

Dennis F. Dunne
Evan R. Fleck
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

Gregory Bray
MILBANK LLP
2029 Century Park East, 33rd Floor
Los Angeles, CA 90067
Telephone: (424) 386-4000
Facsimile: (213) 629-5063

*Proposed Counsel for Debtors and
Debtors-In-Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re:	: Chapter 11
	: :
AVIANCA HOLDINGS S.A., <i>et al.</i> , ¹	: Case No. 20-11133 (MG)
	: :
Debtors.	: (Joint Administration Requested)
	: :
-----X	

**DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS, PURSUANT TO
SECTIONS 105(a) AND 363 OF THE BANKRUPTCY CODE, (I) AUTHORIZING
DEBTORS TO PAY CERTAIN OUTSIDE MAINTENANCE AND SERVICE
PROVIDERS, SHIPPERS, AND CONTRACTORS IN SATISFACTION OF
PERFECTED OR POTENTIAL MECHANICS,' MATERIALMEN'S
OR SIMILAR LIENS OR INTERESTS; (II) SCHEDULING
FINAL HEARING; AND (III) GRANTING RELATED RELIEF**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

¹ The Debtors in these chapter 11 cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Islaña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



Avianca Holdings S.A. and its affiliated debtors in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), as debtors and debtors-in-possession (collectively, the “Debtors”), respectfully represent as follows in support of this motion (the “Motion”):²

RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of an order, substantially in the forms annexed hereto as **Exhibit A** and **Exhibit B** (respectively, the “Proposed Interim Order” and “Final Order”), pursuant to sections 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “Bankruptcy Code”), (a) granting authority to, in their discretion, pay prepetition, ordinary course obligations to the Lien Claimants (as such term is defined herein) in satisfaction of claims secured by perfected or potential mechanics’, materialmen’s, or similar liens or interests, whether possessory or otherwise; (b) scheduling a final hearing (the “Final Hearing”) to consider entry of the Proposed Final Order; and (c) granting related relief.

2. It is vital that the Debtors be permitted to pay prepetition claims of such parties to ensure that the Debtors’ fleet is maintained and serviced in a timely fashion and to ensure that there is no disruption to the Debtors’ ability to provide their customers with safe, dependable air travel promptly upon improvement of the current macroeconomic climate. Absent such authority, and unless the Lien Claimants are paid promptly, these parties may refuse to redeliver the Debtors’ aircraft, engines, and other equipment that are vital to the Debtors’ operations and/or may refuse to continue to perform construction, maintenance, and repairs at the Debtors’ facilities. Notwithstanding the fact that the Debtors’ passenger transport business has been grounded, the Debtors must obtain, as set forth herein, immediate authority to satisfy the prepetition claims of

² Capitalized terms not defined herein shall have the meanings ascribed to them in the First Day Declaration (as defined below).

the Lien Claimants (as defined herein), in order to avoid irreparable harm to their businesses. Therefore, the Debtors believe, in the exercise of their business judgment, that it is in the best interests of the estates if the Debtors are authorized (but not directed) to pay prepetition amounts owed to the Lien Claimants.

JURISDICTION

3. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
4. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
6. The bases for the relief requested herein are sections 105(a), and 363(b) of the Bankruptcy Code.

STATUS OF THE CASE

7. On the date hereof (the "Petition Date"), each of the Debtors filed with this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code.
8. Each Debtor is continuing to operate its businesses and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
9. No creditors' committee has yet been appointed in these cases. No trustee or examiner has been appointed.
10. The Debtors have filed a motion requesting joint administration of the Chapter 11 Cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

11. Avianca is the second-largest airline group in Latin America and the most important carrier in the Republic of Colombia and in the Republic of El Salvador. It is the largest airline in the Republic of Colombia (the third largest Latin American economy), a code-share partner of United Airlines, and a member of the Star Alliance which, with 26 members, is the world's largest global airline alliance. Established in 1919, Avianca has a 100-year legacy as a leading provider of air travel and cargo services in the Latin American market and around the globe. Avianca is well respected throughout Latin America and maintains significant customer brand equity and market share in the regions it services.

12. The Debtors operate an extensive network of routes from their primary hubs in Bogotá and San Salvador (in addition to other focus markets) and offer passenger services on more than 5,350 weekly flights to more than 76 destinations in 27 countries. With approximately 18,900 employees and approximately \$3.9 billion in annual revenues, the Debtors play a key role in the Latin American airline markets.

