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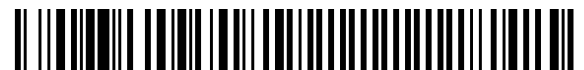
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**COUNSEL FOR PLAINTIFF ECN CAPITAL (AVIATION) CORP.**

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

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



**SUPPLEMENTAL APPENDIX**

<b>Exhibit</b>	<b>Description</b>	<b>Docket</b>	<b>Docket Entry</b>
W	Full Transcript from February 6, 2017 Hearing on Motion for Withdrawal of Reference; Scheduling Order; and Motion for Continuance of Trial, Stay of Deadlines and Brief in Support	16-3151-BJH	73
X	Full 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 <i>Forum Non Conveniens</i> Filed by Defendant Airbus Helicopters (SAS)	16-3151-BJH	86

Dated: April 26, 2017  
New York, New York

Respectfully submitted,

By: /s/ Martin Flumenbaum  
Martin Flumenbaum

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# **Exhibit W**

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 6, 2017
	)	9:46 a.m.
	)	
ECN CAPITAL (AVIATION) CORP.,	)	Adv. Proc. No.
	)	16-03151-bjh
Plaintiff,	)	
	)	
v.	)	
	)	
AIRBUS HELICOPTERS (SAS),	)	
	)	
Defendant.	)	
	)	
	)	

TRANSCRIPT OF HEARING ON:

[#23] STATUS CONFERENCE RE: MOTION FOR WITHDRAWAL OF  
REFERENCE, FILED BY DEFENDANT AIRBUS HELICOPTERS (SAS);

[#1] STATUS CONFERENCE RE: SCHEDULING ORDER;

[#56] DEFENDANT AIRBUS HELICOPTERS, S.A.S.'S MOTION FOR  
CONTINUANCE OF TRIAL, STAY OF DEADLINES AND BRIEF IN SUPPORT,  
FILED BY DEFENDANT AIRBUS HELICOPTERS (SAS)

BEFORE THE HONORABLE BARBARA J. HOUSER  
CHIEF UNITED STATES BANKRUPTCY COURT

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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

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## Colloquy

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1 MR. BARBER: Your Honor, if I may. There were  
2 announcements made at the beginning of the hearing and I did  
3 not make announcements as to this hearing. With me in the  
4 courtroom is Mr. Martin Flumenbaum and also Pietro Signoracci,  
5 both of the Paul Weiss firm in New York, and they will be  
6 handling the argument.

7 THE COURT: Excellent.

8 MR. BARBER: Thank you.

9 THE COURT: Thank you.

10 MR. FLUMENBAUM: Thank you, Your Honor.

11 THE COURT: Good morning.

12 MR. FLUMENBAUM: Good morning.

13 THE COURT: All right. Well, let me just start with  
14 a predicate. In our district, any time a motion to withdraw  
15 the reference is filed, under the district-court local rules,  
16 which you're probably all now familiar with, we're required to  
17 have the status conference with the parties, to do a couple of  
18 things: one, to see if -- see the extent of agreement or  
19 disagreement about withdrawal of the reference and then, under  
20 our local rule -- district-court rule, I'm required to prepare  
21 a report and recommendation for the district court, suggesting  
22 what I think the appropriate outcome of that motion is.

23 So, we do this in every instance where there is a  
24 motion to withdraw the reference, and so that's the purpose of  
25 this. And then somewhat related to that is the request for a

## Colloquy

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1 continuance of the trial, that was also filed, that is  
2 somewhat intertwined with the timing of whether or not we're  
3 going to proceed here or in the district court.

4 My sense is -- and this is a listening check or maybe  
5 a reading check; my sense is that there is agreement that this  
6 case, assuming it stays in federal court, is going to be tried  
7 at the district-court level. Both sides have demanded jury  
8 trials and there's been a late -- we'll agree that the  
9 bankruptcy court can conduct if the other side also agrees,  
10 but I'm unaware of that.

11 So, absent consent to me conducting the jury trial, I  
12 assume we all agree -- and I'm not looking necessarily for you  
13 to consent; don't misunderstand. But I'm assuming we all  
14 agree that this case is headed to the district court. True?

15 MR. FLUMENBAUM: Your Honor, if the case proceeds to  
16 a full jury trial, I think the answer would be yes, unless  
17 Airbus consents to a jury trial before Your Honor. But it's  
18 our view that this motion should be denied at this time and  
19 that all of the proceedings prior to the conduct (sic) of the  
20 jury trial should be handled by this Court.

21 THE COURT: Well, no --

22 MR. FLUMENBAUM: That's our position.

23 THE COURT: I understand that you want me to pre-try  
24 the case.

25 Please.



Colloquy

5

1 MR. KATZ: Just --

2 THE COURT: And since we don't know necessarily who's  
3 who yet, if you wouldn't mind, for the record, just  
4 identifying -- and you can do it right there from counsel  
5 table, so that we make sure we have the right people assigned  
6 to the right role.

7 MR. FLUMENBAUM: That was Marty Flumenbaum for --

8 THE COURT: Thank you.

9 MR. FLUMENBAUM: -- for ECN.

10 THE COURT: Thank you very much.

11 MR. KATZ: And, Your Honor, good morning. Jason Katz  
12 and Eric Strain on behalf of Airbus Helicopters (SAS).

13 And the Court's summary of where we stand on the  
14 motion is accurate from Airbus' standpoint. Airbus' position  
15 is that the motion to withdraw the reference should occur now,  
16 so the motion should be granted in full. I understand that  
17 ECN has taken the position that, yes, it should be withdrawn  
18 but not till later and this Court's handled all pre-trial  
19 matters.

20 THE COURT: Well, let's -- then on that, let's focus  
21 on that issue. And let me tell you that if the reference is  
22 withdrawn, and unless Judge Cummings agrees to hear this here,  
23 you all may be headed to Lubbock. We're down a few district  
24 judges in the Northern District of Texas. We have some  
25 vacancies that have not been filled and, as a result, Judge

## Colloquy

6

1 Cummings, who has taken senior status and sits in Lubbock, has  
2 five percent of the Dallas-division docket. You all are one  
3 of his five percent, with respect to this motion to withdraw  
4 the reference.

5 So, to be honest, I have never -- I have never had  
6 him decide a motion to withdraw the reference based upon my  
7 withdrawal-of-reference recommendation. And I don't know if  
8 he would come here for trial or not. But you all probably  
9 realize who the district judge was. But he has a relatively  
10 small percentage of the Dallas-division docket and, as luck  
11 would have it, he has this case.

12 So, I tell you that only because it is true that most  
13 of the Dallas-division judges prefer the case to be pre-tried  
14 by the bankruptcy court and then the reference withdrawn when  
15 the bankruptcy court certifies that the case is ready for  
16 trial.

17 I'm not quite sure what Judge Cummings' general  
18 procedure is, but I will tell you that I have some perspective  
19 on this and it may be helpful. For those of you who have not  
20 appeared in front of me, you've probably at least been told by  
21 your local counsel that I tend to read everything in advance  
22 of hearings; it helps me cut to the chase, for lack of a  
23 better word. It is true that I have read everything here.

24 I will tell you that this case may seem different to  
25 me. And normally I do suggest, haven't always but for

## Colloquy

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1   seventeen years I have normally suggested, that we'll pre-try  
2   the case and then send it up to the district court when it's  
3   ready for trial. This case seems a little different to me,  
4   and let me explain why and then you all can tell me what I'm  
5   missing. The motion to dismiss does seem like it's something  
6   that I should hear, because it's all about bankruptcy  
7   jurisdiction, for lack of a better word. Obviously we've got  
8   personal jurisdiction, which doesn't have anything to do with  
9   bankruptcy jurisdiction per se, but here the arguments on  
10   that -- although I am not fully briefed on them yet since the  
11   motion to dismiss isn't set until February 28th, personal  
12   jurisdiction appears even to be a bit intertwined with the  
13   bankruptcy case, given arguments over the filling of the proof  
14   of claim and whether or not that is enough to have submitted  
15   the personal jurisdiction before the bankruptcy court.

16           So, my inclination at the moment, only based upon the  
17   papers I've read, is to think that the reference is going to  
18   have to be withdrawn because at this point we don't have  
19   consent, by both sides, to the bankruptcy court conducting the  
20   jury trial. It makes sense to me, because of the  
21   interrelationship with the bankruptcy case and issues about  
22   what is enough for there to be bankruptcy jurisdiction, that  
23   it might be perceived to be helpful if I issued proposed  
24   findings and conclusions with respect to a motion to dismiss,  
25   unless I think I can finally determine that. But once we get

## Colloquy

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1 past that, I'm not convinced that I am necessarily the right  
2 court to do the balance. I mean, this is basically a  
3 complicated, negligence, aviation fuss: what caused the  
4 crash, liability, blah-blah. And while it might be  
5 fascinating, and it's certainly something that I probably  
6 could learn, it's not something that I would routinely be  
7 addressing.

8 And at that point, it may make more sense, is my  
9 current thinking, to suggest that the district court pull the  
10 case at that time and either pre-try the case himself or refer  
11 the matter to a magistrate judge that would, I guess, more  
12 regularly deal with issues like that. Again, that assumes the  
13 case survives motion to dismiss, abstention. But that's sort  
14 of my current thinking.

15 So -- and we'll come back to timing, because  
16 obviously timing is significant. I don't want to minimize  
17 that. But what am I missing?

18 MR. KATZ: Your Honor, Jason Katz and Eric Strain on  
19 behalf of Airbus Helicopters (SAS).

20 The Court, I think, is -- I don't think you're  
21 missing anything. I think you've hit the nail on the head.  
22 It's Airbus' position that we've got two non-U.S. companies in  
23 this court on a products-liability case. And the spectrum of  
24 what is conceivably -- having a conceivable effect on the  
25 bankruptcy estate is being tested here, surely.

## Colloquy

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1           Since I've been practicing law, it's always been  
2 tough for me to figure out how does it not conceivably affect  
3 the estate. And then I got retained in this case, Your Honor,  
4 and I thought, ah-hah, this may be it, because ECN has taken  
5 the position that the outcome in this case somehow is going to  
6 affect their claims in the underlying bankruptcy case. And I  
7 would just want to clarify a few things about that, Your  
8 Honor, that I think need to be pointed out, that, as I  
9 understand ECN's claims in the underlying case, those are  
10 lease-rejection claims.

11           THE COURT: In the bankruptcy case.

12           MR. KATZ: In the bankruptcy case, that's right. And  
13 in our case it's a tort claim.

14           THE COURT: Well, no, it's -- yeah, you're right.  
15 Sorry.

16           MR. KATZ: And --

17           THE COURT: Had to stop and measure my parties.

18           MR. KATZ: Understood, Your Honor. And, so, if ECN  
19 recovers in this case, it's not going to affect their claims  
20 in the other case and -- because if they recover in this case,  
21 the money goes to ECN; it wouldn't go to the debtor. And to  
22 the extent that there is some value that we're going to reduce  
23 their claim --

24           THE COURT: But isn't their argument a finer point?  
25 It's sort of collateral estoppel. I mean, that's their issue

## Colloquy

10

1 is that the conceivable effect may be that the outcome there  
2 could estop Airbus -- I don't think it can be issue  
3 preclusion, because we don't have identical parties. But  
4 that's the finer point.

5 MR. KATZ: That was the next point, Your Honor. Yes,  
6 and my response to that is that's based on their view that  
7 other creditors for the debtor are going to make similar  
8 claims based on what they do hear, and there's just no  
9 certainty to that. And I just think that tests the -- is that  
10 really a rational conceivable effect or is that a "well, I  
11 guess it could happen" conceivable effect? I just don't think  
12 that's what that -- I don't think that's what the Fifth  
13 Circuit meant there.

14 So, I would just take the position -- Airbus takes  
15 the position that that's not enough. And obviously the  
16 Court's going to take that issue up at a later date. But as  
17 it relates to whether reference should be withdrawn, I don't  
18 need to go through the six factors of (ph.) the Holland case  
19 or the local rules. I would just say that the Court is well  
20 aware of our position on all those, in our briefing, and that  
21 this case is different, I agree with the Court on that, that  
22 normally I wouldn't have an issue recommending my client to  
23 agree to this Court hearing pre-trial matters and then having  
24 the reference withdrawn when the Court certified it ready for  
25 trial. That makes sense. When there are bankruptcy issues

## Colloquy

11

1 that the Court has to deal with -- and obviously I agree that  
2 the Court is well suited to handle bankruptcy jurisdiction and  
3 provide recommendations to the district court on those but,  
4 past that, Your Honor, I agree; I just -- I don't see that  
5 there's much for this Court to do that Judge Cummings couldn't  
6 do himself. Obviously, it's up to him. He's going to do what  
7 he wants to do. Judge McBryde -- Judge Lynn (ph.) over in  
8 Fort Worth once told me on a motion to withdraw reference,  
9 when I asked him, Judge, you should sever the core from the  
10 noncore and -- he listened to me and he smiled and he said,  
11 well, Mr. Katz, I don't tell Judge McBryde what to do, he  
12 tells me what to do, so I'll let him decide what he wants to  
13 do.

14 So, Your Honor, I would just ask that the Court grant  
15 the relief that we sought -- or that you recommend to the  
16 district court that he grant the relief we seek in our motion.  
17 Thank you, Your Honor.

18 THE COURT: Please.

19 MR. FLUMENBAUM: Good morning, Your Honor. Martin  
20 Flumenbaum from Paul Weiss, representing ECN.

21 As Your Honor stated at the outset, the withdrawal of  
22 the reference is often deferred until the bankruptcy court has  
23 ruled on pre-trial matters and on dispositive motions. And  
24 why is that done? To further judicial economy, to expedite  
25 the bankruptcy process, and to prevent forum-shopping, in this

1 case. In this case, all of those factors apply even beyond  
2 the motion-to-dismiss stage. And let me first deal with the  
3 motion-to-dismiss stage, because what Defendants are doing in  
4 the -- Defendants in the adversary proceeding are doing are  
5 asking you to actually withdraw the reference before the  
6 motion to dismiss. And I think Your Honor is clearly the  
7 right court to deal with those issues that relate to the  
8 motion to dismiss.

9 First of all, the issue of related-to, subject-matter  
10 jurisdiction, is something that's right down the center of the  
11 fairway for this Court to hear. We submit that the evidence  
12 is overwhelming with respect to related-to jurisdiction in  
13 this particular case, but in any event it is this Court that  
14 should make that determination.

15 And as Your Honor alluded to, the issue of personal  
16 jurisdiction in this case is also right down the fairway,  
17 because what happened in this case is that this French entity  
18 came to this Court voluntarily to assume the benefits of this  
19 court. It voluntarily appeared in the bankruptcy. It  
20 submitted proofs of claim for six million dollars in the  
21 bankruptcy. It participated as an unsecured -- on the  
22 committee of unsecured creditors --

23 THE COURT: Um-hum.

24 MR. FLUMENBAUM: -- in the bankruptcy. It appointed  
25 a representative of its Texas affiliate to sit on the



1 unsecured-creditors' committee, in the bankruptcy. And it  
2 is -- and to the settlement in the bankruptcy, which  
3 specifically reserves the claims that ECN is bringing against  
4 Airbus in the bankruptcy court, in the jurisdiction of this  
5 Court.

6 So, they have -- they've recognized the precise  
7 claims that we do. And we think our claims are -- we value at  
8 about a hundred million dollars. We think that --

9 THE COURT: Your claims against Airbus?

10 MR. FLUMENBAUM: Airbus. We think that CHC has  
11 claims that could be ten times ours. They own fifty -- owned  
12 or leased fifty-one of these super-helicopters at the time of  
13 the bankruptcy.

14 And as Your Honor knows, when they came before you in  
15 the bankruptcy proceeding, they specifically represented to  
16 you that this crash in Norway impacted their economics, their  
17 fleet reorganization, their statements that they made in open  
18 court and in their SEC filings that relate to that.

19 So, this is not just a tangential relationship. As  
20 we stated in our complaint, if the bankruptcy had proceeded,  
21 we believe that if we had recovered against Airbus in this  
22 proceeding, it would reduce our claims, because we would be  
23 collecting twice in some ways for the value of the aircraft --

24 THE COURT: Well, help me understand --

25 MR. FLUMENBAUM: -- because we had leased -- we had

Colloquy

14

1 leased those. We bought those aircraft from CHC.

2 THE COURT: Right.

3 MR. FLUMENBAUM: CHC bought them from Airbus.

4 THE COURT: Right.

5 MR. FLUMENBAUM: So -- and then we've leased them  
6 back to CHC.

7 THE COURT: Understand.

8 MR. FLUMENBAUM: CHC rejects the lease. We have  
9 damages as a result of that. But --

10 THE COURT: But how -- those are different --

11 MR. FLUMENBAUM: But the value of those leases form a  
12 significant value of what the aircraft is worth. The --

13 THE COURT: You're losing me. I mean, I understand  
14 that your claim here is a rejection claim.

15 MR. FLUMENBAUM: Of course.

16 THE COURT: And that's purely a statutory claim  
17 created by Section 365 of the Bankruptcy Code. Your claim  
18 against Airbus is very different from that.

19 MR. FLUMENBAUM: Very -- it's a different claim.

20 THE COURT: And I don't see how that's a credit  
21 against your claim --

22 MR. FLUMENBAUM: If we --

23 THE COURT: -- ever.

24 MR. FLUMENBAUM: If -- well, if we collected a  
25 judgment against Airbus, Airbus, I believe, will say, we

## Colloquy

15

1 collected some of our damages in the bankruptcy proceeding via  
2 CHC and they will use that as a setoff. I believe that's a --

3 THE COURT: Wait. Wait, wait. How? I hear you that  
4 you fear that, but I'm asking you, as a matter of legal  
5 principle -- they're completely separate damages --

6 MR. FLUMENBAUM: Well, the value of the --

7 THE COURT: -- as I'm seeing them.

8 MR. FLUMENBAUM: -- the ultimate value of the  
9 aircraft depends on our ability to lease it and receive income  
10 as a result of it. We're a leasing company. So, we have  
11 value of the aircraft; and the lease prices and the lease  
12 amounts that one could get from utilizing that, it will be  
13 part of what our damage claim will be against Airbus. So, to  
14 the extent we've recovered a very small piece in this  
15 bankruptcy proceeding, I believe that that would be credited  
16 against our recovery against Airbus.

17 But in any event --

18 THE COURT: Okay, but as an unsecured creditor --  
19 okay. Well, I hear you, but we're talking about --

20 MR. FLUMENBAUM: I --

21 THE COURT: -- a very --

22 MR. FLUMENBAUM: I clearly haven't --

23 THE COURT: -- de minimis amount of credit.

24 MR. FLUMENBAUM: Well, it's turning -- it will turn  
25 out to be a de minimis amount, as a result of -- as a result

## Colloquy

16

1 of where we are today in connection with the bankruptcy. But  
2 it will -- but the -- as Your Honor also stated, the action  
3 itself -- again, past the motions to dismiss, the action  
4 itself will have a direct impact on the estate if there's a  
5 liquidating trust that's created or even if no liquidating  
6 trust is created. It will be part of the assets of the  
7 reorganized entity at --

8 THE COURT: Well, but I'm not convinced of that in  
9 the same way you are, but now I feel like we're arguing a  
10 motion to dismiss, and --

11 MR. FLUMENBAUM: Well --

12 THE COURT: -- I haven't properly prepared for that,  
13 although certainly all of this is a bit intertwined.

14 But CHC's claims -- I mean, you own the claims --

15 MR. FLUMENBAUM: With respect to five --

16 THE COURT: -- to the five aircraft.

17 MR. FLUMENBAUM: Correct. CHC owns a different  
18 claim --

19 THE COURT: With respect to forty-five other Pumas --

20 MR. FLUMENBAUM: Correct.

21 THE COURT: -- that they purchased from Airbus.

22 MR. FLUMENBAUM: Correct.

23 THE COURT: So, you own all of the claims here with  
24 respect to defective manufacture, products liability, and all  
25 that, because you were the ultimate owner of those aircraft?

Colloquy

17

1 MR. FLUMENBAUM: Of those five.

2 THE COURT: Of those five.

3 MR. FLUMENBAUM: Correct.

4 THE COURT: So --

5 MR. FLUMENBAUM: And CHC has a companion claim, which  
6 they've reserved the rights to bring in their settlement with  
7 Airbus --

8 THE COURT: Well, they have the ability, if they  
9 later choose to, to bring claims related to the forty-five  
10 other helicopters. And I'm rounding.

11 MR. FLUMENBAUM: Yes.

12 THE COURT: I think --

13 MR. FLUMENBAUM: Correct.

14 THE COURT: -- they had fifty-one; so, it'd be forty-  
15 six.

16 MR. FLUMENBAUM: Right.

17 THE COURT: So -- but again, that's --

18 MR. FLUMENBAUM: So --

19 THE COURT: -- with respect to -- I don't know; are  
20 they the same models or are they different models?

21 MR. FLUMENBAUM: Same models. The same models.

22 THE COURT: I'm not sure --

23 MR. FLUMENBAUM: Obviously it's --

24 THE COURT: -- that's quite right.

25 MR. FLUMENBAUM: Well, there's --

## Colloquy

18

1 THE COURT: But --

2 MR. FLUMENBAUM: -- certainly overlap between the  
3 LS332s (sic) and the 225s. They are in that Super Puma  
4 category --

5 THE COURT: Well, I --

6 MR. FLUMENBAUM: -- which has been grounded.

7 THE COURT: I understand that, but --

8 MR. FLUMENBAUM: Yeah. But they would have the same  
9 claim for a defective gearbox that we're alleging. And it had  
10 been my thought, when we brought this claim, that we would be  
11 proceeding arm in arm with the debtor against Airbus, because  
12 this was such a significant asset of the estate, that they  
13 would bring this lawsuit and we would be working together with  
14 the debtor to bring these claims in this proceeding, together,  
15 to do that.

16 Now, for whatever reasons, they haven't done that  
17 yet. Whether they will or will not, I don't control.

18 THE COURT: Right.

19 MR. FLUMENBAUM: But that doesn't mean that we don't  
20 have proper jurisdiction here from the outset, because you  
21 measured jurisdiction --

22 THE COURT: Okay, but now you're focused way too much  
23 on the motion to dismiss, and that's set for a different day.  
24 So --

25 MR. FLUMENBAUM: So, what --

Colloquy

19

1 THE COURT: So, let's focus on the withdrawal of  
2 reference, because --

3 MR. FLUMENBAUM: Okay.

4 THE COURT: -- they'd like the reference withdrawn  
5 now. I've already told them that I'm not wildly enthusiastic  
6 about that, because I think the motion to dismiss raises  
7 issues that the district court would at least prefer that I  
8 grapple with in the first instance and make a recommendation  
9 on. But you want me to keep it for all --

10 MR. FLUMENBAUM: Right.

11 THE COURT: -- pre-trial proceedings. And, no  
12 offense, I'm not a products-liability lawyer --

13 MR. FLUMENBAUM: Well --

14 THE COURT: -- so, why --

15 MR. FLUMENBAUM: -- it --

16 THE COURT: -- why would I keep it, if it survives  
17 the motion to dismiss, once you get into those kinds of  
18 discovery --

19 MR. FLUMENBAUM: Your --

20 THE COURT: -- disputes?

21 MR. FLUMENBAUM: Your Honor has the discretion,  
22 obviously, not to keep it at that point. But I do think that  
23 there will be at some point an intersection between this  
24 debtor's estate and this claim.

