus cannot credibly claim that it would be costly or burdensome to defend this lawsuit in this jurisdiction, especially after Airbus sent its CEO to this jurisdiction to market and sell Airbus helicopters to customers in the U.S. As a result of its concession of jurisdiction, Airbus will be litigating *in this forum* claims nearly identical to those ECN Capital asserts in this Adversary Proceeding. On this newly developed record, there is no basis for Airbus to complain of costs of litigating the claims in this forum, where jurisdiction lies.

In its Brief in Support of its Motion to Dismiss, Airbus stated that Airbus "structures its transactions by conducting them in France . . . specifically to avoid being subject to the general jurisdiction of courts outside of France." Airbus Br. at 13. While Airbus may wish to "avoid being subject to the general jurisdiction of courts outside of France," it must face the consequences of its actions. The Gouraud Declaration is demonstrably false. Airbus transacts business in this district, avails itself of the courts of this district, sends its executives to this district, and has now conceded jurisdiction in this district regarding claims that Super Puma helicopters were defectively designed. Airbus should not be permitted to escape this Court's jurisdiction, and ECN Capital's appropriate choice of venue.

CONCLUSION

For the foregoing reasons, and the reasons stated in ECN Capital's MTD Opposition, Supplemental Memorandum of Law in Opposition to Defendant's Motion to Dismiss, and Second Supplemental Memorandum of Law in Opposition to Defendant's Motion to Dismiss, this Court should deny Defendant's Motion to Dismiss the Complaint.

Dated: March 20, 2017
New York, New York

Respectfully submitted,

By: /s/ *Martin Flumenbaum*
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CERTIFICATE OF SERVICE

I hereby certify that, on March 20, 2017, I caused the foregoing Supplemental Memorandum on Post-Hearing Developments Related to Personal Jurisdiction and Abstention to be filed with the Court via CM/ECF and served on all parties requesting electronic notification, including the following counsel of record for the Defendant:

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Exhibit N

AIRBUS HELICOPTERS

Press Release

Heli-Expo 2017

Airbus Helicopters wraps up a successful Heli-Expo 2017 in Dallas

Orders for about 60 H125, H135, H145 and H175 announced at the show

Dallas, Texas, 10 March 2017 – Airbus Helicopters showcased its best-selling light singles and light twins during Heli-Expo 2017 at the Kay Bailey Hutchison Convention Center in Dallas, Texas. The H125, H130, H135, and the H145, on display at the show, represented 381 bookings for Airbus Helicopters in 2016, and accounted for a vast majority of the deliveries of the civil helicopter market last year.

“This year’s Heli-Expo has shown that 2017 is already off to a good start for our best-selling products, with orders for about 60 helicopters including the H125, H135, H145, and H175 announced at the show”, said Guillaume Faury, Airbus Helicopters CEO.

Milestone Aviation Group Limited announced a €200 million firm order for H135, H145 and H175 helicopters, while Waypoint Leasing (Ireland) Limited committed to ordering an additional 16 Airbus helicopters including the H135, H145 and adding the H175 to its order book for the first time.

Absent from the show floor as it’s working hard on the field, the H175 has recently seen its maximum take-off weight being extended to 7.8 tonnes, allowing customers to benefit from an additional payload of 300 kg or an extra 40NM radius of action. Launch customer NHV also celebrated its 10,000 flight hours with the H175 on the Airbus Helicopters’ booth during the show.

At Heli-Expo this year, Airbus Helicopters introduced the H135 equipped with the Helionix digital avionics suite. STAT MedEvac will soon be the first air medical transport service in North America to operate this type, following an order for three new H135s announced at the show. The Helionix-equipped H135 will soon be leaving Dallas for a demo tour of the US and Mexico.

The H125 also saw continued success with REACH Air Medical Services, a subsidiary of Air Medical Group Holdings, placing an order for five new Airbus H125s. Ruo’er General Aviation Development Group (Ruo’er Group), one of the biggest general aviation companies operating flight support base and airport with comprehensive services in China, signed a letter of intent for a total of 12 H125s with a first confirmed order of four aircraft.

Another highlight of the show was Airbus Helicopters’ Voice of the Customer where the U.S. Coast Guard celebrated 30-plus years of collaboration with Airbus, as well as the milestone of 1.5 million flight hours on the MH-65 Dolphin. Also, two new VIP customers related their experiences operating Airbus helicopters and working with the Airbus Helicopters Inc. team.

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AIRBUS HELICOPTERS

Press Release

"We're very proud to have customers like Dallas Cowboys Owner and CEO Jerry Jones as well as oil business executive Mike Wallace testify to their satisfaction with our products and customer service, and share their Airbus experience with everyone," said Chris Emerson, President of Airbus Helicopters Inc.

Ever committed to improving customer satisfaction, Airbus Helicopters announced at the show that its efforts in this domain are paying off with a recent independent survey confirming a significant reduction in direct maintenance and direct operating costs (DMC and DOC) for the H125, H130 and H135 helicopters, further strengthening the competitiveness of these types.

About Airbus

Airbus is a global leader in aeronautics, space and related services. In 2016, it generated revenues of € 67 billion and employed a workforce of around 134,000. Airbus offers the most comprehensive range of passenger airliners from 100 to more than 600 seats. Airbus is also a European leader providing tanker, combat, transport and mission aircraft, as well as Europe's number one space enterprise and the world's second largest space business. In helicopters, Airbus provides the most efficient civil and military rotorcraft solutions worldwide.

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Exhibit O

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: CHC GROUP LTD., *et al.*, Debtors.	Chapter 11 Case No. 16-31854 (BJH) (Jointly Administered)
ECN CAPITAL (AVIATION) CORP., Plaintiff, v. AIRBUS HELICOPTERS, S.A.S., Defendant.	Adv. Pro. No. 16-3151 (BJH)

DEFENDANT AIRBUS HELICOPTERS, S.A.S.'S AMENDED BRIEF IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER AND PERSONAL JURISDICTION, AND *FORUM NON CONVENIENS*

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INTRODUCTION

This adversary proceeding is a complex tort and aviation products liability lawsuit. Plaintiff ECN Capital (Aviation) Corp. ("ECN") owns five *Super Puma* helicopters that were designed and manufactured in France by Defendant Airbus Helicopters S.A.S. ("AH"). AH sold and delivered the helicopters in France to European purchasers, not ECN, which later purchased them from third parties. The helicopters are registered and located outside of the United States. ECN asserts that it has suffered economic loss due to an alleged defect in the helicopters. Its claim is based on an unfinished investigation being conducted by European authorities into a Super Puma accident in Norway and precautionary flight bans imposed on Super Puma helicopters by European and other authorities, many of which have been lifted.

This is a standalone lawsuit about ECN's dissatisfaction with its Super Pumas, and it was not properly brought as an adversary proceeding. ECN concedes that it is a non-core proceeding, as it must since the lawsuit does not involve claims arising under the Bankruptcy Code, does not involve any of the debtors in the above-captioned main bankruptcy proceedings of the CHC Group debtor entities (the "CHC Debtors" or "Debtors"), does not pertain to Debtors' property, and its resolution will not affect the bankruptcy proceeding. The adversary proceeding is not "related to" the bankruptcy, and because there is no other basis for federal jurisdiction, the action should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1). The action is also unrelated to any contacts between France-based AH and the United States. AH should therefore be dismissed pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction.

Even if the Court finds that it has jurisdiction, it should exercise its discretion to abstain from hearing this foreign-centered dispute under 28 U.S.C. § 1334(c)(1) or on the grounds of *forum non conveniens*. Abstention is appropriate because the parties to this noncore proceeding

do not consent to the bankruptcy court's orders or judgments, and have demanded a jury trial, and the tort claims are not governed by bankruptcy laws. This Court has previously abstained in the interest of comity and judicial efficiency under very similar circumstances. Dismissal on *forum non conveniens* grounds is appropriate because the action does not involve parties from the United States, does not pertain to events or property in the United States, will almost certainly be governed by foreign law, and involves witnesses and evidence located entirely outside of the United States, much of it in a foreign language. France has a far superior interest in adjudicating claims made by a Canadian company against a French company over alleged conduct that, if it occurred at all, happened in France.[1]

STATEMENT OF FACTS

ECN is an Ontario corporation headquartered in Toronto, Canada. [Complaint, ¶ 5.] AH is a French company organized and existing under the laws of France. [Declaration of Michel Gouraud, ¶ 3. (Appx. Ex. A, at 2).] AH designs, obtains certification of, manufactures, sells and supports certain Airbus Helicopters model helicopters in France, including the Super Puma, and it maintains a website and produces marketing materials for the helicopters it distributes in France. [*Id*. (Appx. Ex. A, at 2-3).] AH does not sell helicopters through its website. [*Id.* at ¶ 4 (Appx. Ex. A, at 3).] AH conducts aircraft certification and technical activities, including accident investigation, from France. [*Id.* at ¶ 3 (Appx. Ex. A, at 3).] AH has never temporarily

[1] AH has also filed a motion to withdraw the reference as it relates to this adversary proceeding. AH agrees with ECN that this proceeding is non-core, and AH does not consent to the entry of final orders or judgments by the Bankruptcy Court in, nor in matters connected with, this adversary proceeding. Further, AH's motion to dismiss is brought without prejudice to the right to later supplement it with additional information and without waiver of any rights, privileges, or defenses including, but not limited to the arbitrability of ECN's claims.

moved its primary offices or these business operations to the United States. [*Id.* at ¶ 5 (Appx. Ex. A, at 3).] AH has no real property, offices, phone numbers, bank accounts, or employees who are permanently assigned in the United States. [*Id.*] AH is not licensed to do business in the United States and does not transact its business in the United States. [*Id.*] AH does not sell Super Puma helicopters in the United States. [*Id.* at ¶ 9 (Appx. Ex. A, at 3).] Two Airbus affiliated entities are located in the United States – Airbus Group, Inc. ("AGI"), headquartered in Virginia, and Airbus Helicopters, Inc. ("AHI"), headquartered in Texas. [*Id.* at ¶¶ 11-12 (Appx. Ex. A, at 4).] However, both are separate and independent companies from AH, are not owned by AH, and have their own separate management, facilities, bank accounts, employees and internal operational control. [*Id.* (Appx. Ex. A, at 4).]

AH designed and manufactured the following Super Puma helicopters in France: AS332 L2, Serial No. 2467, U.K. Reg. No. G-PUMO; AS332 L2, Serial No. 2474, Norway Reg. No. LN-OHE; AS332 L2, Serial No. 2477, U.K. Reg. No. G-PUMM; AS332 L2, Serial No. 2504, U.K. Reg. No. G-PUMS; EC225 LP, Serial No. 2878, U.K. Reg. No. G-OAGA. [*Id.* at ¶ 6 (Appx. Ex. A, at 3).] AH sold and delivered the first four of these helicopters (Serial Nos. 2467, 2474, 2477 and 2504) in France to CHC Scotia Limited of Great Yarmouth in Norfolk, Great Britain. [*Id.* at ¶ 7 (Appx. Ex. A, at 3).] Helicopter Serial No. 2878 was sold and delivered by AH in France to CHC Leasing (Ireland) Limited, of Dublin, Ireland. [*Id.*] AH's standard sale agreements are governed under French law, and mandate as a first step an attempt to resolve any dispute by negotiation lasting no less than three months. [AH Obj. to ECN Mot. for 2004 Examination of Debtors, Case No. 16-31854-bjh11, ¶ 11 (ECF No. 862).] If that requirement is satisfied and the dispute is not yet resolved, disputes must be resolved pursuant to binding

arbitration in Paris, France, conducted in accordance with International Chamber of Commerce ("ICC") international arbitration rules. [*Id.*]

ECN alleges that it purchased these five helicopters from a company called CHC Helicopters (Barbados) Limited ("CHCB"), and then leased them back to CHCB, which is a debtor in the CHC Group bankruptcy cases. [Complaint, ¶ 34.] Debtors report the physical location of the helicopters in Canada, Poland and Scotland. [May 5, 2016 Omnibus Mot., Case No. 16-31854, at Schedule 1 – Page 6-7 (ECF No. 20); May 27, 2016 Omnibus Mot., Case No. 16-31854, Schedule 1 – Page 24 (ECF No. 210).] As part of its efforts to reduce its fleet by as much as 90 helicopters by rejecting leases, including other manufacturer's helicopters such as Sikorsky and Augusta Westland, Debtors rejected their leases for ECN's five Super Pumas. [Oct. 28, 2016 Omnibus Mot., Case No. 16-31854, ¶ 12 and generally Schedule 1 (ECF No. 1090).] Debtors explained the reason for the lease rejections:

> As part of their ongoing efforts to reduce costs and maximize fleet flexibility, the Debtors have identified Excess Equipment that no longer fits into the Debtors' business plan and, accordingly, will no longer be utilized by the Debtors and have no utility or value to the Debtors. The Debtors entered into the Leases and related agreements in a different economic climate than the one facing the Debtors' industry today. Today, with the ongoing downturn in the Debtors' industry, these same helicopters are no longer necessary to the Debtors' operations.

[May 5, 2016 Omnibus Mot., Case No. 16-31854, ¶ 40 (ECF No. 20); May 27, 2016 Omnibus Mot., Case No. 16-31854, ¶ 41 (ECF No. 210).] At a May 6, 2016 hearing in the Bankruptcy Court, the CHC Debtors further explained:

> A few important points about CHC: Its principal business is to provide those helicopter services for large, long-distance, crew changes on offshore production facilities and drilling rigs for major national and international oil and gas companies. Although CHC manages its operations in Irving, Texas, it operates a global business across six continents. As a result, CHC's business is closely tied to the state of the oil and gas industries.

> The rapid and unexpected decline in oil prices that the industry has had in the past couple years has led to a significant decline in offshore oil exploration, cost reduction measures for production, operation, and there's been a substantial decrease in the demand for those offshore drilling services. As a result, the demand for helicopter services has declined.

[Transcript of May 6, 2016 Hearing, Case No. 16-31854, 17:5-19 (ECF No. 1435-19).]

On April 29, 2016 a Super Puma helicopter operated by a CHC-related entity crashed in Norway killing all on board. [Complaint, ¶ 14.] The cause of that accident is under investigation by the Civil Aviation Authority of Norway (the "CAAN") and the Accident Investigation Board of Norway ("AIBN"). [*Id.* at ¶¶ 17-18.] AH has provided technical support to investigative and certification authorities from its place of business in France. [Gouraud Decl., ¶ 3 (Appx. Ex. A, at 3).] Following the lead of the European Aviation Safety Agency ("EASA"), civil aviation authorities in various parts of the world issued temporary flight restrictions following the accident while its cause is investigated. [Complaint, ¶ 17.] EASA has since lifted the flight ban, subject to certain maintenance requirements. [*Id.* at ¶ 24.]

On November 17, 2016, citing the Norway accident and grounding as evidence of a defect, ECN filed this adversary proceeding asserting negligence, strict products liability, breach of implied warranty of merchantability, negligent misrepresentation and fraud causes of action against AH seeking economic loss. [*Id.* at ¶¶ 42, 44, 46-111.] ECN's Complaint states that it is a non-core proceeding, that ECN does not consent to the entry of final orders or judgment by this Court, and that ECN demands a jury trial. [*Id.* at ¶ 13, p. 31.]

ARGUMENT

I. The Court Lacks Subject Matter Jurisdiction over this Action

This action between two foreign corporations lacks diversity of citizenship jurisdiction, and does not involve a claim arising under federal law. 28 U.S.C. §§ 1331, 1332(a). ECN concedes that it is a non-core proceeding that does not arise under title 11. [Complaint, ¶¶ 8, 13.] ECN asserts that federal jurisdiction exists under 28 U.S.C. § 1334(b) because it is "related to" the bankruptcy and because the Court can exercise its supplemental jurisdiction. [*Id.* at ¶¶ 8-10.] Neither basis for federal jurisdiction exists.

A matter is related to bankruptcy when "the outcome of that proceeding could *conceivably* have any effect on the estate being administered in bankruptcy." *Matter of Walker,* 51 F.3d 562, 569 (5th Cir. 1995) (internal citations omitted). A proceeding could conceivably affect the estate "if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.' Conversely, 'bankruptcy courts have no jurisdiction over proceedings that have no effect on the debtor.'" *Id.* at 569 (internal citations omitted).

While it may be broad, "related to" jurisdiction "cannot be limitless." *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995) (citing *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984); *In re TMT Procurement Corp.*, 764 F.3d 512, 526 (5th Cir. 2014). Bankruptcy jurisdiction does not extend, for example, to actions based on state law between non-debtors over non-estate property because it would not have any effect on the bankruptcy. *In re TMT Procurement Corp.*, 764 F.3d at 526. The Fifth Circuit has explained:

> We note that a bankruptcy court does have jurisdiction to resolve a dispute between third parties 'if it is impossible to administer completely the estate of the bankrupt without determining the controversy.' Even if resolution of the

> controversy might have a 'chilling effect' on the financing of the arrangement plan, or might reduce claims against the debtor's estate, exercising jurisdiction over a collateral controversy is improper where it is 'possible' to administer the estate without resolving the controversy.

Matter of Paso Del Norte Oil Co., 755 F.2d 421, 425 (5th Cir. 1985) (internal citations omitted).

Moreover, "[b]ankruptcy courts do not ordinarily have jurisdiction over disputes between non-debtors where the dispute does not involve property of the estate, does not affect the administration of the estate and the resolution of the inter-creditor dispute will not affect the recovery of creditors under a confirmed plan." *Harbour Oaks Dev. Corp. v. Southtrust Bank, N.A.*, 224 B.R. 228, 230 (Bankr. M.D. Fla. 1998) (citations omitted). Further, "'[a] bankruptcy court only has jurisdiction over property owned by or in the actual or constructive possession of the debtor.'" *Herd v. Herd*, Case Nos. 06-10851, 06-1128, 2007 Bankr. LEXIS 2958, *14 (U.S. Bankr. E.D. Tenn. Aug. 28, 2007) (quoting *Weng v. Farb (In re K & L Ltd)*, 741 F.2d 1023 (7th Cir. 1984)). "When property is no longer part of a bankruptcy estate and when the determination of rights thereto would not affect any dispute by creditors over property that was part of the estate, the bankruptcy court lacks jurisdiction to determine the rights to the property." *Id.* (citing *Matter of Edwards*, 962 F.2d 641, 643 (7th Cir. 1992)).