13. Despite an effective debt reprofiling executed in the second half of 2019, a significant improvement in Avianca's liquidity position in early 2020, and the successful 2019 launch of the "Avianca 2021" transformation plan, the Debtors have been compelled to file these Chapter 11 Cases for one principal reason: the COVID-19 pandemic, which has affected the world's population and economies in ways that have never been experienced. The reduction in travel as a result of the virus, and the measures undertaken to combat the virus, including restrictions commercial flights and on travel, have had and will continue to have an adverse impact on the Debtors. As a result of the ongoing pandemic and its consequences, the Debtors are facing significantly reduced revenues from ticket sales and ancillary revenues, government

prohibitions globally on international flights, substantial ongoing contractual obligations to their lessors, lenders and other creditors, and a near complete standstill of the global economy—all with significant continued impact and limited visibility as to the potential market recovery.

14. On March 20, 2020, the Republic of Colombia, consistent with what numerous other governments around the world have done, announced that it would close its airspace to address the spread of COVID-19. As a result of the restrictions imposed by the Colombian government, as well as similar measures in various other of the Debtors' primary markets, on March 24, 2020 the Debtors announced that they were suspending all scheduled passenger flights from March 25, 2020 until at least the end of April 2020; this situation has now been extended and is ongoing, and no date has been established for restart of flights.

15. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the *Declaration of Adrian Neuhauser in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), which is being filed contemporaneously herewith and is incorporated by reference herein.

BACKGROUND RELEVANT TO MOTION

16. The Debtors seek by this Motion immediate authority to satisfy the prepetition claims of the Lien Claimants, in order to avoid irreparable harm to their businesses. The Debtors request such relief notwithstanding the fact that the Debtors' passenger transport business has been grounded for a number of compelling reasons. The Debtors' cargo transport business remains in full operation, and generally has not been subject to the travel restrictions imposed by various governments in the markets which the Debtors operate. Moreover, the Debtors also must continue to operate their passenger aircraft for charter and repatriation flights, as well as "ferry flights,"

which involve the repositioning and relocation of various passenger aircraft depending on aircraft parking and storage availability in various locations.

17. The Debtors also continue to perform certain “lead time” operations in anticipation of a modest near-term resumption of passenger flights. Certain operations must be undertaken sufficiently in advance or on an ongoing basis—such as the servicing of aircraft, the maintenance of airport facilities, and completion of any ongoing construction—to permit the limited ongoing flight operations referenced above and to allow for passenger flights to timely resume when circumstances permit. Most significant among these ongoing operations is the periodically scheduled maintenance required by the FAA under Title 49 of the United States Code and related regulations that is intended to maintain the airworthiness and value of the Debtors’ aircraft. All of the foregoing requires the continued support of the Lien Claimants, as to which relief is requested herein, all of which are necessary and appropriate to accomplish the Debtors’ goals and to protect against further diminution in the value of the Debtors’ businesses.

A. Outside Maintenance & Service Providers and Shippers

18. The Debtors are required to perform significant maintenance and overhaul work to maintain their fleet of aircraft properly and safely and in accordance with the regulations of the Federal Aviation Administration (the “FAA”), as well as applicable laws and regulations of the various foreign jurisdictions in which the Debtors operate. *See, e.g.*, 14 C.F.R. §§ 125.241 to 125.251 (setting forth regular and extensive maintenance requirements for certain types of aircraft).

19. The Debtors rely on outside mechanics and repairmen to perform maintenance and repair work on the Debtors’ aircraft, engines, and equipment, as well as other non-aircraft related services (collectively with the outside mechanics and repairmen, the “Outside Maintenance &

Service Providers”). Certain of the Debtors’ Outside Maintenance & Service Providers perform maintenance and repair work pursuant to ongoing maintenance and service contracts, including, but not limited to, engine repair contracts (the “Maintenance Contracts”), or on a credit basis with the subsequent delivery of invoices to the Debtors. Some of the Outside Maintenance & Service Providers provide “on-call” maintenance and repair services at various destinations, enabling the Debtors to avoid maintaining complete repair facilities and employing mechanics at every destination city. As part of their maintenance and repair work, the Outside Maintenance & Service Providers also supply and/or sell to the Debtors certain aircraft component parts, most of which constitute replacement parts.