25 THE COURT: How? I mean, the --

Colloquy

20

1 MR. FLUMENBAUM: The --

2 THE COURT: -- the itty-bitty credit -- this  
3 bankruptcy case is going to be long closed --

4 MR. FLUMENBAUM: No, no, the --

5 THE COURT: -- by the time you ever get to trial.

6 MR. FLUMENBAUM: The debtor's estate has reserved the  
7 right to bring their claims against Airbus before you in this  
8 court, for the negligence, for the --

9 THE COURT: Right.

10 MR. FLUMENBAUM: So --

11 THE COURT: But that's not going to affect my  
12 estate -- my -- the bankruptcy estate will be concluded.

13 MR. FLUMENBAUM: Well, but --

14 THE COURT: That claim is going to have re-vested,  
15 assuming I confirm the plan --

16 MR. FLUMENBAUM: Right.

17 THE COURT: -- which is a big assumption; I'm not  
18 saying that. But assuming I confirm the plan next week or  
19 shortly thereafter, the cause of action re-vests in the  
20 reorganized debtors and there is no longer a bankruptcy estate  
21 against which to have an impact.

22 MR. FLUMENBAUM: They've res -- but they've reserved  
23 the right to bring that claim bef --

24 THE COURT: Well, of course, but that --

25 MR. FLUMENBAUM: -- in this --



## Colloquy

21

1 THE COURT: -- the reorgani --

2 MR. FLUMENBAUM: -- in this proceeding --

3 THE COURT: No. They're not --

4 MR. FLUMENBAUM: -- in this court.

5 THE COURT: They're not going to -- ain't happening.

6 If the case is over -- and that's why Mr. Youngman is here  
7 today at my request; he may have been here anyway. But I want  
8 to know. But I think you misspeak. They aren't planning to  
9 bring that lawsuit here.

10 MR. FLUMENBAUM: I don't know what they're planning,  
11 but I thought they've reserved the right to do so.

12 THE COURT: Well, I'll be honest with you. Have you  
13 read the Fifth Circuit's decisions on post-confirmation  
14 jurisdiction? Because if you have, you will know that that  
15 ain't happening. So, I put that on a virtually -- no chance  
16 that this Court would conclude that it had post-confirmation  
17 jurisdiction. I'll be honest; I'm thinking jurisdiction's a  
18 bit of a stretch pre-confirmation, with respect to your  
19 lawsuit.

20 Clearly, if the debtor chose to sue Airbus here and  
21 there was personal jurisdiction -- I mean, it -- well, I don't  
22 want to get into the motion to dismiss. But I think you're  
23 overly optimistic as to what the debtor's thinking. I do not  
24 think the debtor has any plans. But we'll ask Mr. Youngman,  
25 at the conclusion of this, if the debtor had any thought in

1 its imagination that it would file a lawsuit later, as a  
2 reorganized debtor, against Airbus and its entities, in the  
3 bankruptcy court. I'm pretty sure Mr. Youngman's going to  
4 tell me no, that's not what they ever thought.

5 But again, even if that is what they were hoping for,  
6 for some unknown reason, I don't think -- I don't think it  
7 would pass the Fifth Circuit post-confirmation jurisdiction  
8 test.

9 MR. FLUMENBAUM: Well, I guess it would depend on  
10 when this bankruptcy-estate process is fully completed. And  
11 as I said, I -- maybe I misread their settlement agreement  
12 with Air -- their proposed settlement agreement with Airbus,  
13 but I thought they reserved, in that, the right to bring it in  
14 this court.

15 But my point going forward is that, to the extent  
16 that there is --

17 THE COURT: And maybe they did. I haven't studied  
18 that settlement agreement yet. That's set for next week.

19 MR. FLUMENBAUM: Right.

20 THE COURT: I got lots of time --

21 MR. FLUMENBAUM: I understand, Your Honor.

22 THE COURT: -- to think about that.

23 MR. FLUMENBAUM: But I don't disagree with Your Honor  
24 that once the motions to dismiss are determined, then  
25 especially if there's no ancillary matter here that relates to

1 the same kinds of issues -- I do not regard the product-  
2 liability issues in this case as going to be so complicated or  
3 so difficult. There's going to be a final report issued by  
4 the Norwegian authorities in April of this year, which will  
5 determine at least publicly some of the defects. My guess is  
6 that by the time our case is ready for a jury trial, it will  
7 be an issue for damages as opposed to liability. The legs  
8 don't separate from the body of the aircraft, without some  
9 design problem or some major problem.

10 So, I don't think we believe that by bringing the  
11 case here where we do have jurisdiction, assuming we do have  
12 jurisdiction, that we were going to impose on this Court, in  
13 terms of -- in terms of moving this case forward. In fact, we  
14 were hoping to benefit from the speed at which this Court  
15 normally moves its bankruptcy proceedings, once we believed we  
16 had jurisdiction in this court to do so.

17 So, thank you.

18 THE COURT: Thank you.

19 All right, anything else on the withdrawal of  
20 reference, other than I would like to hear Mr. Youngman --  
21 just what the debtor's thinking is, at some point.

22 Mr. Katz, please.

23 MR. KATZ: Your Honor, Jason Katz and Eric Strain on  
24 behalf of Airbus Helicopters (SAS).

25 Quickly, just a few rebuttal points and I'll sit

1 down. Counsel for ECN mentioned some sort of design defect  
2 when dealing with that crash, in order -- we'd just obviously  
3 object to that and say that there's no evidence, before this  
4 Court, of what happened there and really it's not pertinent to  
5 the motion to withdraw the reference, and --

6 THE COURT: Agree.

7 MR. KATZ: -- it's just an alleged -- allegation that  
8 ECN's making.

9 Something that I, when reviewing this, found  
10 interesting, when I first reviewed the complaint, I just  
11 assumed that the helicopter crash in Norway belonged to -- was  
12 a leased helicopter by the debtor. I was wrong. ECN owns  
13 five of the helicopters that they're suing on, but that's  
14 not -- those helicopters that the debtor leased, that wasn't  
15 in the crash. They're just making a big to-do about these  
16 ground leaks, and I understand why, but it's just completely  
17 unrelated to the five helicopters before -- in this case.  
18 It's just --

19 THE COURT: So, the helicopter that crashed was not a  
20 helicopter leased -- that the debtor leased from ECN?

21 MR. KATZ: That's my understanding, Your Honor. And  
22 while I just assumed it was, I was wrong. And I think that  
23 that's correct.

24 I reviewed the declaration in support of the first-  
25 day motions, I reviewed the disclosure statement, because ECN

1 keeps on making a big deal about my client's helicopter's the  
2 reason why these companies are in bankruptcy. And I just  
3 wanted to make sure that that's what the debtor had been  
4 saying in this case, before this Court, since I don't  
5 represent Airbus in the main case.

6 And I got to tell you, Your Honor, when I read the  
7 declaration in support of the first-day motion and I reviewed  
8 the disclosure statements, what I saw was the debtor said that  
9 they -- their business is to -- they operate in the oil-and-  
10 gas industry and that they lease out or -- these helicopter  
11 services and maintenance to companies that deal in the oil-  
12 and-gas industry.

13 And while they reserve their rights to serve -- to  
14 sue Airbus at a later date over whatever claims they might  
15 have about my client's helicopters, what I understand is that  
16 the big reason why these companies were in bankruptcy is  
17 because they had a downturn in revenue due to the oil-and-gas  
18 economy. And that's what I read, Your Honor. I just wanted  
19 the Court to understand that I just think Airbus disagrees  
20 that they were the reason why these companies were in  
21 bankruptcy.

22 That's all I've got, Your Honor.

23 THE COURT: Thank you.

24 MR. FLUMENBAUM: Can I just make two clarifications,  
25 Your Honor?

## Colloquy

26

1 THE COURT: Of course.

2 MR. FLUMENBAUM: First, we cited specific references,  
3 in the opening-day statement, to references to the crash and  
4 to the financial impact from that. The SEC disclosures are  
5 very clear in July of 2016; we cited that as well to the  
6 Court. I never said that the crash was a CHC helicopter  
7 leased from ECN. It was a CHC helicopter, however, that --  
8 leased helicopter that did crash.

9 THE COURT: Right, but it was not one it was leasing  
10 from ECN.

11 MR. FLUMENBAUM: It was not one that it was leasing  
12 from ECN.

13 THE COURT: All right. Fair enough.

14 Mr. Youngman, what is the debtor thinking? What  
15 impact, if any, do you feel about this adversary proceeding on  
16 the bankruptcy estate?

17 MR. YOUNGMAN: First, I'm not going to answer your  
18 question directly, but I'll get to it.

19 THE COURT: All right. I'll be patient.

20 MR. YOUNGMAN: First, the debtor did reserve its  
21 rights and claims against Airbus, and of course it did,  
22 because there is some law that would suggest --

23 THE COURT: It would be malpractice --

24 MR. YOUNGMAN: -- if we didn't --

25 THE COURT: -- not.

## Colloquy

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1 MR. YOUNGMAN: Absolutely. Secondly, and I don't  
2 have these numbers down very well, so we'll address it better  
3 at the confirmation hearing if needed; but I believe the  
4 debtors had approximately fifty of this type of helicopter or  
5 the other type, at the filing date, and we've rejected almost  
6 all of those. You may recall that we had an ABL facility that  
7 had some of this type of aircraft, and we put those back to  
8 the lender. And I think we maybe have two of this model that  
9 are owned.

10 So, the forty-five aircraft, I just want to make sure  
11 the Court unders --

12 THE COURT: So, let me just make sure, because we  
13 looked and tried to figure this out and we came to fifty-one.  
14 But fifty's close enough for me, for purposes of these  
15 discussions. So, if I'm hearing you right, the debtor had an  
16 interest in, purchased -- did the debtor purchase all of those  
17 and then enter into, say, leaseback transactions like it did  
18 with ECN, or did the debtor simply lease super-Pumas from a  
19 third party who directly dealt with Airbus? If you know.

20 MR. YOUNGMAN: It's both.

21 THE COURT: Okay.

22 MR. YOUNGMAN: It's both. The ECN was a sale  
23 leaseback.

24 THE COURT: Right. I know that.

25 MR. YOUNGMAN: And I'm not --

## Colloquy

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1 THE COURT: Were there other sale leasebacks --

2 MR. YOUNGMAN: I'm not familiar enough with whether  
3 the rest of them were all sale leasebacks or pure leases.

4 THE COURT: Okay. Okay, but --

5 MR. YOUNGMAN: But in any event, they were leased.

6 THE COURT: -- but, listening check: so, based on  
7 what you just said -- and I know there's no evidence of this,  
8 but just for my frame of reference -- the debtor may own two  
9 Super Pumas outright?

10 MR. YOUNGMAN: Left in the fleet --

11 THE COURT: Well --

12 MR. YOUNGMAN: -- because we've rejected or turned  
13 back to the ABL lenders the other --

14 THE COURT: Owned.

15 MR. YOUNGMAN: -- type of this aircraft.

16 THE COURT: Okay. So, did the debtor, under the  
17 rejection or the surrender, reserve claims against Airbus as  
18 it relates to those helicopters? I guess what I'm getting to  
19 is, on -- if you know; and you may not; you know me. I'm  
20 trying to figure out does the debtor have claims against  
21 Airbus with respect to fifty grounding helicopters, or does it  
22 have claims against Airbus with respect to hypothetically the  
23 two helicopters that it owns outright? And, again, if you're  
24 not prepared to --

25 MR. YOUNGMAN: I'm not --



## Colloquy

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1 THE COURT: -- tell me --

2 MR. YOUNGMAN: I'm not prepared to -- I'm not able to  
3 answer that today. What I am able to answer is that we  
4 reserved any of those claims under our Chapter 11 claim. Did  
5 we -- do we intend to bring them in front of this Court?  
6 Hadn't really thought about that before, but didn't anticipate  
7 that we would be bringing these -- any types of claims of that  
8 nature in front of this Court.

9 THE COURT: Okay, so, again, just, listening check:  
10 So, while you may have reserved that possibility, that  
11 wasn't -- I'm hearing you say that wasn't really what you  
12 expected to be doing.

13 MR. YOUNGMAN: Correct.

14 THE COURT: Okay.

15 MR. YOUNGMAN: My, I guess, main concern -- and I was  
16 going to come to this hearing before the Court suggested maybe  
17 we should. I don't think our Chapter 11 plan should be  
18 upon -- in this jurisdictional dispute. And that's what I'm  
19 trying to prevent. These parties can have whatever litigation  
20 is appropriate, but any delay in confirmation of our Chapter  
21 11 plan, based on what they're doing, of course we're going to  
22 be opposed to that.

23 THE COURT: I don't see how either one of them is  
24 arguing that we should delay confirmation. So --

25 MR. YOUNGMAN: I don't know that they're delaying.

## Colloquy

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1 ECN has suggested that the plan is not proper because it  
2 doesn't specifically put these causes of action into a  
3 litigation trust.

4 THE COURT: But that's a different issue. That  
5 doesn't have anything to do with whether I got jurisdiction  
6 and --

7 MR. YOUNGMAN: Well, it's what I think.

8 THE COURT: -- blah-blah. I mean, if somebody  
9 disagrees, I'd love to hear it. But I see that as purely a  
10 bankruptcy issue, is what rights do they have to dictate what  
11 happens to those claims, as an unsecured creditor.

12 MR. YOUNGMAN: That's fair. I don't know if there's  
13 any suggestion that if there's a litigation trust pursuing  
14 those claims in this court -- which I didn't anticipate there  
15 would ever be those claims pursued in this court, anyway, by  
16 the debtor or a successor. Whether that was somebody's idea  
17 of forming jurisdiction, I'll just leave to the side.

18 THE COURT: Okay.

19 MR. YOUNGMAN: I do want to note that our -- we  
20 reserved our rights and claims.

21 THE COURT: Um-hum.

22 MR. YOUNGMAN: I don't -- didn't anticipate we were  
23 bringing them here. And whether the proceeds are available,  
24 if any that come out of that, it's going to inure to the  
25 benefit of the reorganized debtor. And unsecured creditors

## Colloquy

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1 have ownership interest in the reorganized debtor.

2 Where they sit in the capital structure, I can't  
3 help. So, if they're arguing that that's not as much as they  
4 want, I can't fix where they sit in the capital structure,  
5 but --

6 THE COURT: Where it would be helpful for me to  
7 understand as part of confirmation, I think, is where -- which  
8 debtors hold these claims. So who had the sale leaseback  
9 arrangement; who owns them? Because again, unless it's a mere  
10 entity -- I mean, unless the -- just, it would be helpful for  
11 me to have a better understanding of how many of these  
12 helicopters ECN had or has, I mean, that the debtors had or  
13 had -- who was the lessee or the owner of the aircraft? And  
14 obviously, we know where the rejection claims -- we know the  
15 entities against whom the rejection claims have been asserted.

16 MR. YOUNGMAN: Right.

17 THE COURT: So I just would like to see the mirror of  
18 those.

19 MR. YOUNGMAN: Very well.

20 THE COURT: Okay, thank you.

21 MR. YOUNGMAN: Thank you.

22 THE COURT: Did Mr. Youngman's clarifications cause  
23 anybody to want to tell me something more?

24 MR. FLUMENBAUM: Just one additional --

25 THE COURT: Please.

## Colloquy

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1 MR. FLUMENBAUM: -- factor because I do think that  
2 Mr. Youngman acknowledged that there was a  
3 reservation -- yeah, for those claims, as there should have  
4 been, and that they still own at least two of these. There is  
5 also, wrongful death claims that could -- that may be brought  
6 because it was a CHC helicopter, which I'm sure they would  
7 want to -- that crashed that might relate -- that might give  
8 them causes of action against Airbus, as well, from the crash  
9 itself.

10 THE COURT: Okay, but how would they have wrongful  
11 death?

12 MR. FLUMENBAUM: If they are liable to third parties  
13 for -- there were thirteen deaths on that --

14 THE COURT: Uh-huh.

15 MR. FLUMENBAUM: -- on that. If they are liable to  
16 any of those individuals --

17 THE COURT: But that would be a pre-petition claim  
18 here that's being dealt with under the plan.

19 MR. FLUMENBAUM: Well, I -- yes.

20 THE COURT: So there would be no post-confirmation  
21 liability --

22 MR. FLUMENBAUM: Right.

23 THE COURT: -- it would be an unsecured claim in the  
24 case, right?

25 MR. FLUMENBAUM: Yeah, I don't know if

Colloquy

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1 that's -- I -- Your Honor is obviously right, and --

2 THE COURT: Well, I --

3 MR. FLUMENBAUM: -- and I just don't know enough  
4 about the intricacies to determine what happens to that  
5 claim --

6 THE COURT: Well, the --

7 MR. FLUMENBAUM: -- against Airbus.

8 THE COURT: Okay, but the decedent's estate may have  
9 a claim against Airbus, but to the extent they have a claim  
10 against CHC, that's going to be a -- I mean, the crash  
11 occurred pre-petition.

12 MR. FLUMENBAUM: Yeah, a week before.

13 THE COURT: And everybody got notice of the  
14 bankruptcy case, I assume. And so I think as against CHC,  
15 those claims are gone, or will --

16 MR. FLUMENBAUM: That --

17 THE COURT: -- be post-confirmation --

18 MR. FLUMENBAUM: That very well may be, except that I  
19 believe they were -- would be claims that could be brought in  
20 a foreign jurisdiction. Now, I don't know if -- what the  
21 impact would be.

22 THE COURT: Well, if they got notice of the  
23 bankruptcy, case --

24 MR. FLUMENBAUM: Yeah, I don't know.

25 THE COURT: And again, I don't know, but --

## Colloquy

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1 MR. FLUMENBAUM: I don't know, but there is -- but my  
2 basic point throughout the argument has been that there is an  
3 overlap between claims that the debtor in this case has, or --

4 THE COURT: Okay, but now --

5 MR. FLUMENBAUM: -- could have.

6 THE COURT: -- we're just back --

7 MR. FLUMENBAUM: I'm just repeating.

8 THE COURT: We're back to the --

9 MR. FLUMENBAUM: Correct.

10 THE COURT: -- to the motion to dismiss --

11 MR. FLUMENBAUM: Thank you, Your Honor.

12 THE COURT: -- and you're going to get a full hearing  
13 on that.

14 MR. FLUMENBAUM: Thank you, Your Honor.

15 THE COURT: Thank you.

16 All right, let's talk about schedule. And let me say  
17 what I don't think we need to talk about today. Late Friday,  
18 a motion for protective order got filed, and so the -- to the  
19 extent the supplement to the motion for continuance of trial  
20 tried to raise what, I felt like, should have been raised in a  
21 motion for protective order, those issues now have been  
22 formally raised in a motion for protective order if it is not  
23 yet set for hearing.

24 So I don't feel the need to address the specifics of  
25 the protective order. I understand there's a bunch of

1 document requests and all of that. I will tell you, though,  
2 that as part of addressing that motion for protective order, I  
3 feel like you all are -- I don't mean this maliciously,  
4 so -- but I'm going to say it bluntly -- I feel like the  
5 ball's being a little bit hidden. I don't understand, and  
6 nobody tells me, who these people are; what facts anybody  
7 thinks they're going to testify to; you want me to quash two  
8 depositions of two nonparty witnesses, but I don't know who  
9 they are or what they might know, how that has any impact on  
10 the jurisdictional question or not, et cetera.

11 So to the extent we're going to hear that motion for  
12 protective order at some point -- presumably somebody is going  
13 to ask for it to be set -- there is a whole lot more  
14 information that I need in order to properly evaluate it. And  
15 I don't feel like I got it in either the supplement. Frankly,  
16 I quickly reviewed the motion for protective order; it's still  
17 not there. Or in the response to the motion for continuance,  
18 I mean, again, everybody is keeping it at 10,000 feet; I'm not  
19 a 10,000 foot person. If you really want me to evaluate those  
20 issues, you're going to have to tell me much more about them  
21 so that I feel like I'm not just making it up as we go along.

22 Now, the motion for continuance: It seems to me that  
23 everybody agrees we aren't going to trial at the current  
24 setting; that's the good news. The bad news is, you disagree  
25 over when we should go to trial. Let me give you some

1 thoughts that I have.

2           It makes sense to me that discovery should be limited  
3 to the jurisdictional issue until I have made a recommendation  
4 to the district court on the motion to dismiss. I would  
5 like -- while I'm thinking about it, I would like some  
6 supplemental briefing from the parties on the motion to  
7 dismiss related to: do you think I can finally adjudicate it,  
8 or do you think it has to be a proposed recommendation to the  
9 district court? We've started looking at that, but you all  
10 don't address that, and I would like the parties' positions on  
11 that with authority, please, as soon as possible so that we  
12 can put that into the mix before the hearing currently set for  
13 the 28th.

14           My reaction -- and again, this all gets intertwined  
15 so now I'm going to do what I told you guys not to do,  
16 although you did it anyway. My reaction is that jurisdiction  
17 is a stretch here. It's a clever stretch, and I may  
18 ultimately conclude I got it, but it's taking existing law,  
19 best I can tell at the moment. And again, we aren't done  
20 preparing. But then ooching (sic) it one step further.

21           Is there a conceivable effect on the bankruptcy case?  
22 Maybe because the debtor does have two of these helicopters  
23 that it owns itself, it has other helicopters, but it's pretty  
24 tenuous. And again, conceivable effect on the estate being  
25 administered in bankruptcy is a broad test, I'll spot you



1 that. And it's not just the Fifth Circuit that thinks it's a  
2 broad test. I mean, that's the old Pacor test from the Third  
3 Circuit, and virtually every other circuit follows it; not a  
4 hundred percent, but most of them do. So it's a pretty broad  
5 jurisdiction.

6 But the effect here is fairly remote, and the  
7 bankruptcy estate may be concluded well before this case ever  
8 goes to trial. But again, you assess jurisdiction at the time  
9 of the filing, so -- but again, it's -- personal jurisdiction  
10 seems to be the bigger mess to me. Yes, Airbus filed claims  
11 in this case Airbus was scheduled as a creditor by  
12 the -- certain of the debtors -- two of them, I think, as a  
13 trade creditor. I take it because Airbus serviced the Super  
14 Pumas and maybe sold parts, and that kind of stuff.

15 We have not yet seen the proofs of claim because  
16 they're filed, not with us but with KCC, but we're going to  
17 get copies of those claims so that we understand what the  
18 proofs of claim were for. But I'm guessing because the debtor  
19 scheduled it as a trade creditor that that's what it is; it's  
20 for parts and services and maintenance and that kind of stuff.

21 And so yes, Airbus certainly consented to this  
22 Court's jurisdiction over it when it filed those claims. But  
23 most of the cases are dealing then with the debtor suing  
24 Airbus, and Airbus saying, oh, no, no, no. And the Court  
25 saying, wait a minute, you subjected yourself to the

1 jurisdiction of the Bankruptcy Court; too bad, so sad. It's  
2 like, the tar-baby, you put your hands out and you touched us  
3 and now we're going to touch you back. But I'm struggling at  
4 the moment that them consenting to the jurisdiction of the  
5 Bankruptcy Court by filing proofs of claim, and thus, being  
6 stuck if the debtor chose to sue them here, if I otherwise  
7 thought that was a related-to case, which it clearly would be  
8 because it would be bringing debtor claims against them that  
9 would benefit creditors; blah-blah.

