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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

CHC GROUP LTD., *et al.*,

Debtors.

ECN CAPITAL (AVIATION) CORP.,

Plaintiff,

v.

AIRBUS HELICOPTERS, S.A.S.,

Defendant.

Chapter 11

Case No. 16-31854 (BJH)

(Jointly Administered)

Adv. Pro. No. 16-3151 (BJH)

**RESPONSE OF DEFENDANT AIRBUS HELICOPTERS, S.A.S. TO PLAINTIFF'S
OBJECTION TO THE BANKRUPTCY COURT'S PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW AND BRIEF IN SUPPORT**



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Plaintiff,	
v.	Adv. Pro. No. 16-3151 (BJH)
AIRBUS HELICOPTERS, S.A.S.,	
Defendant.	

**RESPONSE OF DEFENDANT AIRBUS HELICOPTERS, S.A.S. TO PLAINTIFF'S
OBJECTION TO THE BANKRUPTCY COURT'S PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW AND BRIEF IN SUPPORT**

**TO THE HONORABLE SAM R. CUMMINGS,
SENIOR DISTRICT COURT JUDGE¹:**

COMES NOW, Defendant Airbus Helicopters, S.A.S. (“AH”), and files its Response to Plaintiff ECN Capital (Aviation) Corp.’s (“ECN’s”) Objection to the Bankruptcy Court’s Proposed Findings of Fact and Conclusions of Law and Brief in Support [AP No. 104]² (“Response”) and Appendix in Support of Plaintiff’s Objection to the Bankruptcy Court’s Proposed Findings of Fact and Conclusions of Law [AP No. 104-1] (“Appendix”) (collectively, “ECN’s Objections”), and in support thereof, would respectfully show the Court as follows:

I. INTRODUCTION AND SUMMARY OF ARGUMENT

ECN, a creditor in the underlying CHC Bankruptcy Proceeding,³ filed an adversary proceeding against AH, another creditor to the bankruptcy, seeking damages for product liability and negligence claims unrelated to AH’s proofs of claim against the CHC Debtors. ECN’s lawsuit against AH seeks economic loss damages from an alleged defect in five AH Super Puma helicopters owned by ECN, a Canadian company. The helicopters were designed, manufactured, and sold by AH in France, where AH is incorporated and has its principal place of business. AH obtained certification of the helicopters in France before selling them in France to CHC entities from the United Kingdom and Ireland. Those CHC entities later sold the helicopters to ECN, which leased them back to the CHC entities. The helicopters have always been registered and operated in countries other than the United States.

¹ AH’s response to the Objection is filed in the Bankruptcy Court, but directed to the District Court.

² 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).

³ See *In re CHC Group Ltd., et al.*, Case No. 16-31854 (“CHC Bankruptcy Proceeding”). There are 43 CHC Debtors (“CHC Debtors”).

AH responded to ECN's adversary proceeding by filing a Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction and on the Grounds of *Forum Non Conveniens*. [AP No. 24 ("Motion to Dismiss").] After finding that ECN's lawsuit had nothing to do with any contacts between AH and the United States, and because the issues and facts raised by the lawsuit had no connection with the United States, the Bankruptcy Court found that while it had subject matter jurisdiction over the action, it lacked personal jurisdiction over AH, and that even if it did, the action should be dismissed on *forum non conveniens* and permissive abstention grounds. The Bankruptcy Court so found, however, only after giving ECN tremendous leeway to try to show why the Motion to Dismiss should be denied, including receiving some 64 pages of briefing, 1107 pages of exhibits from ECN and hearing several hours of oral argument.