20. The Debtors have developed strong, long-standing relationships with their Outside Maintenance & Service Providers over the course of several years that have allowed the Debtors to negotiate favorable pricing and trade credit terms. In spite of this, the Debtors fear that a failure to honor their prepetition obligations to the Outside Maintenance & Service Providers will jeopardize these relationships. Because the universe of qualified Outside Maintenance & Service Providers with the size and expertise to service the Debtors is very limited, especially in the Latin American market in which they predominantly operate, it would be difficult to replace the majority of these providers with new providers on economically viable terms.

21. Additionally, many of the Outside Maintenance & Service Providers are currently in possession of aircraft, engines, and other equipment that are vital to the Debtors’ operations, and there exists a risk that such Outside Maintenance & Service Providers may assert possessory liens and refuse to redeliver these items to the Debtors until they are paid prepetition amounts owed.

22. Due to the sizeable number of ongoing projects and maintenance, it is difficult to estimate with precision the obligations outstanding at any given moment, but the Debtors estimate that, as of the Petition Date, the amount of outstanding obligations owed to Outside Maintenance & Service Providers is approximately \$30 million.

23. Another integral part of the Debtors' operations is the use of domestic and foreign commercial common carriers, road feeder services, movers, shippers, freight forwarders/consolidators, delivery services, customs brokers, and certain other third-party service providers (collectively, the "Shippers") to ship, transport, store, move through customs and deliver goods through established national and international distribution networks (and payments to such shippers, including, but not limited to, any related taxes and custom duties, the "Shipping Charges"). Due to the international scope of the Debtors' operations, it is difficult to estimate with precision the obligations outstanding at any given moment, but the Debtors estimate that, as of the Petition Date, the amount of outstanding obligations owed to the Shippers is approximately \$3 million.

24. The Debtors rely extensively on Shippers to transport parts, goods, and packages to and from third parties. The services the Shippers provide are critical to the Debtors' day-to-day operations. At any given time, there are numerous shipments en route to or from the Debtors and/or the Outside Maintenance & Service Providers and, therefore, certain Shippers are currently in possession of equipment or other items that may be vital to the Debtors' operations. Until they receive payment of outstanding amounts owed, such Shippers may assert possessory liens against property that they hold in their possession, and may refuse to deliver or release such property to the Debtors. If unable to recover such equipment and other items in transit with the Shippers, the Debtors could suffer a material business disruption that could greatly impede their operations and

reorganization efforts, especially when the debtors seek to promptly resume a regular flight schedule.

25. Permitting the Debtors to satisfy these prepetition claims will enable the Debtors to continue their operations without the potentially serious disruptions that would result if the Outside Maintenance & Service Providers or Shippers refuse to redeliver aircraft, engines, and other equipment in their possession, or refuse to service the Debtors' aircraft on an ongoing basis.

26. Further, the amount reflected in the Debtors' books includes the entire contractual liability for work in progress, of which a portion relates to work that will be completed post-petition—this portion of such liability may constitute an administrative expense of the Debtors' estates. Moreover, permitting the Debtors to satisfy the prepetition claims of the Outside Maintenance & Service Providers and Shippers will not preclude the Debtors from pursuing any claims under the Bankruptcy Code or applicable non-bankruptcy law that they may have against such claimants, including, without limitation, claims for failure to deliver, provide service, or supply additional parts for the Debtors' aircraft, engines, and other equipment and components.

B. Contractors

27. The Debtors also rely on contractors, subcontractors, and professional service firms (the "Contractors," and together with the Outside Maintenance & Service Providers and the Shippers, the "Lien Claimants") to perform construction, maintenance, and repairs at their various facilities. To the extent that these or other similar parties could have valid statutory or possessory liens on the Debtors' assets, the Debtors also request the authority to satisfy outstanding prepetition claims of these parties for the same reasons discussed, *supra*, Section A.

28. Although it is difficult to estimate with precision the obligations outstanding at any given moment, the Debtors estimate that the amount of outstanding prepetition obligations owed

to the Contractors as of the Petition Date is approximately \$2 million. However, due to the nature of the applicable billing cycles, this estimate may not reflect amounts owed for goods and services provided, but not yet billed, to the Debtors.