ECN's action does not involve claims against the CHC Debtors and does not involve their estates' property. The helicopters are owned by ECN, and the leases have already been rejected by the CHC Debtors. Whether ECN can recover from AH for its own, separate alleged economic loss caused by the groundings will have no effect on the Debtors' estates. The sources of damages to ECN in the proceedings are completely separate – rejected leases (bankruptcy) versus the grounding (adversary). Moreover, to the extent ECN recovers damages from AH in

this lawsuit, that money would go to ECN, not the CHC Debtors. Courts decline to find "related to" jurisdiction in such circumstances:

> Likewise, if Yashiro succeeds against the Non-Debtor Defendants on its breach of contract and fraud claims, its recovery will not effect debtor's estate because it will be payable to Yashiro, and Yashiro does not allege or demonstrate otherwise. Non-Debtor Defendants are correct that because Yashiro's claims against them will not impact Falchi's estate, they are not "related to" his chapter 11 case and must be dismissed pursuant to Rule 12(b)(1).

Yashiro Co. v. Falchi (In re Falchi), Case Nos. 97 B 43080, 97-9057A, 1998 Bankr. LEXIS 622, *17-20 (U.S. Bankr. S.D.N.Y. May 26, 1998) (citations omitted); *Singer v. Adamson*, 334 B.R. 1, 11 (Bankr. D. Mass. 2005) ("if Singer were to prevail on her claims against the non-debtor defendants, any damages she could recover would not be available for distribution to the Debtor's creditors as they would not be assets of the bankruptcy estate").

ECN's assertion that the Court may exercise supplemental jurisdiction contravenes clear Fifth Circuit law. *Matter of Walker*, 51 F.3d at 573; *Matter of Bass*, 171 F.3d 1016, 1023-24 (5th Cir. 1999) ("we have held that bankruptcy courts cannot exercise supplemental jurisdiction"). This Court lack subject matter jurisdiction over this action.

II. The Court Should Abstain from Hearing this Foreign Dispute

Even if the Court finds jurisdiction, it should exercise its discretion to abstain from hearing this matter. Title 28 U.S.C. § 1334(c)(1) states: "nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or relating to a case under title 11." While this statute speaks in terms of the states, the Fifth Circuit has explained that it applies to foreign tribunals. *Baumgart v. Fairchild Aircraft Corp.*, 981 F.2d 824, 833 (5th Cir. 1993); *see also In re Regus Bus. Ctr. Corp.*, 301 B.R. 122, 127-29

(Bankr. S.D.N.Y. 2003) (bankruptcy court abstained from hearing dispute between two English corporations over a transaction that was negotiated in England and governed by English law).

This Court abstained from hearing claims asserted in an adversary proceeding against a non-debtor defendant under very similar circumstances. *See Kimpel v. Meyrowitz*, Nos. 06-31660-BJH-11, 10-03227, 2010 Bankr. LEXIS 4853, at *18-23 (U.S. Bankr. N.D. Tex. Dec, 20, 2010) (Houser, J.). The Court abstained for multiple reasons, including: abstention would have no effect on the efficient administration of the bankruptcy and would not affect the adversary proceeding's parties' rights in the bankruptcy; the Complaint raised purely state law claims; there was no federal jurisdiction other than "related-to" bankruptcy jurisdiction; the claims had little to do with the bankruptcy; the claims were non-core; it was feasible for the claims to proceed in a non-bankruptcy court; a jury trial was demanded; one party did not consent to the Court's entry of final judgment; and the Court knew nothing more about the claims other than what was alleged in the Complaint, which any other judge could learn. *Id.*

"It is a burden on this Court's docket to litigate state law claims against non-debtor defendants," the Court explained, "when the outcome of that litigation will have such little effect on the bankruptcy estate, causing this factor to weigh in favor of abstention." *Id.* at *21-22. Further, "resources are better spent hearing live disputes in (i) [the Court's] active bankruptcy cases, and (ii) 'related to' proceedings that have a more substantial impact upon an active bankruptcy estate. If [the adversary proceeding plaintiffs] believe that they have legitimate claims against the non-debtor defendants, they can sue them in whatever other forum they believe is appropriate and credit their claim here with any recoveries received in that other forum." *Id.* at *23.

ECN's action presents many of the same reasons for abstention that compelled this Court to abstain in *Kimpel*. It is a dispute between non-debtors that will have no effect on the efficient administration of the CHC Debtors' bankruptcy cases. There is no possible basis for federal jurisdiction other than "related-to" bankruptcy jurisdiction. This matter involves complex aviation product liability claims that are highly technical and can take years to prepare for trial, with discovery taking place in at least two foreign countries, and could take several weeks to try to a jury. It does not involve rights arising under bankruptcy or federal law, is non-core, and involves parties who demand a jury trial and do not consent to this Court's entry of orders or final judgment. There is no reason for this Court to expend its resources on this matter having no United States connection when a French forum has a far greater interest in adjudicating claims of alleged misconduct by a French company that will likely be governed by French law.

Other judges in this district have abstained under similar circumstances. *See, e.g., Efurd v. Baylor Health Care Sys.*, No. 3:14-cv-556, 2015 U.S. Dist. LEXIS 179080, at *10 (N.D. Tex. March 25, 2015) (abstaining from hearing non-core action based solely on state law medical malpractice claims where there was no independent basis for jurisdiction other than "related to" jurisdiction); *Barbee v. Colonial Healthcare Ctr., Inc.*, No. 3:03-cv-1658-N, 2004 U.S. Dist. LEXIS 4868, at *8-9 (N.D. Tex. March 22, 2004) (affirming bankruptcy court's permissive abstention of cross-claim between two non-debtors where there was no federal jurisdiction absent the bankruptcy case, the action involved state law matters, resolution of the matter would not affect the bankruptcy and would be better accomplished in alternative forum); *P.O'B. Apollo Tacoma, L.P. v. TJX Cos.*, No. 3:02-cv-0222-H, 2002 U.S. Dist. LEXIS 18702, at *2-5 (N.D. Tex. Oct. 3, 2002) (abstaining from hearing non-core proceeding where remand of claims

between non-debtors would have little or no effect on the efficient administration of the estate of the debtor, the matter involved purely state law).

III. The Court Lacks Personal Jurisdiction over AH

Even if the Court has subject matter jurisdiction, it should dismiss AH because ECN cannot meet its burden of establishing personal jurisdiction over AH. *Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 270 (5th Cir. 2006) (plaintiff bears the burden on personal jurisdiction). When subject matter jurisdiction is premised on bankruptcy jurisdiction, the relevant inquiry for personal jurisdiction, under the nationwide contacts standard of Fed. R. Bankr. P. 7004(f) in cases involving a foreign defendant, is whether the defendant has constitutionally-sufficient minimum contacts with the United States. *Searcy v. Knight*, 2009 Bankr. LEXIS 5586, at *18-22 (U.S. Bankr. W.D. La. Dec. 22, 2009).

A court may exercise either general or specific jurisdiction. *Id.* at *21. For general jurisdiction, the defendant's contacts with the United States must be so continuous and systematic as to render it "at home" in the United States. *Daimler AG v. Bauman*, 134 S. Ct. 746, 761 (2014); *Patterson v. Aker Solutions Incorporated*, 826 F.3d 231, 234 (5th Cir. 2016). For specific jurisdiction, the plaintiff's causes of action must arise out of or result from the defendant's purposeful contacts with the United States. *Monkton Ins. Servs., Ltd. v. Ritter*, 768 F.3d 429, 432-33 (5th Cir. 2014).

ECN asserts that AH is subject to personal jurisdiction because it has appeared as a creditor in the bankruptcy proceeding, because AH has placed Super Puma helicopters into the stream of commerce knowing that they might be operated or owned by entities in Texas, and because an affiliated company, AHI, has sold Super Puma helicopters with contracts calling for

jurisdiction in Texas. [Complaint, ¶ 11.] None of these allegations, if true, would establish personal jurisdiction over AH.

A. AH Did Not Consent to Personal Jurisdiction

ECN asserts personal jurisdiction exists over AH because it filed proofs of claim and briefing in the bankruptcy proceeding and participated in related meetings. Courts recognize that by filing a proof of claim a creditor may submit itself to personal jurisdiction for counterclaims asserted by the debtor. *See, e.g., In re Schwinn Bicycle Co.*, 182 B.R. 526, 530–31 (U.S. Bankr. N.D. Ill. 1995); *see also In re Sun W. Distributors, Inc.*, 69 B.R. 861, 864 (U.S. Bankr. S.D. Cal. 1987). This principle does not extend to unrelated claims by co-creditors. If filing a proof of claim in the jurisdiction selected by a debtor meant that a creditor submitted to the bankruptcy court's jurisdiction for any claims by co-creditors, then every time a foreign creditor like AH protected its rights in a United States bankruptcy proceeding, said defendant would be subjecting itself to the general jurisdiction of United States courts. This result would violate a fundamental tenet of personal jurisdiction law – that jurisdiction must be based on the *defendant's* purposeful contacts with the forum, not third party actions. *Pervasive Software, Inc. v. Lexware GMBH & Co. KG*, 688 F.3d 214, 220 (5th Cir. 2012); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-75 (1985) ("The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.")).

B. The Court Lacks General Jurisdiction Because AH is not "At Home" in the US

In *Daimler*, the Supreme Court explained that the general jurisdiction inquiry "is not whether a foreign corporation's in-forum contacts can be said to be in some sense 'continuous and systematic,' it is whether that corporation's 'affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State.'" 134 S. Ct. at 761 (quoting

Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011)). Only in an "exceptional case," will a corporation be deemed "at home" in a place other than its principal place of business or place of incorporation. *Id.* at 761 n.19. The Court cited to *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952) as an example of such an exceptional case where the Court found general jurisdiction over a Philippines company whose president had temporarily moved the company's headquarters to Ohio during the Second World War, from where the president conducted the company's day-to-day business activities. *Id.* at 756 n.8. The Fifth Circuit recognizes that after *Daimler* it is "incredibly difficult to establish general jurisdiction in a forum other than the place of incorporation or principal place of business." *Monkton*, 768 F.3d at 432.

AH's place of incorporation and principal place of business are in France. [Complaint, ¶ 6; *see also* Gouraud Decl., ¶ 3 (Appx. Ex. A, at 2).] ECN does not allege any facts showing this to be an "exceptional case," as in *Perkins*, and AH has never temporarily moved its operations to the United States [Gouraud Decl., ¶ 5 (Appx. Ex. A, at 3).] That two separate and independent Airbus affiliated companies (AGI and AHI) are located in the United States does not support the exercise of general jurisdiction over AH. *Daimler*, 134 S. Ct. at 759-62 (no general jurisdiction over a German manufacturer whose exclusive United States distributor was "at home" in the forum); *see also Patterson*, 826 F.3d at 234-37 (no general jurisdiction over Norwegian company that had an American affiliate in Houston, and had agreements to assign employees to the affiliate). Moreover, AH structures its transactions by conducting them in France and selling helicopters with contracts governed by French arbitration forum clauses and French law provisions specifically to avoid being subject to the general jurisdiction of courts outside of France. *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 375-76 (5th Cir. 1987) ("But Beech

exercised its right to structure its affairs in a manner calculated to shield it from the general jurisdiction of the courts of other states such as Texas, carefully requiring the negotiation, completion, and performance of all contracts in Kansas. Beech has not afforded itself the benefits and protections of the laws of Texas, but instead has calculatedly avoided them.").

C. The Court Lacks Specific Jurisdiction Over AH for ECN's Claims

1. AH Has No United States Contacts Related to ECN's Causes of Action

Specific jurisdiction "focuses on the relationship among the defendant, the forum, and the litigation." *Monkton*, 768 F.3d at 432–33 (quoting *Walden v. Fiore*, 134 S.Ct. 1115, 1121 (2014)). "For a [forum] to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the [forum]." *Id*. at 433; *Pervasive Software*, 688 F.3d at 220 ("Specific jurisdiction . . . depends on an 'affiliatio[n] between the forum and the underlying controversy,' principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.") (internal quotation omitted).

To establish specific jurisdiction, ECN must show that AH "purposely directed its activities toward the [United States] or purposefully availed itself of the privileges of conducting activities [here]" and that each of its causes of action "arises out of or results from the [AH's] forum-related contacts." *Monkton*, 768 at 433 (quoting *Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 271 (5th Cir. 2006)). AH has not purposefully directed activity or purposefully availed itself of the United States in any way related to ECN's claims.

ECN's design and manufacturing defect claims arise out of AH's actions in France. *See Sulak v. American Eurocopter Corp.*, 901 F. Supp. 2d 834, 837, 844 (N.D. Tex. 2012) (finding for choice of law purposes that AH designed the helicopter at issue in France and that "any defects in the helicopter would have occurred where it was designed and manufactured:

France.") (citing *Perez v. Lockheed Corp. (In re Air Disaster at Ramstein Air Base, Ger.),* 81 F.3d 570, 577 (5th Cir. 1996) (holding strict-liability place of conduct is where product was designed, manufactured, and entered the commerce stream)). ECN's failure to warn claim arises where the helicopters are operated, which is not the United States. *Id.* Further, the Super Puma accidents that ECN alleges are proof of the defect took place outside of the United States and were investigated by foreign authorities with assistance from AH in France. To the extent ECN can assert a warranty claim as a subsequent purchaser of used goods, it would be for a breach of a warranty that allegedly occurred when the helicopters left AH's possession as part of their original sale in France. *See, e.g., Shows v. Man Engines & Components, Inc.*, 364 S.W.3d 348, 354 (Tex. App. 2012).[2]

ECN's claims for negligent misrepresentation and fraud also arise from alleged conduct by AH that would not have occurred in the United States. Maintaining a passive website in France does not subject AH to personal jurisdiction in the United States. *McFadin v. Gerber*, 587 F.3d 753, 762 (5th Cir. 2009); *Mink v. AAAA Dev. LLC*, 190 F.3d 333, 336-37 (5th Cir. 1999). Moreover, even if ECN had shown that AH made a false statement in the United States, ECN is located in Canada, and none of the relevant transactions occurred in or involved parties from the United States. *Panda Brandywine Corp. v. Potomac Elec. Power Co.*, 253 F.3d 865, 869-70 (5th Cir. 2001) (affirming district court's finding of no specific jurisdiction when plaintiff made only conclusory jurisdictional allegations that were unrelated to defendant's claims); *cf. Wien Air Alaska, Inc. v. Brandt*, 195 F.3d 208, 213 (5th Cir. 1999) (contrasting exercise of personal jurisdiction over defendant where the actual content of the communication with the

[2] AH cites Texas law for illustrative purposes only and does not contend or otherwise concede that Texas law applies to ECN's claims.

forum gives rise to the tort from cases where it did not); *Fairchild v. Barot*, 946 F. Supp.2d 573, 578-79 (N.D. Tex. 2013) (applying Fifth Circuit's approach in *Wien* to find specific jurisdiction because communications to the forum formed the basis of the claim).

2. Stream of Commerce Jurisdiction Over AH Does Not Exist

Stream of commerce jurisdiction may exist if a nonresident defendant "delivered the product into the stream of commerce with the expectation that it *would be purchased by or used by consumers in the forum state*." *Ainsworth v. Moffett Eng'g, Ltd.*, 716 F.3d 174, 177 (5th Cir. 2013) (emphasis added). ECN does not allege that the helicopters were owned, operated or caused an injury in the United States, as they are registered and located abroad.

ECN asserts that AHI in Texas has sold other Super Puma helicopters manufactured by AH. Even if ECN had alleged that these helicopters are located in the United States, the United States Supreme Court and the Fifth Circuit have rejected stream of commerce jurisdiction when the claim is not related to the actual product in the forum. *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 927, 930 n.6 (2011) (no jurisdiction over French tire manufacturing defendant in North Carolina for injuries caused by a defective tire located in France where other tires manufactured by the defendant were found in North Carolina – "even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales."); *cf. World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (where "the sale of a product . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve . . . the market for its product in [several] States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise *has there been the source of injury to its owner or to others*") (emphasis added)); *Alpine View Co. Ltd. v. Atlas Copco AB*, 205 F.3d 208, 216 (5th Cir. 2000) (no specific jurisdiction over a

Swedish corporation whose products entered the forum when the alleged harm in the forum did not stem from the corporation's delivery of products into the stream of commerce); *Bearry*, 818 F.2d 370 at 375 ("We disagree with the district court's conclusion that the 'stream of commerce' will support a finding of general jurisdiction. In specific jurisdiction cases, the defendant may have, at a minimum, one contact with the forum state – *the product or conduct that caused injury there*.") (emphasis added).

3. The Exercise of Jurisdiction Would Offend Traditional Notions of Fair Play and Substantial Justice

If this Court finds that ECN's claims arise from purposeful contacts by AH in the United States, it should still decline to exercise jurisdiction because doing so would be unreasonable and unfair to AH. *Seiferth*, 472 F.3d at 276. To make this determination, the Court should evaluate:

> (1) the burden on the nonresident defendant; (2) the interests of the forum state; (3) the plaintiff's interest in obtaining relief; (4) the interstate judicial system's interest in the most efficient resolution of controversies; and (5) the shared interests of the several states in furthering fundamental social policies.

Id. All of these factors weigh heavily against the exercise of personal jurisdiction over AH in this case. As discussed, the United States has no interest in hearing a dispute between a Canadian company and a French company regarding helicopters that were designed, manufactured and sold in France, were not owned or operated in the United States, and did not cause an injury in the United States. ECN's interest in efficient relief may be met using dispute resolution procedures available in France, where AH and its documents and witnesses are located, which can efficiently apply French law, and which have a great interest in resolving ECN's claim that a French company designed, manufactured and sold a defective product and made false statements about the product on French soil. Under these circumstances, it would be unfair to force AH to defend against these claims in a court in Texas, where its witnesses would

be forced to testify in a second language, when AH has done nothing in or directed at Texas, or the United States, related to the helicopters, ECN's claims or its alleged damages.

IV. This Action Should Be Dismissed Pursuant to the Doctrine of *Forum Non Conveniens*

The doctrine of *forum non conveniens* allows a court to decline jurisdiction if after weighing private and public interest factors it decides that the case should be heard in an alternative forum. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 507 (1947); *Moreno v. LG Elecs., USA Inc*., 800 F.3d 692, 699 (5th Cir. 2015). "The essence of the *forum non conveniens* doctrine is that a court may decline jurisdiction and may actually dismiss a case, even when the case is properly before the court, if the case more conveniently could be tried in another forum." *In re Volkswagen of Am., Inc*., 545 F.3d 304, 313 (5th Cir. 2008). An adversary proceeding may be dismissed on *forum non conveniens* grounds. *Baumgart*, 981 F.2d at 834 (bankruptcy code venue provisions do not abrogate the doctrine of *forum non conveniens* in the context of foreign transfers); *Bancredit Cayman Ltd. v. Santana*, Nos. 06-11026, 08-1147, 2008 Bankr. LEXIS 3544, at *24-28 (U.S. Bankr. S.D.N.Y. Nov. 25, 2008).