The Bankruptcy Court discussed the reasons for its decision in a carefully considered, very detailed and soundly-reasoned Proposed Findings of Fact and Conclusions of Law. [AP No. 94 ("PFOFCOL").] The Bankruptcy Court explained in its ruling that even if all assertions about AH's contacts with the United States (the relevant forum) and AH's involvement in the CHC Bankruptcy Proceeding were true as alleged by ECN, they would not support the exercise of personal jurisdiction as a matter of law. In particular, the Bankruptcy Court found none of AH's forum contacts alleged by ECN gave rise to its claims against AH, thus leaving the relatedness requirement for specific jurisdiction unsatisfied as a matter of law. The Bankruptcy Court also found that no law supported a finding that by participating in the CHC Bankruptcy Proceeding, AH consented to personal jurisdiction for all purposes for all time, including for a claim by a third-party non-debtor (ECN) for damages wholly unrelated to the bankruptcy. Lastly, the Bankruptcy Court carefully considered the relevant public and private interest factors to find that even if personal jurisdiction exists over AH, nothing about ECN's lawsuit connected it with the United

States, and that the interests of the interested forums weighed strongly in favor of dismissal on *forum non conveniens* and permissive abstention grounds.

As it did when it opposed AH's Motion to Dismiss in the Bankruptcy Court, ECN has objected to the Bankruptcy Court's Proposed Findings of Fact and Conclusions of Law with arguments that are often, at best, only loosely tied to the record, or are based on facts that are irrelevant as a matter of law. ECN's objection comes down to an argument that the Bankruptcy Court did not consider various facts that ECN alleges support denial of AH's Motion to Dismiss. As shown below, however, the Bankruptcy Court carefully considered all relevant facts and correctly applied them to the relevant case law. The only facts not included in the Court's analysis are those that pertain entirely to a third party's (CHC's) contacts with Texas, which are irrelevant to the jurisdictional inquiry as to AH as a matter of law. Indeed, the Bankruptcy Court was very aware of ECN's attempt to bootstrap its jurisdictional arguments as to AH to CHC's Texas contacts and its Bankruptcy Proceeding, and the Bankruptcy Court correctly rejected such arguments.

ECN is simply wrong that the Bankruptcy Court failed to fully address its factual and legal arguments. As the District Court will readily see from its *de novo* review, the Bankruptcy Court's PFOFCOL directly and thoroughly addresses the numerous arguments presented by ECN – even arguments and facts presented by ECN after the hearing on AH's Motion to Dismiss – and it makes well-reasoned and correct factual findings and conclusions of law. ECN failed to show the Bankruptcy Court, as it now fails to show this Court, why AH's Motion to Dismiss should be denied. This Court should adopt the Bankruptcy Court's Proposed Findings of Fact and

Conclusions of Law, overrule ECN's Objections, and enter an order granting AH's Motion to Dismiss.⁴

II. STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 157, the District Court shall enter a final order after considering the bankruptcy judge's proposed findings and conclusions and after reviewing *de novo* those matters to which any party has timely and specifically objected. 28 U.S.C. §157. More specifically, the District Court shall make a *de novo* review upon the record, or, after additional evidence, of any portion of the bankruptcy judge's findings of fact and conclusions of law to which specific written objections have been made in accordance with this rule. FED. BANKR. R. 9033. The district judge may accept, reject, or modify the proposed findings of fact or conclusions of law, receive further evidence, or recommit the matter to the bankruptcy judge with instructions. *Id.*

III. ARGUMENT AND BRIEF IN SUPPORT

A. The Bankruptcy Court Considered all Pertinent Facts Alleged by ECN in Support of Its Personal Jurisdiction Arguments and Correctly Found that they Did Not Support the Exercise of Personal Jurisdiction on Any Theory

ECN's objection is primarily rooted in the baseless contention that the Bankruptcy Court ignored or overlooked relevant facts. ECN focuses on four groups of facts: (1) AH's involvement in the CHC Bankruptcy Proceeding, including the filing of proofs of claim; (2) that AH has contacts with the United States and Texas, including having an affiliate in Texas (Airbus Helicopters, Inc. ("AHI")), that AH sells helicopters to customers in the United States and Texas,