BASIS FOR RELIEF REQUESTED

A. This Court Should Authorize the Debtors to Pay Prepetition Amounts Owed to the Lien Claimants

29. Many of the Lien Claimants who have performed work for the Debtors may hold liens against the Debtors' property in their possession under applicable mechanic's, repairman's, materialman's, and shipping lien statutes, which liens and/or interests may be perfected notwithstanding the automatic stay established by section 362(a) of the Bankruptcy Code (collectively, the "Liens").³ Indeed, pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such Liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay.⁴ See 11 U.S.C. § 362(b)(3).

30. Moreover, the Debtors believe that the value of the aircraft, aircraft components, and other items in the Lien Claimants' possession, and the value of the projects under construction with respect to the Lien Claimants, will generally far exceed the value of the Lien Claimants'

³ In Colombia, for example, a statutory right of retention of possession of an asset to secure payment of an obligation is recognized by article 2417 of the Civil Code and implemented, as a matter of law, by other articles of the Civil Code and Commercial Code as to an array of claimants. See, e.g., Article 2497 of Civil Code (granting statutory retention rights to common carriers); Article 1177 of Commercial Code (same as to depositories); Article 1188 of Commercial Code (same as to warehousemen); Article 1033 of Commercial Code (same as to carriers of goods). In addition, under article 2417 of the Civil Code, parties to contracts for a variety of goods and services may agree that, in the event of breach, the non-breaching party may withhold goods or equipment that, under the terms of the relevant contract, it would be obliged to deliver to the breaching party. As under U.S. law, Article 9 of Law 1676 of 2013 (the Colombian secured transactions law), grants secured claim status to such creditors' retention rights, and Colombian insolvency law recognizes the enforceability and priority (in modified post-insolvency form) of these and other secured claims (as established in articles 50, 51, and 52 of Law 1676 of 2013).

⁴ Under section 546(b) of the Bankruptcy Code, a debtor's lien-avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection . . ." 11 U.S.C. § 546(b)(1)(A).

claims. Such fully secured claims will, in any event, be satisfied first in connection with any restructuring transactions ultimately pursued.⁵ As such, the requested relief implicates only timing considerations and will not lead to any attendant harm to unsecured creditors.

31. This Court has authority pursuant to sections 363(b) and 105(a) of the Bankruptcy Code to grant the relief requested herein. Section 363(b) provides that “the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A court may authorize a debtor to pay certain prepetition obligations pursuant to section 363(b) of the Bankruptcy Code. See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). To approve the use of a debtor’s assets outside the ordinary course of business pursuant to section 363(b), a court must find that a “good business reason” exists for the use of such assets. See, e.g., Official Comm. of Unsecured Creditors of Enron Corp. v. Enron Corp. (In re Enron Corp.), 335 B.R. 22, 27-28 (S.D.N.Y. 2005) (quoting Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983)).

32. “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

33. It is vital that the Debtors be permitted to pay claims held by the Lien Claimants to ensure that the Debtors’ fleet is maintained and serviced in a timely fashion, even during the COVID-19 shutdown, and to further ensure that there is no disruption in the Debtors’ ability to

⁵ Additionally, to the extent that a portion of the Shipping Charges are related to the payment of customs duties and are due to governmental units, such claims would be entitled to priority under section 507(a)(8)(f) of the Bankruptcy Code.

provide their customers with safe, dependable air travel. Planned maintenance for aircraft is scheduled months ahead of time. When the Debtors' normal flight schedule resumes, it will be operationally imperative that this planned maintenance schedule has not been disrupted. Furthermore, any disruption could also impair the Debtors' ability to comply with the FAA's regulations, as well as applicable foreign maintenance regulations. See 28 U.S.C. § 959(b) (requiring debtors-in-possession to comply with all state and federal laws).

34. Prior to the COVID-19 shutdown, the Debtors maintained substantial international operations. The Debtors' viability as a going concern, for the duration of the shutdown and once flight operations resume fully, will be largely dependent upon the maintenance of their foreign operations, to which end the continued cooperation and goodwill of the Lien Claimants are indispensable. As set forth herein, the Lien Claimants provide essential maintenance, repair, shipping, and other services to the Debtors that are critical to sustaining and preserving the Debtors' overseas assets. Many of these Lien Claimants have little or no connection to the United States. As such, there is a substantial risk that Lien Claimants that hold claims against the Debtors may consider themselves beyond the jurisdiction of this Court and engage in conduct to seize the Debtors' foreign assets or otherwise deny services to the Debtors. Payment of prepetition amounts due to these Lien Claimants virtually eliminates these risks. Therefore, the Debtors believe, in the exercise of their business judgment, that it is in the best interests of the estates to authorize the Debtors to pay prepetition amounts owed to the Lien Claimants.