10 I'm struggling that that lets a nondebtor third party  
11 assert a claim against them, and assert that they waived  
12 personal-jurisdiction arguments as against a nondebtor. Man,  
13 if that works, wee, I may be glad I'm closer to retirement  
14 than not at this point because that would be really broad  
15 personal jurisdiction.

16 I haven't finely sorted through that, but I'm  
17 struggling a bit with the personal jurisdiction because ECN  
18 doesn't cite us to a single case where that's the situation  
19 where the personal jurisdiction that was allegedly my word  
20 "waived", or the objection of personal jurisdiction was this  
21 against a nondebtor party.

22 Now, again, I hear -- you're going to stand up and  
23 tell me next -- on the 28th that -- well, but it's -- the  
24 debtor bought these helicopters and the debtor has very  
25 similar claims and I get that. But boy -- so I'm being asked

1 to go where no judge has gone before, best we can tell, on  
2 personal jurisdiction; and I've done that before, and that's  
3 okay if I think that's right. But it seems like it's a bit of  
4 a stretch.

5 Because I think at the moment, the jurisdictional  
6 issues are interesting and may be a stretchy, doing a lot of  
7 discovery on the merits doesn't seem appropriate to me right  
8 now. And I'll be honest, ECN argues, well, it's all  
9 intertwined so we've got to do the merits; I don't understand  
10 that. That may be a shortcoming that I'm not sophisticated on  
11 products-liability issues, but it seems like that's a little  
12 bit of a copout as to why you want to keep trudging ahead with  
13 pretty broad discovery. So that's part of why I'm saying I  
14 need much better information about why the jurisdictional  
15 issues and the merits are so heavily intertwined because it  
16 seems to me that jurisdiction is pretty narrow. Does Airbus  
17 do business here?

18 Again, I don't want to define all of those issues  
19 because I've not seen enough to understand, but I want to  
20 understand what the real nub of the fuss over the discovery  
21 is. And I wanted to share these thoughts with you because you  
22 all are really good lawyers, which I love having in my court,  
23 but that then puts a burden on you to try and work through  
24 this. And if a little bit of help from me in terms of what my  
25 thinking is informs that process, I thought that might be

1 productive.

2           So my inclination is to think that we ought to focus  
3 on the discovery that's necessary to decide the motions to  
4 dismiss. And maybe some of what's being asked for is  
5 perfectly appropriate for that. Again, I didn't spend a lot  
6 of time this weekend on that, particularly after the motion  
7 for protective order was specifically filed Friday evening.  
8 But those are my thoughts that let's get past the  
9 jurisdictional issue. If I conclude that we have  
10 jurisdiction, and I conclude that we should not abstain from  
11 exercising it, then we can talk more about merits discovery  
12 and other things.

13           Arguing about the trial setting, I mean, again, if we  
14 limit discovery in the short term to the jurisdictional  
15 issues, again, however broadly that may have to be, crafted,  
16 it seems to me that it's sort of a light switch, right? If I  
17 recommend that the district court abstain, or I recommend that  
18 we don't have jurisdiction, or I conclude we don't have  
19 jurisdiction, and I think I can decide that issue. Again,  
20 that's why I'd like your thoughts on what I can and can't do.  
21 Then there's no merits discovery that's necessary until after  
22 the district judge accepts the recommendation or whatever.

23           If on the other hand, I conclude that tenuous though  
24 it may be, there is personal jurisdiction, there is subject-  
25 matter jurisdiction, and that I think Judge Cummings would

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1 love to try this case, then at that point, of course, it's  
2 time to begin the merits process. So I'm sort of inclined to  
3 think what we may need to do is hang loose on when the case is  
4 going to go to trial until we get past the motion to dismiss.  
5 Just because I think we will be better informed about that and  
6 we won't agonize too much over the timing of trial.

7 And again, if I'm right, I'm not even sure I'm the  
8 right person to target the trial date, right, because if my  
9 recommendation on the motion to withdraw the reference is that  
10 I am going to hear and either determine or make a proposed  
11 ruling with respect to the motion to dismiss, but then the  
12 case should be withdrawn, then frankly, it's either Judge  
13 Cummings himself who's going to decide trial setting. I mean,  
14 we can have a scheduling order in place that at least, I  
15 think, makes sense that we're working toward, but at the end  
16 of the day, Judge Cummings is going to decide that, or some  
17 magistrate judge who he would normally turn to to assist him  
18 with those sorts of things.

19 But I do think -- we all agree we aren't going to  
20 trial at the current setting. It makes sense to me to stay  
21 deadlines temporarily, limit discovery to that necessary to  
22 the jurisdictional issue, subject to the hearing on the motion  
23 for protective order, but again, to give you preliminary  
24 thoughts on that, and then see what happens with respect to  
25 dismissal and abstention because that will much better inform

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1 what the schedule moving forward should or shouldn't be.

2 Does that make any sense to the parties?

3 Yes?

4 MR. FLUMENBAUM: Your Honor, that makes sense to us;  
5 again, Martin Flumenbaum for ECN. That makes sense for us.

6 The problem that we're going to have is that Airbus  
7 is taking an overly narrow view of what jurisdiction is  
8 appropriate. We have subpoenaed Kevin Cabanas (ph.), for  
9 example, who Your Honor is familiar with, is the name of the  
10 representative that was appointed --

11 THE COURT: I'm not, but thank you for assuming I  
12 was. He's -- I take it, he's the person who sits on the  
13 committee?

14 MR. FLUMENBAUM: Sits on the committee. And  
15 they've --

16 THE COURT: Okay, what's he going to tell you?

17 MR. FLUMENBAUM: Well, I'm going to get contacts  
18 between him and Airbus related to this proceeding. I'm going  
19 to get --

20 THE COURT: But how does that --

21 MR. FLUMENBAUM: Because you're --

22 THE COURT: -- help you with bankruptcy?

23 MR. FLUMENBAUM: Because I believe that it -- this is  
24 not just a situation where you file a proof of claim.

25 THE COURT: Right.

1 MR. FLUMENBAUM: This is where you actively  
2 participate, and in structuring the settlements in obtaining  
3 whatever benefits you're going to obtain for yourself for  
4 Airbus France in this proceeding.

5 THE COURT: Well, but hang on. But okay, so I mean,  
6 just help me understand because, I mean, I hear you, I mean,  
7 but I'm guessing that that could be done by stipulation.

8 MR. FLUMENBAUM: Oh --

9 THE COURT: He was appointed to the committee, he  
10 serves on the committee, the committee has been consulted by  
11 the debtor with respect to settlements, and you bet, he hopes  
12 that he recovers as much as humanly possible on the trade  
13 claims that they've asserted on the case.

14 MR. FLUMENBAUM: And he spoke to representatives of  
15 Airbus France weekly, daily, he raised issues with them as to  
16 how to handle Airbus' --

17 THE COURT: Can I ask a question?

18 MR. FLUMENBAUM: -- claims here. Yeah.

19 THE COURT: Is Airbus France one of the creditors?

20 MR. FLUMENBAUM: Airbus France is the entity that  
21 filed the proofs of claim.

22 THE COURT: I've not seen the claim.

23 MR. FLUMENBAUM: I'm sorry, I've assumed that you --

24 THE COURT: It's okay.

25 MR. FLUMENBAUM: -- Airbus France --

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1 THE COURT: I've never seen the claim.

2 MR. FLUMENBAUM: Airbus France was the only Defendant  
3 in our adversary proceeding --

4 THE COURT: Um-hum.

5 MR. FLUMENBAUM: -- is the entity that filed --

6 THE COURT: Filed the two proofs of claim.

7 MR. FLUMENBAUM: -- the proofs of claim.

8 THE COURT: Okay. But --

9 MR. FLUMENBAUM: It is the entity that appointed  
10 Kevin Cabanas as its representative. Kevin Cabanas, my  
11 understanding is -- and I don't have --

12 THE COURT: Okay, but how does any of that have  
13 anything to do with the crash of the helicopters?

14 MR. FLUMENBAUM: It doesn't have anything -- it  
15 has -- that's why Kevin Cabanas is a pure jurisdiction --

16 THE COURT: Right.

17 MR. FLUMENBAUM: -- witness.

18 THE COURT: Okay, but my point is, is okay, I'm going  
19 to assume all that, yes.

20 MR. FLUMENBAUM: They're not wanting me to --

21 THE COURT: They filed a proof of claim, he's --

22 MR. FLUMENBAUM: They're not letting me depos him,  
23 okay, but I think he's going to have -- he's going to have  
24 conversations with the French -- his French supervisors --

25 THE COURT: Um-hum.



1 MR. FLUMENBAUM: -- as to the bankruptcy proceeding  
2 itself, as to the claims in the bankruptcy committee.  
3 Remember, Airbus also -- Airbus France objected to our 2004  
4 application -- to ECN's application in the bankruptcy  
5 proceeding.

6 THE COURT: Right.

7 MR. FLUMENBAUM: They appeared for that purpose, as  
8 well.

9 THE COURT: Okay.

10 MR. FLUMENBAUM: So this -- I -- well, I understand  
11 Your Honor hasn't made up her mind on jurisdiction, but I  
12 don't think this is a stretch of the cases. I think this is  
13 precisely what those cases entail that when you come into a  
14 jurisdiction --

15 THE COURT: Wait, wait, wait. But you cite me not to  
16 a single case where a creditor filing a proof of claim has  
17 consented to a nondebtor suing them in the Bankruptcy Court.

18 MR. FLUMENBAUM: There generally is no consent to  
19 that, but --

20 THE COURT: Well, but you get my message.

21 MR. FLUMENBAUM: Right.

22 THE COURT: None of your cases are third-party  
23 plaintiffs.

24 MR. FLUMENBAUM: I can't tell you whether that's  
25 right or wrong. I'm sure Your Honor is right --

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1 THE COURT: Well --

2 MR. FLUMENBAUM: -- and we will look for some  
3 additional cases. But if Your Honor is prepared to say the  
4 debtor could have brought these claims in this proceeding --

5 THE COURT: Not these claims; they belong to you.

6 MR. FLUMENBAUM: If the debtor could bring comparable  
7 claims -- similar claims -- of negligence and product  
8 defect --

9 THE COURT: With respect to other aircraft.

10 MR. FLUMENBAUM: With respect to other aircraft that  
11 it owned -- and remember, it owned these aircraft for a  
12 portion of time, as well.

13 THE COURT: For a period of time, yeah.

14 MR. FLUMENBAUM: As well, these very aircraft.

15 THE COURT: But do you think the debtor could bring  
16 the claims you're asserting?

17 MR. FLUMENBAUM: I don't think the debtor could bring  
18 our claims; I don't.

19 THE COURT: I don't, either.

20 MR. FLUMENBAUM: I don't. But they certainly have  
21 similar or comparable claims that they could bring. And if  
22 Your Honor --

23 THE COURT: I agree with that.

24 MR. FLUMENBAUM: And if Your Honor would have  
25 jurisdiction for those, I don't think logically and

1 jurisprudentially, it makes any difference whether we are the  
2 creditor. They have come into the jurisdiction for the  
3 purpose of --

4 THE COURT: To --

5 MR. FLUMENBAUM: -- obtaining a benefit.

6 THE COURT: To recover against the debtor; not  
7 against you.

8 MR. FLUMENBAUM: Well, but that is a choice they  
9 make. And there are many debtor -- there are many claimants,  
10 especially from abroad, who make a decision not to subject  
11 themselves --

12 THE COURT: Because they don't want the debtor to get  
13 jurisdiction --

14 MR. FLUMENBAUM: Well --

15 THE COURT: -- over them, yes, I completely agree  
16 that -- I've got to tell you, please do look for cases that  
17 are on course because, man, I don't believe you cited us any,  
18 and we can't find any.

19 MR. FLUMENBAUM: But in any event, I think Kevin  
20 Cabanas, if limited to jurisdiction, is an appropriate  
21 witness. Jeffrey Trang who was the other one they are  
22 objecting to in its entirety, is a representative of AHI; he's  
23 the Dallas -- he works for the Dallas entity, which is an  
24 affiliate --

25 THE COURT: Who is AHI?

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1 MR. FLUMENBAUM: It's Airbus Helicopter, Inc. It's a  
2 U.S. entity located in Texas.

3 THE COURT: Okay.

4 MR. FLUMENBAUM: It is an entity that sells the  
5 helicopters --

6 THE COURT: That didn't sell them to you.

7 MR. FLUMENBAUM: It did not sell them to us, but it  
8 sells the helicopters to others in Texas.

9 THE COURT: So what does that -- how does that --

10 MR. FLUMENBAUM: But that's related to the  
11 jurisdiction issue.

12 THE COURT: How?

13 MR. FLUMENBAUM: Because it --

14 THE COURT: You didn't buy from them.

15 MR. FLUMENBAUM: We didn't buy from them, but if  
16 Airbus France puts them into commerce and they are sold in  
17 Texas by a Texas entity, that's an additional factor, I didn't  
18 say it's a sufficient factor, to bring Airbus France into this  
19 jurisdiction.

20 THE COURT: Okay, but don't you already know that  
21 what you've just told me is true? That AHI is selling the  
22 Super Pumas in Texas?

23 MR. FLUMENBAUM: We do.

24 THE COURT: Okay.

25 MR. FLUMENBAUM: We do --

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1 THE COURT: So what is the discovery going --

2 MR. FLUMENBAUM: But the relationship between AHI and  
3 Airbus France is the one that's opaque, for now. We don't  
4 know how that flow goes; we know they manufacture them --

5 THE COURT: Who is they?

6 MR. FLUMENBAUM: -- in France, Airbus France  
7 manufactures designs --

8 THE COURT: And what's the corporate --

9 MR. FLUMENBAUM: Above them is, I think, another  
10 Airbus entity.

11 THE COURT: No, no, are they sister --

12 MR. FLUMENBAUM: I believe they are sister --

13 THE COURT: Is France and AHI sisters?

14 MR. FLUMENBAUM: I believe they are sister entities.

15 THE COURT: So they have common --

16 MR. FLUMENBAUM: I don't think --

17 THE COURT: -- ownership.

18 MR. FLUMENBAUM: Common ownership.

19 THE COURT: But no -- they're sisters.

20 MR. FLUMENBAUM: I believe they are. I think there  
21 might be an intermediary company, which is a Delaware-based  
22 U.S. entity that owns the Texas entity, but I think that is  
23 owned by the ultimate parent that owns both Airbus Helicopter  
24 France and Airbus Delaware.

25 MR. STRAIN: Your Honor, I don't mean to interrupt.

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1 I'm here as national product-liability counsel for the Airbus  
2 companies, and could shed light on some of these issues should  
3 the Court wish to hear --

4 THE COURT: Okay.

5 MR. STRAIN: -- my perspective on ownership issues  
6 and whatnot. Just bringing that to the Court's attention --

7 THE COURT: Excellent.

8 MR. STRAIN: -- should the Court wish to hear.

9 THE COURT: Thank you.

10 MR. STRAIN: So I don't think these facts are  
11 accurate, so I would be happy to clarify.

12 THE COURT: Fair enough.

13 MR. FLUMENBAUM: That's why we wanted depositions, to  
14 determine what --

15 THE COURT: Have we tried to stipulate? I mean,  
16 because it --

17 MR. FLUMENBAUM: We --

18 THE COURT: -- seems like the relationship between  
19 the entities is a matter of -- shouldn't be a big dispute. I  
20 mean --

21 MR. FLUMENBAUM: Right.

22 THE COURT: -- I assume there is corporate charts  
23 that would tell us who owns what and where, and so forth,  
24 and --

25 MR. STRAIN: And in the past, we've done this type of

1 discovery on jurisdictional issues, say by way of an  
2 interrogatory or a request for admission, which then can  
3 narrow any questions that may be needed to direct it in  
4 discovery.

5 MR. FLUMENBAUM: Well, my understanding is that Mr.  
6 Trang has been deposed in another -- in a State Texas case.

7 THE COURT: Yeah, there's two of them, I think.

8 MR. FLUMENBAUM: Correct, in a State Texas case. In  
9 their latest papers, they assume we have a copy of the  
10 deposition transcript; we don't, if they want to provide that  
11 to us that may suffice to avoid another deposition of Mr.  
12 Trang.

13 So those are the two U.S. people that we have sought.  
14 Then we -- they submitted an affidavit from a representative of  
15 Airbus France to this Court; we wanted to depose him. And  
16 we're battling over the location of that.

17 THE COURT: Right.

18 MR. FLUMENBAUM: But they seem to agree that we're  
19 entitled to that. And then we asked for a 30(b)(6). I don't  
20 know if he's the same person for the 30(b)(6); they haven't  
21 identified that. And then we have given them broad discovery  
22 requests that do include merits. We sent them an email, which  
23 narrowed the requests to -- limited to jurisdiction to about  
24 fifteen and about half of what we did. But we haven't had any  
25 further discussion about that.

1 But I'm prepared to limit our document requests on  
2 jurisdiction to -- I heard what Your Honor said about what we  
3 should be focused on for the 28th, and assuming we can get  
4 those three depositions done and get satisfaction on the key  
5 documents that show jurisdiction, show sales in Texas; show  
6 all those things that would give jurisdiction here -- make  
7 jurisdiction supplemental and appropriate.

8 THE COURT: Okay.

9 MR. KATZ: Jason Katz and Eric Strain on behalf of  
10 Airbus Helicopters (SAS). Your Honor, I heard everything you  
11 said and your thoughts on the pending motion, the motion for  
12 protective order that was filed on Friday, and I just have a  
13 few comments that will, hopefully, help the Court on a few  
14 issues as it relates to the motion to dismiss and the related  
15 discovery that may be necessary, limited to jurisdiction.

16 First, I agree that the Court should stay all  
17 deadlines as in we put in our first order that the Court  
18 should do that, and I think that's appropriate in this case so  
19 that we can do limited discovery on the jurisdiction ahead of  
20 the motion to dismiss of February 28th.

21 The -- subject to the protective order, as the  
22 Court's referenced, the stipulation idea seems to be a good  
23 one. Certain things they want to ask these nondebtor  
24 witnesses about, I think, can be done by stipulation. So  
25 we'll go back to counsel for ECN and try to work through



1 these. I never like coming to Court discovery disputes  
2 because I think they should be worked out. Counsel for ECN is  
3 right, he did send us a new one by trying to -- attempting to  
4 limit some of the topic areas in the 30(b)(6) deposition  
5 notice, but it's, I think, our position that there is still  
6 a -- still broad, but we're going to still continue to work  
7 with him to try to get it limited to where we can both agree  
8 what's appropriate.

9 The motion to dismiss is for 12(b)(1) and 12(b)(2).  
10 12(b)(1) is subject-matter jurisdiction, and it is Airbus'  
11 position that because that subject-matter-jurisdiction motion  
12 is not factual, but facial. Discovery is not proper on  
13 jurisdiction in that regard because the Court can just rule on  
14 the papers.

15 The declaration that Airbus submitted in support of  
16 the 12(b)(2) motion, to dismiss for lack of personal  
17 jurisdiction would be appropriate for limited discovery, Your  
18 Honor. And we're not disputing that, and in fact, that's what  
19 we've been telling them from the very beginning. I think the  
20 evidence that the Court will see that's been attached to the  
21 protective order, so we have to go forward on that motion,  
22 shows that, I think, we first emailed counsel for ECN in early  
23 January about what we thought was appropriate going forward,  
24 and we just -- so we were aware of this issue early on. But  
25 the motion to dismiss was filed on January 3rd, and instead of

1 hearing back on limited discovery, we get full-blown discovery  
2 twenty days later, without really much discussion.

3 So the comment about whether the debtor has claims  
4 versus Airbus, if ECN has claims versus Airbus, there just is  
5 no claim by the debtor against Airbus. And I understand that  
6 ECN thinks that they should, but that's just not their  
7 decision, and I don't think it's really relevant, unless it  
8 happens. And then if the debtors decide that they want to  
9 intervene in this adversary, that's their business. But until  
10 they do it, I don't see that the Court is going to have  
11 jurisdiction, but that's an argument for a later time.

12 So we would ask the Court, grant the motion to the  
13 extent that all deadlines under the November 18th, 2016  
14 scheduling order be stayed until further order of the Court.  
15 And that any further amended scheduling order should be  
16 submitted at a later date, depending what happens at the  
17 motion to dismiss level. And we would also ask that the Court  
18 grant the motion limiting the discovery to jurisdictional  
19 issues, subject to the protective order.

20 That's all I've got, Your Honor.

21 THE COURT: Very well.

22 Please.

23 MR. FLUMENBAUM: Martin Flumenbaum for ECN.

24 Just on the comment, Mr. Genereux submitted one  
25 affidavit in this case in support of Helicopter's motion to

1 dismiss; he didn't divide it up between 12(b)(1) and 12(b)(2).

2 THE COURT: Well, but the standard for 12(b)(1) is  
3 the allegations in the complaint --

4 MR. FLUMENBAUM: Correct, if the --

5 THE COURT: -- facially.

6 MR. FLUMENBAUM: -- if it's based solely on the  
7 facial allegations of related-to jurisdiction that there is  
8 conceivably some impact, I'm prepared to accept that. But  
9 they have put -- I thought they were putting in evidence that  
10 challenges that there could be no conceivable impact at the  
11 time of the filing. And if they're saying they haven't, then  
12 I'm prepared to live with that, but I want it to be very clear  
13 that they are accepting the allegations of the complaint as  
14 true.

15 MR. KATZ: Your Honor, if you -- it's Jason Katz and  
16 Eric Strain on behalf of Airbus Helicopters (SAS).

17 The motion to dismiss only cites to the declaration  
18 when referring to the 12(b)(2) motion. So I think that's  
19 clear what our position is on that; we're not going to agree  
20 that the allegations are true in the complaint, that's for --

21 THE COURT: No, no, no, but -- well --

22 MR. KATZ: -- subject to --

23 THE COURT: But --

24 MR. KATZ: For 12(b)(1) purposes --

25 THE COURT: You are not submitting the declaration in

1 support of your 12(b)(1) motion.

2 MR. KATZ: That's correct, Your Honor.

3 THE COURT: All right. And I think we all agree that  
4 the standard in the Fifth Circuit is, as I test the  
5 sufficiency on 12(b)(1), assuming that the allegations in the  
6 complaint are true, and whether or not they are facially  
7 sufficient to state a claim.

8 MR. KATZ: Fair enough, and correct, Your Honor.

9 THE COURT: Okay.

10 All right, so we're down to discovery that's  
11 necessary for the 12(b)(2) motion, so we've made some  
12 progress, even though we're not hearing the motion for  
13 protective order.

14 Well, here's what I want to do: I am going to grant  
15 the motion in part and carry the balance of the motion to the  
16 hearing on the motion to dismiss. We aren't going to reargue  
17 it; we're just keeping the portions that I don't address now  
18 alive, so that they can be addressed then.

19 I'm going to stay the deadlines. I'm going to  
20 continue trial to a date that the Court will set, following  
21 its ruling on the motion to dismiss. And again, that may be a  
22 proposed ruling, but we'll -- because again, there's no  
23 disagreement we should continue trial from its current date;  
24 the dispute is what the reset date should be. We'll stay all  
25 of the deadlines in the current scheduling order, again,

1 subject to the Court ruling on the motion to dismiss. And  
2 that will not stay discovery that may be necessary with  
3 respect to the 12(b)(2) motion, and I'm -- nor does it stay a  
4 hearing if one becomes necessary on the motion for protective  
5 order.