A. France is an Available, Alternative Forum That Offers an Adequate Remedy

France is an alternate forum because AH is amenable to process there and its tribunals offer some remedy. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 n. 22 (1981); *Moreno*, 800 F.3d at 699. Federal courts in the United States recognize that the French legal system provides an adequate alternative forum. *E.g., Reyno*, 454 U.S. at 252 n.18 ("[r]ules roughly equivalent to American strict liability are effective in France").[3]

[3] *See also In re Air Crash over the Mid-Atlantic on June 1, 2009*, 760 F. Supp. 2d 832, 842 (N.D. Cal. 2010) ("the Court concludes that France is an adequate, alternative forum" for claims involving French airline and French aircraft manufacturer over foreign aircraft accident) (citing *Dattner v. Conagra Foods, Inc.*, 91 Fed. Appx. 179, **2 (2d Cir. 2004) (affirming district

(Footnote continued on next page)

B. The Public and Private Interest Factors Weigh Heavily in Favor of Dismissal

1. The Private Interest Factors

The private-interest factors include "the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive." *Gilbert*, 330 U.S. at 508; *Weber v. PACT XPP Techs., AG*, 811 F.3d 758, 766-67 (5th Cir. 2016).

The evidence relevant to ECN's claims against AH is located in France, including documents and witnesses related to: the design, manufacture, certification of and sale of the helicopters; statements made on AH's website or in its marketing materials; AH's involvement with investigation of the Norway accident and related Super Puma technical issues. [Gouraud Decl., ¶ 3 (Appx. Ex. A, at 2-3).] What little is not in France is likely elsewhere in Europe (where European authorities are investigating the Norway accident) or in Canada where ECN is located; none of it would be in the United States. *See supra* at 2-5. The cost and burden of bringing evidence and witnesses from Europe to Texas for a matter having no connection with Texas or the United States weigh heavily in favor of dismissal. *See, e.g., Camejo v. Ocean Drilling & Exploration*, 838 F.2d 1374, 1381 (5th Cir. 1988) ("Compulsory process for Brazilian witnesses is unavailable in a Texas forum. The cost of bringing Brazilian witnesses to Houston

court dismissal on *forum non conveniens* grounds following conclusion that France was an adequate alternative forum); *Gschwind v. Cessna Aircraft Co.*, 161 F.3d 602, 606-07 (10th Cir. 1998) (France is an adequate forum)); *Mediterranean Golf, Inc. v. Hirsh*, 783 F. Supp. 835, 841, 841 n.6 (D.N.J. 1991) (observing that "French law does permit recovery for claims based in fraud, breach of fiduciary duty and breach of contract," and has "a very broad statutory basis for tort liability.").

is very high. All the information regarding the Plaintiff's damages is in Brazil. The rig was and still is in Brazil. The local interest of Brazil in determining a case involving the death of one of its citizens is great; Texas courts have no comparable interest in the case."); *Automated Marine Propulsion Sys. v. Aalborg Ciserv Int'l A/S*, 859 F. Supp. 263, 268 (S.D. Tex. 1994) ("The only evidence before the Court indicates that almost all of the activities forming the basis of this lawsuit occurred in Sweden and other European countries . . . Obviously, therefore, access to these sources of proof will be much less burdensome in Sweden than in Galveston.").

Moreover, third party witnesses and documents located in Europe related to the Norway accident and groundings are outside the compulsory subpoena power of this Court. Likewise, third party witnesses and documents related to ownership, operation, and maintenance of the helicopters are presumably located in Poland, Scotland, and Canada. *See supra* at 4. Even if discovery from such witnesses could be obtained under this Court's auspices, such witnesses still could not be compelled to attend trial in Texas, depriving the jury the opportunity to assess their demeanor and veracity. *See, e.g.*, *Gilbert*., 330 U.S. at 511 ("to fix the place of trial at a point where litigants cannot compel personal attendance and may be forced to try their cases on deposition, is to create a condition not satisfactory to court, jury or most litigants"); *Seguros Comercial Americas, S.A. de C. V. v. American Pres. Lines*, 933 F. Supp. 1301, 1312 (S.D. Tex. 1996) ("conducting a substantial portion of a trial on deposition testimony. . . precludes the trier of fact from the important function of evaluating the credibility of witnesses"). A French court would face none of these problems. *See In re Air Crash over the Mid-Atlantic*, 760 F. Supp. 2d at 844 n.8 (finding in lawsuit against French defendants from foreign aircraft accident that "France is also the location of significant amounts of relevant damages evidence, and it will likely be easier in France to obtain damages evidence from the other Europeans in these

lawsuits.") (citing European Council Regulation 1206/2001; *Magnin v. Teledyne Cont. Motors*, 91 F.3d 1424, 1429-30 (11th Cir. 1996) ("Witnesses such as the crash investigators, eyewitnesses to the crash, the owner of the aircraft, those who maintained it, and the damage witnesses, are all in France.")). At best, these third-party witnesses and documents would only be available in the United States, if at all, through reliance on the Hague Convention or letters rogatory, but the need to rely on these "incredibly burdensome" processes supports dismissal. *Vivendi S.A. v. T-Mobile USA, Inc.*, No. C06-1524, 2008 U.S. Dist. LEXIS 118523, at *37 (W.D. Wash. June 5, 2008), *aff'd* 586 F.3d 689 (9th Cir. 2009).

The United States Supreme Court has stated, and the Fifth Circuit agrees, that a *forum non conveniens* "dismissal will ordinarily be appropriate where trial in the plaintiff's chosen forum imposes a heavy burden on the defendant or the court, and where the plaintiff is unable to offer any specific reasons of convenience supporting his choice." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 249 (1981); *Moreno v. LG Elecs., USA Inc.*, 800 F.3d 692, 699 (5th Cir. 2015). In terms of "practical problems that make trial of a case easy, expeditious and inexpensive," *Gilbert*, 330 U.S. at 508, this forum selected by ECN is very inconvenient for AH and the Court. In this case, convenience could not have been a reason supporting ECN's choice of a Texas forum. Moreover, the Supreme Court and Fifth Circuit agree that, as a foreign plaintiff, ECN's choice of forum is subject to less deference than would a resident plaintiff. *Reyno*, 454 U.S. at 255-56; *Moreno*, 800 F.3d at 699. [4]

[4] Addressing U.S. companies with international operations, the Fifth Circuit has instructed that "'parties who choose to engage in international transactions should know that when their foreign operations lead to litigation they cannot expect always to bring their foreign opponents into a United States forum when every reasonable consideration leads to the conclusion that the site of the litigation should be elsewhere.'" *DTEX, LLC v. BBVA Bancomer, S.A.*, 508 F.3d 785, 795 (5th Cir. 2007) (per curiam) (quoting *Contact Lumber Co. v. P.T. Moges Shipping Co., Ltd.*,
(Footnote continued on next page)

2. The Public Interest Factors

The public-interest factors include "the administrative difficulties flowing from court congestion; the 'local interest in having localized controversies decided at home'; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty." *Reyno*, 454 U.S. at 241 n.6 (quoting *Gilbert*, 330 U.S. at 509). "The central question a court must answer when considering the public interest is whether the case has a general nexus with the forum sufficient to justify the forum's commitment of judicial time and resources to it." *Seguros Comercial Americas*, 933 F. Supp. at 1313.

The taxpayers of the United States, this Court, and jurors within this district should not be burdened with this dispute brought by a Canadian company against a French company that relates to the sales of helicopters built and sold in France. *Boonma v. Bredimus*, No. 3:05-cv-0684-D, 2005 U.S. Dist. LEXIS 15587, at *17 (N.D. Tex. July 29, 2005) ("Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. Texas jurors have little connection with the case because the plaintiff is Thai and all the conduct occurred in Thailand.") (quoting *Gulf Oil*, 330 U.S. at 508-09); *Pain v. United Tech. Corp.*, 637 F.2d 775, 792 (D.C. Cir. 1980) (where helicopter that was owned, operated and maintained by a Norwegian corporation crashed in Norwegian waters and the resulting investigation evidence and wreckage were located in Norway, "jury duty for this matter ought

918 F.2d 1446, 1450 (9th Cir. 1990)). This injunction applies with even greater force where, as here, ECN also is a foreign company that seeks to use U.S. courts to litigate claims arising from a foreign transaction against another foreign company.

not be imposed upon the people of the District of Columbia, nor should local dockets be clogged by appeals in this case.").

France, by contrast, has a strong interest in a claim regarding alleged misconduct committed in France by a French company subject to French and European regulations. *E.g.*, *Jennings v. The Boeing Co.*, 660 F. Supp. 796, 808 (E.D. Pa. 1987) (dismissing a Scottish helicopter crash case, recognizing that "the English and Scottish governments have an intensely local interest in regulating the sale and operation of aircraft within their territory"); *Dahl v. United Technologies Corp*., 632 F.2d 1027, 1031-1033 (3d Cir. 1980) (finding that Norway's interest in regulating aircraft safety was equal if not superior to the United States' even where the aircraft was manufactured in the United States).

French tribunals are also in a far better position to apply what will most likely be French laws and/or European regulations on the claims against AH. The Fifth Circuit "has not determined whether the independent judgment test or the forum state's choice-of-law rules should be applied in bankruptcy." *MC Asset Recovery LLC v. Commerzbank A.G.*, 675 F.3d 530, 536 (5th Cir. 2012) (citing *Woods—Tucker Leasing Corp. v. Hutcheson—Ingram Dev. Co.*, 642 F.2d 744, 748 (5th Cir. 1981)). Because the most significant relationship test that Texas courts apply to tort claims and the independent judgment test are "essentially synonymous," this Court need not decide which applies in this case. *Id.* (citations and quotations omitted). Under either test, it is clear on the facts discussed herein that the laws of France would apply to these claims against a French manufacturer for conduct that occurred in France, where not a single interest of the United States is involved. *In re Air Crash over the Mid-Atlantic*, 760 F. Supp. 2d at 847 (noting that while "the Court need not definitively determine which law will apply to these actions before dismissing on forum non conveniens grounds . . . the possibility that French law

will apply is an additional factor favoring dismissal") (citations omitted); *Simcox v. McDermott Int'l, Inc.*, 152 F.R.D. 689, 697-698 (S.D. Tex. 1994) ("It would be far more practical to try this case in the courts of a country well-versed in the applicable law."); *Villar v. Crowley Maritime Corp*., 780 F. Supp. 1467, 1485 (S.D. Tex. 1992) ("A Philippine court is better placed to apply Philippine law, and at least as well placed to apply Panamanian and Saudi Arabian law, than is a Texas court.").

The United States Supreme Court and the Fifth Circuit have affirmed many dismissals of product liability lawsuits on *forum non conveniens* grounds when the controversy centers in another country and involves foreign products, foreign plaintiffs and foreign injuries. *See, e.g.*, *Reyno*, 454 U.S. at 257-61 (dismissal of Scottish air crash products liability action brought by foreign plaintiffs where the crash and most of the evidence was located abroad); *Moreno*, 800 F.3d at 699 (dismissal of action by Mexican resident against Mexican defendants over injuries that occurred in Mexico); *Vasquez v. Bridgestone/Firestone, Inc*., 325 F.3d 665, 672-73 (5th Cir. 2003) (same); *Gonzalez v. Chrysler Corp.*, 301 F.3d 377, 382–83 (5th Cir. 2002)(dismissal where victim and plaintiff were Mexican, the accident took place in Mexico, where the car was purchased, and the car was not manufactured in Texas); *Baumgart*, 981 F.2d at 836-37 (dismissal of German air crash products liability case involving foreign plaintiffs – "The airline crash itself and other principal events surrounding the accident took place in Germany, the vast majority of the expected evidence and anticipated witnesses are located in Germany, and Germany is the residence of all plaintiffs and of three potential third-party defendants."); *Empresa Lineas Maritimas Argentinas, S.A. v. Schichau-Unterweser, A.G.*, 955 F.2d 368, 370-76 (5th Cir. 1992) (dismissal of action brought by Argentinian company against Dutch company over boat that sank

off Bermuda while en route to the United States). This Court should do the same and dismiss this action on *forum non conveniens* grounds.

CONCLUSION

For the foregoing reasons, Defendant Airbus Helicopters, S.A.S. requests that this Court dismiss ECN's adversary proceeding and award AH all further relief to which it may be entitled.

DEMAND FOR JURY TRIAL

Without waiver of its objection to the Court's personal jurisdiction, the convenience of the forum, or any other rights, privileges, or defenses, including but not limited to the arbitrability of the claims, AH hereby demands a trial by jury on all issues and claims so triable, and does not consent to jury trial before the bankruptcy court.

Dated: January 4, 2017.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT AIRBUS HELICOPTERS, S.A.S.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on January 4, 2017, a true and correct copy of the above and foregoing document was filed with the court via CM/ECF and served on all parties requesting electronic notification.

/s/ Jason M. Katz
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Exhibit P

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: CHC GROUP LTD., *et al.*, Debtors.	Chapter 11 Case No. 16-31854 (BJH) (Jointly Administered)
ECN CAPITAL (AVIATION) CORP., Plaintiff, v. AIRBUS HELICOPTERS, S.A.S., Defendant.	Adv. Pro. No. 16-3151 (BJH)

DEFENDANT AIRBUS HELICOPTERS, S.A.S.'S MOTION FOR WITHDRAWAL OF REFERENCE OF ADVERSARY PROCEEDING, AND BRIEF IN SUPPORT

\TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE[1]:

[1] Pursuant to Local Rule 5011.1, this Motion is directed to the Honorable District Judge, but is filed in the Bankruptcy Court.

COMES NOW, Defendant Airbus Helicopters, S.A.S. ("AH"), subject to and without waiving its objection to the Court's personal jurisdiction (discussed below), respectfully moves the Court for an order withdrawing the Order of Reference of Bankruptcy Cases and Proceedings *Nunc Pro Tunc* (Miscellaneous Rule No. 33 of the United States District Court Northern District of Texas) (the "Standing Order") as it relates to the above-captioned adversary proceeding.

INTRODUCTION

This adversary proceeding brought by non-debtor ECN Capital (Aviation) Corp. ("ECN") against non-debtor AH 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 AH. 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 AH 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.

AH has separately moved to dismiss (the "Motion to Dismiss") the adversary proceeding pursuant to Fed. R. Bankr. P. 7012(b) and Fed. R. Civ. P. 12(b)(1) and (b)(2) for lack of subject matter and personal jurisdiction, and because the Court should abstain under 28 U.S.C. § 1334(c)(1) from hearing this matter or dismiss it on *forum non conveniens* grounds. That motion is based on the fact that the adversary proceeding has no connection to the United States, involves only foreign (Canadian and French) parties, pertains solely to foreign subject matter and conduct,

involves evidence located entirely outside of the United States, will be governed by foreign law, and involves the strong interest of a foreign sovereign – France. Many of the arguments supporting AH's Motion to Dismiss also support the withdrawal of reference, and are incorporated by reference herein.

FACTUAL BACKGROUND

On May 5, 2016, the Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code in United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court" or "the Court"). The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and N.D. Tex. L.B.R. 1015-1.

On November 17, 2016, ECN commenced its adversary proceeding against AH in the Bankruptcy Court. [*See* ECN Complaint ("Complaint"), Case No. 16-03151 (ECF No. 1).] None of the Debtors are parties. [*Id.*] ECN has demanded a jury trial. [Complaint, 31.] ECN states that the proceeding is non-core, and that it does not consent to the entry of final orders or judgment by the Bankruptcy Court. [*Id*. at ¶ 13.]

ECN's Complaint seeks damages related to five Super Puma helicopters that AH designed, manufactured and sold from its place of business in France to European purchasers other than ECN, which bought from third parties. [*See* Brief in Support of Motion to Dismiss, 3-4.] ECN is located in Canada, and the helicopters are registered and located outside of the United States. [*Id.* at 4.] ECN claims that its helicopters are defective based on accidents that occurred in Norway in 2016 and in the North Sea off of Scotland in 2009 involving different Super Puma helicopters, and related government aviation authority activity in Europe, including a temporary flight ban. [Complaint, *passim*.] ECN also asserts that AH has made false statements about the safety,

reliability and design of Super Puma helicopters. [*Id.* at ¶¶ 93-111.] ECN asserts that it has suffered economic loss due to reduced value and loss of use of the helicopters as a result of the alleged defect and flight ban. [*Id.* at ¶¶ 42, 44.] ECN has not alleged any connection between its product defect, negligence, breach of warranty, fraud or misrepresentation causes of action, or its damages, and any conduct, events or transactions that occurred in the United States. [*Id.* at *passim.*]

ECN leased the helicopters to Debtor CHC Helicopters Barbados ("CHC Barbados"). [*See Id.* at ¶ 12.] Those leases (the "ECN Leases") were rejected in the CHC Bankruptcy Proceedings. [*Id.*] The Debtors' stated reason for rejecting the ECN Leases was that "with the ongoing downturn in the Debtors' industry, these same helicopters are no longer necessary to the Debtors' operations." [May 5, 2016 Omnibus Mot., Case No. 16-31854, ¶ 40 (ECF No. 20); May 27, 2016 Omnibus Mot., Case No. 16-31854, ¶ 41 (ECF No. 210).] ECN's Adversary Proceeding does not seek damages from AH related to the rejection of the ECN Leases. [Complaint, *passim*.]

RELIEF REQUESTED AND BASIS FOR RELIEF

Subject to and without waiving its personal jurisdiction objection, AH respectfully requests that the District Court enter an order withdrawing the reference to the Bankruptcy Court pursuant to 28 U.S.C. § 157(d).

ARGUMENT

Section 157(a) of Title 28 and the Standing Order in this District work in conjunction to automatically refer to the Bankruptcy Court all cases under title 11 and all proceedings arising in, under or related to title 11 to the Bankruptcy Court. The District Court may permissively withdraw reference pursuant to 28 U.S.C. § 157(d) which states that the "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 for any party, for cause shown." 28 U.S.C. § 157(d).

In *Holland Am. Ins. Co. v. Succession of Roy*, the Fifth Circuit explained that "Article I bankruptcy courts may not have original jurisdiction over adversary proceedings that do not intimately involve the debtor-creditor relationship and rest solely in issues of state law." 777 F.2d 992, 999 (5th Cir. 1985). Although "cause" is not defined in the Bankruptcy Code or Title 28, courts weigh six factors outlined in *Holland* to determine if cause exists: "1) promoting uniformity in bankruptcy administration, 2) reducing forum shopping and confusion, 3) fostering the economical use of the debtors' and creditors' resources, 4) expediting the bankruptcy process, 5) whether jury demands have been made, and 6) core versus non-core matters." *Mobley v. Quality Lease & Rental Holdings, LLC (In re Quality Lease & Rental Holdings, LLC)*, Nos. 14-60074, 14-6005, 2016 Bankr. LEXIS 297, at *14-15 (U.S. Bankr. S.D. Tex. Feb. 1, 2016); *Holland*, 777 F.2d at 999 (outlining factors); *Mirant v. The Southern Co.*, 337 B.R. 107, 123 (N.D. Tex. 2006) (McBryde, J.); *see also* N.D. Tex. L.B.R. 5011-1(a) (listing some of the same factors). These factors weigh heavily in favor of withdrawal of reference for ECN's adversary proceeding.