35. In addition, this Court has the authority to authorize the Debtors to pay the Lien Claimants' prepetition claims because such payments are necessary to the Debtors carrying out their fiduciary duties under sections 1107(a) and 1108 of the Bankruptcy Code to maintain the value of the Debtors' business.

36. A debtor-in-possession operating a business has a fiduciary duty to protect and preserve the estate, including the going concern value of an operating business. See In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“There are occasions when this [fiduciary] duty can only be fulfilled by the preplan satisfaction of a prepetition claim.”); see also Unofficial Comm. of Equity Holders of Penick Pharm., Inc. v. McManigle (In re Penick Pharm., Inc.), 227 B.R. 229, 232-33 (Bankr. S.D.N.Y. 1998) (“Specifically, in the case of an inanimate debtor-in-possession such as a corporation, the fiduciary duties borne by a trustee for a debtor out of possession fall on the debtor’s directors, officers and managing employees . . . who have a duty to maximize the value of the estate . . . and who are burdened to ensure that the resources that flow through the debtor-in-possession’s hands are used to benefit the unsecured creditors and other parties in interest.” (citations omitted)). Furthermore, section 105(a) of the Bankruptcy Code provides that the “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” See 11 U.S.C. § 105(a). See Schwartz v. Aquatic Dev. Grp., Inc. (In re Aquatic Dev. Grp., Inc.), 352 F.3d 671, 680 (2d Cir. 2003) (“[I]t is axiomatic that bankruptcy courts are ‘courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.’” (citation omitted)).

37. Furthermore, pursuant to section 105(a) of the Bankruptcy Code and the “necessity of payment doctrine” established by case law, this Court has the authority to authorize the Debtors to pay prepetition obligations owed to Lien Claimants. See, e.g., Miltenberger v. Logansport Ry. Co., 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent “stoppage of . . . [indispensable] business relations”); In re Ionosphere Clubs, Inc., 98 B.R. 174 (Bankr. S.D.N.Y. 1989) (recognizing the existence of the judicial power to authorize a

debtor in a reorganization case to pay prepetition claims where such payment “is essential to the continued operation of the debtor”).

38. Courts in this District have regularly authorized the payment of vital prepetition creditors and suppliers in complex reorganizations, including in large chapter 11 cases involving airlines, where such payment is in the best interest of the estate and its creditors, and is critical to maintaining a debtor’s operations. See, e.g., In re Republic Airways Holdings Inc., No. 16-10429 (SHL) (Bankr. S.D.N.Y. Mar. 23, 2016); In re AMR Corp., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 22, 2011); In re Northwest Airlines Corp., Case No. 05-17930 (ALG) (Bankr. S.D.N.Y. Oct. 7, 2005); In re Aegean Marine Petrol. Network Inc., Case No. 18-13374 (MEW) (Bankr. S.D.N.Y. Dec. 6, 2018); In re Nine West Holdings, Inc., Case No. 18-10947 (SCC) (Bankr. S.D.N.Y. May 7, 2018); In re Avaya Inc., Case No. 17-10089 (SMB) (Bankr. S.D.N.Y. Feb. 10, 2017).

B. The Court Should Authorize the Debtors to Condition Payment on Continued Participation and Performance Under the Contracts

39. In the ordinary course of their business with certain Lien Claimants, the Debtors receive credit and other favorable payment terms from such Lien Claimants. Accordingly, to the extent any such Lien Claimants owe obligations (the “Performance Obligations”) and/or provide such business terms, and those terms are acceptable to the Debtors (the “Acceptable Credit Terms”) and together with the Performance Obligations, the “On-Going Obligations/Terms”), the Debtors request authority to condition any prepetition payments on the Lien Claimants continuing to provide the Debtors with the On-Going Obligations/Terms. To implement the terms of this authority, the Debtors propose that the Court include in the Proposed Order provisions stating that:

- a. The Debtors are authorized, in their discretion and in the exercise of their business judgment, to make payment to the Lien Claimants on the condition that by accepting payment, the Lien Claimants agree to maintain, reinstate,

or otherwise comply with the On-Going Obligations/Terms during the pendency of these cases;