6 And since we've clarified that the discovery only  
7 needs to relate to the 12(b)(2) motion, let's go back and look  
8 at that, counsel for ECN, and see what you really think you  
9 need. And then frankly, do talk about stipulations because it  
10 seems to me that many of the things that you're hoping to  
11 prove to me as it relates to personal jurisdiction, they may  
12 just admit to. Yes, the gentleman is a member of the  
13 committee, and yes, the committee has considered these things,  
14 and yes, he's fully participated in those discussions, and  
15 yes, he talks to somebody at his employer about what he should  
16 be doing. So again, it may well be that those can be  
17 stipulated to and submitted as stipulations to the Court as  
18 opposed to needing to take depositions.

19 MR. FLUMENBAUM: Your Honor, it will take us more  
20 time to work out stipulations than it will be to take a three-  
21 hour deposition of Mr. Cabanas in Dallas and get this all on  
22 the record. And as I said, if Mr. Trang has already been  
23 asked these questions, and they want to give me that  
24 transcript, that may be sufficient.

25 THE COURT: Okay, I'm not going to decide it today.

1 MR. FLUMENBAUM: Yeah.

2 THE COURT: I'm urging you to consider stipulations.  
3 If you elect not to, what I'm trying to do is I don't like  
4 discovery fights; try and work through them.

5 MR. FLUMENBAUM: I appreciate that.

6 THE COURT: If I have to decide them, I will; that's  
7 why I'm here.

8 MR. FLUMENBAUM: Okay.

9 THE COURT: But let's narrow them as much as  
10 possible, and before we move forward on a motion for  
11 protective order, I would want a -- either amended motion or  
12 something that tells me what the live disputes are so that we  
13 don't prepare for a hearing on this many issues, when it's  
14 really down to this many issues because that's just a waste of  
15 my time. And so work together, and see if you can't resolve  
16 as many of these issues as possible, as officers of the Court.  
17 And again, if you can't, that's why there's judges, and I'll  
18 be happy to rule on them, but let's narrow them down so that  
19 we focus on the things that are really important and not on  
20 the peripheral issues.

21 So get with my courtroom deputy about a setting on  
22 the motion for protective order, so we have one if it's  
23 necessary. My hope is, is that it doesn't become necessary;  
24 that you all can work through the issues and agree on what is  
25 or isn't going to happen and get it done. But as I said, if

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1 we do need a hearing, then make it clear to me what the issues  
2 really are, and make it clear to me how what you need is  
3 specifically related to 12(b)(2), or not, as the case may be.

4 All right. What else, gentlemen and lady? Anything  
5 else we need to accomplish today?

6 MR. FLUMENBAUM: Thank you, Your Honor.

7 MR. KATZ: Nothing further from Airbus, Your Honor.

8 THE COURT: Very well.

9 MR. STRAIN: Thank you, Your Honor.

10 THE COURT: Excellent. Thank you all very much.

11 MR. KATZ: May we be excused?

12 THE COURT: You may, thank you.

13 MR. FLUMENBAUM: One -- actually, one thing, Your  
14 Honor. Would you like me to prepare the order and circulate  
15 it, and then --

16 THE COURT: Please.

17 MR. FLUMENBAUM: I'll take care of that.

18 THE COURT: That would be great.

19 MR. FLUMENBAUM: Thank you.

20 THE COURT: Thank you very much.

21 (Recess from 11:09 a.m. until 11:10 a.m.)

22 THE COURT: Mr. Youngman, if you would go to the  
23 podium? Nicole, tell me when you're ready.

24 Okay, Mr. Youngman, I hear you -- I overheard you  
25 speaking to my court recorder about logistics for the

1 confirmation hearing, and I just -- since we're having this  
2 conversation and not everybody is still here, is this  
3 courtroom big enough for the confirmation hearing?

4 I mean, I -- we managed the plan support agreement  
5 hearing in this courtroom. I'm assuming that confirmation  
6 won't be better attended than it, but since you were asking  
7 about your team and so forth, I just thought I'd ask. And I  
8 don't know if there's another courtroom available, but we can  
9 check, we just need to know. And you don't have to answer  
10 this second, but I just, again, wanted to make a record of  
11 what you and I were talking about, given that we have  
12 objections to confirmation.

13 MR. YOUNGMAN: If I could ask the Court to, perhaps,  
14 check if there is a larger courtroom available.

15 THE COURT: And what do you need in that courtroom?  
16 Do you need electronics in that courtroom? I mean, do you  
17 want to use the ELMO, or is just a courtroom?

18 MR. YOUNGMAN: A courtroom, I think, would  
19 be -- because I don't think we need any of the electronics.

20 THE COURT: Could you check with the objectors and  
21 confirm that they don't anticipate using electronics, and then  
22 just get back with Ms. Harden, and we will -- once we know the  
23 answer to that, we will reach out to the district court to see  
24 if there is a larger courtroom that we might use for a couple  
25 of days.



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1 MR. YOUNGMAN: Very well, and if not, we'll certainly  
2 make do.

3 THE COURT: Yeah, we'll squeeze, but it just hit me  
4 when you -- when I overheard you that we might be tight in  
5 here.

6 MR. YOUNGMAN: Well, we were pretty tight for the PSA  
7 hearing.

8 THE COURT: We were, but it worked. But anyway, just  
9 let me know. And the critic -- my guess is that there would  
10 be a courtroom available, it might not be an electronic  
11 courtroom. But if people feel like they need electronics, so  
12 be that.

13 And secondly, the complication is always, we use a  
14 recorded transcript --

15 MR. YOUNGMAN: Oh.

16 THE COURT: -- and many of my district judge  
17 colleagues use a live court reporter. And we have portable  
18 equipment that may work. So anyway, it's not as  
19 straightforward as it seems, but tell me what you need and  
20 we'll see if there is a courtroom that can accommodate. If  
21 not, we'll just all be good friends in here, and we'll turn  
22 the air conditioning way down.

23 MR. YOUNGMAN: I'll admit to not paying as much  
24 attention, but the PSA hearing was pretty full; is that right?

25 THE COURT: It was full, but I don't remember anybody

Colloquy

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1 standing, other than Mr. Fisher.

2 MR. YOUNGMAN: Or those two poor guys sitting on the  
3 boxes.

4 THE COURT: Yeah, except for Mr. Fisher, who was  
5 doing that, but he's a former law clerk so it's okay.

6 I knew you'd like that, Mr. Genender.

7 So just let us know, and we'll see. But sooner  
8 rather than later so that we can get that issue on the  
9 district court's radar that we might be interested in a  
10 different courtroom.

11 MR. YOUNGMAN: Very well, thank you.

12 THE COURT: You're welcome.

13 We're off the record, Nicole, thank you.

14 Oh, also --

15 (Break in audio)

16 THE COURT: -- something to store exhibits on so that  
17 I'm not -- so that I can more easily access, like, how many  
18 volumes of exhibits do we think we'll need.

19 MR. YOUNGMAN: Can I confer just a moment?

20 THE COURT: Yeah, and confer with the other objectors  
21 so that --

22 MR. YOUNGMAN: What I was thinking is --

23 THE COURT: -- we get some sense of, is it ten  
24 notebooks full of exhibits, or is it twenty-five notebooks  
25 full of exhibits, or is it five?

Colloquy

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1 MR. YOUNGMAN: I think it depends on if we  
2 reincorporate the PSA exhibits. It sounds like we're headed  
3 that way, you may want that shelf behind you again.

4 THE COURT: Yeah. Yeah, okay. Just let us know,  
5 when you let us know about the electronics.

6 MR. YOUNGMAN: Very well.

7 THE COURT: Excellent. Good, thank you.

8 (Whereupon these proceedings were concluded at 11:15 AM)

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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 8, 2017

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CLARA RUBIN

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			<b>30b6 (3)</b>	



# **Exhibit X**

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
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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

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Colloquy

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1 THE COURT: right. When the parties are ready, I'll  
2 take appearances here in the court room.

3 MR. STRAIN: I guess I'll go ahead.

4 THE COURT: No problem. Please.

5 MR. STRAIN: Good morning, Your Honor. Eric Strain  
6 from Nixon Peabody in New York. I'm here with Jason Katz of  
7 the Hiersche firm here locally. With me today also is Joseph  
8 Ortego from Nixon Peabody in New York, my partner, and Natalie  
9 Sears of Mr. Katz firm.

10 THE COURT: Excellent.

11 MR. STRAIN: Thank you.

12 THE COURT: Thank you very much.

13 MR. STRAIN: Your Honor, one other point.

14 THE COURT: Please.

15 MR. STRAIN: Mr. Katz and I proposed to split up  
16 argument; I'll be handling personal jurisdiction and forum non  
17 conveniens; he'll be handling subject matter jurisdiction and  
18 abstention.

19 THE COURT: Okay, excellent.

20 MR. FLUMENBAUM: Good morning, Your Honor. Marty  
21 Flumenbaum; Paul, Weiss, Rifkind, Wharton & Garrison, for ECN.  
22 With me is my colleague, Pietro Signoracci, and George Barber  
23 has already introduced himself --

24 THE COURT: Indeed.

25 MR. FLUMENBAUM: -- as our local counsel.

## Colloquy

4

1 THE COURT: Excellent. Thank you.

2 Is it the least bit helpful to the parties if I tell  
3 you what I'm thinking about the motions that are before me and  
4 give you something to shoot at?

5 MR. STRAIN: Very much so.

6 THE COURT: All right. It's good news and bad news  
7 for both of you. My tentative thinking is that I have subject  
8 matter jurisdiction. I believe that there is a sufficient  
9 connection, given the very broad test for related-to  
10 jurisdiction, conceivable effect upon the estate being  
11 administered in bankruptcy.

12 I think that potential collateral estoppel effect of  
13 findings, with respect to the product liability claims, at  
14 least as it relates to the debtor-owned helicopters, and as  
15 was pointed out by ECN's counsel, the confirmation hearing  
16 record -- and again, I'm assuming what everyone argued about  
17 in the briefs will actually become part of this evidentiary  
18 record somehow today, and I probably should have waited for  
19 you to do that.

20 But, in any event, it's clear that the debtor does  
21 still own certain of these Super Pumas; and I think that the  
22 collateral estoppel effect of the litigation between ECN and  
23 Airbus could resolve certain issues that the debtors would  
24 then be bound for, either good news or bad news for the  
25 debtor.

## Colloquy

5

1           If ECN wins, presumably, the debtor would seek to use  
2 collateral estoppel effect in its favor. No doubt, if Airbus  
3 wins on the product liability claims, Airbus would attempt to  
4 do the same. That is unquestionably a conceivable effect upon  
5 the estate being administered in bankruptcy.

6           I don't really buy the second potential conceivable  
7 effect because it's just really vaguely referenced in the  
8 paper, and that was sort of a somehow there could be a effect  
9 upon the ECN claim here; that one either needs to be better  
10 explained.

11           But at least, at the moment, that vague comment that  
12 was mentioned briefly at the hearing on the withdrawal of  
13 reference, is not terribly persuasive to me; I'm not seeing  
14 that effect. But I do see how collateral estoppel could  
15 either help the debtor or hurt the debtor later, and I think  
16 that is a conceivable effect upon the estate because of the  
17 fact that the debtor has, I think, four or five of these same  
18 helicopters that were owned -- that are -- remain owned by the  
19 debtor, for which they would have these product liability  
20 claims.

21           So my tentative view is that I likely have subject  
22 matter jurisdiction over the adversary proceeding, because  
23 there is a conceivable effect. But at best, it is related-to  
24 jurisdiction; and, of course, no one has argued to the  
25 contrary. ECN asserted that it was related-to, and obviously

## Colloquy

6

1 Airbus didn't think I had subject matter jurisdiction, but my  
2 inclination is to think that I do.

3 I am struggling, though, with personal jurisdiction.  
4 I've read everything everybody submitted pretty carefully.  
5 And there is a two-pronged test, and there may be sufficient  
6 context to satisfy the first prong of specific jurisdiction.  
7 But the close nexus second prong, I am unpersuaded exists. It  
8 appears to me that ECN's arguments have heavily focused on the  
9 first prong of personal jurisdiction. And again, we're not  
10 talking about general jurisdiction; we're talking about  
11 specific, I think. I don't think -- I think it unlikely that  
12 ECN could show general personal jurisdiction.

13 So I think we're focused on specific personal  
14 jurisdiction, which is a two-pronged test. Perhaps the first  
15 prong is satisfied; I am unpersuaded that the second prong can  
16 be established.

17 Abstention: even assuming that I become persuaded  
18 about personal jurisdiction, I am inclined to abstain. I  
19 don't see a reason for this Court, and of course when I say  
20 this Court, I'm really talking about my good friends upstairs,  
21 since I would not be permitted to try this case in any event;  
22 the parties have not consented to me trying this case.

23 And, in fact, we had the motion to withdraw the  
24 reference to the district court, pending that my report and  
25 recommendation has not been submitted, because I wanted to

## Colloquy

7

1 hear this first, and then basically submit a report and  
2 recommendation on the withdrawal of reference and the motion  
3 to dismiss simultaneously.

4           There's eleven factors for permissive abstention,  
5 which is, of course, what this would be. And at least, from  
6 my perspective, most all of those factors weigh in favor of  
7 abstention. The effect, or lack thereof, on the efficient  
8 administration of the estate, if the Court decides to remand  
9 or abstain, there's no effect on the efficient administration  
10 of this estate if I abstain. The debtor is hoping to obtain  
11 confirmation of a plan; the debtor hopes to emerge from  
12 bankruptcy expeditiously. And this litigation just isn't  
13 going to have any effect on that at all.

14           The debtor is retaining its claims against Airbus  
15 under the plan; if that plan is confirmed, those claims will  
16 be adjudicated between the debtor and Airbus later, if the  
17 debtor so chooses; and by debtor, I mean reorganized debtor,  
18 assuming the plan is confirmed. But it is clear to me that  
19 the debtor has no intention of attempting to prosecute those  
20 claims here, in this Court, or any time soon.

21           So it appears to me that there is no effect on the  
22 administration of the estate; and therefore, that factor  
23 weighs in favor of abstention.

24           The extent to which state law issues predominate over  
25 bankruptcy issues, I think we can all agree there is not a



## Colloquy

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1 single bankruptcy issue in sight in this adversary proceeding.  
2 So we either have state law issues or foreign law issues  
3 between the parties. So, again, that weighs in favor of  
4 abstention, given that the basis for jurisdiction is related-  
5 to jurisdiction.

6 The difficult or unsettled nature of applicable law,  
7 to be honest, I think this one weighs in favor of abstention,  
8 but only slightly; and it's a little hard for me to know. But  
9 obviously, we have products liability issues, the extent to  
10 which those are unsettled at this point, under the law, is  
11 unclear to me; the lawsuit is in its infancy.

12 But to the extent foreign law applies, again, that  
13 will at least be novel, not necessarily difficult; and  
14 certainly, I don't think either I or my colleagues on the  
15 fifteenth floor are incapable of understanding difficult  
16 issues; trust me. But, I do think that, at this point, that  
17 is either neutral or slightly in favor of abstention.

18 Four, the presence of a related proceeding commenced  
19 in state court or other non-bankruptcy proceeding; that simply  
20 doesn't apply; there is no other proceeding pending anywhere.

21 Five, the jurisdictional basis, if any, other than  
22 1334, at least there is no other jurisdictional basis alleged,  
23 except perhaps, supplemental jurisdiction, which doesn't  
24 really work in the Fifth Circuit.

25 So I believe this is a lawsuit that is brought in the

## Colloquy

9

1 Northern District of Texas on the basis of related-to  
2 jurisdiction. So that would weigh in favor of abstention,  
3 because if it's only here, as a result of the bankruptcy case  
4 of CHC, and it has really no effect upon the efficient  
5 administration of the estate, the Court sees no reason why  
6 there would be a need to retain this and decide this here.

7 The degree of relatedness or remoteness of the  
8 proceeding to the main bankruptcy case, similar to the  
9 analysis of factor one, this is pretty remote to the main  
10 bankruptcy case; ECN has not asserted these claims. It's my  
11 impression from what the debtor has advised previously that it  
12 is in discussions with Airbus, with respect to these claims,  
13 and other Airbus issues that affect the business of the  
14 debtors.

15 But again, from the Court's perspective, it appears  
16 that these Airbus claims are the tail wagging the bankruptcy  
17 dog, from CHC's perspective. It did not file the bankruptcy  
18 to address these claims; it filed the bankruptcy for business  
19 reasons. It obviously had a debt load that it was unable to  
20 manage. And under the plan, much of that debt will be  
21 converted to equity assuming that the plan is confirmed.

22 So it appears to me that this lawsuit has very little  
23 direct impact upon the estate, other than the potential  
24 collateral estoppel effect of rulings that may be made, with  
25 respect to the debtor's owned aircraft and product liability

## Colloquy

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1 claims, similar to those that ECN has asserted against Airbus  
2 here, are ultimately asserted by the debtors.

3 Number seven, the substance rather than the form of  
4 an asserted core proceeding; there is no asserted core  
5 proceeding. So that factor simply doesn't apply.

6 The feasibility of severing state law claims from  
7 core bankruptcy matters to allow judgments to be entered in  
8 state court, with enforcement left to the bankruptcy court;  
9 again, that factor really doesn't apply, because there is no  
10 core matter asserted here; so there's nothing to sever. These  
11 are all non-bankruptcy law claims. And from this Court's  
12 perspective, they probably can be better adjudicated  
13 elsewhere.

14 The burden on the Court's docket, I will tell you  
15 that the district court docket here is difficult at the  
16 moment, as I understand it; we are shorthanded in the Northern  
17 District of Texas at the district court level. There are  
18 several vacancies that have not been filled.

19 And, as I understand it, from my district judge  
20 colleagues, their docket is really quite busy. I'm not going  
21 to say that this case would break the back of the district  
22 court, by any means. But I do think, from what I understand,  
23 that given the judge vacancies that have not been filled, my  
24 colleagues are feeling the stress of their existing docket.  
25 And adding to it, unless there's a good reason to, is

1 certainly not something that I think is necessarily  
2 appropriate.

3           The likelihood that the commencement of the  
4 proceeding in the bankruptcy court involves forum shopping by  
5 one of the parties, I'm always a little hesitant to find forum  
6 shopping, so I won't do it here. But I do think that  
7 there -- the plaintiff may be finding a forum that it thought  
8 would be helpful to it.

9           But again, I'm not prepared to base my ruling on a  
10 finding of forum shopping; there is simply not enough evidence  
11 in the record. But the case has such little direct relevance  
12 to this bankruptcy case that it appears to me that there might  
13 be some forum shopping going on.

14           Number eleven, last but not least, the existence of a  
15 right to jury trial. Obviously, there are jury trial rights  
16 here; they've been demanded. And I can't conduct a jury trial  
17 without consent. And frankly, I don't even have consent for  
18 me entering a final judgment without a jury. And the  
19 existence of the jury trial right was at least a basis for the  
20 request for withdrawal of the reference. So that factor would  
21 appear to weigh in favor of permissive abstention.

22           So as I tally the scorecard -- and again, these are  
23 all tentative rulings subject to you all telling me that I've  
24 got it wrong -- it seems like they either don't apply, or they  
25 weigh in favor of me abstaining. And when I say me, I will

1 tell you, here's my view of whether it's me abstaining or it's  
2 me recommending to a district judge that he or she abstain. I  
3 think it's the latter.

4 I think that I must make a recommendation, issue  
5 proposed findings and conclusions to the district court;  
6 that's because I do have subject matter jurisdiction, in my  
7 view. But that subject matter jurisdiction is only related  
8 to, the parties have not consented, and thus I cannot enter a  
9 final order disposing of the matter.

10 So the better part of valor would be to send it up to  
11 the district court, who can have the opportunity to review  
12 proposed findings and conclusions; and we'll see what the  
13 district court thinks on the basis of that.

14 So to recap -- and I'm not going to go through forum  
15 non conveniens, I've taken up enough time right now -- but the  
16 bottom line is I think I probably do have related-to  
17 subject matter jurisdiction; I'm concerned that there is no  
18 personal jurisdiction over Airbus here, focusing mostly on  
19 factor two.

20 And even assuming that I do have personal  
21 jurisdiction over Airbus, my analysis of the abstention factor  
22 strongly suggests to me that I should abstain and let the  
23 parties go litigate this issue, in whatever court of competent  
24 jurisdiction exists.

25 So those are my tentative thoughts. So tell me what

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1 I have misanalysed, in whatever order you wish to proceed.

2 Obviously, Airbus probably goes first, since it's  
3 your motion to dismiss.

4 MR. STRAIN: Thank you, Your Honor. I'll address the  
5 personal jurisdiction issue, since that seems to be a source  
6 of --

7 Your Honor, I'm going to offer you the -- one second.  
8 The defendant's exhibits in (indiscernible).

9 THE COURT: Please.

10 MR. FLUMENBAUM: Your Honor, with respect to  
11 defendant's exhibits, we object to the entry of the letter,  
12 dated February 10th of --

13 THE COURT: Which exhibit is that?

14 MR. FLUMENBAUM: I believe it's Exhibit 2 or B.

15 THE COURT: All right.

16 MR. FLUMENBAUM: That letter is not based on the  
17 record in this case; Your Honor has already commented on that.  
18 I think Airbus has made it the centerpiece of their reply  
19 brief. They quoted the specific paragraph, which Your Honor,  
20 I believe, said in open court yesterday was well beyond the  
21 record, and that there was no support for that.

22 THE COURT: Well, let's be clear, what statement?

23 MR. FLUMENBAUM: It was on page two of their reply  
24 brief, they quoted from a February 10th letter from Weil  
25 Gotshal that --

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1 THE COURT: Okay, but I'm looking at the letter. So,  
2 what --

3 MR. FLUMENBAUM: Oh, I'm sorry.

4 THE COURT: No, and that's fine, I didn't make myself  
5 clear. So if you could look with the letter --

6 MR. FLUMENBAUM: I --

7 THE COURT: -- what are we concerned about?

8 MR. FLUMENBAUM: There -- the letter that was  
9 submitted, this one had to do with -- the letter brief was in  
10 response to Your Honor's suggestion --

11 THE COURT: Right.

12 MR. FLUMENBAUM: -- on the issue of the best  
13 interest --

14 THE COURT: Um-hum.

15 MR. FLUMENBAUM: -- standard. And they made  
16 statements and claims in this letter that were not supported  
17 by the record, and that's why we were at a point --

18 THE COURT: Okay, but which one -- what statements  
19 are you objecting? Because obviously, the letter is a letter  
20 brief that was addressed to the Court, that I believe is --

21 MR. FLUMENBAUM: Well --

22 THE COURT: -- and the top of it suggests, it was  
23 filed with the Court.

24 So --

25 MR. FLUMENBAUM: I believe it's hearsay, page eight,

1 in particular, based on a careful review, I believe this is  
2 what they cited in their reply brief. Page eight, starting  
3 with "based on a careful review," the next paragraph, and the  
4 paragraph after that, I think going up to the top of page  
5 nine.

6 THE COURT: And your objection is what?

7 MR. FLUMENBAUM: Hearsay and no record to support it.  
8 These were statements that were essentially gratuitous, based  
9 on the record that Your Honor had developed in the  
10 confirmation hearing.

11 THE COURT: Response?

12 MR. STRAIN: Yeah, I think that the response is we  
13 haven't actually offered this into evidence; we put it in the  
14 court's notebook to take judicial notice of something that's  
15 been filed with the Court. It also reflects statements that,  
16 I believe, were made during the February 6th hearing by  
17 debtor's counsel, at some point, about the nature of their  
18 claims.