A. <u>The Adversary Proceeding is Non-Core</u>

"The majority of courts evaluating a request to withdraw the reference place paramount importance on whether the claims at issue are core or non-core." *Mobley*, 2016 Bankr. LEXIS 297, at *18. Absent consent, bankruptcy courts do not have authority to enter final judgment on non-core claims. *Id.* at *19. In *Mobley*, the court explained,

> Absent consent, this Court does not have the authority to enter a final judgment on non-core claims. If the bankruptcy court were to try the case and then enter a judgment on core claims and a report and recommendation to the district court on the non-core claims, the ultimate resolution would be complex and time-consuming . . . The United States District Court is the only court with the jurisdiction and authority to consider all claims in this proceeding.

Id. at *19-20.

In this case, ECN concedes, and AH agrees, that the adversary proceeding against AH is a non-core proceeding [Complaint, ¶ 13], since it does not include any claims based on a right expressly created by title 11, has existence outside of the bankruptcy, and ECN does not invoke the Court's jurisdiction to adjudicate claims by or against a debtor. *Southmark Corp. v. Coopers & Lybrand (In re Southmark Corp.),*163 F.3d 925, 932 (5th Cir. 1999). Further, neither ECN nor AH consent to the entry of final orders or judgment by this Court. [Complaint, ¶ 13; Brief in Support of Motion to Dismiss, 2 n.1.] Thus, as in *Mobley*, only the District Court has the authority and jurisdiction to issue its orders and judgments for ECN's lawsuit, and there is no reason for the Bankruptcy Court to hear this complex and potentially time-consuming lawsuit.

Moreover, as more fully explained in AH's Motion to Dismiss, the adversary proceeding is not "related to" the Bankruptcy Proceedings. ECN alleges that "[t]he outcome of this lawsuit is likely to impact" (i) the CHC Debtors' estates and their administration, and (ii) and the rights, obligations and "choices of action" of the CHC Debtors and their creditors. [Complaint, ¶¶ 8, 42.] The adversary proceeding, however, does not name the CHC Debtors, and does not involve their estates' property. The helicopters are owned by ECN. Although the Debtors have made certain assertions about the financial impact of the flight ban, the stated reason for rejection of the ECN Leases was that the Debtors no longer needed the helicopters for their operations due to changed market conditions.

While ECN asserts that "[t]o the extent that ECN Capital recovers damages against Airbus through this action, the amount of ECN Capital's claims against the CHC Debtors will be reduced by ECN Capital's recovery," [*Id.* at ¶ 42], the source of damages to ECN in the two proceedings are completely separate – rejected leases (bankruptcy) versus the grounding (adversary). To the

extent that ECN recovers from AH in the adversary proceeding, the recovery would go to ECN, not the CHC Debtors. *Yashiro Co. v. Falchi (In re Falchi)*, Nos. 97 B 43080, 97-9057A, 1998 Bankr. LEXIS 622, *17-20 (U.S. Bankr. S.D.N.Y. May 26, 1998) (finding no "related to" jurisdiction in dispute between non-debtors where recovery would go to adversary proceeding plaintiff, not debtors) (citations omitted); *Singer v. Adamson*, 334 B.R. 1, 11 (Bankr. D. Mass. 2005) ("if Singer were to prevail on her claims against the non-debtor defendants, any damages she could recover would not be available for distribution to the Debtor's creditors as they would not be assets of the bankruptcy estate"). Thus, the fact that ECN alleges that the helicopters have a lower value is irrelevant as to the CHC Debtors Bankruptcy Proceeding.

B. ECN Has Demanded a Jury Trial

"When a party that is entitled to a jury trial properly requests a jury and does not consent to a jury trial before the bankruptcy court, the bankruptcy court must recommend that the adversary proceeding be withdrawn to the district court for trial." *Mobley*, 2016 Bankr. LEXIS 297, at *16-18 (citing *In re Clay*, 35 F.3d 190, 196-97 (5th Cir. 1994)). ECN and AH have demanded a jury trial, and AH does not consent to a jury trial before the Bankruptcy Court. This factor weighs strongly in favor of withdrawal of the reference. N.D. Tex. L.B.R. 5011-1(a)(4); *see also Levine v. M&A Custom Home Builder & Developer, LLC*, 400 B.R. 200, 203 (S.D. Tex. 2008) (withdrawing reference because defendant "demanded a jury trial, had not waived his right to a jury trial, and had not consented to a jury trial held in the bankruptcy court").

C. Forum Shopping

As explained, there is no basis for ECN to pursue its claim against AH for the helicopters in the United States absent the purported relationship to the CHC Debtors' bankruptcy. [*See* Brief

in Support of Motion to Dismiss, 6.] It is clear that ECN has brought this action as an adversary proceeding only to try to gain access to a United States forum.

Moreover, where a bankruptcy court can only issue proposed findings of fact and conclusion of law (subject to *de novo* review), as would be the case here, a motion to withdraw the reference is not forum shopping but a "reasonable effort to have a non-core proceeding litigated with a minimum of time and expense." *See Waldon v. Nat'l Fire Ins. Co*, No. 01-31527, 2006 Bankr. LEXIS 1861, at *16 (U.S. Bankr. S.D. Tex. June 14, 2006). Since the Bankruptcy Court cannot enter final orders or judgment in this proceeding, this Motion is a reasonable effort to have these non-core claims litigated efficiently in a forum that can resolve the dispute, assuming *arguendo* that jurisdiction exists in the United States.

D. Judicial Economy

The remaining factors considered (furthering bankruptcy uniformity, fostering economical use of resources, and expediting the bankruptcy process) are all essentially questions of judicial economy. *See Guff, v. Brown (In re Brown Med. Ctr., Inc)*, No. 16-0084, 2016 U.S. Dist. LEXIS 12646, at *4-5 (S.D. Tex. Feb. 3, 2016). Judicial economy favors immediate withdrawal of the reference when, as here, a bankruptcy court cannot enter final orders or judgments on dispositive motions, and instead can only issue proposed findings of fact and conclusions of law. *Mirant*, 337 B.R. at 122-23 (referral to the District Court often results in more efficient and less costly results for "non-core" matters). "Adjudicating all of the claims . . . dispenses with the need for the district court to conduct a de novo review. . . [and] will foster the economical use of the resources of the litigants." *Id.*

Moreover, the reference should be withdrawn in this adversary proceeding against non-debtor defendants because it involves complex aviation product liability claims that are highly

technical and can take years to prepare for trial (with discovery taking place in foreign countries), and requires the expenditure of resources on a matter having no United States connection. [*See* Brief in Support of Motion to Dismiss, 10.] It also makes the most sense for the District Court to resolve the initial procedural matters raised by AH's Motion to Dismiss because their facts bear on the ultimate issues in the case. This Motion is an "effort to have a non-core matter litigated with a minimum of time and expense." *Waldon*, 2006 Bankr. LEXIS 1861, at *16.

CONCLUSION

In light of the overwhelming weight of the factors favoring withdrawal of the reference, Defendant Airbus Helicopters, S.A.S. respectfully requests that the Bankruptcy Court issue a report and recommendation to the District Court recommending immediate withdrawal of the reference pursuant to 28 U.S.C. § 157(d), and that AH be granted all other relief to which it is justly entitled.

DEMAND FOR JURY TRIAL

Subject to and without waiving its objection to the Court's personal jurisdiction, defendant AH hereby demands a trial by jury on all issues and claims so triable, and does not consent to jury trial before the bankruptcy court.

Dated: January 3, 2017.

Respectfully submitted,

HIERSCHE, HAYWARD, DRAKELEY & URBACH, P.C.

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CERTIFICATE OF CONFERENCE

On January 3, 2017, the undersigned attorney had a conference via e-mail with counsel for all Plaintiff to discuss the relief sought in this opposed motion. At that time, an agreement could not be reached among the parties.

/s/ Eric C. Strain
Eric C. Strain

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on January 3, 2017, a true and correct copy of the above and foregoing document was filed with the court via CM/ECF and served on all parties requesting electronic notification.

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COUNSEL FOR PLAINTIFF ECN CAPITAL (AVIATION) CORP.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: CHC GROUP LTD., *et al.* Debtors,	**Chapter 11** **Case No. 16-31854(BJH)** **(Jointly Administered)**
ECN CAPITAL (AVIATION) CORP., Plaintiff, v. AIRBUS HELICOPTER (SAS) Defendant	**Adv. No. 16-03151-bjh** **Plaintiff's Supplemental Memorandum of Law in Opposition to Defendant's Motion to Dismiss**

Plaintiff ECN Capital (Aviation) Corp. (f/k/a Element Capital Corp.) ("ECN Capital"), by its undersigned attorneys, files this Supplemental Memorandum of Law in Opposition to Defendant Airbus Helicopters S.A.S.'s ("Airbus") Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction and *Forum non Conveniens* ("Motion to Dismiss"), at the direction of the Court.

PRELIMINARY STATEMENT

This Court has jurisdiction over this Adversary Proceeding and is authorized to enter an order denying Airbus's Motion to Dismiss. The Adversary Proceeding is a non-core matter in which the parties have not consented to final orders by the Bankruptcy Court, and the Court therefore is not authorized to enter a final order in the matter. In precisely these circumstances, however, courts in the Fifth Circuit and elsewhere have held that the bankruptcy court has jurisdiction to deny a defendant's motion to dismiss the complaint, as the denial of a dispositive motion does not constitute a final order.

This Court, however, is not authorized to enter an order granting Airbus's Motion to Dismiss, as such a judgment would constitute a final order in a non-core matter in which the parties have not consented to entry of final orders by the bankruptcy court. Thus, if this Court were to rule that the Motion to Dismiss should be granted, such a ruling would have to be submitted as a proposed finding of fact and conclusion of law to the District Court.

The Complaint and the Motion to Dismiss raise issues regarding the facts underlying the Bankruptcy Cases to which this Adversary Proceeding is related, as well as questions regarding the extent of this Court's subject matter and personal jurisdiction. Airbus sought to have the reference of this Adversary Proceeding withdrawn immediately, such that Airbus could present these questions in the first instance to the District Court. The District Court, of course, is not as

familiar with the parties, the Bankruptcy Cases, and the facts underlying both the Bankruptcy Cases and this Adversary Proceeding—which is exactly why Airbus wants the District Court to rule on its Motion to Dismiss in the first instance.

As ECN Capital has maintained in its briefing and argument before the Court, the reference should stay with this Court, at the very least for purposes of hearing the Motion to Dismiss. This Court should exercise its jurisdiction and enter an order denying Airbus's Motion to Dismiss.

BACKGROUND

The facts underlying ECN Capital's claims are set forth in the Complaint by ECN Capital (Aviation) Corp. against Airbus Helicopters (SAS) [Docket. No. 1] (the "Complaint") and in ECN Capital's Opposition to Defendant's Motion to Dismiss [Docket No. 63] (the "MTD Opposition").[1] ECN Capital sets forth here the salient facts relating to this Supplemental Memorandum of Law.

ECN Capital filed the Complaint against Airbus in this Adversary Proceeding on November 17, 2016. The Complaint asserts, among other things, claims against Airbus for defective design and breach of implied warranty of merchantability regarding Airbus's manufacturing, marketing, and sale of the EC225 and the AS332 L2 helicopters. *See* ¶¶ 46–111. The allegations in the Complaint demonstrate that ECN Capital's claims would likely have an impact on the rights, liabilities, and/or property of the Debtors' estates (and, at the very least, "could conceivably have an effect" on the Debtors' estates), and thus are related to the Bankruptcy Cases. *See, e.g.*, ¶¶ 8, 43.[2] The Complaint also states that the Adversary Proceeding

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the MTD Opposition. All references herein to "¶ __" are to the Complaint.

[2] As this Court recognized, for purposes of deciding Airbus's Motion to Dismiss, the factual allegations in the Complaint must be taken as true. *See* Transcript of 2/6/2017 H'r'g on Withdrawal Mot. ("Tr.") 56:3-7; *see also*

is a "non-core proceeding," and that ECN Capital "does not consent to entry of final orders or judgment by this Court at this time." ¶ 13.

On January 3, 2017, Airbus filed its Motion to Dismiss [Docket No. 24], asking this Court to find that it lacked subject matter jurisdiction over ECN Capital's claims or personal jurisdiction over Airbus. In the alternative, the Motion to Dismiss requested that the Court abstain from exercising its jurisdiction, or dismiss the Complaint on grounds of *forum non conveniens*.

Also on January 3, 2017, Airbus filed its Motion for Withdrawal of Reference of Adversary Proceeding, and Brief in Support [Docket No. 23] (the "Withdrawal Motion"), requesting that this Court "issue a report and recommendation to the District Court recommending immediate withdrawal of the reference." Withdrawal Mot. p. 9. Airbus argued in the Withdrawal Motion that "[i]t also makes the most sense for the District Court to resolve the initial procedural matters raised by [Airbus's] Motion to Dismiss because their facts bear on the ultimate issues in the case." *Id.*

On January 27, 2017, ECN Capital filed its MTD Opposition, demonstrating that this Court has subject matter jurisdiction to hear ECN Capital's claims against Airbus in the Adversary Proceeding, which are related to the Bankruptcy Cases. Among other things, ECN Capital argued in the MTD Opposition that Airbus should not be permitted to avoid this Court's jurisdiction and benefit from blatant forum-shopping merely on account of its refusal to consent to entry of final orders by the Bankruptcy Court. *See* MTD Opposition pp. 15–16 & nn.26–27.

In re Wilborn, 401 B.R. 872, 877 (Bankr. S.D. Tex. 2009) ("[W]hen deciding whether to grant a 12(b)(1) motion, the Court 'must accept all factual allegations in the plaintiffs complaint as true.'") (quoting *Ramming* v. *United States*, 281 F.3d 158, 161 (5th Cir. 2001); *Seghers* v. *El Bizri*, 513 F. Supp. 2d 694, 703 (N.D. Tex. 2007) ("In determining whether a prima facie case for personal jurisdiction exists on a [12(b)(2)] motion to dismiss, uncontroverted factual allegations in the plaintiff's complaint must be taken as true.").

On February 2, 2017, ECN Capital filed its Opposition to Airbus's Withdrawal Motion ("Withdrawal Motion Opposition") [Docket No. 65]. In the Withdrawal Motion Opposition, ECN Capital explained that this Court is better positioned that any other forum to adjudicate ECN Capital's claims against Airbus in the Adversary Proceeding, which are related to the Bankruptcy Cases. *See* Withdrawal Mot. Opp'n 5, 17. Again, ECN Capital argued that Airbus should not be permitted to benefit from its attempt at forum-shopping, and that the reference should remain with this Court at this time. *Id.* 16–18.

On February 2, 2017, Airbus filed a Reply in Further Support of Its Withdrawal Motion ("Withdrawal Motion Reply") [Docket No. 67-1].[3] Airbus again contended that the reference should be withdrawn immediately, on the purported grounds that "it is more efficient for the District Court to become familiar with the case earlier rather than later, particularly because the District Court will need to rule on dispositive motions." Withdrawal Mot. Reply 4.

On February 6, 2017, the Court held a hearing on Airbus's Withdrawal Motion. The Court recognized that the Motion to Dismiss raised issues that were intertwined with the Bankruptcy Cases, making it appropriate for the Court to retain the reference at least through the adjudication of the Motion to Dismiss. Tr. 7:5-24; 19:4-9. Ultimately, the Court requested supplemental briefing from the parties on the issue whether the Court has authority to finally adjudicate the Motion to Dismiss, or is required to submit its ruling as a proposed recommendation to the District Court. Tr. 36:4-13. ECN Capital respectfully submits this Supplemental Memorandum of Law to demonstrate, as explained below, that this Court is authorized to enter an order denying Airbus's Motion to Dismiss.

[3] The Withdrawal Motion Reply was attached as Exhibit A to Airbus's motion for leave to file the Withdrawal Motion Reply [Docket No. 67].

ARGUMENT

I. This Court Is Authorized To Enter an Order Denying Airbus's Motion To Dismiss.

Airbus relies on 28 U.S.C. § 157(c), and cases interpreting the statute, as the basis for concluding that "the District Court will need to rule on dispositive motions." Withdrawal Mot. Reply 3–4 & n.4; *see also* Withdrawal Mot. 5–6.

28 U.S.C. § 157(c) provides that the bankruptcy court may hear non-core proceedings that are related to a bankruptcy case, but that the bankruptcy court may not enter final orders in such proceedings without the consent of all parties. *Id.*; *see also, e.g.*, *In re Blackwell ex rel. Estate of I.G. Services, Ltd.*, 279 B.R. 818, 822–24 (Bankr. W.D. Tex. 2002) ("Non-core matters . . . can be heard by the bankruptcy court, but [28 U.S.C. § 157(c)] says that only the district court can enter 'final judgments and orders,' absent consent of the parties."). This provision does not limit the bankruptcy court's ability to enter *interlocutory* orders in "related to" non-core matters. *See, e.g.*, *In re Almasri*, 378 B.R. 550, 553 (Bankr. N.D. Ohio 2007) ("Because 28 U.S.C. § 157(c)(1) speaks only to 'final' orders or judgments, the plain language of that provision dictates that this Court has the authority to enter interlocutory orders in non-core proceedings and courts have consistently held such to be within the power of the bankruptcy court.").

An order denying Airbus's Motion to Dismiss the Complaint in the Adversary Proceeding would be an interlocutory order, not a final order. In the Fifth Circuit, "numerous courts have held that a bankruptcy court's denial of a motion to dismiss is not a final order." *Smith* v. *AET Inc., Ltd.*, 2007 WL 1644060, at *3–4 (S.D. Tex. June 4, 2007) (collecting cases and concluding that "a denial of a motion to dismiss is an interlocutory, not a final order"); *see also In re Smith*, 514 B.R. 838, 842 (Bankr. S.D. Tex. 2014) ("[D]enying the [motion to dismiss] does not end the litigation on the merits; therefore, there is no final order to be entered at this

time."). "In general, an order denying a motion to dismiss is considered a nonappealable interlocutory order. The same rule applies in bankruptcy appeals. A bankruptcy court's order denying a motion to dismiss generally is not a 'final' order." *In re Pickle*, 149 F.3d 1174, 1998 WL 413023, at *2 (5th Cir. 1998); *see Kelley* v. *Cypress Financial Trading Co.*, 518 B.R. 373, 377 (N.D. Tex. July 30, 2014) (citing *In re Pickle* and holding that a bankruptcy court's order denying a motion to dismiss is not a final order); *In re Ted A. Petras Furs, Inc.*, 100 F.3d 943, 1996 WL 49255, at *2 (2d Cir. 1996) (holding that bankruptcy court order denying defendants' motion to dismiss adversary proceeding was an interlocutory order).