⁴ This Court should review the complete record of the case and not just rely on the Appendix filed by ECN because it fails to provide this Court with the entire pertinent record. Pursuant to FED. BANKR. R. 9033(b), a party objecting to the bankruptcy judge's proposed findings or conclusions shall arrange promptly for the transcription of the record, or such portions of it as all parties agree upon or the bankruptcy judge seems sufficient, unless the district judge otherwise directs. As of the date of the filing of this Response, the complete record has not been submitted to this Court.

and that AH employees and executives attend industry events in the United States and Texas; (3) that the CHC Debtors rejected their leases with ECN for the five helicopters at issue in the CHC Bankruptcy Proceeding in Texas, leading to a guarantee claim against the ECN Lease Guarantors; and (4) that various CHC entities are “managed out of Texas” and suffered harm in Texas as a result of the 2016 Norway accident and grounding of Super Pumas by aviation authorities in some countries. As shown below, the Bankruptcy Court carefully considered the facts falling under group numbers (1) through (3) and found that, under applicable law, they do not support personal jurisdiction over AH. The facts contained in number (4) are irrelevant to the jurisdictional injury over AH as a matter of law.

1. AH’s Involvement in the CHC Bankruptcy Proceeding & Other Consent Jurisdiction

ECN claims that AH consented to jurisdiction in Texas for any claim a third party might assert against it simply because AH filed proofs of claim in the CHC Bankruptcy Proceeding. Its argument is specious and flawed. ECN’s claims in this case are product liability and negligence claims, whereas AH’s proofs of claim were for goods and services provided to the CHC Debtors, and have nothing to do with ECN, or the subject of its lawsuit against AH, or its damages. Despite this obvious disconnect, the Bankruptcy Court carefully considered ECN’s argument over some seven pages in the PFOFCOL, including carefully analyzing the case law cited by ECN. *See* PFOFCOL, pp. 15-22. The Bankruptcy Court very carefully explained in the PFOFCOL that there is no case law to support ECN’s position that AH subjected itself to ECN’s third-party product liability claims by participating in and filing proofs of claim in the CHC Bankruptcy Proceeding:

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.

PFOFCOL, p. 22.

The Bankruptcy Court also considered the case law that ECN alleges was ignored on the issue of whether the filing of a proof of claim was tantamount to the filing of a lawsuit:

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.

Id. at 21.

ECN truly stretches credibility when it argues that the Bankruptcy Court ignored that CHC could have filed a lawsuit as a counterclaim in the bankruptcy proceeding against AH for different helicopters owned by CHC (not the ones owned by ECN). CHC and ECN are two entirely different entities, and the transactions and helicopters at issue are entirely different. The Bankruptcy Court went to great lengths to explain that the cases ECN cited on consent jurisdiction in the bankruptcy context involved situations where the debtor sued a creditor on matters related to the bankruptcy, which is a different situation from a finding that a non-debtor subjects itself to jurisdiction for claims by another non-debtor that are unrelated to the bankruptcy. *Id.* at 16-21. The Bankruptcy Court was keenly aware of the issues, the facts and the law on consent jurisdiction, and it correctly found that filing proofs of claim against CHC did not subject AH to personal jurisdiction for ECN's unrelated product liability lawsuit.

The Bankruptcy Court also considered the argument that because AH is defending other lawsuits in Texas, it has consented to jurisdiction as to ECN's lawsuit:

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.

See id. at 26.