19 But the point of including this really is the subject  
20 matter jurisdiction argument, which Mr. Katz can address, the  
21 substance of the purpose of including this. But we haven't  
22 actually offered this into evidence. We'd like the Court to  
23 take judicial notice of the letter that's been filed.

24 THE COURT: Well, but what's the -- I mean again, you  
25 can't avoid the hearsay problem, or the outside the scope of



1 the evidentiary record, that was made at confirmation, by me  
2 taking judicial notice of it.

3 MR. STRAIN: I agree, Your Honor. And so  
4 the -- that's why we're not offering this into evidence; we've  
5 included it as part of our argument. If the Court cannot  
6 consider it, we understand that. But we thought since it was  
7 presented to the Court, and it did express the debtor's  
8 position, with regards to whether it would move forward with  
9 claims in the bankruptcy court, we thought it was useful.

10 THE COURT: Well, but the debtor, Mr. Youngman spoke  
11 at the last hearing --

12 MR. STRAIN: Yes.

13 THE COURT: -- so I know the debtor's view of this.

14 MR. STRAIN: Yes.

15 THE COURT: Well, he's not offered it, so you can  
16 object to any offers --

17 MR. FLUMENBAUM: I thought when I handed you the  
18 notebook, he was --

19 THE COURT: As did I.

20 MR. FLUMENBAUM: -- he was offering it.

21 THE COURT: So.

22 MR. FLUMENBAUM: And I want to point out that in  
23 Exhibit A, Mr. Genereux's affidavit, Genereux's affidavit,  
24 there are two paragraphs that, I believe, Mr. Strain has  
25 acknowledged are not accurate, so, which would be paragraph

1 five and paragraph nine of that affidavit.

2 So to the extent that he asked the Court to rely on  
3 that, I think the Court should not.

4 MR. STRAIN: Well, I disagree that I disagree with my  
5 own client's affidavit. And we can address those few points,  
6 as we go through the personal jurisdiction argument, if they  
7 are of concern. But the points of these paragraphs --

8 THE COURT: Which paragraphs? I'm sorry.

9 MR. STRAIN: These are paragraphs five, and really  
10 what they say, paragraph five and nine of Mr. Genereux's  
11 affidavit, the declaration regarding Airbus Helicopter's never  
12 moving its offices to the United States, and not being  
13 licensed to do business and transacting business in the United  
14 States, which I think is the controversial portion of it.

15 And paragraph nine, not selling Super Puma  
16 helicopters in the United States.

17 THE COURT: And I take it AH is SAS, Airbus  
18 Helicopters, SAS; I see that on the first page.

19 MR. STRAIN: Yes.

20 THE COURT: Okay.

21 MR. STRAIN: And the position we've taken, and this  
22 was raised in the opposite seconds, supplemental opposition,  
23 and pointed out in our reply brief, our client, AH, does not  
24 sell -- doesn't transact his business in the United States; it  
25 transacts its business in France. There's no controversy that

1 Airbus Helicopters has customers located in the United States.  
2 But when it sells its helicopters, as this declaration points  
3 out, it does so from its place of business in France, pursuant  
4 to purchase agreements that call for the transaction to occur  
5 in France.

6 So, yes, Airbus Helicopters has customers in the  
7 United States, there's no dispute as to that; it's where the  
8 transactions occur; and those transactions occur in France.  
9 So that's why it says "Airbus Helicopters does not transact  
10 its business in the United States or sell Super Puma  
11 Helicopters in the United States."

12 MR. FLUMENBAUM: Your Honor, as we pointed out in the  
13 discovery, that we received from Airbus, and which they  
14 stipulated to, there have been direct transactions between SAS  
15 and customers in the United States. And indeed, in one of  
16 those transactions was announced in the United States at the  
17 Heli Expo, just in 2015, with the Chief Executive Officer of  
18 Airbus SAS in the United States --

19 THE COURT: Okay, but --

20 MR. FLUMENBAUM: -- signing a contract with Bristow.

21 THE COURT: But that doesn't make the -- I mean, the  
22 declaration is admissible at a hearing on a motion to dismiss;  
23 you may have evidence that refutes statements in it. But I  
24 don't think that makes the affidavit itself inadmissible.

25 MR. FLUMENBAUM: Well, I wasn't suggesting that the

1 whole affidavit, but since Mr. Strain stipulated to the  
2 accuracy of the documents, that they gave us, I thought these  
3 two paragraphs were clearly inaccurate, based on those  
4 documents. I perfectly accept the way Your Honor articulated  
5 our position.

6 THE COURT: Fair enough. Then, Exhibit A will be  
7 admitted, and we'll address B if we need to.

8 (Declaration of Michael J. Genereux was hereby received  
9 into evidence as Defendant's Exhibit A, as of this date.)

10 MR. STRAIN: Thank you, Your Honor.

11 And, with regard to Exhibit A and the transaction of  
12 business, that leads us right into the point of personal  
13 jurisdiction, which is --

14 THE COURT: Okay, well --

15 MR. STRAIN: -- there's been allegations about Airbus  
16 Helicopter's business activities with customers in the United  
17 States, its sale of helicopters to customers in the United  
18 States, its attendance of trade shows in the United States,  
19 its sending employees to the United States to do business, to  
20 visit customers, go to trade shows, but none of these are  
21 alleged to have anything to do with the claims that we're here  
22 to talk about today.

23 For helicopters that, it's undisputed, were sold by  
24 Airbus Helicopters in France to customers located in Europe;  
25 and those helicopters have never been owned, operated,

1 registered in, or as far as anybody can tell, located in the  
2 United States.

3 So when we're talking about what business activities,  
4 there can be a dispute as to where those activities take  
5 place. There can even be a dispute as to whether Airbus  
6 Helicopters transacts business in the United States. But  
7 there can't be a dispute as to whether any of that business  
8 has anything to do with ECN's product liability causes of  
9 action, the helicopters that were designed, manufactured,  
10 certified, sold and exist outside of the United States.

11 When I --

12 THE COURT: So, you think prong two -- if I'm hearing  
13 you correctly -- the close nexus prong requires that your  
14 activities in the United States have got to have led to ECN's  
15 product liability claims?

16 MR. STRAIN: Yes, Your Honor. I have my notes from  
17 this morning, going over, when Your Honor was giving her  
18 tentative views on things, and I was able to cross out a lot  
19 of this, because what I really wanted to focus my argument on  
20 is exactly that; I say in my notes, "ECN has one half of the  
21 specific jurisdiction test, purposeful availment; they have  
22 alleged quite a bit to" -- that may satisfy the purposeful  
23 availment prong of specific jurisdiction. What they have not  
24 alleged is the relatedness requirement.

25 And Your Honor's already expressed her view on that.

1 The three areas that have been focused on are the  
2 participation in the bankruptcy proceeding. And we understand  
3 Your Honor may find that that participation could give rise to  
4 related-to subject matter jurisdiction.

5 But in terms of having a substantial connection to  
6 giving rise to the claims of this lawsuit, nothing about the  
7 proof of claims or any of the activity that my client has done  
8 in this courtroom, was in any way related to product liability  
9 claims by ECN, who's for economic loss related to their  
10 helicopters.

11 And so, we've looked at all the cases that were cited  
12 by ECN, and there were a lot of distinguishing factors; but  
13 really what's driving all of them is that those are claims  
14 brought by debtors or trustees on matters related to the  
15 bankruptcy, whether it's preferential transfers or fraudulent  
16 transfers or whatnot, I mean you can go through them, but I  
17 think that if the Court has already done that, there's no  
18 point in doing so because we couldn't find a case similar to  
19 this situation.

20 So -- and even outside of the bankruptcy context,  
21 when the focus is put on a party comes into a forum and files  
22 a lawsuit, even the cases cited by ECN there are cases where  
23 the lawsuit filed was somehow related to an activity in the  
24 forum; one was with his JAMS proceeding or some other core  
25 facts that made the availment of the forum related to the

1 claims at issue.

2 And then, if we look at, even footnote nine of the  
3 second supplemental opposition filed by ECN, they talk about  
4 courts have found when a party avails itself of the forum by  
5 filing a lawsuit -- and if you want to call a proof of claim a  
6 lawsuit, that's fine -- but even in those cases, which are all  
7 post-Diamler, which they're talking about, they're all related  
8 to the causes of action, which we just don't have here.

9 So in terms of the bankruptcy proceeding, we don't  
10 see that that availment of this forum is in any way related to  
11 the causes of action.

12 With respect to the business contacts, we've already  
13 talked about that, all the activity here at issue, the design  
14 and manufacture all arose in France; any warranties that were  
15 given were done in France. There's no connection with the  
16 United States.

17 And the last point that ECN has made to argue  
18 specific jurisdiction is the stream of commerce argument,  
19 which even the cases they cite, Faraday, (ph.) Bean Dredging,  
20 and Lovencare, (ph.) these are all cases where the product  
21 flowed through a distribution system setup -- whether set up  
22 or not by the defendant -- but they flowed into the forum  
23 cause and injury there; we don't have that here. We don't  
24 have these helicopters ever entering the United States.

25 There's some discussion in the papers about the fact

1 that Airbus Helicopters has a distributor here, in Texas, in  
2 Grand Prairie. And the fact that it has that distributor is  
3 irrelevant when the helicopters we're talking about never  
4 flowed through that distributor.

5 So in terms of stream of commerce, where the Court  
6 defines stream of commerce jurisdiction here, it would really  
7 be contrary to the Goodyear case, that the Supreme Court  
8 discussed, and that's in our brief. But just very basically,  
9 the accident occurred in France from defective tires in  
10 France; the question was, was the presence of similar tires,  
11 manufactured by those defendants in the forum, sufficient for  
12 the exercise of jurisdiction, and the court said no.

13 And that's what we have here. We have business  
14 activity; we have other products, other customers in the  
15 United States, none of which are related to the causes of  
16 action. And the only way this Court would be able to find  
17 personal jurisdiction would be based on purely purposeful  
18 availment factors, which would essentially be a watered-down  
19 version of general jurisdiction. Because those factors that  
20 have been alleged today wouldn't satisfy the general  
21 jurisdiction standard after Daimler and in the Fifth Circuit.  
22 So, there couldn't possibly be a basis for jurisdiction here  
23 without the related Nexus requirement having done that.

24 Thank you, Your Honor.

25 THE COURT: Thank you.



1           Please, Mr. Katz. Am I wrong on subject matter  
2 jurisdiction? And it's okay to say yes.

3           MR. KATZ: Your Honor, Jason Katz on behalf of Airbus  
4 Helicopters, SAS. Respectfully, Your Honor, as I told you,  
5 when we were here on February 6th, I believe that the Court is  
6 wrong about that. And it's a close call, there's no doubt  
7 about that, because the Court has recognized that it's a broad  
8 test, it's conceivable as a very broad term.

9           And I've been doing this a while, and I've read  
10 plenty of cases about this topic, and I've been surprised  
11 about courts saying bad subject matter jurisdiction. But I  
12 just believe that this case goes too far.

13           I was in the lobby this morning, preparing for this  
14 hearing. I went back and reviewed Pacor versus Higgins in the  
15 Third Circuit. In that case, the court found that this idea  
16 of potential liability, that would require an additional  
17 lawsuit, should that liability come out of the lawsuit that  
18 was before the court, which is too far, it was too remote.  
19 And the Third Circuit said let's just -- there is a limit  
20 here, so that's just too far; we recognize conceivable effect,  
21 but -- and that's, Your Honor, what we have here.

22           I believe that while the Court has accepted this  
23 collateral estoppel argument, the facts here are the same as  
24 they were in the Pacor case, in the sense that let's assume  
25 that ECN, in this case, recovers against Airbus, and then the

1 debtor decides to attempt to use the ruling in this case,  
2 that's just another lawsuit, just like in Pacor; that's just  
3 not certain enough. It's too speculative; it's too remote.

4 So, Airbus, respectfully, would request that the  
5 Court find that subject matter jurisdiction does not exist,  
6 because there is a limit to what the conceivable effect would  
7 be, and that this Court does have the adjudicative authority  
8 to grant the motion to dismiss, based on the lack of subject  
9 matter jurisdiction, because we did submit a supplemental  
10 brief at the Court's request on that issue, and the --

11 THE COURT: Oh, I agree. If I don't have  
12 jurisdiction, there's not a stern implication. I can dismiss  
13 the case. But you all were sort of ships passing in the  
14 night. You say I can, because you assume I don't have subject  
15 matter jurisdiction; ECN says I can't, because they assume I  
16 do have subject matter jurisdiction.

17 So whether I can enter a final order seems to turn on  
18 the question of do I have subject matter jurisdiction.

19 MR. KATZ: And unfortunately, Your Honor, we did not  
20 brief that second issue, which is if the Court finds that you  
21 do have subject matter jurisdiction, and you don't have  
22 personal jurisdiction, can you then enter an order dismissing  
23 it on that basis. And we didn't brief that, Your Honor, and  
24 I'm sorry I didn't research that; I apologize for that.

25 THE COURT: No, no apology needed. I'll just tell

1 you -- I mean I'm happy if you want to look at it. My  
2 thinking is, if I've got related-to jurisdiction, then 157  
3 pretty clear says that I can only enter proposed findings and  
4 conclusions absent consent, which I don't have here.

5 MR. KATZ: Right.

6 THE COURT: So it seems like once I get past the do I  
7 have subject matter jurisdiction, I'm in the world of proposed  
8 findings and conclusions.

9 MR. KATZ: Fair enough, Your Honor. And I don't need  
10 to look at it; I would accept the Court's position on that.  
11 We just, Airbus respectfully disagrees that this is a proper  
12 conceivable effect finding, based on what ECN believes could  
13 happen in the future, that what I believe to be based on what  
14 the debtor has said, very unlikely. So I'll leave that  
15 argument alone; I think we've made the same argument at the  
16 February 6th hearing, and just would request that the Court  
17 grant the motion to dismiss for lack of subject matter  
18 jurisdiction.

19 As it relates to abstention, Your Honor, I believe  
20 that the Court's checklist of seven of the eleven factors is  
21 very accurate. In fact, a lot of the notes I wrote down in my  
22 little checklist and boxes that I wrote in my notes, I had  
23 some of the same words that the Court used, and the factors,  
24 and don't disagree with any of them, except that maybe that  
25 some of them, where the Court said it could be slightly in the

1 keep category or neutral, maybe in my notes I was a little  
2 more favorable to my client's position. But I don't think  
3 that the Court would --

4 THE COURT: I'm shocked by that.

5 MR. KATZ: But, Your Honor, it's clear that the Court  
6 has the discretion under 28 U.S.C. 1334(c)(1) to abstain from  
7 hearing this matter, assuming that the Court finds that  
8 personal jurisdiction exists, and even going back one step,  
9 assuming the Court finds it has subject matter of  
10 jurisdiction, Your Honor, Airbus requests that assuming that  
11 those two things happen, that the Court exercises discretion.  
12 I won't go through each factor, as I have already stated, I  
13 agree with the Court's general review and analysis on the  
14 factors, and request that the Court abstain from keeping this  
15 case here for Judge Cummings to decide.

16 That's all I have, Your Honor. Thank you.

17 THE COURT: Let me ask you a question. I want to go  
18 back to your Pacor. I'll be honest; Pacor was decided many,  
19 many years ago. And so I haven't read it in a while. But  
20 while we've been here, my able law clerk, Ms. Crocker (ph.)  
21 has sent me a blurb from it; and we'll go back and reread  
22 Pacor, because it appears that that's really the focal point  
23 of your argument, is that Pacor's just different.

24 But it appears to me from, at least the quote that's  
25 been sent to me, that Pacor may not be so different, or that

1 the basis for the conclusion there, that there wasn't related-  
2 to jurisdiction by the Third Circuit, may be different. At  
3 least, what I've seen here is, here's the quote "our  
4 examination of the Higgins Pacor Manville controversy leads us  
5 to conclude that the primary action between Higgins and Pacor  
6 would have no effect on the Manville bankruptcy estate, and  
7 therefore is not related to bankruptcy within the meaning of  
8 section," yeah, it's the precursor, 1471(b).

9 "At best, it is a mere precursor to the potential  
10 third party claim for indemnification by Pacor against  
11 Manville. Yet the outcome of the Higgins Pacor action would  
12 in no way bind Manville, in that it could not determine any  
13 rights liabilities or course of action of the debtor."

14 Since Manville is not a party to the Higgins Pacor  
15 action, it could be -- it could not be bound by res judicata  
16 or collateral estoppel.

17 But here, it does appear to me that collateral  
18 estoppel would apply. And again, we have the exact same  
19 claim, at least with respect to the four or five owned Super  
20 Puma helicopters by CHC.

21 And the distinction that the Third Circuit's drawing  
22 in Pacor is that the indemnification claim is a different  
23 claim, and it's going to be decided on different issues than  
24 the ultimate underlying liability claim between the two non-  
25 debtor parties. And that appears to me to be the

1 distinguishing feature of Pacor, again, given the very short  
2 period of time I've had to read this; and again, I assure you  
3 we'll go back and reread it. But it appears to me, I wanted  
4 to hear your take on it, because it appears to me that Pacor  
5 is just different. You had an underlying claim that was then  
6 going to give rise to indemnification claim against the  
7 debtor, and the Court said not close enough, not enough  
8 relatedness to the bankruptcy case.

9 Here, we would have the identical product liability  
10 claims, at least with respect to four or five of the Super  
11 Pumas, the CHC would have against Airbus, that it might be  
12 collaterally estopped, one way or the other, by the outcome of  
13 this proceeding.

14 MR. KATZ: Right. And Your Honor, so I apologize if  
15 I misspoke, but reading it on my iPhone in the lobby, I was --

16 THE COURT: It's about as good as what I'm doing, so.

17 MR. KATZ: -- I was focusing on the part of the  
18 opinion that I don't have it in front of me, where the court  
19 said that it would require a second piece of litigation. And  
20 I understand that if it's a different claim, I get that.

21 But in this case, Airbus's position would be that  
22 collateral estoppel is not certain here; and I know the Court  
23 just said that oh, it would be the same claim and the same  
24 issue, but they're different parties.

25 And so, I think that there can be an argument --

1           THE COURT: Well, that's res judicata. I'm not  
2 saying res judicata applies.

3           MR. KATZ: But --

4           THE COURT: The collateral estoppel can apply with  
5 different parties, if the issues were -- if the issues are  
6 identical, and the issues were -- I'm going to get the  
7 language a little bit off -- but substantially litigated by  
8 parties who have similar interests.

9           MR. KATZ: Sure. And so, there is no evidence that  
10 the claims would be exactly the same. The Court is assuming  
11 that it would be the same. We now know, based on the evidence  
12 put forth by the debtor, that the debtors have, I believe  
13 five -- they own five, at least four or five helicopters.

14           But my point was a little more -- it was a general  
15 broad statement that the fact that the debtor could bring the  
16 claims in the future, and the fact that they would have to  
17 bring another lawsuit, just like I believe the Third Circuit  
18 opinion in Pacor said -- and hopefully, I hope I'm not  
19 misspeaking, I apologize if I am -- I thought that part of  
20 that opinion, and it may have been dicta, but I thought it  
21 said the fact that they would have to do those -- bring an  
22 additional lawsuit, that that was making it too remote. And  
23 that was really the connection I was trying to make, Your  
24 Honor.

25           THE COURT: I don't -- again, we'll look at it more

1 closely, but I fear you're reading too much into the opinion.  
2 I think the Third Circuit's point was the debtor is not  
3 bound --

4 MR. KATZ: Bound by the findings.

5 THE COURT: -- either by collateral estoppel or res  
6 judicata, as it relates to a second indemnification claim  
7 against the debtor.

8 MR. KATZ: Sure. But Your Honor, Airbus would still  
9 take the position that the subject matter jurisdiction is  
10 conceivable effect here of the fact that collateral estoppel  
11 could occur in the future, it's just not enough. And it's  
12 just -- there is a limit, and that limit should be drawn in a  
13 case like this.

14 And the fact that the debtor, it's made clear, that  
15 they have no intention of bringing these claims --

16 THE COURT: Well, no, no, no. That's not fair.

17 MR. KATZ: -- here.

18 THE COURT: They're not going to bring them --

19 MR. KATZ: Here.

20 THE COURT: -- here.

21 MR. KATZ: And that they --

22 THE COURT: But that doesn't mean they aren't going  
23 to bring them.

24 MR. KATZ: But they could; but they also may make a  
25 decision that they're not going to. So it's our position or



1 that's just not enough. And obviously, if the Court disagrees  
2 with me, I'm sure the Court will --

3 THE COURT: Well, but again, this is helpful. I just  
4 fear that you may be misreading Pacor and -- but we'll go back  
5 and look at it, because it is the -- it is certainly the  
6 predicate decision for many, many, many decisions that follow,  
7 both in the Fifth Circuit and many other circuits that have  
8 followed Pacor.

9 MR. KATZ: Thank you, Your Honor. May I be excused?

10 THE COURT: You may. Thank you, Mr. Katz.  
11 Please.

12 MR. FLUMENBAUM: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MR. FLUMENBAUM: Martin Flumenbaum for ECN. I guess  
15 I have the bigger burden today of trying to show you why your  
16 initial instincts are, in my view, not appropriate.

17 Let me first start with the related-to jurisdiction,  
18 in part because you've agreed with our position on that.

19 THE COURT: Yeah, but be careful. Don't --

20 MR. FLUMENBAUM: All right.

21 THE COURT: -- you may say something that causes me  
22 to reconsider.

23 MR. FLUMENBAUM: I do want to cover the one aspect.  
24 I think related-to jurisdiction is very clear in this case. I  
25 think the collateral estoppel issue is certainly on point. I

## Colloquy

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1 think when we filed this complaint in November, at that time,  
2 the case was moving quickly towards confirmation. But I think  
3 jurisdiction occurs at that moment in time.

4 THE COURT: I agree, when it's filed.

5 MR. FLUMENBAUM: And at that moment in time, as we  
6 alleged in both our complaint, and as we talked about on  
7 February 6th, in addition to the collateral estoppel effect,  
8 and the impact that whatever decisions we may get will relate  
9 to the reorganized debtor, we also firmly believe that our  
10 damages and our claims against the debtor would be effected if  
11 we were successful. And I think that would apply, also to  
12 other --

13 THE COURT: Then you're going to have drill down.

14 MR. FLUMENBAUM: -- to other --

15 THE COURT: That sounds good, but what does it mean?

16 MR. FLUMENBAUM: It means that part of the value that  
17 we've lost because of the grounding and the product defect,  
18 has to do with the leases, that we had leased these -- and we  
19 had bought them from CHC, and --

20 THE COURT: And leased them back.

21 MR. FLUMENBAUM: -- and leased them back.

22 THE COURT: So there's five --

23 MR. FLUMENBAUM: So --

24 THE COURT: -- lease-rejection claims.

25 MR. FLUMENBAUM: Right. And I think that fact, that

Colloquy

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1 I'm going to come back to as to the personal jurisdiction  
2 part, because that seems to be ignored --

3 THE COURT: Okay.

4 MR. FLUMENBAUM: -- that our damages occurred, in  
5 part, right in this district and through the bankruptcy.

6 THE COURT: Oh, come on, no, no, no.

7 MR. FLUMENBAUM: Well --

8 THE COURT: Rejection gives rise to a prepetition  
9 claim. The Code expressly addresses that. So, but you're --

10 MR. FLUMENBAUM: But the --

11 THE COURT: -- nice words, but drill down with me.

12 MR. FLUMENBAUM: Okay.

13 THE COURT: Specifically, what is your claim against  
14 the debtor, and how is that -- I mean it's going to be  
15 compromised, in theory, at eighty-four million dollars?