Bankruptcy courts have exercised the authority to enter an order denying a dispositive motion in a non-core proceeding, rather than submitting such a ruling to the district court as a report and recommendation. *See, e.g.*, *In re Holloway*, 538 B.R. 137, 140, 145 (Bankr. M.D. Ala. 2015) (holding that "[a] denial of a motion to dismiss is not a final order" and denying 12(b)(6) motion to dismiss adversary complaint including non-core claims); *In re Freeway Foods of Greensboro, Inc.*, 467 B.R. 853, 868 & n.7 (Bankr. M.D.N.C. 2012) (denying motion to dismiss non-core claims in adversary proceeding).

In re Freeway Foods is an instructive example. There, the bankruptcy court considered a motion for judgment on the pleadings with regard to eight non-core claims brought in an adversary proceeding. The bankruptcy court entered an order denying the motion with respect to seven of the claims, explaining that it had the power to do so because "denial of a dispositive motion does not constitute a final order." *In re Freeway Foods*, 467 B.R. at 868 & n.7 (citing *Bryan* v. *BellSouth Commc'ns, Inc.*, 492 F.3d 231, 240 (4th Cir. 2007)). The court ruled that the motion to dismiss should be granted with respect to one of the non-core claims, but clarified that

"the Court's ruling as to this cause of action is a proposed finding of fact and conclusion of law [to the District Court], and not a final judgment." *Id.* at n.6.

This Court is authorized under 28 U.S.C. § 157(c) and well-settled case law to enter an order denying Airbus's Motion to Dismiss. Airbus's claim that "the District Court will need to rule on dispositive motions" therefore is not accurate, and does not justify withdrawal of the reference in this Adversary Proceeding. As this Court has acknowledged, the claims asserted in ECN Capital's Complaint against Airbus and the issues raised by Airbus in the Motion to Dismiss are intertwined with the Bankruptcy Cases (*see* Tr. 7:5-24; 19:4-9), and an adjudication of the Motion to Dismiss would benefit from this Court's familiarity with the facts underlying the Bankruptcy Cases. Accordingly, this Court should exercise its jurisdiction and authority to enter an order denying Airbus's Motion to Dismiss.

II. If This Court Does Not Deny Airbus's Motion To Dismiss, It Must Submit Its Ruling to the District Court As a Proposed Finding of Fact and Conclusion of Law.

Unlike an order denying a dispositive motion, an order granting a dispositive motion is a "final order" for purposes of 28 U.S.C. § 157(c). In non-core adversary proceedings, such orders may not be entered by a bankruptcy court without consent of all parties. *See, e.g.*, *Stern* v. *Marshall*, 564 U.S. 462, 475 (2011) (holding that under 28 U.S.C. § 157(c) only the district court may enter a final judgment in a non-core proceeding); *In re Blackwell*, 279 B.R. at 822 ("[O]nly the district court can enter 'final judgments and orders,' [in non-core matters] absent consent of the parties."). Since all parties do not consent at this time to the entry of final orders by this Court with respect to the Adversary Proceeding (*see, e.g.*, Am. Br. in Supp. of Mot. to Dismiss 2 & n.1), this Court is not authorized to enter a final order granting Airbus's Motion to Dismiss. If the Court does not deny the Motion to Dismiss, its ruling must be submitted to the District Court

as "a proposed finding of fact and conclusion of law, and not a final judgment." *In re Freeway Foods*, 467 B.R. at 868 & n.6.

CONCLUSION

For the foregoing reasons, this Court is authorized to enter an order denying Defendant's Motion to Dismiss the Complaint.

Dated: February 20, 2017
Dallas, Texas

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN PC

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CERTIFICATE OF SERVICE

I hereby certify that, on February 20, 2017, I caused the foregoing Supplemental Memorandum of Law in Opposition to Defendant's Motion to Dismiss to be filed with the Court via CM/ECF and served on all parties requesting electronic notification, including the following counsel of record for the Defendant:

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/s/ *George H. Barber*
George H. Barber

Exhibit R

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

In Re:	)	Case No. 16-31854-bjh
	)	Dallas, Texas
CHC GROUP LTD., et al.,	)	
	)	
Debtor.	)	February 28, 2017
	)	9:49 AM
----------	)	
ECN CAPITAL (AVIATION) CORP.,	)	Adv. Proc. 16-03151-bjh
	)	
Plaintiff,	)	
v.	)	
	)	
AIRBUS HELICOPTERS (SAS),	)	
	)	
Defendant.	)	
----------	)	

TRANSCRIPT OF HEARING ON

MOTION TO DISMISS ADVERSARY PROCEEDING FOR LACK OF SUBJECT MATTER AND PERSONAL JURISDICTION AND ON THE GROUNDS OF FORUM NON CONVENIENS FILED BY DEFENDANT AIRBUS HELICOPTERS (SAS) (24)

BEFORE THE HONORABLE BARBARA J. HOUSER

UNITED STATES BANKRUPTCY COURT

Transcription Services: eScribers, LLC
352 Seventh Avenue
Suite #604
New York, NY 10001
(973) 406-2250

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE

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this issue. So --

MR. FLUMENBAUM: Oh, all right.

THE COURT: -- why are we spending so much time on --

MR. FLUMENBAUM: Right.

THE COURT: -- it?

MR. FLUMENBAUM: Let me --

THE COURT: I told you at the outset that I think --

MR. FLUMENBAUM: All right.

THE COURT: -- have related-to jurisdiction --

MR. FLUMENBAUM: I apologize. I --

THE COURT: -- and the big argument that Mr. Katz made is really that Pacor is -- that this case is like Pacor in the conclusion that there wasn't related-to jurisdiction. And I'm fearful that he has misread Pacor.

So, unless you have something to add on the Pacor analysis --

MR. FLUMENBAUM: I would ask Your Honor to look at Passmore, Inray Canyon (ph.), which are two Fifth Circuit, recent Fifth Circuit cases --

THE COURT: And trust me, we have.

MR. FLUMENBAUM: -- which I think -- which support the related-to jurisdiction.

Let me turn to the personal jurisdiction. There are actually -- let me start with the concept of consent, because we believe we have consent jurisdiction, in terms of personal

jurisdiction here, which is slightly different than general, and slightly different than specific. The mere participation of Airbus, in this proceeding, gives us personal jurisdiction over Airbus to file related-to claims. I think the law is clear on that, in terms of their active participation in this proceeding.

And what we have here is that they voluntarily appeared, they filed proofs of claim, seeking over six million dollars. They voluntarily joined the unsecured creditors. They appointed a Texas resident, Kevin Cabanas, as its representative. We served Mr. Cabanas in Texas with the complaint. There's been no challenge to service of process in this case.

So, we think that they participated in the 2004 proceeding, which had nothing to do with them, which was between ECN and the debtor; they filed briefs in that case. And they've obviously entered into a settlement and a restructuring agreement with the debtor, in which Airbus will receive recovery, and in which these particular claims, that are similar to ours, are preserved.

So, we think that just that, under the law, gives us jurisdiction over Airbus. But there is much more than just this consensual, purposeful activity. And I think it's clear that voluntarily filing a lawsuit in the jurisdiction is purposeful availment of the jurisdiction's facilities, and can

subject the party to personal jurisdiction in another lawsuit, when the lawsuits arise from the same general transactions.

And, in this case, we believe we meet that standard. And I would refer Your Honor to Schwinn and Blenko, these are some of the cases we assigned in terms of personal jurisdiction.

THE COURT: Yeah, but that -- but those cases are different. And we've read them all. Those are all cases where it was the debtor or the trustee asserting claims, not a third party.

MR. FLUMENBAUM: Well --

THE COURT: You don't have a single third party case, that you cite, where the fact that a creditor filed a proof of claim in a bankruptcy case and participated in the bankruptcy case. I agree that that can give rise to jurisdiction by the debtor or trustee back against that creditor that relates to the proof of claim.

But, no offense, the claim filed here doesn't have anything to do with the product's liability claim you're asserting against it.

MR. FLUMENBAUM: Well --

THE COURT: And again, you didn't cite a single case where the fact that a creditor came in to the bankruptcy case and participated in the bankruptcy case gives rise to some other creditor suing, yet --

MR. FLUMENBAUM: It's not some other creditors. Another creditor --

THE COURT: Well, it is some other creditor.

MR. FLUMENBAUM: -- in the bankruptcy case.

THE COURT: Yeah, but on unrelated claims. Debtor doesn't have an interest in your outcome, other than it may get bound by it.

MR. FLUMENBAUM: Well --

THE COURT: But it has no economic interest in your lawsuit.

MR. FLUMENBAUM: Well, but for personal jurisdiction purposes, I don't think the debtor's concern, whether they will file or won't file, is really relevant. I think what is relevant is that CHC is in the middle of the transaction; we purchased these helicopters from CHC, which, as Your Honor knows, operates its businesses from Texas. We leased it back to CHC. CHC had these helicopters in its possession; they purchased them from Airbus, originally.

THE COURT: Right.

MR. FLUMENBAUM: So --

THE COURT: In France, pursuant to documents --

MR. FLUMENBAUM: Well --

THE COURT: -- that established French laws, the governing --

MR. FLUMENBAUM: Well --

THE COURT: -- law, et cetera, et cetera.

MR. FLUMENBAUM: We haven't seen all of those documents, Your Honor. So I can't verify that, and they are not in the record. I do know that in terms of personal --

THE COURT: Which CHC entity purchased your five helicopters and then turned around and sold them to you? Because the answer is --

MR. FLUMENBAUM: I think it was Barbados.

THE COURT: -- it was CHC Barbados --

MR. FLUMENBAUM: Yeah.

THE COURT: -- which is not a Texas corporation --

MR. FLUMENBAUM: It's not a --

THE COURT: -- the parent is in Texas.

MR. FLUMENBAUM: Right, but --

THE COURT: But ECN has many, many, many, many, many subsidiaries, many of which are foreign entities --

MR. FLUMENBAUM: But in this --

THE COURT: -- including Barbados SRL.

MR. FLUMENBAUM: But in this particular case, CHC has acknowledged that it operates its foreign subsidiaries from Texas; it stated so in its initial filings with this Court.

THE COURT: Where is that in my record?

MR. FLUMENBAUM: I (indiscernible). If CHC acknowledged that it operates its -- it is in the record, Your Honor.

THE COURT: Okay.

So --

THE COURT: But, nevertheless, you agree that the CHC entity that bought the five helicopters, and then turned around and sold them to you, is a foreign entity, and that the contractual relationships between Airbus Helicopters, SAS, which is a French entity --

MR. FLUMENBAUM: Correct.

THE COURT: -- and Barbados, all occurred outside the jurisdiction of the United States.

MR. FLUMENBAUM: Well, I don't agree to that because CHC said it directs its operations from Texas. So it may have used its CHC Barbados entity, but I think the decision-making, as to what to buy and not to buy, was done out of Texas.

THE COURT: Okay. You --

MR. FLUMENBAUM: So --

THE COURT: -- think you've got evidence of that?

MR. FLUMENBAUM: I think that's what CHC --

THE COURT: I'll be very anxious --

MR. FLUMENBAUM: -- has admitted.

THE COURT: I'll be very anxious to see that.

MR. FLUMENBAUM: Okay. I will --

Now, again, talking about personal jurisdiction, the documents that we received from Airbus during the short period of discovery that we had -- and I appreciate Your Honor's

moving that discovery, and permitting it -- really shows, in addition to what we believe is consensual jurisdiction, specific jurisdiction. They --

THE COURT: Okay, so your argument's -- I'm correct, you're not arguing general jurisdiction; you're not arguing that CH -- I mean --

MR. FLUMENBAUM: Well --

THE COURT: -- that Airbus Helicopters SAS is at-home in the United States?

MR. FLUMENBAUM: For purposes of this case, where they purposely avail --

THE COURT: No, no, no.

MR. FLUMENBAUM: -- of the Texas court to -- nobody forced them to come into this Court --

THE COURT: Two different issues: consent, you've covered that; now we're down to the more traditional, general, personal jurisdiction --

MR. FLUMENBAUM: Right.

THE COURT: -- and specific. You are not alleging general personal jurisdiction, correct?

MR. FLUMENBAUM: I don't believe we would have general jurisdiction but for their coming into this Court.

THE COURT: Other than consent.

MR. FLUMENBAUM: Other than consent. But --

THE COURT: Okay, see, I don't think that creates

general jurisdiction.

MR. FLUMENBAUM: Well --

THE COURT: But I hear ya.

MR. FLUMENBAUM: Daimler is not -- I've argued the Daimler position from both sides in different matters. But what Daimler says is it sets a standard of -- is an entity at-home in the jurisdiction. And --

THE COURT: And the entity is not at home here.

MR. FLUMENBAUM: Well --

THE COURT: The entity may --

MR. FLUMENBAUM: -- the entity --

THE COURT: The entity may have come to the United States to file a proof of claim against CHC in these bankruptcy proceedings. But that does not make it at-home for all purposes.

MR. FLUMENBAUM: Not for all purposes, but for certainly -- we have evidence, direct evidence, and I want to make sure I have the right data; Airbus sold -- Airbus France sold thirty helicopters to U.S.-based companies directly, twenty-eight, including six Super Pumas, the customer's headquartered in Texas.

The data that we've put before you shows that Airbus sold indirectly through its Texas affiliate, AHI, which is a sister company, and a distributor for SAS, another fifty-eight Airbus helicopters to Texas-based entities.

THE COURT: Right.

MR. FLUMENBAUM: The data shows that --

THE COURT: But unless under the Fifth Circuit precedent, Mr. Flumenbaum, unless you have alleged alter ego status between the two sister companies, which you have not, that's not enough to make them at-home for general jurisdiction.

MR. FLUMENBAUM: Well, I --

THE COURT: The --

MR. FLUMENBAUM: We have not alleged --

THE COURT: -- Fifth Circuit has so held.

MR. FLUMENBAUM: Right, I understand that. But I think the activity, whether or not we've alleged alter ego through AHI, they sold another 649 -- we're talking billions of dollars of sales --

THE COURT: But that doesn't make it --

MR. FLUMENBAUM: -- to Texas.

THE COURT: -- that doesn't make it at-home.

MR. FLUMENBAUM: By itself, it might not, but --

THE COURT: That's through the affiliate --

MR. FLUMENBAUM: -- with coming into this jurisdiction, and seeking the benefits from this jurisdiction, I submit that it is at-home. So, I'm not willing to limit Daimler just to that particular fact.

And I think in Daimler there was an issue as to

whether the California entity was an alter ego, but it had been abandoned in the lower courts.

But, in this case, it's not. We believe that by coming into this jurisdiction and participating as fully as it did by appointing a Texas representative, by -- that we have personal jurisdiction over them. And again, we serve them through their representative in this jurisdiction. So, we have location as well. We didn't serve them through the Hague in France; we served them here, and they've accepted that service.

So we believe that -- and they also sold nineteen Super Pumas to CHC, four of which, I believe, CHC still owns. We have evidence of four executives from France coming over here to participate in the bankruptcy proceeding, that they were in court -- two of them were in court, I believe in June, again, all before we filed our complaint here.

And, as I said, they were actively involved in the 2004 proceedings. Airbus France also participates in activities in the United States -- sales activities in the United States. And we have evidence in our papers about the Heli Expo in Dallas next week, which Airbus France is the gold sponsor for that. Their CEO, as I said before, attended the Orlando Heli Expo last year. And I believe they announced the sale, at that conference, of seventeen helicopters to the Bristow Group of Texas in 2015.

So there is direct linkage between our case, which talks about these Super Pumas and other activities of Airbus in the United States. Now, true, we did not buy these aircraft from Airbus in the United States; that is true. But we did get them back from CHC in Texas through the bankruptcy proceeding. The deliveries of these were made in foreign jurisdictions; but that's -- but the order granting us -- giving us back these helicopters, occurred right here in Texas. And so we -- and that's not a order that we can appeal or fight; it's now ours. So now we have to deal with it in Texas.

And as --

THE COURT: No, you don't have to deal with anything in Texas.

MR. FLUMENBAUM: Well, I mean --

THE COURT: No offense, the helicopters are outside of Texas.

MR. FLUMENBAUM: Correct. But --

THE COURT: You got possession of them, wherever they were located, on the date of rejection.

MR. FLUMENBAUM: Right.

THE COURT: Yes, I signed an --

MR. FLUMENBAUM: But all --

THE COURT: -- order.

MR. FLUMENBAUM: But all that comes out of this Texas

proceeding, which Airbus voluntarily participated in.

THE COURT: As it relates to the debtor.

MR. FLUMENBAUM: Correct, correct. And as it related to us, because they actively involved in our 2004 proceeding. They objected to our discovery.

THE COURT: That you filed in the bankruptcy case, and they are --

MR. FLUMENBAUM: Correct.

THE COURT: -- unquestionably a party in interest in the bankruptcy case.

MR. FLUMENBAUM: Right. But --

THE COURT: But that doesn't create general jurisdiction.

MR. FLUMENBAUM: Well, what it does -- well, I'm sort of merging the arguments for specific and general in this case.

THE COURT: Do not do that.

MR. FLUMENBAUM: Okay.

THE COURT: I've asked you to be very specific.

MR. FLUMENBAUM: Well, I -- what I've been saying right now, in terms of the Texas activity, I believe relates to specific jurisdiction.

THE COURT: To the first prong.

MR. FLUMENBAUM: Right.

THE COURT: I don't disagree. And I keep pointing

THE COURT: For whatever it's worth.

MR. FLUMENBAUM: For whatever it's worth.

THE COURT: But it's not worth anything; I'll tell you that now.

MR. FLUMENBAUM: Okay.

THE COURT: Lawyer talk is just lawyer talk.

MR. FLUMENBAUM: I think those were the references that I had.

THE COURT: I mean, Mr. Holtzer has no personal information; anything Mr. Holtzer knows is hearsay, just like anything you tell me would be hearsay. You may firmly believe it, your client may have told it to you, but it's not evidence.

MR. FLUMENBAUM: I think, Your Honor can infer, from the evidence before you, that the grounding of those helicopters would have an impact on decisions by CHC, as to which aircraft to keep and which aircraft to reject. I believe that is a proper inference that Your Honor can make from the evidence that is before you.