2. AH's United States and Texas Contacts

The Bankruptcy Court also carefully evaluated ECN's arguments that AH's direct contacts with the United States and Texas subjected it to personal jurisdiction, including that AH sells helicopters to customers in this country, sends employees and executives to industry events in the United States and Texas, and is affiliated with AHI, which shares the same ultimate parents as AH. The Bankruptcy Court correctly found that none of these facts gave rise to specific jurisdiction because ECN had not shown, or even argued (and still has not), that its product liability claim arose from contacts between AH and the United States. Thus, the relatedness (or "nexus") requirement for specific jurisdiction was entirely unsatisfied. *See Id.* at 22-26. The Bankruptcy Court even considered a very lengthy appendix filed by ECN after the hearing on AH's Motion to Dismiss regarding additional alleged contacts between AH and Texas (even though the Bankruptcy Court found that ECN had incorrectly and inaccurately described that evidence). *See id.* at 24-26.

ECN incorrectly argues that the Bankruptcy Court failed to analyze whether general jurisdiction exists over AH. ECN fails to apprise the Court that it expressly admitted to the Bankruptcy Court that general jurisdiction would not exist without consent based on participation in the bankruptcy proceeding. *See id.* at 15, n. 16 (citing 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.”)). Even after this admission, the Bankruptcy Court still entertained a general jurisdiction argument made by counsel for ECN for the first time at the hearing, and concluded that AH was not “at home” in the United States, as required for a finding of general jurisdiction under controlling law:

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.

Hr’g Tr. 47, Feb. 28, 2017 [AP. No. 86]. ECN is simply wrong that the Bankruptcy Court did not consider AH’s contacts with the forum as a basis for general and specific jurisdiction.

3. The Lease Rejection

The Bankruptcy Court also specifically addressed the lease rejection and lease guarantor arguments made by ECN, and it correctly found that CHC (Barbados)’s decision to reject its leases with ECN – even assuming that decision was made in Texas – did not give rise to ECN’s product liability claims against AH, and therefore also did not provide a basis for specific jurisdiction. *See id.* at 24 (“However, CHC (Barbados)’s decision to reject the ECN Leases did not give rise to ECN’s negligence and product liability claims against Airbus, 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.”).

Furthermore, the harm that ECN alleges occurred in Texas – i.e., the CHC Debtors rejection of the leases with ECN for the helicopters resulting in ECN’s proofs of claim against the CHC Debtors – is a harm that is completely unrelated to the damages sought in ECN’s lawsuit against AH. The harms that ECN seeks to redress through its tort lawsuit against AH are economic damages due to alleged defects in the helicopters it owns, not economic losses from the rejected

leases. The sources of damage to ECN in the two proceedings are completely separate – rejected leases (bankruptcy) versus the alleged product defects (adversary).

4. The CHC Debtors Texas-Contacts

ECN’s arguments based on the alleged Texas contacts of the CHC Debtors – such as that they are managed out of Texas, and the decision to reject the ECN leases was made in Texas, and that CHC may have its own independent claims that it might try to bring in Texas against AH for different helicopters not at issue in ECN’s lawsuit – are irrelevant as a matter of law. It is a basic principal of personal jurisdiction jurisprudence that only the purposeful acts of the defendant may subject it to personal jurisdiction in a forum; the unilateral conduct of third parties – in this case CHC and its affiliates – is irrelevant. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-75 (1985)(quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958) (“The unilateral activity of those who claim some relationship with a nonresident cannot satisfy the requirement of contact with the forum State.”)). Jurisdiction over AH cannot be premised on whatever contacts the CHC Debtors may have with Texas or the United States.

B. The Bankruptcy Court Considered All Facts Alleged by ECN in Opposition to AH’s Forum Non Conveniens Motion, and Correctly Found that the Private and Public Interest Factors Strongly Weighed in Favor of Dismissal

ECN argues that the Bankruptcy Court incorrectly concluded that this case should be dismissed on the grounds of *forum non conveniens* because the Bankruptcy Court failed to consider its argument that its claims and damages are closely tied to the CHC Bankruptcy Proceeding, and that AH would allegedly face minimal cost, inconvenience, or hardship in defending the case in this Court. ECN’s arguments are entirely without merit. Again, ECN is wrong.