16 MR. FLUMENBAUM: Again --

17 THE COURT: And what damage --

18 MR. FLUMENBAUM: -- as to CHC.

19 THE COURT: -- did Airbus -- what damage that you  
20 might recover in the Airbus action is going to reduce --

21 MR. FLUMENBAUM: Because we can't --

22 THE COURT: Hang on.

23 MR. FLUMENBAUM: Yep.

24 THE COURT: Let me finish.

25 MR. FLUMENBAUM: Go ahead.

## Colloquy

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1 THE COURT: -- is going to reduce a potential eighty-  
2 four million, ninety-four million, twenty-four million dollar  
3 claim that might get allowed in this bankruptcy?

4 MR. FLUMENBAUM: Part of the damages that we will  
5 seek from Airbus is our inability -- is a loss of our ability  
6 to lease those planes going forward. So we now have gotten  
7 them back, we can't lease them to somebody else. So we are  
8 damaged in the sense that that lease income that we had  
9 expected over the next five years is gone.

10 THE COURT: But why does that -- why are you going to  
11 credit that --

12 MR. FLUMENBAUM: Because --

13 THE COURT: -- against your claim in the bankruptcy?

14 MR. FLUMENBAUM: If we recover it on that lease, on  
15 that value, I believe it would be -- I would believe the  
16 debtor could argue that we didn't lose the eighty-four  
17 million, because we were able to mitigate our damages, and  
18 deal with it elsewhere.

19 THE COURT: Well, but --

20 MR. FLUMENBAUM: And I think other creditors would  
21 have the exact same argument, whose planes were --

22 THE COURT: Okay, I'm not worried about anybody else.

23 MR. FLUMENBAUM: I understand.

24 THE COURT: I'm only worried about you.

25 MR. FLUMENBAUM: All right. But --

1 THE COURT: So, let's stay focused on you, or more  
2 accurately, ECN. Okay, but that sounds good, but I just don't  
3 buy it.

4 MR. FLUMENBAUM: Oh?

5 THE COURT: I don't think you're going to suggest a  
6 nickel credit. The lease rejection damages are for the  
7 debtor's breach of the contract. The fact that you are  
8 damaged -- so you got your aircraft back, and you now can't  
9 re-lease them to someone else, because they've been grounded  
10 or they're defective, whatever --

11 MR. FLUMENBAUM: Right.

12 THE COURT: -- that didn't have anything to do with  
13 the fact that CHC rejected the lease with you.

14 MR. FLUMENBAUM: I think I would be entitled -- I  
15 would be entitled to prove that I had this income stream, that  
16 I was supposed to get from CHC; CHC rejected these as part of  
17 the bankruptcy, in part, because they couldn't use these  
18 aircraft as well.

19 THE COURT: But you're assuming that. There's no  
20 evidence in this record.

21 MR. FLUMENBAUM: Well, there is. There is testimony  
22 on the very first day that the grounding impacted there.

23 THE COURT: As part of this record, I said. Right?  
24 Where is that in this record? And how did that affect the  
25 five -- your five helicopters?

Colloquy

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1 MR. FLUMENBAUM: Well --

2 THE COURT: That testimony was not specific as to  
3 your five helicopters or one of the other forty-six or seven  
4 or eight that the debtor owned.

5 MR. FLUMENBAUM: We have -- I should move --

6 THE COURT: And there's no evidence that --

7 MR. FLUMENBAUM: I should --

8 THE COURT: -- suggests that the debtor rejected the  
9 ECN leases for any other reason than it no longer needed them.

10 MR. FLUMENBAUM: Well, one of the reasons why they no  
11 longer needed them was because they were damaged.

12 MR. KATZ: Your Honor, I'm going to object to this  
13 note that he's testifying about that in -- this is a 12(b)(1)  
14 based on the papers, not any additional evidence anyway, Your  
15 Honor.

16 THE COURT: Well, be careful there, because you've  
17 admitted the declaration, so not quite true.

18 MR. KATZ: In support of the personal jurisdiction,  
19 Your Honor.

20 THE COURT: Right, understand.

21 MR. KATZ: Okay. The --

22 THE COURT: But, again, evidence that's before me.

23 MR. FLUMENBAUM: Your Honor, I believe, before you  
24 are the binders of exhibits that we put in through the  
25 Signoracci affidavit, and through my affidavit last week. And

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1 I would move that they be taken as part of the evidence in  
2 this hearing.

3 THE COURT: Any objection?

4 MR. STRAIN: No objection, Your Honor.

5 THE COURT: The Court will do so.

6 (Martin Flumenbaum and Pietro Signoracci affidavit was  
7 hereby received into evidence as Plaintiff's Exhibit \*\*, as of  
8 this date.)

9 MR. FLUMENBAUM: Thank you.

10 THE COURT: But where in that --

11 MR. FLUMENBAUM: I --

12 THE COURT: -- is there the evidence that you're  
13 telling me about?

14 MR. FLUMENBAUM: I will cite that to you.

15 THE COURT: Okay.

16 MR. FLUMENBAUM: I'll ask Mr. Signoracci to find  
17 that.

18 THE COURT: Fair enough.

19 MR. FLUMENBAUM: But, in any event, I think in terms  
20 of related-to jurisdiction, I think we may disagree on that  
21 aspect, but I think if you look at the Passmore case, the  
22 Baylor medical case, Passmore v. Baylor Medical, where they  
23 said there could be related-to jurisdiction based on a  
24 potential claim against the third party.

25 THE COURT: Mr. Flumenbaum, you've tentatively won on

1 this issue. So --

2 MR. FLUMENBAUM: Oh, all right.

3 THE COURT: -- why are we spending so much time on --

4 MR. FLUMENBAUM: Right.

5 THE COURT: -- it?

6 MR. FLUMENBAUM: Let me --

7 THE COURT: I told you at the outset that I think --

8 MR. FLUMENBAUM: All right.

9 THE COURT: -- have related-to jurisdiction --

10 MR. FLUMENBAUM: I apologize. I --

11 THE COURT: -- and the big argument that Mr. Katz  
12 made is really that Pacor is -- that this case is like Pacor  
13 in the conclusion that there wasn't related-to jurisdiction.  
14 And I'm fearful that he has misread Pacor.

15 So, unless you have something to add on the Pacor  
16 analysis --

17 MR. FLUMENBAUM: I would ask Your Honor to look at  
18 Passmore, Inray Canyon (ph.), which are two Fifth Circuit,  
19 recent Fifth Circuit cases --

20 THE COURT: And trust me, we have.

21 MR. FLUMENBAUM: -- which I think -- which support  
22 the related-to jurisdiction.

23 Let me turn to the personal jurisdiction. There are  
24 actually -- let me start with the concept of consent, because  
25 we believe we have consent jurisdiction, in terms of personal



1 jurisdiction here, which is slightly different than general,  
2 and slightly different than specific. The mere participation  
3 of Airbus, in this proceeding, gives us personal jurisdiction  
4 over Airbus to file related-to claims. I think the law is  
5 clear on that, in terms of their active participation in this  
6 proceeding.

7 And what we have here is that they voluntarily  
8 appeared, they filed proofs of claim, seeking over six million  
9 dollars. They voluntarily joined the unsecured creditors.  
10 They appointed a Texas resident, Kevin Cabanas, as its  
11 representative. We served Mr. Cabanas in Texas with the  
12 complaint. There's been no challenge to service of process in  
13 this case.

14 So, we think that they participated in the 2004  
15 proceeding, which had nothing to do with them, which was  
16 between ECN and the debtor; they filed briefs in that case.  
17 And they've obviously entered into a settlement and a  
18 restructuring agreement with the debtor, in which Airbus will  
19 receive recovery, and in which these particular claims, that  
20 are similar to ours, are preserved.

21 So, we think that just that, under the law, gives us  
22 jurisdiction over Airbus. But there is much more than just  
23 this consensual, purposeful activity. And I think it's clear  
24 that voluntarily filing a lawsuit in the jurisdiction is  
25 purposeful availment of the jurisdiction's facilities, and can

1 subject the party to personal jurisdiction in another lawsuit,  
2 when the lawsuits arise from the same general transactions.

3 And, in this case, we believe we meet that standard.  
4 And I would refer Your Honor to Schwinn and Blenko, these are  
5 some of the cases we assigned in terms of personal  
6 jurisdiction.

7 THE COURT: Yeah, but that -- but those cases are  
8 different. And we've read them all. Those are all cases  
9 where it was the debtor or the trustee asserting claims, not a  
10 third party.

11 MR. FLUMENBAUM: Well --

12 THE COURT: You don't have a single third party case,  
13 that you cite, where the fact that a creditor filed a proof of  
14 claim in a bankruptcy case and participated in the bankruptcy  
15 case. I agree that that can give rise to jurisdiction by the  
16 debtor or trustee back against that creditor that relates to  
17 the proof of claim.

18 But, no offense, the claim filed here doesn't have  
19 anything to do with the product's liability claim you're  
20 asserting against it.

21 MR. FLUMENBAUM: Well --

22 THE COURT: And again, you didn't cite a single case  
23 where the fact that a creditor came in to the bankruptcy case  
24 and participated in the bankruptcy case gives rise to some  
25 other creditor suing, yet --

Colloquy

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1 MR. FLUMENBAUM: It's not some other creditors.

2 Another creditor --

3 THE COURT: Well, it is some other creditor.

4 MR. FLUMENBAUM: -- in the bankruptcy case.

5 THE COURT: Yeah, but on unrelated claims. Debtor  
6 doesn't have an interest in your outcome, other than it may  
7 get bound by it.

8 MR. FLUMENBAUM: Well --

9 THE COURT: But it has no economic interest in your  
10 lawsuit.

11 MR. FLUMENBAUM: Well, but for personal jurisdiction  
12 purposes, I don't think the debtor's concern, whether they  
13 will file or won't file, is really relevant. I think what is  
14 relevant is that CHC is in the middle of the transaction; we  
15 purchased these helicopters from CHC, which, as Your Honor  
16 knows, operates its businesses from Texas. We leased it back  
17 to CHC. CHC had these helicopters in its possession; they  
18 purchased them from Airbus, originally.

19 THE COURT: Right.

20 MR. FLUMENBAUM: So --

21 THE COURT: In France, pursuant to documents --

22 MR. FLUMENBAUM: Well --

23 THE COURT: -- that established French laws, the  
24 governing --

25 MR. FLUMENBAUM: Well --

## Colloquy

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1 THE COURT: -- law, et cetera, et cetera.

2 MR. FLUMENBAUM: We haven't seen all of those  
3 documents, Your Honor. So I can't verify that, and they are  
4 not in the record. I do know that in terms of personal --

5 THE COURT: Which CHC entity purchased your five  
6 helicopters and then turned around and sold them to you?  
7 Because the answer is --

8 MR. FLUMENBAUM: I think it was Barbados.

9 THE COURT: -- it was CHC Barbados --

10 MR. FLUMENBAUM: Yeah.

11 THE COURT: -- which is not a Texas corporation --

12 MR. FLUMENBAUM: It's not a --

13 THE COURT: -- the parent is in Texas.

14 MR. FLUMENBAUM: Right, but --

15 THE COURT: But ECN has many, many, many, many, many  
16 subsidiaries, many of which are foreign entities --

17 MR. FLUMENBAUM: But in this --

18 THE COURT: -- including Barbados SRL.

19 MR. FLUMENBAUM: But in this particular case, CHC has  
20 acknowledged that it operates its foreign subsidiaries from  
21 Texas; it stated so in its initial filings with this Court.

22 THE COURT: Where is that in my record?

23 MR. FLUMENBAUM: I (indiscernible). If CHC  
24 acknowledged that it operates its -- it is in the record, Your  
25 Honor.

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1 THE COURT: Okay.

2 So --

3 THE COURT: But, nevertheless, you agree that the CHC  
4 entity that bought the five helicopters, and then turned  
5 around and sold them to you, is a foreign entity, and that the  
6 contractual relationships between Airbus Helicopters, SAS,  
7 which is a French entity --

8 MR. FLUMENBAUM: Correct.

9 THE COURT: -- and Barbados, all occurred outside the  
10 jurisdiction of the United States.

11 MR. FLUMENBAUM: Well, I don't agree to that because  
12 CHC said it directs its operations from Texas. So it may have  
13 used its CHC Barbados entity, but I think the decision-making,  
14 as to what to buy and not to buy, was done out of Texas.

15 THE COURT: Okay. You --

16 MR. FLUMENBAUM: So --

17 THE COURT: -- think you've got evidence of that?

18 MR. FLUMENBAUM: I think that's what CHC --

19 THE COURT: I'll be very anxious --

20 MR. FLUMENBAUM: -- has admitted.

21 THE COURT: I'll be very anxious to see that.

22 MR. FLUMENBAUM: Okay. I will --

23 Now, again, talking about personal jurisdiction, the  
24 documents that we received from Airbus during the short period  
25 of discovery that we had -- and I appreciate Your Honor's

1 moving that discovery, and permitting it -- really shows, in  
2 addition to what we believe is consensual jurisdiction,  
3 specific jurisdiction. They --

4 THE COURT: Okay, so your argument's -- I'm correct,  
5 you're not arguing general jurisdiction; you're not arguing  
6 that CH -- I mean --

7 MR. FLUMENBAUM: Well --

8 THE COURT: -- that Airbus Helicopters SAS is at-home  
9 in the United States?

10 MR. FLUMENBAUM: For purposes of this case, where  
11 they purposely avail --

12 THE COURT: No, no, no.

13 MR. FLUMENBAUM: -- of the Texas court to -- nobody  
14 forced them to come into this Court --

15 THE COURT: Two different issues: consent, you've  
16 covered that; now we're down to the more traditional, general,  
17 personal jurisdiction --

18 MR. FLUMENBAUM: Right.

19 THE COURT: -- and specific. You are not alleging  
20 general personal jurisdiction, correct?

21 MR. FLUMENBAUM: I don't believe we would have  
22 general jurisdiction but for their coming into this Court.

23 THE COURT: Other than consent.

24 MR. FLUMENBAUM: Other than consent. But --

25 THE COURT: Okay, see, I don't think that creates

1 general jurisdiction.

2 MR. FLUMENBAUM: Well --

3 THE COURT: But I hear ya.

4 MR. FLUMENBAUM: Daimler is not -- I've argued the  
5 Daimler position from both sides in different matters. But  
6 what Daimler says is it sets a standard of -- is an entity at-  
7 home in the jurisdiction. And --

8 THE COURT: And the entity is not at home here.

9 MR. FLUMENBAUM: Well --

10 THE COURT: The entity may --

11 MR. FLUMENBAUM: -- the entity --

12 THE COURT: The entity may have come to the United  
13 States to file a proof of claim against CHC in these  
14 bankruptcy proceedings. But that does not make it at-home for  
15 all purposes.

16 MR. FLUMENBAUM: Not for all purposes, but for  
17 certainly -- we have evidence, direct evidence, and I want to  
18 make sure I have the right data; Airbus sold -- Airbus France  
19 sold thirty helicopters to U.S.-based companies directly,  
20 twenty-eight, including six Super Pumas, the customer's  
21 headquartered in Texas.

22 The data that we've put before you shows that Airbus  
23 sold indirectly through its Texas affiliate, AHI, which is a  
24 sister company, and a distributor for SAS, another fifty-eight  
25 Airbus helicopters to Texas-based entities.

## Colloquy

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1 THE COURT: Right.

2 MR. FLUMENBAUM: The data shows that --

3 THE COURT: But unless under the Fifth Circuit  
4 precedent, Mr. Flumenbaum, unless you have alleged alter ego  
5 status between the two sister companies, which you have not,  
6 that's not enough to make them at-home for general  
7 jurisdiction.

8 MR. FLUMENBAUM: Well, I --

9 THE COURT: The --

10 MR. FLUMENBAUM: We have not alleged --

11 THE COURT: -- Fifth Circuit has so held.

12 MR. FLUMENBAUM: Right, I understand that. But I  
13 think the activity, whether or not we've alleged alter ego  
14 through AHI, they sold another 649 -- we're talking billions  
15 of dollars of sales --

16 THE COURT: But that doesn't make it --

17 MR. FLUMENBAUM: -- to Texas.

18 THE COURT: -- that doesn't make it at-home.

19 MR. FLUMENBAUM: By itself, it might not, but --

20 THE COURT: That's through the affiliate --

21 MR. FLUMENBAUM: -- with coming into this  
22 jurisdiction, and seeking the benefits from this jurisdiction,  
23 I submit that it is at-home. So, I'm not willing to limit  
24 Daimler just to that particular fact.

25 And I think in Daimler there was an issue as to



1 whether the California entity was an alter ego, but it had  
2 been abandoned in the lower courts.

3 But, in this case, it's not. We believe that by  
4 coming into this jurisdiction and participating as fully as it  
5 did by appointing a Texas representative, by -- that we have  
6 personal jurisdiction over them. And again, we serve them  
7 through their representative in this jurisdiction. So, we  
8 have location as well. We didn't serve them through the Hague  
9 in France; we served them here, and they've accepted that  
10 service.

11 So we believe that -- and they also sold nineteen  
12 Super Pumas to CHC, four of which, I believe, CHC still owns.  
13 We have evidence of four executives from France coming over  
14 here to participate in the bankruptcy proceeding, that they  
15 were in court -- two of them were in court, I believe in June,  
16 again, all before we filed our complaint here.

17 And, as I said, they were actively involved in the  
18 2004 proceedings. Airbus France also participates in  
19 activities in the United States -- sales activities in the  
20 United States. And we have evidence in our papers about the  
21 Heli Expo in Dallas next week, which Airbus France is the gold  
22 sponsor for that. Their CEO, as I said before, attended the  
23 Orlando Heli Expo last year. And I believe they announced the  
24 sale, at that conference, of seventeen helicopters to the  
25 Bristow Group of Texas in 2015.

1           So there is direct linkage between our case, which  
2 talks about these Super Pumas and other activities of Airbus  
3 in the United States. Now, true, we did not buy these  
4 aircraft from Airbus in the United States; that is true. But  
5 we did get them back from CHC in Texas through the bankruptcy  
6 proceeding. The deliveries of these were made in foreign  
7 jurisdictions; but that's -- but the order granting  
8 us -- giving us back these helicopters, occurred right here in  
9 Texas. And so we -- and that's not a order that we can appeal  
10 or fight; it's now ours. So now we have to deal with it in  
11 Texas.

12           And as --

13           THE COURT: No, you don't have to deal with anything  
14 in Texas.

15           MR. FLUMENBAUM: Well, I mean --

16           THE COURT: No offense, the helicopters are outside  
17 of Texas.

18           MR. FLUMENBAUM: Correct. But --

19           THE COURT: You got possession of them, wherever they  
20 were located, on the date of rejection.

21           MR. FLUMENBAUM: Right.

22           THE COURT: Yes, I signed an --

23           MR. FLUMENBAUM: But all --

24           THE COURT: -- order.

25           MR. FLUMENBAUM: But all that comes out of this Texas

1 proceeding, which Airbus voluntarily participated in.

2 THE COURT: As it relates to the debtor.

3 MR. FLUMENBAUM: Correct, correct. And as it related  
4 to us, because they actively involved in our 2004 proceeding.  
5 They objected to our discovery.

6 THE COURT: That you filed in the bankruptcy case,  
7 and they are --

8 MR. FLUMENBAUM: Correct.

9 THE COURT: -- unquestionably a party in interest in  
10 the bankruptcy case.

11 MR. FLUMENBAUM: Right. But --

12 THE COURT: But that doesn't create general  
13 jurisdiction.

14 MR. FLUMENBAUM: Well, what it does -- well, I'm sort  
15 of merging the arguments for specific and general in this  
16 case.

17 THE COURT: Do not do that.

18 MR. FLUMENBAUM: Okay.

19 THE COURT: I've asked you to be very specific.

20 MR. FLUMENBAUM: Well, I -- what I've been saying  
21 right now, in terms of the Texas activity, I believe relates  
22 to specific jurisdiction.

23 THE COURT: To the first prong.

24 MR. FLUMENBAUM: Right.

25 THE COURT: I don't disagree. And I keep pointing

1 out to you that the problem with your argument is the second  
2 prong --

3 MR. FLUMENBAUM: Well --

4 THE COURT: -- which you have not yet even begun to  
5 address.

6 MR. FLUMENBAUM: Well, I think what you have -- I  
7 thought I've been addressing that, in part, by saying that our  
8 cause of action arises out of decisions that are being made in  
9 Texas, as a result of the bankruptcy, which relates to these  
10 helicopters.

11 THE COURT: No, your cause of action against Airbus  
12 is a product liability claim; it doesn't have anything to do  
13 with the bankruptcy.

14 MR. FLUMENBAUM: Well, it's -- the reason I own  
15 these, again, has to --

16 THE COURT: No, you always --

17 MR. FLUMENBAUM: -- and my damages --

18 THE COURT: -- owned them, sir.

19 MR. FLUMENBAUM: Well, I --

20 THE COURT: They were leased to the debtor.

21 MR. FLUMENBAUM: Right. I bought them in 2013.

22 THE COURT: And, at the time of the crash, you were  
23 the proud owner of these five helicopters that you have leased  
24 back --

25 MR. FLUMENBAUM: Right. And that --

1 THE COURT: -- to CHC.

2 MR. FLUMENBAUM: Right, but I was getting an income  
3 from them.

4 THE COURT: Right.

5 MR. FLUMENBAUM: And now I'm not getting an income  
6 from them.

7 THE COURT: Okay, but your claim is a products  
8 liability claim.

9 MR. FLUMENBAUM: Well, because I --

10 THE COURT: It doesn't have anything to do with  
11 rejection of the lease.

12 MR. FLUMENBAUM: Right, it's because of the  
13 grounding, that I can't lease it elsewhere, that I can't sell  
14 it to other people, that I can't recover the value of, what I  
15 believed was, the helicopters --

16 THE COURT: But --

17 MR. FLUMENBAUM: -- at the time.

18 THE COURT: Right, but that didn't have anything to  
19 do with CHC.

20 MR. FLUMENBAUM: Well, I believe CHC -- CHC will be a  
21 central witness in this case, because they are the  
22 intermediary; CHC maintained these helicopters through 2013.

23 THE COURT: But that doesn't create jurisdiction  
24 against Airbus.

25 MR. FLUMENBAUM: Well --

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1 THE COURT: They may be Exhibit A.

2 MR. FLUMENBAUM: The purposeful --

3 THE COURT: But that doesn't create jurisdiction.

4 MR. FLUMENBAUM: -- availment gives you jurisdiction,  
5 if there's a nexus to the underlying complaint. And I believe  
6 there is a nexus to the underlying complaint.

7 THE COURT: What is it? Because you --

8 MR. FLUMENBAUM: Well, I --

9 THE COURT: -- wrote long, long briefs, I read them  
10 all really carefully. But you really do not focus on the  
11 nexus requirement.

12 MR. FLUMENBAUM: The nexus is that our claims are  
13 based on diminution in value of those helicopters, due to  
14 Airbus's negligence, product liability, fraud, et cetera. And  
15 the reason I have these damages is as a result, in part, of  
16 activities that occurred in Texas, with respect to the  
17 bankruptcy of CHC.