- b. The Lien Claimants' acceptance of payment is deemed to be acceptance of the terms of the Order, and if the Lien Claimants thereafter do not provide the Debtors with, or otherwise comply with, On-Going Obligations/Terms during the pendency of these cases, then any payments of prepetition claims made after the Petition Date may be deemed to be unauthorized postpetition transfers and recoverable by the Debtors without further evidentiary showing; and
- c. The Debtors are authorized, but not required, to obtain written verification of On-Going Obligations/Terms from the Lien Claimants before issuing payment hereunder. The absence of such written verification shall not limit the Debtors' rights hereunder. The order shall not, however, be construed to limit, or in any way affect, the Debtors' ability to contest any invoice or other charge or claim of any Lien Claimants on any grounds.

C. The Court Should Authorize and Direct Banks and Other Financial Institutions to Honor and Pay Checks Issued and Make Other Transfers to Pay Lien Claimants

40. The Debtors request that the Court authorize and direct the Debtors' banks and other financial institutions at which the Debtors maintain disbursement accounts to, at the Debtors' direction, receive, process, honor, and pay, to the extent of funds on deposit, any and all checks drawn or electronic fund transfers requested or to be requested by the Debtors relating to the Debtors' obligations to the Lien Claimants. The Debtors also seek authority to issue new postpetition checks, or effect new electronic fund transfers, on account of such obligations, and to replace any prepetition checks or electronic fund transfer requests that may be lost, dishonored, or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

BANKRUPTCY RULE 6003 IS SATISFIED AND REQUEST FOR WAIVER OF STAY

41. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein

and in the First Day Declaration, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

42. Specifically, Bankruptcy Rule 6003 provides:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following: . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001

Fed. R. Bankr. P. 6003.

43. As described above, prompt satisfaction of certain prepetition claims held by the Lien Claimants is critical and necessary to maintain the Debtors' operations, and works to ensure the safety and well-being of the Debtors' customer base. Moreover, it is the Debtors' business judgment that continuation of their positive relationship with the Lien Claimants is imperative to a successful resumption of normal operations. The Debtors request such relief notwithstanding the fact that the Debtors' passenger transport business has been grounded for a number of compelling reasons. The Debtors continue operate limited charter, repatriation, and "ferry" flights and their cargo transport business, which has not been subject to the travel restrictions imposed by various governments in the markets which the Debtors operate, remains in full operation. Moreover, the Debtors also continue to perform certain "lead time" operations in anticipation of a modest near-term resumption of passenger flights—such as the servicing of aircraft, the maintenance of airport facilities, and completion of any ongoing construction—to allow for passenger flights to timely resume when circumstances permit. All of the foregoing requires the continued support of the Lien Claimants, as to which relief is requested herein, all of which is necessary to avoid immediate and irreparable harm and satisfy, thereby, Bankruptcy Rule 6003(b).

44. The Debtors further seek a waiver of any stay of the effectiveness of an order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As set forth above, the relief requested herein is essential to prevent immediate and irreparable damage to the Debtors’ operations, going concern value, and their efforts to successfully reorganize.

45. Accordingly, the relief requested herein is appropriate under the circumstances and under Bankruptcy Rules 6003 and 6004(h).

NOTICE

46. The Debtors will provide notice of this Motion to the following parties: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the forty (40) largest unsecured claims against the Debtors (on a consolidated basis); (c) the holders of the five (5) largest secured claims against the Debtors (on a consolidated basis); (d) the Internal Revenue Service; (e) the Securities and Exchange Commission; (f) the Federal Aviation Administration; (g) the Lien Claimants; and (h) any party that requests service pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

47. In light of the nature of the relief requested, the Debtors submit that no further notice need be given.

NO PRIOR REQUEST

48. No prior request for the relief sought in this Motion has been made to this or to any other court.

CONCLUSION

WHEREFORE, the Debtors request that this Court enter orders, substantially in the forms of the Proposed Interim Order and the Proposed Final Order, granting the relief requested herein and granting such other and further relief as is just and proper.