The Bankruptcy Court carefully analyzed the *forum non conveniens* issue for eleven pages. *See* PFOFCOL, pp. 27-38. In those eleven pages, the Bankruptcy Court properly analyzed (i) if

an adequate alternative forum exists, (ii) the relevant factors of private interest, weighing in the balance the relevant deference given Plaintiff's particular 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. *Id.* at page 28. ECN largely ignored the *forum non conveniens* factors in its opposition to the Motion to Dismiss, and, as with its personal jurisdiction argument, instead focused mostly on irrelevant facts pertaining to the CHC Bankruptcy Proceeding.

The Bankruptcy Court specifically addressed the relationship between adversary and the bankruptcy proceedings and concluded that:

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).

See id. at 30 (emphasis added).

The Bankruptcy Court also explained that its determination that the cost and burden to AH of bringing witnesses and evidence to Texas to defend against ECN's claims was based on the fact that ECN's claims have "no connection with the United States or Texas," and only after describing that all of the evidence and witnesses related to ECN's claims are located outside of the United States. *Id.* at 31-32. The Bankruptcy Court properly weighed all of the various factors; ECN's argument inappropriately focuses on only one.

ECN again complains that the Bankruptcy Court ignored the purported fact that the decision by CHC to reject its leases with ECN occurred as part of the bankruptcy proceeding in Texas. As explained, even if true, this fact has nothing to do with ECN's product liability claims against AH. The relevant evidence for ECN's claims pertains to the design, manufacturing and sale of the helicopters that occurred entirely outside of the United States, and the Norway accident and actions

by regulatory authorities outside of the United States related to helicopters that are not registered in and have never operated in the United States.⁵ The facts surrounding CHC's decision to reject its leases for those helicopters has no relevance or bearing on ECN's claims against AH, and the Bankruptcy Court properly found that the CHC bankruptcy connection was too tenuous to justify maintaining this lawsuit in Texas.

ECN further incorrectly asserts that the Bankruptcy Court fails to mention that Texas has an interest in resolving this case. To the contrary, the Bankruptcy Court squarely addressed the interests of ECN's chosen forum:

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. ...

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

⁵ ECN asserts that evidence from the Federal Aviation Administration ("FAA") in Texas is relevant, but fails to apprise the Court that its five helicopters are not registered in the United States and are not subject to the FAA's jurisdiction related to the post-Norway accident grounding.

nor the Adversary Proceeding have any connection to Texas, much less one that would justify burdening its citizens with jury duty.

See Pages 34, 37-38, PFOFCOL.

ECN further states that the Bankruptcy Court failed to address that AH is allegedly forum shopping in order to avoid Court in the U.S. The Bankruptcy Court squarely addressed forum shopping when it correctly pointed out that ECN is the party that seems to be forum shopping in this matter.

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.

See Pages 41-42, PFOFCOL.

Further, ECN incorrectly alleges that the Bankruptcy Court should have found that the relevant private interest and public interest factors weigh against dismissal. Addressing ECN's alleged relevant factors in the Objection: (a) though ECN is entitled deference to its choice of forum, that deference is limited because ECN is a foreign plaintiff, and this case is a singular example of one where little deference should be given because essentially all factors weigh in favor of dismissal; (b) ECN's claims are not closely connected to Texas and the Bankruptcy Case; (c) AH's involvement in other proceedings in Texas is irrelevant to this analysis; (d) AH's participation in the CHC Bankruptcy Proceeding is irrelevant to this analysis; and (e) AH's activity in Texas that is unrelated to ECN's claims is irrelevant to the *forum non conveniens* analysis, and Texas has no interest in resolving a case between a French company and a Canadian company over

activity and property that is entirely outside of the United States. The Court should overrule all of ECN's objections related to *forum non conveniens*.