18 THE COURT: Um-hum. I'm sorry; I'm just not seeing  
19 it.

20 MR. FLUMENBAUM: I've lost lease income, which I'm  
21 never going to regain back, because of the grounding of  
22 these --

23 THE COURT: There's no evidence of that. Again, I  
24 keep asking you for evidence, and you keep turning to your  
25 colleague to find it. But --

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1 MR. FLUMENBAUM: Well, I'll give you cites to  
2 everything as --

3 THE COURT: Let's do it now.

4 MR. FLUMENBAUM: Okay.

5 THE COURT: Because I'm tired of argument being made  
6 on the basis of no record. It's not helpful.

7 MR. FLUMENBAUM: Exhibit D to the Signoracci  
8 declaration, page three, paragraph five.

9 THE COURT: Let me get there.

10 MR. FLUMENBAUM: CHC manages --

11 THE COURT: Hang on. Just let me get there.

12 So it's tab seven, D?

13 MR. FLUMENBAUM: Exhibit D, page three, paragraph  
14 five.

15 THE COURT: So this is a motion. This isn't an  
16 affidavit.

17 MR. FLUMENBAUM: I believe it's --

18 THE COURT: This is just -- this is just lawyer talk.

19 MR. FLUMENBAUM: I believe it's based on the initial  
20 affidavits that were filed with --

21 THE COURT: Okay, but no, then if you want -- where  
22 is the affidavit? A motion is not evidence.

23 MR. FLUMENBAUM: We've cited, I believe, to it, the  
24 Del Genio declaration, which is cited in paragraph six.

25 THE COURT: Right, but where is it in my record? Is

1 it somewhere here?

2 MR. FLUMENBAUM: I am not sure we attached the Del  
3 Genio, but --

4 THE COURT: Then, that's a problem.

5 MR. FLUMENBAUM: -- I would certainly ask for  
6 permission to provide that to the Court.

7 THE COURT: Okay, but --

8 MR. FLUMENBAUM: Where we cited to it, it certainly  
9 is in the record of the Court.

10 THE COURT: Well, not in this adversary proceeding,  
11 it's not, sir. And you just objected -- well --

12 MR. FLUMENBAUM: I objected to --

13 THE COURT: Is it part of your -- the evidence that  
14 you submitted in your notebook; anywhere?

15 MR. FLUMENBAUM: Your Honor, this was attached to the  
16 Signoracci declaration, which Your Honor just admitted into  
17 evidence, so --

18 THE COURT: Right, this -- what this?

19 MR. FLUMENBAUM: This document that was submitted.

20 THE COURT: This motion, but that's not evidence,  
21 sir, that's allegations made by a party, the debtors --

22 MR. FLUMENBAUM: Right.

23 THE COURT: -- in a motion filed with the Court.

24 MR. FLUMENBAUM: Well, I would ask permission --

25 THE COURT: But that's not evidence.



1 MR. FLUMENBAUM: -- for the Court to put in the  
2 underlying affidavit, that supports this motion. I apologize,  
3 if I should have done that, or I thought that this was  
4 sufficient --

5 THE COURT: Any objection?

6 MR. FLUMENBAUM: -- for purposes of this.

7 MR. STRAIN: Without having seen it, I -- it's hard  
8 to say.

9 THE COURT: Do you have a copy of the declaration to  
10 show me or counsel?

11 MR. STRAIN: I could also argue why none of this is  
12 relevant as a matter of law, which may cut through this, but  
13 we -- on my reply, I'll do so.

14 THE COURT: Well, if you don't have a copy, I don't  
15 know what I can look at, so --

16 MR. FLUMENBAUM: I don't have a copy with me here  
17 today. I believe that this was in evidence -- would be in  
18 evidence, and the whole statements, the debtor's business,  
19 which was taken literally verbatim from the Del Genio  
20 affidavit.

21 THE COURT: How do we know that? You don't even have  
22 the affidavit here, Counsel.

23 MR. FLUMENBAUM: I --

24 THE COURT: You may be right, but my gosh, to make  
25 that statement, without having the declaration here is a

1 little surprising.

2 MR. FLUMENBAUM: We've made that statement in our  
3 briefs; it's never been challenged. No one has --

4 THE COURT: It is by me. I don't know if that's what  
5 Mr. Del Genio said or not. I fear you're taking his statement  
6 out of context.

7 MR. FLUMENBAUM: Well --

8 THE COURT: Or you're reading it extraordinarily  
9 broadly.

10 MR. FLUMENBAUM: Well, I'm -- this is what, I  
11 believe, he said: "CHC manages its domestic and overseas  
12 businesses" --

13 THE COURT: Do not read me the motion. If you have  
14 the declaration --

15 MR. FLUMENBAUM: I don't have it.

16 THE COURT: -- I'm happy --

17 MR. FLUMENBAUM: I believe that's what he said.

18 THE COURT: -- to hear it.

19 MR. FLUMENBAUM: And I will find you the cite to the  
20 Del Genio affidavit, which is in the bankruptcy proceeding.  
21 "Manages domestic and overseas business from Irving, Texas and  
22 its sales force from an office in Houston, Texas."

23 THE COURT: Mr. Flumenbaum, I've asked you not to  
24 read me from the motion.

25 MR. FLUMENBAUM: Okay.

1 THE COURT: Unless you can represent to me that that  
2 is, in fact, the testimony of Mr. Del Genio -- what the debtor  
3 says in a motion, just like what you say in a brief --

4 MR. FLUMENBAUM: I --

5 THE COURT: -- isn't evidence.

6 MR. FLUMENBAUM: I agree. I do not believe this was  
7 a disputed issue at all, and if I had thought there was any  
8 dispute as to this issue, I would have certainly put in the  
9 Del Genio affidavit. And I apologize and I just asked for --  
10 If you look at the declaration of Michael Cox, which  
11 was filed last night, in the case, I have not admitted that.  
12 He says the same thing --

13 THE COURT: I --

14 MR. FLUMENBAUM: -- in his --

15 THE COURT: Do you have -- I don't have --

16 MR. FLUMENBAUM: -- affidavit.

17 THE COURT: Again --

18 MR. FLUMENBAUM: This was filed, I believe, last  
19 night by the debtors.

20 THE COURT: But for what purpose, and in connection  
21 with what?

22 MR. FLUMENBAUM: It was for order pursuant to  
23 sections 105, 363 and 365 --

24 THE COURT: Okay, but again, is that part of this  
25 record?

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1 MR. FLUMENBAUM: No.

2 THE COURT: Okay.

3 MR. FLUMENBAUM: But I would ask that I have the  
4 ability to put these affidavits in, that support that point.  
5 I did not think this was a disputed issue, Your Honor.

6 THE COURT: Is there objection?

7 MR. STRAIN: To this document?

8 THE COURT: Yes.

9 MR. STRAIN: Again, I haven't seen it, Your Honor.

10 THE COURT: Why don't you show counsel?

11 (Pause)

12 MR. KATZ: Which paragraph, Your Honor, is --

13 THE COURT: I have no idea. I've never seen it  
14 either.

15 MR. FLUMENBAUM: Your Honor, at a minimum, I would  
16 ask you to take judicial notice --

17 THE COURT: Don't talk while they're trying to  
18 read --

19 MR. FLUMENBAUM: I'm sorry.

20 THE COURT: -- please. It's hard to read and --

21 MR. FLUMENBAUM: I'm sorry.

22 THE COURT: -- listen.

23 MR. STRAIN: Yeah. Your Honor, we would just object;  
24 it's one, untimely, being presented here today, but also  
25 irrelevant for reasons that I'll explain --

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1 THE COURT: Well, if you're --

2 MR. STRAIN: -- given an opportunity.

3 THE COURT: -- objecting, you need to explain them  
4 now.

5 MR. STRAIN: Oh.

6 THE COURT: And may I see that before, since I have  
7 no idea of what we're talking about?

8 MR. STRAIN: I actually have no objection to this  
9 sentence that counsel would like to put in the record, since  
10 that's what he's pointed out as he would like to have.

11 THE COURT: What sentence?

12 MR. FLUMENBAUM: May I approach?

13 THE COURT: What sentence?

14 UNIDENTIFIED SPEAKER: (Indiscernible).

15 THE COURT: Okay. Excellent, thank you.

16 All right, so that sentence from Mr. Cox will be  
17 considered part of the record.

18 (Michael Cox affidavit was hereby received into evidence  
19 as Plaintiff's Exhibit \*\*, as of this date.)

20 MR. FLUMENBAUM: And I'd like permission to put in a  
21 similar statement from Mr. Del Genio, which were made at the  
22 outset of this --

23 THE COURT: Well, you don't need --

24 MR. FLUMENBAUM: -- proceeding.

25 THE COURT: -- both, do you? I mean, if you have

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1 copies here today --

2 MR. FLUMENBAUM: I -- if there's any view by the  
3 Court that it makes a difference whether it comes from Mr. Cox  
4 or Mr. Del Genio. I don't know Mr. Cox; I don't know Mr. Del  
5 Genio. I do know they made representations on behalf of CHC  
6 to Your Honor.

7 THE COURT: Okay. Well, I see no reason that we need  
8 both.

9 MR. FLUMENBAUM: All right.

10 THE COURT: So, if you're happy with this, and  
11 counsel's not objecting, you have this sentence as part of the  
12 record.

13 MR. FLUMENBAUM: Thank you.

14 And I believe --

15 (Pause)

16 MR. FLUMENBAUM: Your Honor, I also made a reference  
17 to the impact of the grounding on fleet allocations and use of  
18 fleet. And if Your Honor looks at Exhibit I, which is part of  
19 a public filing by CHC, which was filed with the Securities  
20 and Exchange Commission, I believe the date was in July of  
21 2016, after the bankruptcy.

22 THE COURT: Well, what -- specifically what?

23 MR. FLUMENBAUM: Page thirteen: "Risk related to our  
24 business and industry."

25 THE COURT: At the top of the page?

1 MR. FLUMENBAUM: Yes. That first three paragraphs.  
2 "All flights" -- it's entitled "all flights with the aircraft  
3 type H225 and AS332L2, have been temporarily grounded, which  
4 may cause some material and adverse impact to our financial  
5 viability."

6 THE COURT: Right, this is part of the record. But,  
7 specifically, what do you --

8 The point I asked you about was your statement that  
9 CHC rejected your leases because they were grounded, and I  
10 pointed out to you that I don't think there was any evidence  
11 of that.

12 MR. FLUMENBAUM: What I believe I said was that I  
13 think the record shows that that impacted the decisions by CHC  
14 as to which aircraft to reject.

15 THE COURT: Okay, but this doesn't say anything about  
16 that.

17 MR. FLUMENBAUM: Well, I have another cite for you  
18 then.

19 THE COURT: I mean does it? Help me.

20 MR. FLUMENBAUM: I'm reading this carefully.

21 They talk about "there is uncertainty surrounding  
22 H225 and AS332 operations in the foreseeable future."

23 THE COURT: Right, I understand that. But again,  
24 that doesn't suggest that's what caused them to reject your  
25 five leases.

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1 MR. FLUMENBAUM: I said it was a factor, because of  
2 their inability to use them.

3 THE COURT: But it doesn't even say that --

4 MR. FLUMENBAUM: I --

5 THE COURT: -- here.

6 MR. FLUMENBAUM: There is another cite, that I think  
7 is more precise.

8 THE COURT: Okay.

9 MR. FLUMENBAUM: And I will -- I'm looking for that.  
10 If you look at page seventeen of that same document.

11 THE COURT: All right.

12 MR. FLUMENBAUM: "Our profitability is directly  
13 related to demand for our helicopter services" --

14 THE COURT: Hang on; I don't know where you are.

15 MR. FLUMENBAUM: Top of page seventeen.

16 THE COURT: Yes. I see it.

17 MR. FLUMENBAUM: "Our services have been  
18 significantly restricted due to the grounding of aircraft  
19 types H225 and AS332."

20 THE COURT: Okay. But again, that doesn't say  
21 anything about why particular leases were rejected.

22 MR. FLUMENBAUM: There's another cite that I have,  
23 Your Honor, where I -- where we specifically talk about  
24 (indiscernible), where we talk about allocation.

25 I apologize, Your Honor; I didn't realize that those



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1 statements were going to be in dispute. And I would have had  
2 this at my ready, if I had --

3 THE COURT: No, no problem.

4 MR. FLUMENBAUM: -- had anticipated that.

5 At a May 6th -- I'm citing to the brief, where  
6 it's -- see Exhibit H, transcript of 5/6/2016.

7 THE COURT: Exhibit H? What page on the transcript?

8 MR. FLUMENBAUM: It's -- let me see. It's seventeen.

9 THE COURT: Page seventeen?

10 Is that right, page seventeen?

11 MR. FLUMENBAUM: Yes, Your Honor. And the beginning  
12 of eighteen.

13 THE COURT: So this is a statement of counsel?

14 MR. FLUMENBAUM: This is a statement of counsel.

15 THE COURT: That's not really evidence.

16 MR. STRAIN: Counsel, which document are we looking  
17 at?

18 MR. FLUMENBAUM: I'm looking at Exhibit H, which is  
19 the hearing before Your Honor, where I believe Mr. Holtzer  
20 reported to the Court about the tragic events in Norway, and  
21 then said that "the helicopter has been temporarily grounded  
22 in certain jurisdictions; and that has had an impact on our  
23 fleet reconfiguration, which is central to our restructuring.  
24 Our customers are also assessing the use of the H225 going  
25 forward; and we're working with them in that process around

1 the world. CHC -- for all these reasons, CHC has determined  
2 that under these circumstances, it can no longer maintain its  
3 current capital structure and its fleet expense level."

4 THE COURT: Right. But again, that's lawyer talk;  
5 that's not evidence.

6 MR. FLUMENBAUM: That was a representation that was  
7 made to you by counsel for CHC.

8 THE COURT: Okay, but again, Mr. Flumenbaum, you know  
9 this as well as I do, that's not evidence. Lawyers tell me  
10 all sorts of things as officers of the court. But again, I  
11 can't make factual findings on the basis of lawyer talk.

12 MR. FLUMENBAUM: Well, I would ask you, Your Honor,  
13 to take judicial notice of what was said to you, and whether  
14 it's an admission by CHC.

15 THE COURT: Is there an objection to the Court  
16 considering this as evidence?

17 MR. STRAIN: I would think so, Your Honor. I mean,  
18 this is not something that's been -- I mean, we don't even  
19 know where the basis for this, or any opportunity to challenge  
20 it. So yes, there is an objection.

21 THE COURT: But lawyer talk is just not evidence.  
22 The Court never considers what a lawyer says from the podium  
23 to be evidence before the Court.

24 MR. FLUMENBAUM: Well, the document has been admitted  
25 by Your Honor.

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1 THE COURT: For whatever it's worth.

2 MR. FLUMENBAUM: For whatever it's worth.

3 THE COURT: But it's not worth anything; I'll tell  
4 you that now.

5 MR. FLUMENBAUM: Okay.

6 THE COURT: Lawyer talk is just lawyer talk.

7 MR. FLUMENBAUM: I think those were the references  
8 that I had.

9 THE COURT: I mean, Mr. Holtzer has no personal  
10 information; anything Mr. Holtzer knows is hearsay, just like  
11 anything you tell me would be hearsay. You may firmly believe  
12 it, your client may have told it to you, but it's not  
13 evidence.

14 MR. FLUMENBAUM: I think, Your Honor can infer, from  
15 the evidence before you, that the grounding of those  
16 helicopters would have an impact on decisions by CHC, as to  
17 which aircraft to keep and which aircraft to reject. I  
18 believe that is a proper inference that Your Honor can make  
19 from the evidence that is before you.

20 Let me -- so, I've talked about personal  
21 jurisdiction. I've talked about what I believe are the strong  
22 ties to Texas. The fact that the helicopters were purchased  
23 from CHC, were purchased by CHC from Airbus; they were  
24 purchased from CHC by ECN, that ECN leased the helicopters to  
25 CHC. CHC rejected the leases, transferring ownership fully

1 back to CHC.

2 CHC owns the helicopter that crashed in Norway; I  
3 think that's also related to our claims. Airbus markets the  
4 EC225 and the AS332L helicopters for distribution and services  
5 around the world and through the United States, including  
6 Texas.

7 And, as I said, Airbus Group owns AH. And Airbus  
8 Group also owns, through another entity, Airbus Helicopters  
9 Inc., which was a Delaware Corporation headquartered in Texas.

10 So, I think when you take all that into account, and  
11 you take into account the fact that Airbus sells these very  
12 same helicopters, both directly into Texas, and through its  
13 distributor into Texas, that that gives us personal  
14 jurisdiction with the extra benefit that we get, because of  
15 their consent and their coming here, and because of the fact  
16 that we served Airbus in this jurisdiction.

17 So, I think, when you add all those together, we do  
18 have specific jurisdiction, and maybe even have general  
19 jurisdiction.

20 THE COURT: I'm still struggling, because I think  
21 that specific nexus requires that your claims against Airbus,  
22 that's the nexus that the cases talk about. And I see no  
23 nexus.

24 MR. FLUMENBAUM: Your Honor, let me refer you to the  
25 Hess v. Bumbo international case.

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1 THE COURT: Okay.

2 MR. FLUMENBAUM: I think that case -- I think there  
3 was a -- this was an injury, and I was going to rely on this  
4 case also, for when we talk about abstention. I think this  
5 was a injury that occurred in Arizona, you got a foreign  
6 entity; and they sued in Texas.

7 And again, on specific jurisdiction grounds, they did  
8 not have specific jurisdiction, unlike what we believe we do;  
9 but the court found that they had general jurisdiction,  
10 because of Bumbo, which was a South African entity, I believe,  
11 had continuous and systematic commercial contacts with Texas,  
12 but its central base for distributing product was in the  
13 United States, and in Texas, that they sued their distributor  
14 in Texas, and that was a big factor in that. And they also  
15 found that Texas has an interest in policing entities that do  
16 business in Texas, and that involve product liability claims.

17 So I think the Bumbo International Trust case, I  
18 think gives you a case that supports what I've been arguing,  
19 in terms of the general jurisdiction point. But I think, in  
20 this case, we have both consent jurisdiction; and I think it  
21 also gives us general jurisdiction, given the central role  
22 that Texas has played in this proceeding.

23 Let me --

24 THE COURT: But the problem there is that case is  
25 distinguishable. Bumbo sued its distributor first, and then

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1 later claimed that there was no personal jurisdiction, when it  
2 was sued in the same court, and the court --

3 MR. FLUMENBAUM: By a third party.

4 THE COURT: Hang on. But the court found that Bumbo  
5 had consented its jurisdiction by filing a related lawsuit on  
6 its own. All of the suits -- both of the suits related to the  
7 same issue, giving rise to the product's liability, which  
8 is --

9 MR. FLUMENBAUM: Well, I --

10 THE COURT: -- very different.

11 MR. FLUMENBAUM: -- I think they sued their  
12 distributor -- I don't believe they sued their distributor for  
13 product liability claims. I may be forgetting Bumbo, but I  
14 don't believe that was the --

15 THE COURT: Okay, but Bumbo sued in the jurisdiction  
16 on related issues, and that was the basis of the court  
17 concluding that it essentially had waived any personal  
18 jurisdiction argument, as I understand it.

19 MR. FLUMENBAUM: This is the exact same thing that  
20 SAS did here.

21 THE COURT: No.

22 MR. FLUMENBAUM: They brought a proof of claim --

23 THE COURT: Against the debtor.

24 MR. FLUMENBAUM: That's correct. That's the same as  
25 the distributor.

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1 THE COURT: No, but that --

2 MR. FLUMENBAUM: It's the same as the distributor.

3 THE COURT: It's for different -- that the claim is  
4 for goods and services; it's not for a products liability.

5 MR. FLUMENBAUM: No, but it doesn't have to be the  
6 same claim.

7 THE COURT: Okay.

8 MR. FLUMENBAUM: I think that's where -- I think  
9 that's where we're failing to connect; it doesn't have to be  
10 the same claim.

11 THE COURT: Okay.

12 MR. FLUMENBAUM: And suing the debtor here is the  
13 same as Bumbo suing their distributor in Texas.

14 But again, the court didn't rely on one factor; it  
15 relied on a host of factors, including the voluntary suit, the  
16 participation, the continuous contact, the fact that the suits  
17 related, involved the same thing, and Texas's interest. And  
18 that leads me, really, to the abstention point that I want to  
19 get to.

20 THE COURT: Okay, please.

21 MR. FLUMENBAUM: Because I think -- I believe that  
22 this case should not -- this Court should not abstain, in this  
23 case. By abstaining in this case, this Court is saying to ECN  
24 that they have to bring suit against Airbus in France.

25 THE COURT: No, I'm not --

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1 MR. FLUMENBAUM: There's no --

2 THE COURT: -- telling you --

3 MR. FLUMENBAUM: -- there's --

4 THE COURT: -- where you have to sue.

5 MR. FLUMENBAUM: I have jurisdiction, assuming I have  
6 jurisdiction, we have to assume I have jurisdiction, if Your  
7 Honor is reaching the --

8 THE COURT: Um-hum.

9 MR. FLUMENBAUM: -- abstention points. So, I have  
10 jurisdiction against them here. I do not believe I could get  
11 jurisdiction against Airbus elsewhere in the United States.

12 THE COURT: Okay.

13 MR. FLUMENBAUM: So this is -- most abstention cases  
14 have a forum that the court abstains to.

15 THE COURT: Understood. But it's not required.

16 MR. FLUMENBAUM: It's not required. It's not  
17 required, because I guess the provision of 1334(c)(12) talks  
18 about interest of justice, as opposed to the comity and those  
19 state law issues.

20 And I don't believe that abstention, in this case,  
21 meets the interests of justice at all. I think, in fact, it's  
22 a -- would be an unjust result, because it would require ECN,  
23 which has jurisdiction, assuming, in this district, to give up  
24 its jurisdiction in this district, and go to Airbus's home  
25 court in France.



1           There's no suit in France that we join. We'd have to  
2 bring a separate -- there's no arbitration for ECN; they talk  
3 about -- we could arbitrate in France, but we don't have an  
4 arbitration agreement.

5           THE COURT: I understand.

6           MR. FLUMENBAUM: There's no -- there's nothing  
7 there -- we would have to bring suit in France, which does not  
8 have the kind of discovery that we have in this country, which  
9 does not have the kind of court system; I mean it is a  
10 democratic country, but it certainly is unjust for ECN to have  
11 to give up the advantages of an American court and an American  
12 jurisdiction in this case.

13           As I said, the purpose of abstention is to go to --

14           THE COURT: Well, but --

15           MR. FLUMENBAUM: -- is to go another court, which has  
16 some interest in this thing; usually it's the state court, as  
17 opposed to a foreign entity.

18           THE COURT: Well, but that's -- I mean, look, let's  
19 be blunt; ECN is Canadian, and Airbus SAS is French. You  
20 bought helicopters from the debtor.

21           MR. FLUMENBAUM: From CHC, Texas.

22           THE COURT: No; you did not. You bought them from  
23 CHC Barbados --

24           MR. FLUMENBAUM: Which is run --

25           THE COURT: -- who had bought them from a French

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1 entity. So --

2 MR. FLUMENBAUM: Both decisions being made in Texas.

3 THE COURT: There's no evidence of that. Thank you,  
4 but there is no evidence of that. You chose to buy  
5 helicopters from a foreign entity, that that foreign entity  
6 had purchased from another foreign entity. ECN is a foreign  
7 corporation.