Let me -- so, I've talked about personal jurisdiction. I've talked about what I believe are the strong ties to Texas. The fact that the helicopters were purchased from CHC, were purchased by CHC from Airbus; they were purchased from CHC by ECN, that ECN leased the helicopters to CHC. CHC rejected the leases, transferring ownership fully

back to CHC.

CHC owns the helicopter that crashed in Norway; I think that's also related to our claims. Airbus markets the EC225 and the AS332L helicopters for distribution and services around the world and through the United States, including Texas.

And, as I said, Airbus Group owns AH. And Airbus Group also owns, through another entity, Airbus Helicopters Inc., which was a Delaware Corporation headquartered in Texas.

So, I think when you take all that into account, and you take into account the fact that Airbus sells these very same helicopters, both directly into Texas, and through its distributor into Texas, that that gives us personal jurisdiction with the extra benefit that we get, because of their consent and their coming here, and because of the fact that we served Airbus in this jurisdiction.

So, I think, when you add all those together, we do have specific jurisdiction, and maybe even have general jurisdiction.

THE COURT: I'm still struggling, because I think that specific nexus requires that your claims against Airbus, that's the nexus that the cases talk about. And I see no nexus.

MR. FLUMENBAUM: Your Honor, let me refer you to the Hess v. Bumbo international case.

THE COURT: Okay.

MR. FLUMENBAUM: I think that case -- I think there was a -- this was an injury, and I was going to rely on this case also, for when we talk about abstention. I think this was a injury that occurred in Arizona, you got a foreign entity; and they sued in Texas.

And again, on specific jurisdiction grounds, they did not have specific jurisdiction, unlike what we believe we do; but the court found that they had general jurisdiction, because of Bumbo, which was a South African entity, I believe, had continuous and systematic commercial contacts with Texas, but its central base for distributing product was in the United States, and in Texas, that they sued their distributor in Texas, and that was a big factor in that. And they also found that Texas has an interest in policing entities that do business in Texas, and that involve product liability claims.

So I think the Bumbo International Trust case, I think gives you a case that supports what I've been arguing, in terms of the general jurisdiction point. But I think, in this case, we have both consent jurisdiction; and I think it also gives us general jurisdiction, given the central role that Texas has played in this proceeding.

Let me --

THE COURT: But the problem there is that case is distinguishable. Bumbo sued its distributor first, and then

C E R T I F I C A T I O N

I, Elisheva Elbaz, the court approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

March 5, 2017

ELISHEVA ELBAZ — DATE

Exhibit S

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

FOR THE FISCAL YEAR ENDED APRIL 30, 2016

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _ to _

Commission file number: 001-36261

CHC Group Ltd.
(Exact Name of Registrant as Specified in Its Charter)

Cayman Islands	**98-0587405**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

190 Elgin Avenue
George Town
Grand Cayman, KY1-9005
Cayman Islands
(Address of principal executive offices, including zip code)
(604) 276-7500
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Class	**Name of Each Exchange on Which Registered**
Ordinary Shares, par value $0.003	

Securities registered pursuant to Section 12(g) of the Act: None.

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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Ernst & Young LLP, have included an emphasis of matter paragraph in their auditors' report which states certain conditions exist which raise substantial doubt about our ability to continue as a going concern in relation to the foregoing. Our plans in regard to these matters are described in note 2(a). The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. See "Report of Independent Registered Public Accounting Firm" included elsewhere in this Annual Report on Form 10-K.

Risks Related to Our Net Losses and Indebtedness

We have a history of net losses.

We have incurred net losses since our acquisition on September 16, 2008 of the entity formerly known as CHC Helicopter Corporation, including losses of approximately $170.9 million, $794.8 million and $437.8 million in the last three fiscal years ended April 30, 2014, 2015 and 2016, respectively. Our net losses since September 16, 2008 have resulted from a number of factors, including non-cash impairments of goodwill and other assets totaling $1.7 billion and interest charges related to substantial leverage incurred to acquire additional helicopters and grow our business. We may continue to incur net losses in the future and our net losses may increase in the future and we cannot assure you that we will achieve or sustain profitability, or that we will continue to generate sufficient cash flow and liquidity through access to the capital markets to meet our debt and interest obligations as and when they become due.

Our substantial level of indebtedness, operating lease commitments, purchase and other commitments could materially adversely affect our ability to fulfill our obligations under our debt agreements, our ability to react to changes in our business and our ability to incur additional debt to fund future needs.

We have a substantial amount of indebtedness, operating lease commitments, purchase and other commitments. As of April 30, 2016, we had $1.7 billion of indebtedness, an additional $1.3 billion of operating lease commitments, as well as $236.8 million in purchase commitments and $258.3 million of additional flexible orders for the purchase of aircraft. The terms of certain of our debt instruments and helicopter lease agreements impose operating and financial limitations on us.

As of April 30, 2016, included within our indebtedness was $1.0 billion of senior secured notes due 2020, $94.7 million of senior unsecured notes due 2021, $327.5 million under our revolving credit facility and $139.0 million under our ABL Facility. As of April 30, 2016, we had cash and cash equivalents of approximately $266.1 million.

Our substantial debt has had important consequences in the past and may continue to do so in the future. These consequences include:

- increasing our vulnerability to adverse economic and industry conditions;
- limiting our flexibility in planning for, or reacting to, changes in our business and the industries in which we operate;
- placing us at a competitive disadvantage compared to our competitors that have relatively less debt; and
- limiting our ability to borrow additional funds, or to dispose of assets to raise funds, if needed, for working capital, capital expenditures and other purposes.

In addition, because we are currently in Chapter 11 proceedings, we may have to undertake alternative financing plans, such as:

- refinancing or restructuring our debt;
- selling assets;
- reducing or delaying capital investments; or
- seeking to raise additional capital.

However, any alternative financing plans that we undertake will not likely allow us to meet our debt obligations. Our inability to pay off our debt obligations and our inability to obtain alternative financing due to our current Chapter 11 proceedings, could materially and adversely affect our business, financial condition, results of operations or prospects. Additionally, we must obtain Bankruptcy Court approval for these actions, which will place us at a competitive disadvantage and limit our flexibility to react to changes in our business or our industry.

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Risks Related to Our Business and Industry

All flights with the aircraft type H225 and AS332 L2 have been temporarily grounded which may cause a material and adverse impact to our financial viability.

On April 29, 2016, one of our H225 helicopters was involved in a tragic accident in Norway resulting in the loss of life for 11 passengers and two crew members. Immediately after the accident on April 29, 2016, out of respect for passengers and crew members, and in order to evaluate any implications associated with the April 29, 2016 accident, all flights with the aircraft type H225 were temporarily put on hold in the Norwegian and UK sectors. In collaboration with our stakeholders, customers and regulatory authorities, pending further regulatory guidance, we then temporarily put on hold all H225 commercial flights around the world (with the exception of SAR missions).

This incident resulted in the Civil Aviation Authorities in the U.K. and Norway issuing safety directives, requiring operators to suspend all commercial operations, including SAR missions, of the affected aircraft globally for a period of time pending determination of the root cause of the accident. Additionally, the European Aviation Safety Agency issued an Emergency Airworthiness Directive on June 2, 2016, and temporarily grounded H225 and AS332 L2 flights as a precautionary measure, but does permit single ferry flights without passengers to recover aircraft to a suitable maintenance location. On June 28, 2016, the AIBN released a preliminary report which is available at http://www.aibn.no/Aviation/Investigations/16-286. Neither the foregoing website nor the information contained on the website nor the report accessible through such website shall be deemed incorporated into, and neither shall be a part of, this Annual Report on Form 10-K.

We have suspended all H225 and AS332 L2 operations (including those committed to SAR and Medevac) until further feedback is received from the European Aviation Safety Agency. In addition to any loss of property, liability or litigation risks associated with helicopter crashes, our revenue, profitability and margins would decline to the extent the helicopters were voluntarily or mandatorily grounded. We have also suffered costs due to a reduction in various choices of helicopter types and the necessity to retrain our employees how to operate different helicopters due to this accident. There is uncertainty surrounding H225 and AS332 L2 operations in the foreseeable future. Additionally, many of our contracts with our customers require us to provide H225 aircraft to them and we may possibly face legal liability for breach of contract if we are unable to provide these helicopters for safety reasons. A protracted grounding of the H225 and AS332 L2 helicopters will cause us to face significant uncertainty regarding our ability to continue as a going-concern.

Our operations and fleet are reliant on Airbus helicopters.

Our operations and fleet are reliant on Airbus helicopters. This reliance may increase our risk of losses due to any unforeseen safety incidents. Safety incidents involved with any Airbus helicopter will negatively impact our ability to continue operations and will impact a significant amount of our fleet.

Operating helicopters involves a degree of inherent risk and we are exposed to the risk of losses from safety incidents.

Hazards, such as adverse weather conditions, darkness, collisions and fire are inherent in the provision of helicopter services and can result in personal injury and loss of life, accidents, reduced number of flight hours, severe damage to and destruction of property and equipment and suspension of operations or grounding of helicopters.

For example, on October 22, 2012, one of our H225 helicopters made a controlled water landing in the North Sea with no injuries to crew or passengers. Given that this was the second such event, the first having occurred to another operator in May 2012, all flights of almost all commercial operators worldwide using the same type of helicopter were subsequently suspended for the duration of a lengthy investigation and subsequent corrective action from the manufacturer. In addition, on August 23, 2013, one of our AS332 L2 helicopters was involved in a tragic accident in the North Sea, resulting in four fatalities among the 16 passengers and two crew members on board. The U.K. Air Accident Investigation Branch released a final report stating that the cause of the accident was pilot error.

On April 29, 2016, one of our H225 helicopters was involved in a tragic accident in Norway resulting in the loss of life for 11 passengers and two crew members. We voluntarily restricted the use of this model of helicopter worldwide while investigating the cause of the accident. This incident resulted in the Civil Aviation Authorities in the U.K. and Norway issuing safety directives, requiring operators to suspend commercial operations of the affected aircraft globally for a period of time pending determination of the root cause of the accident. On June 28, 2016, the AIBN released a preliminary report which is available at http://www.aibn.no/Aviation/Investigations/16-286. Neither the foregoing website nor the information contained on the website nor the report accessible through such website shall be deemed incorporated into, and neither shall be a part of, this

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Annual Report on Form 10-K. In addition to any loss of property or liability associated with helicopter crashes, our revenue, profitability and margins would decline to the extent any of our helicopters were voluntarily or mandatorily grounded. We have suspended all H225 and AS332 L2 operations (including those committed to SAR and Medevac) until further feedback is received from the European Aviation Safety Agency. While we seek to mitigate the financial impact of such risks and preserve our rights through commercial and other arrangements with all those involved, when available, these mitigation efforts may not be successful or available for all incidents. Our performance, profitability and margins may fluctuate from period to period as a result of such incidents and our mitigation efforts.

If other operators experience accidents with aircraft models that we operate or lease, obligating us to take such aircraft out of service until the cause of the accident is rectified, we would lose revenue and might lose customers. In addition, safety issues experienced by a particular model of aircraft could result in customers refusing to use that particular aircraft model or a regulatory body grounding that particular aircraft model. The value of the aircraft model might also be permanently reduced in the market if the model were to be considered less desirable for future service and the inventory for such aircraft may be impaired.

If we are unable to mitigate potential losses through a robust safety management and insurance coverage program, our financial condition would be jeopardized in the event of a safety or other hazardous incident.

We attempt to protect ourselves against potential losses through our safety management system and insurance coverage. However, portions of our insurance coverage are subject to deductibles and maximum coverage amounts, and we do not carry insurance against all types of losses. We cannot ensure that our existing coverage will be sufficient to protect against all losses, that we will be able to maintain our existing coverage in the future or that the premiums will not increase substantially, including potentially, in connection with the AS332 L2 accident that occurred in August 2013 or the H225 accident that occurred in April 2016. Our safety management system may not be effective. In addition, terrorist activity, risk of war, accidents or other events could increase our insurance premiums. Our inability to renew our aviation insurance coverage or the loss, expropriation or confiscation of, or severe damage to, a large number of our helicopters could adversely affect our operations and possibly our financial condition and results of operations. Furthermore, we are not insured for loss of profit, loss of use of our helicopters, business interruption or loss of flight hours. The loss of, or limited availability of, our liability insurance coverage, inadequate coverage from our liability insurance or substantial increases in future premiums could have a material adverse effect on our business, financial condition and results of operations.

Failure to maintain standards of acceptable safety performance could have an adverse impact on our ability to attract and retain customers and could adversely impact our reputation, operations and financial performance.

Our customers consider safety and reliability as the two primary attributes when selecting a provider of helicopter transportation services. If we fail to maintain standards of safety and reliability that are satisfactory to our customers, our ability to retain current customers and attract new customers may be adversely affected. Moreover, helicopter crashes or similar disasters of another helicopter operator could impact customer confidence and lead to a reduction in customer contracts or result in the grounding of our helicopters, particularly if such helicopter crash or disaster were due to a safety fault in a type of helicopter used in our fleet. In addition, the loss of any helicopter as a result of an accident could cause significant adverse publicity and the interruption of air services to our customers, which could adversely impact our reputation, operations and financial results. Our helicopters have been involved in accidents in the past, some of which have included loss of life and property damage.

Our operations are largely dependent upon the level of activity in the offshore oil and gas industry.

To varying degrees, activity levels in the oil and gas industry are affected by long-term trends in oil and gas prices. Historically, the prices for oil and gas have been volatile and subject to wide fluctuations in response to changes in the supply of and demand for oil and gas, market uncertainty and a variety of additional factors beyond our control, such as:

- actions of the Organization of Petroleum Exporting Countries and other oil producing countries to control prices or change production levels;
- general economic and political conditions, both worldwide and in the regions in which we operate;
- governmental regulation;
- the price and availability of alternative fuels;

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Variable Interest Entities

The Company has variable interest in entities that are not consolidated, as we are not the primary beneficiary, which provide operating lease financing to us and an entity that provides flying services to third party customers. At April 30, 2016, the Company had operating leases for 103 helicopters with variable interest entities that were not consolidated. See note 3(b)(ii) of the audited annual consolidated financial statements for the fiscal years ended April 30, 2014, 2015 and 2016 included elsewhere in this Annual Report on Form 10-K.

Guarantees

The Company has provided limited guarantees to third parties under some of its operating leases relating to a portion of the residual helicopter values at the termination of the leases. The leases have terms expiring between fiscal 2017 and 2025. At April 30, 2016, the Company's exposure under the asset value guarantees including guarantees in the form of funded and unfunded residual value guarantees is approximately $171.8 million.

Contingencies

The Company has exposure for certain legal matters as disclosed in note 25 of the audited annual consolidated financial statements for the fiscal years ended April 30, 2014, 2015 and 2016 included elsewhere in this Annual Report on Form 10-K. There have been no material changes in our exposure to contingencies.

We have entered into fee arrangements with financial advisors to assist us with our Bankruptcy filing. The arrangements include contingent fee payments up to $15.0 million, payable upon completion of Chapter 11 reorganization. At April 30, 2016, no contingent fee amounts were accrued.

Critical Accounting Policies and Estimates

The preparation of the financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of revenue and expenses during the reporting periods. Areas where significant estimates and assumptions have been made include: flying asset impairment assessment, provision for obsolete and excess inventories, indefinite life intangible asset and goodwill impairment assessment, flying asset depreciation, classification of helicopter leases as operating or capital leases, consolidation of variable interest entities, defined benefit pensions, contingent liabilities, and income taxes.

Flying asset impairment assessment

Our audited annual consolidated financial statements include property and equipment related to flying assets. Flying assets include both owned and leased helicopters, in addition to rotable and repairable assets. In addition to property and equipment, our consolidated balance sheet includes funded residual value guarantees related to helicopter operating leases. The assessment of impairment for flying assets and funded residual value guarantees are subject to significant estimates and assumptions related to helicopter future cash flows and fair values.

Where events or circumstances indicate that the carrying amount of held for use flying assets may not be recoverable, the carrying value of the assets or asset groups is compared to the future projected undiscounted cash flows. We review the carrying amounts of the property and equipment either on an annual basis or earlier when the asset is classified as held for sale or when events or circumstances indicate that the carrying amount of an asset may not be recoverable from the estimated future cash flows expected to result from its use and eventual disposition.

We estimate the future projected undiscounted cash flows for helicopters at the helicopter type level as this is the lowest level which earns independent cash flows. The cash flows are based on management's expectation of future revenues and expenses including costs to maintain the assets over their respective service lives. Revenues are derived from the expected contractual cash flows for each helicopter. Costs are based on expected amounts for crew, helicopter lease costs, insurance, PBH, and any other cost directly related to the operation of the helicopter. An impairment loss is recognized as the excess of the carrying value over the fair value when an asset or asset group is not recoverable. Fair value is based on third party appraisals and market transactions. Significant estimates and judgments are applied in determining these cash flows and fair values, in particular due to the long life of these assets.

For the fiscal years ended April 30, 2014, 2015, and 2016, we recorded impairment charges of $5.5 million and $128.0 million and $31.9 million, respectively, on assets held for use, as their carrying values were not deemed to be recoverable. We have made a strategic decision to exit certain older helicopter types upon completion of their flying obligations. Impairment charges were recorded to write down the carrying value of held for use helicopters, the major airframe inspections of leased

helicopters, related rotable parts and embedded equity to their fair values and the carrying value of held for sale helicopters to their fair value less costs to sell.

Long-lived assets that have been classified as held for sale are measured at the lower of their carrying amount or fair value less costs to sell and are not amortized once they are classified as held for sale. An impairment loss is recognized as the excess of the carrying amount over the fair value less costs to sell. In the fiscal years ended April 30, 2014, 2015, and 2016, we recorded impairment charges of $18.5 million, $5.5 million and $4.1 million, respectively, on assets classified as held for sale.

Helicopter operating lease funded residual value guarantees are made at the inception of an operating lease where we have guaranteed a portion of the helicopter residual values at the end of the lease term and advanced an amount to the lessor in respect of this. Funded residual value guarantees are recoverable based on the residual value of the helicopter under the terms of the distribution of proceeds contained within the lease agreements. We recognize an impairment on funded residual value guarantees where our assessed value of each individual helicopter means that we would not be able to recover the full amount of our funded residual value guarantee. Fair value is based on third party appraisals. Significant estimates and judgments are applied in determining these fair values. In the fiscal years ended April 30, 2015, and 2016, we recorded impairment charges of $13.4 million and $93.4 million, respectively, on helicopter operating lease funded residual value guarantees.

A significant portion of our property and equipment, funded residual value guarantees and related assets is tied to the aircraft type H225. As at April 30, 2016, we have performed our impairment assessment using valuations informed by third party appraisals using available valuation information at that point in time. However, there may be significant risk and judgment associated with the fair values of this helicopter type. See “Item 1A. Risk Factors” and “Item 7. Aviation Safety and Regulatory Developments” included elsewhere in this Annual Report on Form 10-K for further information.