C. The Bankruptcy Court Correctly Concluded that Permissive Abstention was Appropriate

The Bankruptcy Court separately recommended that AH's Motion to Withdraw the Reference of ECN's adversary proceeding. ECN has not objected to that recommendation. To the extent the Court grants the Motion to Withdrawal of the Reference, ECN asks this Court to consider Factors 2, 6, 7 and 8⁶ moot and factors 3 (the Difficult or Unsettled Nature of Applicable Law) and 4 in favor of keeping this case (The Presence of a Related Proceeding Commenced in State Court or Other Non-Bankruptcy Proceeding). Assuming, *arguendo*, this Court does so because the reference would likely be withdrawn, the remaining factors, when given the necessary weight given the facts of this case, still weigh strongly in favor of this Court permissively abstaining.

ECN complains that factor 4 weighs in favor of this Court keeping the case and ignores the fact this Court can permissively abstain even if there is no other pending proceeding. *See generally Hallmark Capital Group, LLC v. Pickett (In re Pickett)*, 362 B.R. 794 (Bankr. S.D.Tex. 2007) (the Court dismissed the adversary even though there were no other pending proceedings). Given this fact in conjunction with factor 10 (The Likelihood that the Commencement of the Proceeding in the Bankruptcy Court Involves Forum Shopping by One of the Parties), where the Bankruptcy Court correctly found that ECN is the one that is forum shopping; factor 9 (the Burden on the Court's docket), the Bankruptcy Court made it clear the District Courts in the Northern District do

⁶ Factors 2, 6, 7 and 8 are: The Extent to which State Law Issues Predominate Over Bankruptcy Issues (Factor 2); The Degree of Relatedness or Remoteness of the Proceeding to the Main Bankruptcy Case (Factor 6); The Substance Rather than the Form of an Asserted Core Proceeding (Factor 7); and 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 (Factor 8).

not currently have enough Judges to handle the current docket (see Hr’g Tr. 81-82, Feb. 28, 2017 [AP No. 86]); and factor 13 (comity), French law will likely apply and France has the most vested interest in determining the claims, permissive abstention was proper. ECN baselessly claims that the State of Texas has an interest in this case even though all five helicopters at issue in this case have never been in the United States.

The remaining factors also weigh in favor of abstention, as the Bankruptcy Court correctly found. Ultimately, when deciding whether to abstain, “[c]ase law holds that this Court, in its discretion may give greater weight to certain of these fourteen (14) factors.” *McVey v. Johnson (In re SBMC Healthcare, LLC)*, 519 B.R. 172, 193 (Bankr. S.D. Tex. 2014) (citations omitted); *See, e.g., Kollmeyer v. Aetna Life Ins. Co. (In re Heritage Sw. Med. Group., P.A.)*, 423 B.R. 809, 816 (Bankr. N.D. Tex. 2010) (“factors (3), (4), (7), (10), (13) and (14) are either neutral or do not apply. Each of the other factors, however, weighs in favor of remand.”). The factors that weigh in favor of abstention outweigh the factors that are either neutral, moot or weigh in favor of keeping this case. Therefore, this Court should overrule ECN’s objections related to abstention.

IV. CONCLUSION

ECN’s objection is based on an incomplete record, as it failed to provide the Court with all of the briefing and oral argument on the issues as part of its submission as required under FED. BANKR. R. 9033(b). The Court should review the entire record that will be transmitted after the filing of this Response, and not just those provided by ECN. Once it does, it will be clearer to the Court that the Bankruptcy Court’s findings of a lack of personal jurisdiction, and that this action should be dismissed on *forum non conveniens* and permissive abstention grounds, was fully informed by the pertinent facts, and were correct under the law. ECN has done nothing in its objection but re-argue facts and issues already fully considered; ECN has not shown that the

Bankruptcy Court failed to consider any relevant evidence, or that it reached incorrect conclusions of law. The Court should fully adopt the Bankruptcy Court's PFOFCOL, and grant AH's Motion to Dismiss.

Dated: April 25, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on April 25, 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

Jason M. Katz