8 And again, I hear you, but there is --

9 MR. FLUMENBAUM: We do business --

10 THE COURT: -- the basis of jurisdiction is related  
11 to. This is so tangential to the bankruptcy, that to be  
12 honest, I think it's an abuse of discretion to keep this case  
13 here. I tried to say it nicely before, but this is truly a  
14 stretch.

15 Normally, it's a debtor who wants me to keep things;  
16 this is a debtor who says we don't care, go away; we are not  
17 going to bring these claims in this court, ever. We'll go to  
18 France, we'll do -- we'll go someplace else, where we think we  
19 have jurisdiction. But even the debtor, who holds identical  
20 claims to yours, has no intention of suing in the Northern  
21 District of Texas, because this was a bankruptcy case; this  
22 was a case designed to resolve an enormous insolvency  
23 situation.

24 MR. FLUMENBAUM: I --

25 THE COURT: But that this debtor is hopelessly

1 insolvent, that's why billions of dollars of debt is being  
2 converted to equity in this case.

3 And yes, the tragedy in Norway didn't help; but the  
4 debtor operates in the oil field services industry, that is in  
5 the toilet. And --

6 MR. FLUMENBAUM: For which Texas is a significant  
7 area of operations.

8 THE COURT: No -- yeah, but --

9 MR. FLUMENBAUM: Texas has a significant interest in  
10 making sure that defective Super Pumas are not sold or flown  
11 in Texas.

12 THE COURT: And this one wasn't. The crash was in  
13 Norway.

14 MR. FLUMENBAUM: Right.

15 THE COURT: Let us remember.

16 MR. FLUMENBAUM: I -- we understand. But it could  
17 have been in Texas.

18 THE COURT: Well, a lot of things could have been,  
19 Mr. Flumenbaum.

20 MR. FLUMENBAUM: But, as in Bumbo, the accident  
21 occurred in Arizona; that doesn't mean that there wasn't  
22 jurisdiction in Texas, and there was no reason for the Texas  
23 court to refuse to hear the case and then send it back to  
24 Arizona.

25 THE COURT: Okay. But I have broad discretion on

1 this, right?

2 MR. FLUMENBAUM: Of course you do. But what I'm  
3 trying to convince Your Honor is that it's an unfair result to  
4 abstain.

5 THE COURT: But --

6 MR. FLUMENBAUM: If we have --

7 THE COURT: But why?

8 MR. FLUMENBAUM: Because if we have jurisdiction, if  
9 we assume we have jurisdiction, then we should be allowed  
10 to --

11 THE COURT: But --

12 MR. FLUMENBAUM: -- do that. If you look --

13 THE COURT: But any time a court permissibly  
14 abstains, it's had jurisdiction. And there are --

15 MR. FLUMENBAUM: But, usually --

16 THE COURT: -- thousands of cases --

17 MR. FLUMENBAUM: But usually --

18 THE COURT: -- where courts decide to permissibly  
19 abstain.

20 MR. FLUMENBAUM: Yes, but there's usually a court to  
21 accept the case, that is --

22 THE COURT: Well, there is a court here. There's not  
23 one where it's pending, but there is another court.

24 MR. FLUMENBAUM: There's no pending proceeding.

25 THE COURT: I know, but there is another court to

1 accept jurisdiction.

2 MR. FLUMENBAUM: There --

3 THE COURT: It's in France. At a minimum, it's in  
4 France.

5 MR. FLUMENBAUM: So you're -- so, after getting a  
6 jurisdiction in the United States --

7 THE COURT: Barely, but yes.

8 MR. FLUMENBAUM: I don't know of any quantum --

9 THE COURT: No, no, no. But let's --

10 MR. FLUMENBAUM: -- that is --

11 THE COURT: -- be candid; it's related to, but it's a  
12 tenuous connection.

13 MR. FLUMENBAUM: But we disagree on how tenuous it  
14 is.

15 THE COURT: Yes.

16 MR. FLUMENBAUM: We think there's a lot of activity  
17 in Texas, that's related.

18 THE COURT: No, no, no.

19 MR. FLUMENBAUM: CHC is going to be a witness. We --

20 THE COURT: But that doesn't create related-to  
21 jurisdiction.

22 MR. FLUMENBAUM: No, it doesn't, but we --

23 THE COURT: The fact --

24 MR. FLUMENBAUM: -- think there's a --

25 THE COURT: -- that CHC is going to be a witness.

1 MR. FLUMENBAUM: -- we think there's a lot here.  
2 What abstaining essentially does, it negates our ability to  
3 choose our forum, which is entitled to some deference, not the  
4 full deference, as if we were a Texas entity, but some  
5 deference. And it denies us the benefits of a U.S. litigation  
6 in connection with this case.

7 And, as I, maybe inarticulately, tried to do, Texas,  
8 I think, has a strong interest in this case, being a center  
9 for the oil industry, being a center for the flight of these  
10 helicopters. I think, as in Bumbo, Texas has an interest in  
11 making sure that defective products are not sold here. And  
12 there are hundreds of those things that are, in fact, sold  
13 here.

14 So, we don't have a state court action. Both parties  
15 are creditors, in this proceeding, are here. The result will  
16 certainly impact, we believe, the rights and/or property of  
17 the reorganized estate, or even the debtor's estate.

18 And when you go to the MontCrest Energy factors, that  
19 Your Honor articulated, we have a different view of them,  
20 because we have never -- we have argued that -- we believe  
21 that there are the four key factors, we think, go against  
22 abstention; and that is, there's no related court proceeding,  
23 state court proceeding.

24 We believe it's Airbus that's doing the forum  
25 shopping, having come in here, and is trying to escape some

1 decisions that it voluntarily made, to litigate in this forum.  
2 So we look at that totally differently than Your Honor. And  
3 what we were doing, in terms of ECN, was finding where Airbus  
4 was -- could be sued, legitimately. We weren't trying to gain  
5 an advantage. If we could have sued them in Delaware; they  
6 haven't offered Delaware, they haven't offered New York, they  
7 haven't offered any other place.

8 THE COURT: Well, they don't have to offer.

9 MR. FLUMENBAUM: They don't. They don't. They  
10 obviously don't. But Your Honor should take that into  
11 account.

12 THE COURT: Why? What factor does that fit under  
13 permissive abstention?

14 MR. FLUMENBAUM: Well, that it's -- I think, when the  
15 fact of four, which is not related to a state court  
16 proceeding, I think that there's no other court proceeding  
17 that this thing should be deferred for; I think that's  
18 what's -- the concept is there. And I think, in terms of the  
19 bankruptcy, I think CHC is an important witness in the  
20 proceeding.

21 THE COURT: But that's not affecting the  
22 administration of the estate.

23 MR. FLUMENBAUM: Well, it -- there will be demands on  
24 their executives, on their time.

25 And again, the issue should be at the time of when we

1 filed this complaint.

2 THE COURT: But they did not spend any time on it --

3 MR. FLUMENBAUM: Well --

4 THE COURT: -- yet.

5 MR. FLUMENBAUM: -- that is because we haven't gotten  
6 to --

7 THE COURT: Well, but --

8 MR. FLUMENBAUM: -- discovery yet.

9 THE COURT: I understand.

10 MR. FLUMENBAUM: But they will be, and we require  
11 them to actually --

12 THE COURT: But it's the efficient administration of  
13 the estate.

14 MR. FLUMENBAUM: I understand that.

15 THE COURT: By the time you get to discovery, Mr.  
16 Flumenbaum, there may well not be a bankruptcy estate.  
17 Because --

18 MR. FLUMENBAUM: May or may not, depending on how --

19 THE COURT: Right.

20 MR. FLUMENBAUM: -- how quickly --

21 THE COURT: We'll know later this week or next week,  
22 in all likelihood.

23 MR. FLUMENBAUM: The unsettled nature, I think Your  
24 Honor recognized that that's really a neutral factor of the  
25 law.



Colloquy

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1 THE COURT: I -- well --

2 MR. FLUMENBAUM: This is not -- this is a --

3 THE COURT: That isn't what I said, but fair enough.

4 MR. FLUMENBAUM: I thought it was a neutral  
5 factor -- I think it's a neutral factor; I think it's a  
6 products liability case. Federal courts in this jurisdiction  
7 have handled numerous product liability cases.

8 I think the fact that the reference is going to be  
9 withdrawn, also negates some of these other factors. The  
10 issue, whether the state law predominates over the bankruptcy  
11 issues is irrelevant, because, again, federal courts are used  
12 to dealing with state law issues.

13 THE COURT: To be blunt, no more so than I am.

14 MR. FLUMENBAUM: Well --

15 THE COURT: I deal with state law issues every day.

16 MR. FLUMENBAUM: Your Honor, if I could have you  
17 decide a products liability case, I would. If they would --

18 THE COURT: And I don't care.

19 MR. FLUMENBAUM: If they --

20 THE COURT: I mean I don't care about that. But --

21 MR. FLUMENBAUM: Yeah, but I'm just --

22 THE COURT: -- the reality is is every federal court  
23 decides state law issues --

24 MR. FLUMENBAUM: Of course.

25 THE COURT: -- day in and day out.

Colloquy

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1 MR. FLUMENBAUM: Of course. So that's why I don't  
2 think that factor really weighs against us; the burden on the  
3 bankruptcy court docket, I don't think that factor --

4 THE COURT: It doesn't say bankruptcy court's docket;  
5 it said the court's docket.

6 MR. FLUMENBAUM: Docket. I had assumed it was the  
7 bankruptcy court's docket.

8 THE COURT: No.

9 MR. FLUMENBAUM: But even a broader -- this is a case  
10 that --

11 THE COURT: This is not a case I can try.

12 MR. FLUMENBAUM: Right.

13 THE COURT: So the burden on the Court's docket is  
14 the district court's docket.

15 MR. FLUMENBAUM: Right. And as we're before a judge  
16 in Lubbock, Texas, I've got no indication that their docket in  
17 Lubbock is any worse than any other federal --

18 THE COURT: Why do you think he's hearing a Dallas  
19 case?

20 MR. FLUMENBAUM: Well, because --

21 THE COURT: Because Dallas is -- the Northern  
22 District of --

23 MR. FLUMENBAUM: -- the Dallas judge is --

24 THE COURT: -- Texas is very busy --

25 MR. FLUMENBAUM: Right.

## Colloquy

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1 THE COURT: -- right now.

2 MR. FLUMENBAUM: Right. I understand that.

3 But, no more so than if we had filed a different case  
4 in this district. But my point being --

5 THE COURT: Well --

6 MR. FLUMENBAUM: -- my point being that if we have  
7 jurisdiction here, I think the abstention argument, especially  
8 given the fact that it's not a burden for either party to  
9 litigate in this jurisdiction, because both parties have  
10 already litigated in this jurisdiction; they came into this  
11 jurisdiction voluntarily.

12 So -- and again, the existence of a jury trial  
13 doesn't -- I don't think leads to -- doesn't lead to  
14 abstention in this case, because the case is going to be jury-  
15 tried in the federal court.

16 This is not a situation where Airbus has said well, I  
17 have another similar case pending in state court in Dallas,  
18 why don't you -- why don't you abstain --

19 THE COURT: Mr. Flumenbaum --

20 MR. FLUMENBAUM: -- in favor of that?

21 THE COURT: -- I have allowed you to have a greatly  
22 disproportionate amount --

23 MR. FLUMENBAUM: You certainly have.

24 THE COURT: -- of the time. But at this point,  
25 you're just repeating yourself.

## Colloquy

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1 MR. FLUMENBAUM: All right.

2 THE COURT: So, if you have something new to add, I'm  
3 happy to hear it. But I do think, at this point, you may just  
4 be repeating.

5 MR. FLUMENBAUM: I just want to, again, stress that  
6 it's no hardship for Airbus to defend here; and the state has  
7 an interest -- the state of Texas, I believe, has an  
8 independent interest in making sure that unsafe aircrafts are  
9 not sold in Texas. And I think that puts us in the Bumbo  
10 state.

11 Thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. STRAIN: Your Honor, I'll be brief on personal  
14 jurisdiction.

15 THE COURT: All right, please.

16 MR. STRAIN: Your Honor, there's been a lot of talk  
17 today about this evidence related to decisions being made in  
18 Texas, by the CHC parent company. The issue for personal  
19 jurisdiction is Airbus Helicopters' contacts with the forum,  
20 not some third party; case law we cited on our opening brief  
21 acknowledges that. And when we talk about the filing of the  
22 proof of claim, is in a forum that the debtor has chosen; and  
23 if that exposes us to purposeful availment for anything, and  
24 everything, general jurisdiction, that's not our activity.

25 But more to the point, these helicopters, as Your

1 Honor has made very clear, were sold to U.K. and Irish  
2 companies. The fact that some parent company in Texas has  
3 made a decision to reject leases, or gone into bankruptcy, and  
4 made any type of decisions related to these helicopters, is  
5 not contact -- excuse me -- conduct by Airbus Helicopters. It  
6 could be deemed purposeful availment; therefore, it's also not  
7 conduct, by my client, that could satisfy the relatedness  
8 requirement, because the relatedness requirement stems from  
9 the purposeful availment.

10 The causes of action must arise from the defendant's  
11 contacts with the forum, not a third party, which is why I was  
12 suggesting earlier, all of this discussion about this evidence  
13 is really not relevant today.

14 Secondly, there are -- Bumbo is pre-Daimler, I'll  
15 point that out. And after Daimler, the Fifth Circuit has  
16 said, in Moncton, (ph.) it's incredibly difficult to establish  
17 general jurisdiction, at any forum other than the place of the  
18 corporation and the principal place of business.

19 I don't think we're really talking about general  
20 jurisdiction here today; I don't necessarily feel a need to  
21 respond. Our briefs address that.

22 If the filing of a proof of claim opened a defendant  
23 to general jurisdiction, Daimler would obviously mean nothing,  
24 because how could a -- any creditor come into a court to file  
25 proof of claim, and seek to protect its rights in a

1 bankruptcy, without exposing itself to worldwide general  
2 jurisdiction in that situation. So, I think the chilling  
3 effect alone is something to consider. But I don't think the  
4 Supreme Court would allow that under Daimler.

5 There was talk about service made on Mr. Cabanas in  
6 Texas. And I just want to make sure the record is clear on  
7 that, because I don't think it matters, because acceptance of  
8 service, or service alone, does not establish personal  
9 jurisdiction.

10 And secondly, there was an attempt to serve Mr.  
11 Cabanas, but we informed counsel for ECN that we did not think  
12 that that was appropriate, because Mr. Cabanas works for a  
13 separate and independent company. But we agreed to accept  
14 service, and agreed on a response date. So that is not an  
15 issue, I think, that plays in to the jurisdictional analysis  
16 at all.

17 Those are my points, Your Honor.

18 THE COURT: Thank you.

19 MR. STRAIN: Unless Your Honor has questions.

20 THE COURT: I do not.

21 MR. STRAIN: The only other point I'd like to make is  
22 it seemed that the abstention argument, at some points, went  
23 into forum non conveniens issues. I'm happy to respond on  
24 forum non conveniens, if Your Honor intends to address that.  
25 But it didn't appear that that was an issue that we were going

1 to discuss in our argument today.

2 THE COURT: Well, give me your response to --

3 MR. STRAIN: Sure.

4 THE COURT: -- because I agree. Some of the  
5 arguments, with respect to permissive abstention, did seem to  
6 drift over into forum non conveniens.

7 MR. STRAIN: Okay. I'll just give a very brief  
8 statement on forum non conveniens; and Mr. Katz will be  
9 addressing the reply on abstention.

10 I just point out that with respect to forum non  
11 conveniens, there hasn't been any attempt by ECN to  
12 distinguish or dispute any of the many cases cited in our  
13 briefs, that would compel -- that would allow the Court, in  
14 its discretion, to dismiss this case on forum non conveniens  
15 grounds.

16 It seems the real focus, is this treatment unfairly.  
17 In the courts of France, there's been some indication that is  
18 Airbus Helicopters' ultimate parent company, is owned ten  
19 percent by the French government, that that somehow means the  
20 courts of France can't be fair. I think that that's kind of  
21 like saying the courts of the United States would have to  
22 recuse themselves every time the United States government, or  
23 an agency thereof, were a defendant in a case. And I think  
24 that it's just not an argument that goes anywhere; and we  
25 cited case law to that effect.

1           With regard to the public interest factors, and the  
2 private interest factors, look, this is -- everything we've  
3 talked about today, all of the evidence, all of the activity,  
4 everything has occurred outside of the United States, the  
5 place of manufacture, sale, the witnesses, people involved  
6 with the maintenance of the helicopters; I mean, we don't  
7 concede there's a defect.

8           And just because there was an accident and the  
9 grounding, there'll be umpteen number of depositions of people  
10 involved with maintaining these aircraft and all sorts of  
11 other activity related to that.

12           In those, there may be third parties that we don't  
13 have the ability to compel here, in Texas, or anywhere in the  
14 United States. Meaning, you have a trial primarily by  
15 videotape, with respect to third party witnesses, which the  
16 Fifth Circuit has said is not something that's ideal.

17           Lastly, with respect to the country having the  
18 biggest interest in this, Your Honor has already mentioned  
19 this Court is congested; that's why this case would go up to  
20 the Lubbock. Why should jurors of this district hear this  
21 case between two foreign parties, involving completely foreign  
22 events and activities?

23           With respect to the cases we cite, there are many  
24 that say the country in which an accident occurred, or that  
25 has regulatory authority over somebody, or the laws of France,



1 the European Union, should be applied against this case,  
2 because that's where the conduct took place, Your Honor.

3 I think the cases that they've cited, Tempurpedic  
4 (ph.) and Snaza (ph.) are distinguishable nonbeliefs, (ph.)  
5 because they were brought by U.S. citizens, which do get  
6 greater deference in the forum non conveniens analysis.

7 Thank you, Your Honor.

8 THE COURT: Thank you very much.

9 Mr. Katz?

10 MR. KATZ: Your Honor, Jason Katz, on behalf of the  
11 defendant, Airbus Helicopters SAS, briefly on the abstention.  
12 ECN focused on the factor four, and I think the Court's  
13 already pointed out that it's not a requirement that there be  
14 another place to go, for this Court to tell ECN where the case  
15 should go. I'm not going to rehash all the factors. Airbus  
16 agrees with the Court on the majority of the factors at the  
17 outset of this hearing.

18 There is a twelve-factor, if you look at the  
19 MontCrest Energy in case, that ECN's counsel mentioned to the  
20 court, the twelve-factor that this Court didn't touch on was  
21 the presence in the proceeding of non-debtor parties, and  
22 that's what we have here, two non-debtor parties, both foreign  
23 entities.

24 And there's nothing else for me to address, because I  
25 believe the rest of the abstention argument drifted into forum

1 non conveiens, which I believe my co-counsel has already  
2 addressed, Your Honor.

3 That's all I have. Thank you.

4 THE COURT: Thank you, Mr. Katz.

5 All right. Well, the Court appreciates the briefing  
6 that's been done; certainly, a lot of effort has gone into  
7 this, both by the parties and the Court. So, at this point,  
8 from the Court's perspective, the matter is under submission,  
9 along with the request to withdraw the reference.

10 And so, we will give it careful thought; and we'll  
11 attempt to issue whatever it is that we think we have to  
12 issue, whether that be proposed findings or a determination  
13 ourselves, as promptly as we can.

14 As you may have figured, from the status conference I  
15 held this morning, the -- at the moment, we're a bit  
16 encumbered in the main bankruptcy case, in the efforts to see  
17 if the debtor's plan can be confirmed or not. And so, to be  
18 candid, for the next couple of weeks I fully expect that we  
19 will be looking at our other non-CHC-related docket, and be  
20 focused mostly on confirmation issues.

21 But we will turn to this just as quickly as we can,  
22 and issue our decision, whatever it may be, just as quickly as  
23 we can.

24 Are there deadlines? Just refresh my recollection;  
25 are there any deadlines that we need to worry about in this

1 case, while these issues are, for lack of a better word, under  
2 advisement here?

3 MR. KATZ: Your Honor, Jason Katz, on behalf of  
4 Airbus Helicopters SAS, I believe that the Court's prior  
5 ruling on the motion to stay the deadlines and the order  
6 that's been entered by the Court, actually, that we have a  
7 proposed order for the Court to consider, I don't think the  
8 order's actually been entered yet, addresses all the pretrial  
9 deadlines; and I believe they're stayed until further order of  
10 the Court.

11 And the decision by the Court on when to set the  
12 trial date is subject to the Court's ruling on the motion to  
13 dismiss and motion to withdraw the reference and  
14 recommendations for the addition, Judge; so I don't believe  
15 there any deadlines the Court needs to deal with at this  
16 point, Your Honor.

17 THE COURT: When will that order come in? I don't  
18 want to hear from you, Mr. Flumenbaum, but --

19 MR. FLUMENBAUM: I don't think there's any need for  
20 another order, Your Honor. I believe that we are basically on  
21 hold until --

22 THE COURT: I thought there was an order abating the  
23 adversary. Am I misremembering?

24 MR. KATZ: Your Honor, we uploaded the -- the Court  
25 had some questions about one of the provisions that was

1 submitted in the initial proposed order. Counsel for Airbus,  
2 we addressed that issue and resubmitted the order to the  
3 Court. So the Court should have it now.

4 THE COURT: Okay. Well then, we'll look at that  
5 order presumably, I'll sign that order. I just wanted to be  
6 sure, because obviously, until we rule on this; and frankly it  
7 may not make any sense to go further until we know what the  
8 district court thinks of this ruling, or proposed ruling; so,  
9 we'll look at that.

10 And once we issue -- again, whatever it is we're  
11 going to issue, if anyone has any concerns, that we need to be  
12 doing something other than keeping the action on hold,  
13 obviously file whatever anybody thinks is appropriate. But we  
14 will try and get our decision out, and before the district  
15 court, in all likelihood, as quickly as possible.

16 But I do alert you that the next -- the first I'm  
17 going to be able to turn back to this is probably not until  
18 the week of March 20th. That won't mean that there won't be  
19 Ms. Crocker working on drafts. But I feel pretty certain this  
20 week and next are going to be reasonably tied up with CHC main  
21 bankruptcy case matters.

22 And then, as I mentioned previously, I am out the  
23 week of the 13th on judicial conference and related  
24 activities. So we'll be out of town on court-related  
25 requirements.

## Colloquy

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1           So, anyway, we will get to this as quickly as we can,  
2   and get our decision out just as quickly as we can, so we can  
3   keep the lawsuit moving, if the lawsuit is going to remain  
4   here. But mostly, I want to get whatever we're going to do to  
5   the district court, so that the district judge has the  
6   opportunity to review it and either approve or not approve.  
7   And we'll go from there.

8           So, thank you all very much. I appreciate all the  
9   effort that's gone into this.

10          MR. STRAIN: Thank you, Your Honor.

11          MR. FLUMENBAUM: Thank you, Your Honor.

12          MR. KATZ: Thank you, Your Honor.

13          THE COURT: And we are in recess until this  
14   afternoon. You're excused.

15          (Whereupon these proceedings were concluded at 11:54 a.m.)

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## I N D E X

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No.	Description	Marked	Admitted
PLAINTIFF'S:			
**	Martin Flumenbaum and Pietro Signoracci affidavit		60
DEFENDANT'S:			
A	Declaration of Michael J. Genereux		19

## 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

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ELISHEVA ELBAZ

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DATE

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**CERTIFICATE OF SERVICE**

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