Subsequent to April 30, 2016, the Debtors filed motions with the Bankruptcy Court for the rejection of a number of helicopter lease contracts. See “Item 1. Business” included elsewhere in this Annual Report on Form 10-K for further information. The impact of the rejected leases on our fleet plan or on helicopter fair values is not reflected in the assessment of impairment of these assets as at April 30, 2016.

Provision for obsolete and excess inventories

We maintain inventories that primarily consist of consumable parts and supplies to service our aircraft. We record provisions to reduce inventories to the lower of cost or market value to reflect changes in market conditions, fleet strategy, expected utilization and the secondary market for consumable parts and supplies. During the fiscal year ended April 30, 2016, we recorded an impairment charge of $17.9 million to increase our provision on certain consumable inventories. Consumable inventories identified as excess have been measured at estimated market value, based on our experience with past sales of surplus consumable inventories and our assessment of resale market conditions.

Subsequent to April 30, 2016, the Debtors filed motions with the Bankruptcy Court for the rejection of a number of helicopter lease contracts. See “Item 1. Business” included elsewhere in this Annual Report on Form 10-K for further information. Changes in our fleet plan subsequent to April 30, 2016, pending the outcome of decisions by the Bankruptcy Court, may significantly impact the assessment of the provision for obsolete and excess inventories going forward.

Indefinite life intangible asset and goodwill impairment assessment

The recoverability of goodwill and indefinite life intangible assets is assessed on an annual basis or more frequently if events or circumstances indicate that the carrying value may not be recoverable. If the carrying amount of an indefinite life intangible asset exceeds its fair value, we shall recognize an impairment loss equal to that excess.

The fair value of trademarks and trade names, which we have assessed as indefinite life intangible assets, is determined based on the present value of estimated future cash flows, discounted at a risk-adjusted rate. The fair value of trademarks and trade names is allocated to both our Helicopter Services and Heli-One segments. No impairment was recognized in the fiscal years ended April 30, 2014 and 2015 for trademarks and trade names based on our estimated cash flow projections and assessed risk-adjusted discount rates. However, due to a decrease in customer activity and our estimated revenue projections from operations, in conjunction with a risk-adjusted rate reflecting the inherent risks given increased oil and gas market uncertainty, we recognized an impairment charge of $75.3 million as at April 30, 2016. The discount rate for the carrying value to exceed the fair value of the trade names and trademarks of Helicopter Services would be 11.6% and for Heli-One would be 19.5% for the fiscal year ended April 30, 2016.

In fiscal 2015, goodwill was assessed for impairment at the reporting unit level by comparing the carrying value of the reporting units with their fair value. All of our goodwill was contained in the Helicopter Services reporting unit. The fair value of our reporting units was determined based on the present value of estimated future cash flows, discounted at a risk-adjusted rate. Management’s forecasts of future cash flows which incorporate anticipated future revenue growth and related expenses to

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support the growth and maintain its assets are used to calculate fair value. The discount rates used represent management's estimate of the weighted average cost of capital for the reporting units considering the risks and uncertainty inherent in the cash flows of the reporting units and in our internally developed forecasts. The fair value of our reporting units is most significantly affected by the discount rate used, the expected future cash flows and the long-term growth rate. We operate in a competitive environment and derive a significant portion of revenue from the offshore oil and gas industry. The ability to win new contracts, earn forecast margins on those contracts, retain existing customers as well as the continued demand for flying services in the oil and gas market will affect our future cash flows and future growth. Relatively minor changes in estimated future cash flows, growth rates and discount rates could significantly affect the estimate of reporting unit fair value and the amount of impairment loss recognized, if any. As a result of deteriorating conditions in the oil and gas markets and related service sectors and a decline in our market capitalization we performed a two-step goodwill impairment test during fiscal 2015.

In the first step of the impairment test, we concluded that the carrying value of the Helicopter Services segment exceeded its fair value. Therefore, we performed the second step to determine the amount of the impairment loss by comparing the carrying value of goodwill against its implied fair value. The implied fair value of the goodwill was determined by allocating the fair value of Helicopter Services to all of its assets and liabilities as if Helicopter Services had been acquired in a business combination and its fair value was the purchase price paid to acquire Helicopter Services. Based on the analysis, there was no implied fair value of goodwill and goodwill impairment of $403.5 million was recorded in fiscal 2015, which represented the entire goodwill balance.

Flying asset depreciation

Flying assets are amortized to their estimated residual value over their estimated useful life of 10-25 years, with the residual value used in the calculation of depreciation being 50%. The estimated service lives and associated residual values are based on management estimates including an analysis of future values of the helicopters and our experience. The estimated service lives and associated residual values of helicopters are reviewed when there are indicators that a change in estimate may be necessary.

Rotable and repairable assets are recorded at cost and are amortized on a pooled basis to their estimated residual value on either a 40%-80% declining balance basis for shop replaceable assets or a 10%-30% declining balance basis for line replaceable assets. When components are retired or otherwise disposed of in the ordinary course of business, their original cost, net of salvage or sale proceeds, is charged to accumulated depreciation.

The depreciation of flying assets may change significantly based on changes to our fleet plan, driven by market and other conditions. Subsequent to April 30, 2016, the Debtors filed motions with the Bankruptcy Court for the rejection of a number of helicopter lease contracts. See "Item 1. Business" included elsewhere in this Annual Report on Form 10-K for further information. Changes in our fleet plan subsequent to April 30, 2016 may significantly alter the depreciation rates of these assets.

Classification of helicopter leases as operating or capital leases

In assessing the lease classification of a helicopter lease as operating or capital, management makes significant judgments and assumptions in determining the discount rate, fair value of the helicopter, estimated useful life and residual value. Changes in any of these assumptions at lease inception or modification date could change the initial lease classification.

Consolidation of variable interest entities ("VIEs")

We are required to consolidate a VIE if we are determined to be its primary beneficiary. Significant judgments are made in assessing whether we are the primary beneficiary, including determination of the activities that most significantly impact the VIE's economic performance. This significant judgment is discussed further in note 3 of our audited annual consolidated financial statements for the fiscal years ended April 30, 2014, 2015 and 2016 included elsewhere in this Annual Report on Form 10-K.

Defined benefit pensions

We maintain both funded and unfunded defined benefit employee pension plans for certain eligible employees. As of April 30, 2015 and 2016, we had an unfunded deficit of $105.8 million and $94.1 million, respectively. The pension expense (income) for the fiscal years ended April 30, 2014, 2015 and 2016 was $(0.9) million, $0.6 million and $2.9 million, respectively. The overall asset mix was 1% cash, 26% equities, 34% fixed income and 39% money market and other as of April 30, 2016. This asset mix varies by each plan.

Measuring our obligations under the plans and related periodic pension expense involves significant estimates. Our pension benefit costs are accrued based on our review of annual analysis performed by our actuaries. These factors include

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on the 15th day of July 2016.

CHC GROUP LTD.
(Registrant)

By: /s/ Karl S. Fessenden
Name: Karl S. Fessenden
Title: President and Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below hereby constitutes and appoints Karl S. Fessenden and Lee Eckert, and each of them, with full power of substitution and resubstitution and full power to act without the other, as his or her true and lawful attorney-in-fact and agent to act in his or her name, place and stead and to execute in the name and on behalf of each person, individually and in each capacity stated below, and to file any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing, ratifying and confirming all that said attorneys-in-fact and agents or any of them or their or his substitute or substitutes may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Exchange Act of l934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Karl S. Fessenden Karl S. Fessenden	President, Chief Executive Officer and Director *(Principal Executive Officer)*	July 15, 2016
/s/ Lee Eckert Lee Eckert	Chief Financial Officer *(Principal Financial Officer)*	July 15, 2016
/s/ Melanie Kerr Melanie Kerr	Chief Accounting Officer (*Principal Accounting Officer*)	July 15, 2016
/s/ John Krenicki Jr. John Krenicki Jr.	Director	July 15, 2016
/s/ John A. McKenna, Jr. John A. McKenna, Jr.	Director	July 15, 2016
/s/ William G. Schrader William G. Schrader	Director	July 15, 2016
/s/ Juan Diego Vargas Juan Diego Vargas	Director	July 15, 2016
/s/ William L. Transier William L. Transier	Director	July 15, 2016
/s/ Robert C. Volpe Robert C. Volpe	Director	July 15, 2016
/s/ Nathan K. Sleeper Nathan K. Sleeper	Director	July 15, 2016

Exhibit T

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

In re	Case No. 16-31854-bjh11
CHC GROUP LTD., et al.,	Dallas, Texas
Debtors.	May 6, 2016
	3:02 PM

TRANSCRIPT OF HEARING ON:
NOTICE OF DESIGNATION AS COMPLEX CHAPTER 11 CASE, FILED BY DEBTOR CHC GROUP LTD. (2);
MOTION FOR JOINT ADMINISTRATION OF CASES / MOTION OF DEBTORS FOR ENTRY OF ORDER AUTHORIZING JOINT ADMINISTRATION OF CHAPTER 11 CASES, PURSUANT TO RULE 1015(B) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, FILED BY DEBTOR CHC GROUP LTD. (3);
MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) WAIVING THE REQUIREMENT TO FILE A LIST OF CREDITORS, (II) WAIVING THE REQUIREMENT TO FILE AN EQUITY LIST, AND (III) APPROVING THE FORM AND MANNER OF NOTIFYING CREDITORS OF THE COMMENCEMENT OF THE DEBTORS CHAPTER 11 CASES,
FILED BY DEBTOR CHC GROUP LTD. (4);
MOTION TO EXTEND TIME TO FILE SCHEDULES OR NEW CASE DEFICIENCIES, EXCLUDING MATRIX,
FILED BY DEBTOR CHC GROUP LTD. (5);
MOTION REGARDING PRE-PETITION CLAIMS / MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO PAY CERTAIN (A) EMPLOYEE OBLIGATIONS AND (B) INDEPENDENT CONTRACTOR OBLIGATIONS, (II) MODIFYING THE AUTOMATIC STAY, AND (III) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS, PURSUANT TO SECTIONS 105(A), 363(A) AND 507(A) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6003 AND 6004,
FILED BY DEBTOR CHC GROUP LTD. (6);
MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO (A) CONTINUE THEIR INSURANCE PROGRAMS AND ARRANGEMENTS AND (B) PAY ALL UNDISPUTED OBLIGATIONS IN RESPECT THEREOF AND (II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS, PURSUANT TO SECTIONS 105(A), 363(B), AND 503(B) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6003 AND 6004, FILED BY DEBTOR CHC GROUP LTD. (7);
MOTION OF DEBTORS FOR ENTRY OF ORDER ENFORCING THE PROTECTIONS OF SECTIONS 362, 365, 525, AND 541(C) OF THE BANKRUPTCY CODE,

PURSUANT TO SECTION 105 OF THE BANKRUPTCY CODE, FILED BY DEBTOR CHC GROUP LTD. (8);
MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO PAY CERTAIN PRE-PETITION TAXES AND ASSESSMENTS AND (II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS, PURSUANT TO SECTIONS 105(A), 363(B), 507(A)(8), AND 541(D) OF THE BANKRUPTCY CODE, FILED BY DEBTOR CHC GROUP LTD. (9);
MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS AUTHORIZING DEBTORS TO MAINTAIN, APPLY, PAY, AND HONOR PRE-PETITION CUSTOMER DEPOSITS, PURSUANT TO SECTIONS 363(B) AND 105(A) OF THE BANKRUPTCY CODE, FILED BY DEBTOR CHC GROUP LTD. (10);
MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO (A) CONTINUE THEIR EXISTING CASH MANAGEMENT SYSTEM, (B) CONTINUE EXISTING INTERCOMPANY TRANSACTIONS, (C) MAINTAIN EXISTING BANK ACCOUNTS AND BUSINESS FORMS, AND (D) HONOR CERTAIN PRE-PETITION OBLIGATIONS RELATING TO THE USE OF THE CASH MANAGEMENT SYSTEM, AND (II) GRANTING EXTENSION OF TIME TO COMPLY WITH, AND PARTIAL WAIVER OF, REQUIREMENTS OF SECTION 345(B) OF THE BANKRUPTCY CODE, PURSUANT TO SECTIONS 105(A), 345(B), 363(C), 364(A), AND 503(B) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6003 AND 6004, FILED BY DEBTOR CHC GROUP LTD. (11);
MOTION TO USE CASH COLLATERAL / MOTION OF DEBTORS FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO UTILIZE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO THE PRE-PETITION SECURED PARTIES, PURSUANT TO SECTIONS 105, 361, 362, 363, AND 507 OF THE BANKRUPTCY CODE; AND (III) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(B), FILED BY DEBTOR CHC GROUP LTD. (12);
APPLICATION TO EMPLOY KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS AGENT / APPLICATION OF DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND APPOINTMENT OF KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS, NOTICING, AND BALLOTING AGENT NUNC PRO TUNC TO THE PETITION DATE, FILED BY DEBTOR CHC GROUP LTD. (14)
BEFORE THE HONORABLE BARBARA J. HOUSER,
CHIEF UNITED STATES BANKRUPTCY JUDGE

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Suite #607
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MR. HOLTZER: I'll then make a few opening remarks on why we filed and how we intend to use the Chapter 11 process over the next few months.

So, with respect to today's hearing process, we have submitted an agenda, it's our proposed agenda, which is in the binder that I believe Your Honor has.

THE COURT: I do.

MR. HOLTZER: Our order of operations, if you will, after me, will be that Ms. DiBlasi, who Mr. Youngman introduced, will handle all of the motions up until the cash-collateral, adequate-protection and cash-management motions; Mr. Youngman will handle those motions. As we introduced, Mr. Del Genio; he is in court here to testify; we can put him on the stand if we need to, for the motions that Ms. DiBlasi will handle.

THE COURT: All right.

MR. HOLTZER: I suspect that we will not need him to testify for those, but he is here. Separately, though, our preferred approach with respect to cash collateral and cash management is that we put him on the stand and take him through direct testimony. Mr. Levine, who's here, will handle that direct testimony.

If that process is acceptable, Your Honor, I'll proceed with some very brief background on CHC.

THE COURT: Please.

MR. HOLTZER: As detailed in our filing and including Mr. Del Genio's extensive first-day affidavit, CHC is a global, commercial, helicopter-services company; it primarily services offshore oil and gas industry participants.

A few important points about CHC: Its principal business is to provide those helicopter services for large, long-distance, crew changes on offshore production facilities and drilling rigs for major national and international oil and gas companies. Although CHC manages its operations in Irving, Texas, it operates a global business across six continents. As a result, CHC's business is closely tied to the state of the oil and gas industries.

The rapid and unexpected decline in oil prices that the industry has had in the past couple years has led to a significant decline in offshore oil exploration, cost-reduction measures for production, operation, and there's been a substantial decrease in the demand for those offshore drilling services. As a result, the demand for helicopter services has declined.

I wanted to let the Court know about the tragic events in Norway as well, and their impact on CHC. First, our thoughts and prayers go out to all the families affected by the accident in Norway. The helicopter involved, for your information, Your Honor, was a 225; that's the type of helicopter. That helicopter has been temporarily grounded in

certain jurisdictions and that has had an impact on our fleet reconfiguration, which is central to our restructuring. Our customers are also assessing the use of the 225, going forward, and we're working with them in that process, around the world.

For all of those reasons, Your Honor, CHC has determined that under these circumstances it can no longer maintain its current capital structure and its fleet expense level.

Turning to its corporate capital structure and its corporate structure itself. You should have marked as the first exhibit, CHC-1, a corporate organizational chart. We have copies for anyone in the courtroom who would like a copy. Or hopefully we have enough copies. So we'll hand those out.

A couple of observations about the corporate chart, Your Honor. First of all, all the debtors are direct and indirect wholly owned subsidiaries of CHC Group Limited. Secondly, all of the issuers and guarantors of all of CHC's funded debt are debtors. You've met some of the counsel for those funded debts, in the introductions, and I'll come back to that.

As you can see on the chart, the legend at the top indicates which entities are debtors, which entities in red are funded debt obligors, which entities are nondebtors, and which entities are obligors, for example, on the ABL versus

the secured and unsecured obligations as well as the RCF, as Mr. Strubeck calls it.

Turning to its capital structure, Your Honor; and I'm sure you've read about this in our submission but, just to make sure we crystallize it here quickly: We have an ABL loan; it's 139 million dollars; it's secured by certain of CHC's owned aircraft. And that loan was issued on June 12th, 2015 and it matures in 2020. The RCF, also secured, 370 million; that loan was issued in January of 2014; its maturity is in 2019. Next is the senior secured notes, approximately one billion dollars in principal amount; that was issued in October of 2010, due in October of 2020; so, ten-year paper.

The unsecured notes -- well, before I jump to the unsecured notes, Your Honor, the revolver and senior secured notes are pari passu, in terms of their liens, on substantially all of the debtors' assets, other than assets securing the ABL loan, Your Honor

THE COURT: All right.

MR. HOLTZER: The unsecured notes approximate ninety-five million dollars; you can see that laid out on the chart.

The next category of constituents we ought to discuss, Your Honor, for a moment are the lessors. We mentioned that CHC not only owns some of its aircraft, but of course it leases some. CHC has 163 leased aircraft in the fleet, as well as 67 owned aircraft. And as I mentioned

C E R T I F I C A T I O N

I, Clara Rubin, the court approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

May 10, 2016

_____ _____

CLARA RUBIN DATE

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Exhibit U

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 28, 2017

United States Bankruptcy Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
CHC GROUP LTD., *et al.*,	§	BANKR. CASE NO. 16-31854-BJH
	§	(CHAPTER 11)
DEBTORS.	§	
	§	
	§	
ECN CAPITAL (AVIATION) CORP.,	§	CASE NO. 3:17-cv-00075-C
	§	
PLAINTIFF,	§	ADV. PROC. NO. 16-3151-BJH
v.	§	Related to ECF No. 23
	§	
AIRBUS HELICOPTERS SAS,	§	
	§	
DEFENDANT.	§	
	§	
	§	
	§	

REPORT AND RECOMMENDATION TO THE DISTRICT COURT
REGARDING CASE NO. 3:17-cv-00075-C (ADV. PROC. NO. 16-3151-BJH)

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[1] 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

[1] 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.[2]

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).[3]

[2] 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.

[3] 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.[4]

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).[5]

[4] 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.

[5] 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.[6] ECN then filed its response in opposition to the Motion to Withdraw Reference on February 2, 2016 [AP No. 65] (the "**Opposition**").[7] 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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[6] *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].

[7] 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[8]

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

[8] 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.[9] In addition, despite ECN's allegations

[9] 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,

Report and Recommendation where issues overlap and the Proposed Findings and Conclusions contain additional detail or analysis that the District Court may find helpful.

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,[10] 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

[10] 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,"[11] 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.

[11] 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.[12] 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

[12] 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 # # #

Exhibit V

Requested Hearing Date: February 13, 2017 at 9:00 a.m. (CT)
Requested Objection Deadline: February 8, 2017 at 4:00 p.m. (CT)

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Special Aircraft Attorneys for Debtors and Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	:	**Chapter 11**
CHC GROUP LTD. et al.,	:	**Case No. 16– 31854 (BJH)**
Debtors.	:	**(Jointly Administered)**

DEBTORS' MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 107(b) AND FED. R. BANKR. P. 9018 AUTHORIZING THE FILING OF CERTAIN INFORMATION UNDER SEAL IN CONNECTION WITH THE DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTIONS 105, 363, AND 365 OF THE BANKRUPTCY CODE AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 6004(h), 6006, AND 9019 AUTHORIZING THE DEBTORS TO ENTER INTO AND PERFORM UNDER THE 2017 OMNIBUS RESTRUCTURE AGREEMENT WITH AIRBUS HELICOPTERS (SAS) REGARDING CERTAIN OF THE DEBTORS' EXECUTORY CONTRACTS

THE DEBTORS HAVE REQUESTED A HEARING TO BE CONDUCTED ON THIS MATTER ON FEBRUARY 13, 2017 AT 9:00 A.M. IN COURTROOM #2, 14TH FLOOR

OF THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION, EARLE CABELL FEDERAL BUILDING, 1100 COMMERCE ST., DALLAS, TEXAS 75242.

TO THE HONORABLE BARBARA J. HOUSER, UNITED STATES BANKRUPTCY JUDGE:

CHC Group Ltd. and its above-captioned debtor affiliates, as debtors and debtors in possession (collectively, the "**Debtors**")[1], respectfully submit this motion (the "**Motion to Seal**") pursuant to sections 105(a) and 107(b) of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") for the entry of an order granting leave to file under seal certain information in connection with *Debtors' Motion for an Order Pursuant to Sections 105, 363, and 365 Of The Bankruptcy Code And Federal Rules of Bankruptcy Procedure 6004(h), 6006, And 9019 Authorizing The Debtors To Enter Into And Perform Under The 2017 Omnibus Restructure Agreement With Airbus Helicopters (SAS) Regarding Several of the Debtors' Executory Contracts* [Docket No. ____] (the "**Airbus Restructure Agreement Motion**").[2]

Relief Requested

1. During the pendency of the chapter 11 cases, the Debtors have engaged in extensive good-faith discussions and negotiations with Airbus Helicopters (SAS) ("**Airbus**") with respect to their existing contracts and the claims associated therewith. These discussions have culminated in the 2017 Omnibus Restructure Agreement (together with all exhibits and schedules thereto, the "**Restructure Agreement**") attached as **Exhibit C** to the Airbus Restructure Agreement Motion, which, as stated, provides for a comprehensive resolution of the

[1] A list of the Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, where applicable, is attached hereto as Exhibit A.

[2] Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Airbus Restructure Agreement Motion.

disputes between the parties, and provides the framework for the Debtors' contractual relationship with Airbus going forward and post-emergence.

2. The Restructure Agreement contains as attachments the various existing and new contracts between the Debtors and Airbus which contain information regarding certain pricing structures, discounts and rebates, as well as the terms of the service agreements (collectively, the "**Confidential Information**"), which are sensitive commercial information, the disclosure of which should not be publicly disclosed. Providing the Confidential Information publicly to competitor lessors, financiers, or other operators in the helicopter industry would have a detrimental impact on the Debtors' and Airbus' businesses, as courts in many aviation-related chapter 11 cases have uniformly recognized. Sharing of such information will also hinder the Debtors' ability to effectively renegotiate lease terms with other contract counter-parties that are necessary to their overall fleet reconfiguration. If disclosed, the Confidential Information would be highly valuable to competitors, which could seek to use the information to gain a competitive advantage against the Debtors and Airbus. This Motion to Seal seeks relief that will protect the Debtors and Airbus from such competitive harm.

3. Accordingly, the Debtors respectfully request that the Court enter an order pursuant to section 107(b) of the Bankruptcy Code ("**Section 107(b)**") and Bankruptcy Rule 9018 authorizing the Debtors to file the Confidential Information under seal.

4. The Debtors intend to provide an unredacted copy of the Restructure Agreement to the Court and the Office of the United States Trustee for the Northern District of Texas (the "**U.S. Trustee**"). The Debtors will also provide an unredacted copy of the Restructure Agreement to counsel to the Official Committee of Unsecured Creditors (the "**UCC**") and counsel to the informal group of certain unaffiliated holders of the 9.250% Senior

Secured Notes Due 2020 (the "**Bondholders**") (but not the individual holders of the bonds), subject in each case to appropriate restrictions to maintain the confidentiality of the Confidential Information.

5. This procedure will permit the UCC, the Bondholders, the U.S. Trustee, and the Court to evaluate the implications of the Restructure Agreement for the Debtors' estates and intended reorganization, without putting the Debtors at a competitive disadvantage.

Jurisdiction and Venue

6. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief requested herein are sections 105(a) and 107(b) of the Bankruptcy Code.

Background

7. On May 5, 2016 (the "**Petition Date**"), each of the Debtors commenced with this Court a voluntary case under chapter 11 of title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas (the "**Court**"). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) and Rule 1015-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the "**Local Rules**") [Docket No. 52].

9. The Debtors, together with their non-debtor affiliates (collectively, "**CHC**"), comprise a global commercial helicopter services company, primarily engaged in providing helicopter services to the offshore oil and gas industry. CHC also provides helicopter

services for search and rescue and emergency medical services to various government agencies. In addition, CHC maintains the industry's largest independent helicopter maintenance, repair, and overhaul business, which services helicopter fleets for both CHC as well as third-party customers. CHC manages its domestic and overseas businesses form its headquarters in Irving, Texas and its sales force from an office in Houston, Texas. CHC maintains one of its primary engine overhaul facilities in Fort Collins, Colorado. Only certain entities within CHC – primarily the issuers or guarantors of the Debtors' funded debt – are Debtors in the chapter 11 proceedings. CHC's other entities, including certain operating entities, are not debtors in these cases and are continuing to conduct their business in the ordinary course.

10. Additional information about the Debtors' businesses, capital structure and the circumstances leading to the commencement of these chapter 11 cases can be found in the *Declaration of Robert A. Del Genio in Support of the Debtors' Chapter 11 Petitions and Request for First Day Relief* [Docket No. 13].

Basis for Relief Requested

11. Section 107(b) authorizes the Court to issue orders that will protect entities from potential harm caused by disclosure of confidential information. Specifically, Section 107(b) provides that upon the "request of a party in interest", the Court shall "protect an entity with respect to a trade secret or confidential research, development, or commercial information." 11 U.S.C. § 107(b).

12. Bankruptcy Rule 9018 sets forth the procedures by which a party may move for relief under Section 107(b). In particular, Bankruptcy Rule 9018 states that the Court "may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research development, or commercial information…" Fed. R. Bankr. P. 9018.

13. In addition, the Court also may grant the requested relief pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, which provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

14. Based upon these provisions, bankruptcy courts have restricted access to filed documents where parties have demonstrated good cause. *See, e.g., In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003); *In re Epic Assoc. V*, 54 B.R. 445, 450 (Bankr. E.D. Va. 1985). Whether a document falls within the scope of Section 107(b) is ultimately a decision for the Court. *In re Barney's Inc.*, 201 B.R. 703, 707 (Bankr. S.D.N.Y. 1996). If the Court determines that filed documents are covered by Section 107(b), the Court must issue a remedy that will protect the interested party and "has no discretion to deny the application." *Video Software Dealers Ass'n v. Orion Pictures Corp*., 21 F.3d 24, 27 (2d Cir. 1994); *see also In re Northstar Energy, Inc.,* 315 B.R. 425, 428-29 (Bankr. E.D. Tex. 2004)("In fact, § 107(b) *mandates* the protection of certain types of information, including 'confidential commercial information.'")(emphasis in original); *In re Global Crossing*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003). Section 107(b) is "designed to protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury*." In re Northstar Energy, Inc.*, 315 B.R. at 429. Courts have defined commercial information as that "information which would cause an unfair advantage to competitors by providing them information as to the commercial operations of the debtor." *In re Northstar Energy, Inc*., 315 B.R. at 429 (quoting *Orion Pictures Corp*.). *See also In re Alterra Healthcare Corp*., 353 B.R. 66, 75 (Bankr. D. Del. 2006).

15. As the Restructure Agreement and the exhibits attached thereto necessarily must discuss confidential and proprietary information, good cause exists to grant the Debtors leave to file the Confidential Information under seal pursuant to sections 105(a) and 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018.

16. By this Motion to Seal, the Debtors respectfully request that the Court enter the Order authorizing the Debtors to file the Confidential Information under seal in accordance with Bankruptcy Rule 9018, and directing that such filing remain confidential and under seal, and that no such information shall be made available to anyone, other than as set forth in the Order approving this Motion to Seal. The Debtors request that the Clerk of the Court treat the Confidential Information held under seal as confidential.

Notice

17. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion to Seal shall be given to: (i) the Office of the United States Trustee for the Northern District of Texas; (ii) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036 (Attn: Douglas Mannal, Esq. and Anupama Yerramalli, Esq.), counsel to the Official Committee of Unsecured Creditors; (iii) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, Bank of America Tower, New York, NY 10036 (Attn: Michael S. Stamer, Esq.), counsel to an informal group of certain unaffiliated holders of the 9.250% Senior Secured Notes Due 2020; (iv) Norton Rose Fulbright, 2200 Ross Avenue, Suite 3600, Dallas, TX 75201 (Attn: Louis R. Strubeck, Jr., Esq. and Richard P. Borden, Esq.), counsel to certain secured lenders under the Revolving Credit Agreement; (v) Paul Hastings LLP, 75 East 55th Street, New York, NY 10022 (Attn: Leslie A. Plaskon, Esq. and Andrew V. Tenzer, Esq.), counsel to the administrative agent under the ABL Credit Agreement; (vi) The Bank of New York Mellon, 101 Barclay Street, Floor 4 East, New York, NY 10286 (Attn: International

Corporate Trust), in its capacity as indenture trustee under the 9.250% Senior Secured Notes due 2020 and under the 9.375% Senior Notes due 2021; (vii) the Securities and Exchange Commission; (viii) the Internal Revenue Service; and (ix) all parties who have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion to Seal is required.

No Prior Request

18. No previous request for the relief sought herein has been made to this or any other Court.

[The remainder of this page is intentionally blank]

WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested and such other or further relief as is just.

Dated: New York, New York
January 24, 2017

By: */s/ Jasmine Ball*

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Attorneys for Debtors and Debtors in Possession

EXHIBIT A

Debtors

Debtor	Last Four Digits of Federal Tax I.D. No.
CHC Group Ltd.	7405
6922767 Holding SARL	8004
Capital Aviation Services B.V.	2415
CHC Cayman ABL Borrower Ltd.	5051
CHC Cayman ABL Holdings Ltd.	4835
CHC Cayman Investments I Ltd.	8558
CHC Den Helder B.V.	2455
CHC Global Operations (2008) ULC	7214
CHC Global Operations Canada (2008) ULC	6979
CHC Global Operations International ULC	8751
CHC Helicopter (1) S.à r.l.	8914
CHC Helicopter (2) S.à r.l.	9088
CHC Helicopter (3) S.à r.l.	9297
CHC Helicopter (4) S.à r.l.	9655
CHC Helicopter (5) S.à r.l.	9897
CHC Helicopter Australia Pty Ltd	2402
CHC Helicopter Holding S.à r.l.	0907
CHC Helicopter S.A.	6821
CHC Helicopters (Barbados) Limited	7985
CHC Helicopters (Barbados) SRL	N/A
CHC Holding (UK) Limited	2198
CHC Holding NL B.V.	6801

Debtor	Last Four Digits of Federal Tax I.D. No.
CHC Hoofddorp B.V.	2413
CHC Leasing (Ireland) Limited	8230
CHC Netherlands B.V.	2409
CHC Norway Acquisition Co AS	6777
Heli-One (Netherlands) B.V.	2414
Heli-One (Norway) AS	2437
Heli-One (U.S.) Inc.	9617
Heli-One (UK) Limited	2451
Heli-One Canada ULC	8735
Heli-One Holdings (UK) Limited	6780
Heli-One Leasing (Norway) AS	2441
Heli-One Leasing ULC	N/A
Heli-One USA Inc.	3691
Heliworld Leasing Limited	2464
Integra Leasing AS	2439
Lloyd Bass Strait Helicopters Pty. Ltd.	2398
Lloyd Helicopter Services Limited	6781
Lloyd Helicopter Services Pty. Ltd.	2394
Lloyd Helicopters International Pty. Ltd.	2400
Lloyd Helicopters Pty. Ltd.	2393
Management Aviation Limited	2135

Exhibit B

Proposed Form of Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	:	**Chapter 11**
CHC GROUP LTD. *et al.,*	:	**Case No. 16– 31854 (BJH)**
Debtors.	:	**(Jointly Administered)**

ORDER GRANTING DEBTORS' MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 107(b) AND FED. R. BANKR. P. 9018 AUTHORIZING THE FILING OF CERTAIN INFORMATION UNDER SEAL IN CONNECTION WITH THE DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTIONS 105, 363, AND 365 OF THE BANKRUPTCY CODE AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 6004(h), 6006, AND 9019 AUTHORIZING THE DEBTORS TO ENTER INTO AND PERFORM UNDER THE 2017 OMNIBUS RESTRUCTURE AGREEMENT WITH AIRBUS HELICOPTERS (SAS) REGARDING CERTAIN OF THE DEBTORS' EXECUTORY CONTRACTS

Upon the motion dated January 24, 2017 (the "**Motion to Seal**")[3] of CHC Group Ltd. and its above-captioned debtor affiliates, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, in connection with the Debtors' motion for the entry of an order granting leave to file under seal certain information in connection with *Debtors' Motion for an Order Pursuant to 11 U.S.C. §§ 105(a) and 107(b) and Fed. R. Bankr. P.*

[3] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion to Seal.

9018 Authorizing The Filing of Certain Information Under Seal in Connection With the Debtors' Motion For An Order Pursuant To Sections 105, 363, and 365 Of The Bankruptcy Code And Federal Rules of Bankruptcy Procedure 6004(h), 6006, And 9019 Authorizing The Debtors To Enter Into And Perform Under The 2017 Omnibus Restructure Agreement With Airbus Helicopters (SAS) Regarding Several of the Debtors' Executory Contracts, (together with all exhibits thereto, the "**Restructure Agreement**"), and the Court having jurisdiction to consider the Motion to Seal and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion to Seal and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b)(2); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion to Seal having been provided to (i) the Office of the United States Trustee for the Northern District of Texas; (ii) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036 (Attn: Douglas Mannal, Esq. and Anupama Yerramalli, Esq.), counsel to the Official Committee of Unsecured Creditors (the "**UCC**"); (iii) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, Bank of America Tower, New York, NY 10036 (Attn: Michael S. Stamer, Esq.), counsel to an informal group of certain unaffiliated holders of the 9.250% Senior Secured Notes Due 2020 (the "**Bondholders**"); (iv) Norton Rose Fulbright, 2200 Ross Avenue, Suite 3600, Dallas, TX 75201 (Attn: Louis R. Strubeck, Jr., Esq. and Richard P. Borden, Esq.), counsel to certain secured lenders under the Revolving Credit Agreement; (v) Paul Hastings LLP, 75 East 55th Street, New York, NY 10022 (Attn: Leslie A. Plaskon, Esq. and Andrew V. Tenzer, Esq.), counsel to certain secured lenders under the ABL Credit Agreement; (vi) The Bank of New York Mellon, 101 Barclay Street, Floor 4 East, New York, NY 10286 (Attn: International Corporate Trust), in its capacity as indenture trustee under the

9.250% Senior Secured Notes due 2020 and under the 9.375% Senior Notes due 2021; (vii) the Securities and Exchange Commission; (viii) the Internal Revenue Service; and (ix) all parties who have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002; and no other or further notice need be provided; and the relief requested in the Motion to Seal being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion to Seal; it is hereby ORDERED that:

1. The relief requested in the Motion to Seal is hereby granted.

2. Pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, the Debtors are hereby authorized to file the Confidential Information under seal. The filing under seal shall remain under seal and confidential, and no such information shall be made available to anyone, other than as set forth in this Order.

3. The Debtors are authorized to file a redacted version of the Restructure Agreement on the docket maintained in these chapter 11 cases.

4. The Debtors are authorized to file the exhibits attached to the Restructure Agreement under seal.

5. The Debtors shall provide unredacted copies the Restructure Agreement to the Court and the Office of the United States Trustee. The obligations of the Office of the United States Trustee concerning criminal matters or ethical matters are not affected by the terms of this Order.

6. The Clerk of the Court shall treat the Confidential Information as confidential and counsel for the Debtors shall contact the Clerk's Office regarding the return or disposition of the sealed Restructure Agreement within ten (10) days after issuance of a final order with respect to the Restructure Agreement.

7. The Debtors shall also provide unredacted copies of the Restructure Agreement to (a) counsel for the UCC, (b) counsel for the Bondholders (but not individual holders of the bonds) and (c) those persons (1) who are deemed acceptable by the Debtors, in their sole discretion, (2) who have executed a confidentiality agreement acceptable to the Debtors, and (3) who present the Clerk with a document evidencing satisfaction of the previous two conditions, signed by the Debtors.

8. Access to the Confidential Information, subject to the conditions set forth above, shall be for the sole purpose of determining whether the relief requested in the motion to approve the Restructure Agreement should be granted.

9. Any party permitted access to the Confidential Information shall not share any information contained in such documents with any third party, without the consent of the Debtors or further order of this Court. Any party found to have violated these conditions shall be subject to sanctions for violation of this Order.

10. This Order is without prejudice to the rights of any party in interest to (i) seek to declassify and make public any portion of the Confidential Information or (ii) request from this Court the further review of the terms of this Order.

11. The Debtors are authorized to take any additional actions as are necessary or appropriate to implement and effectuate this Order.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

13. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to this Order.

END OF ORDER

Respectfully Submitted,

DEBEVOISE & PLIMPTON LLP

/s/ Jasmine Ball

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CERTIFICATE OF SERVICE

I hereby certify that, on April 11, 2017, I caused the foregoing Appendix and Exhibits to be filed with the Court via CM/ECF and served on all parties requesting electronic notification, including the following counsel of record for the Defendant:

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