Dated: New York, New York
May 10, 2020

MILBANK LLP

/s/ Evan R. Fleck

Dennis F. Dunne

Evan R. Fleck

MILBANK LLP

55 Hudson Yards

New York, New York 10001

Telephone: (212) 530-5000

Facsimile: (212) 530-5219

- and -

Gregory A. Bray

MILBANK LLP

2029 Century Park East, 33rd Floor

Los Angeles, CA 90067

Telephone: (424) 386-4000

Facsimile: (213) 629-5063

*Proposed Counsel for Debtors and
Debtors-in-Possession*

EXHIBIT A

Proposed Interim Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
: In re: : Chapter 11
: :
: AVIANCA HOLDINGS S.A., *et al.*,¹ : Case No. 20-11133 (MG)
: :
: Debtors. : (Joint Administration Requested)
: :
-----X

**INTERIM ORDER PURSUANT TO SECTIONS 105(a) AND 363 OF
THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO PAY
CERTAIN OUTSIDE MAINTENANCE AND SERVICE PROVIDERS, SHIPPERS,
AND CONTRACTORS IN SATISFACTION OF PERFECTED OR POTENTIAL
MECHANICS', MATERIALMEN'S OR SIMILAR LIENS OR INTERESTS**

Upon consideration of the motion (the "Motion")² of the above-captioned debtors and debtors-in-possession (the "Debtors"), seeking entry of an interim order (the "Interim Order") pursuant to sections 105(a) and 363 of the Bankruptcy Code (a) authorizing, but not directing, the Debtors to pay certain Outside Maintenance & Service Providers, Shippers and Contractors in satisfaction of perfected or potential mechanics', materialmen's, or similar liens or interests in the ordinary course of business; (b) scheduling a final hearing (the "Final Hearing") to consider entry

¹ The Debtors in these chapter 11 cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

of the Proposed Final Order; and (c) granting related relief; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and it appearing that venue of these chapter 11 cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the Motion and the *Declaration of Adrian Neuhauser Pursuant to Local Bankruptcy Rule 1007-2 and in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings*, dated as of the Petition Date; and upon the statements of counsel in support of the relief requested in the Motion at the hearing before the Court; and all of the proceedings had before the Court; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED and approved in all respects on an interim basis.
2. The Debtors are authorized, but not directed, to pay any undisputed prepetition claim of any Lien Claimant that has given or may give rise to a Lien or similar interest, and to honor the contracts of the Outside Maintenance & Service Providers, Shippers and Contractors in the ordinary course of the Debtors' business.
3. The Final Hearing shall be held on _____, 2020, at ___:___ .m., prevailing Eastern Time. Any objections or responses to entry of Proposed Final Order shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2020, and shall be served on: (a) the

Office of the United States Trustee for the Southern District of New York; (b) the Debtors; (c) proposed counsel to the Debtors; and (d) those parties requesting notice pursuant to Bankruptcy Rule 2002. In the event no objections to entry of Proposed Final Order on the Motion are timely received, this Court may enter the Proposed Final Order without need for the Final Hearing.

4. All applicable banks and other financial institutions are authorized and directed, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor, and pay any and all checks drawn on the Debtors' accounts by the Lien Claimants, whether those checks were presented prior to or after the Petition Date, and make other transfers, *provided* that sufficient funds are available in the applicable accounts to make the payments.

5. Upon satisfaction of any prepetition claim, the applicable Lien Claimant shall agree to release promptly its Liens, if any; *provided, however* that should such Lien Claimant fail to promptly release such Liens upon payment by the Debtors, any such Liens shall be deemed released and expunged, without necessity of any further action, and this Order shall be all that is required to evidence such release and expungement.

6. The Debtors are authorized, in their discretion and in the exercise of their business judgment, to make payment under this Order to the Lien Claimants on the condition that by accepting payment, the Lien Claimants agree to maintain, reinstate or otherwise comply with the On-Going Obligations/Terms during the pendency of these cases.

7. Any Lien Claimant's acceptance of payment is deemed to be acceptance of the terms of the Order, and if such Lien Claimant thereafter does not provide the Debtors with, or otherwise comply with, the On-Going Obligations/Terms during the pendency of these Chapter 11 Cases, then any payments of prepetition claims held by such Lien Claimant and made after the

Petition Date will be deemed to be unauthorized postpetition transfers and automatically recoverable by the Debtors in their discretion.

8. The Debtors are authorized, but not required, to obtain written verification of the On-Going Obligations/Terms from the Lien Claimants before issuing payment hereunder, provided, however, that the absence of such written verification shall not limit the Debtors' rights hereunder.

9. This Order shall not be construed to limit, or in any way affect, the Debtors' ability to contest any invoice or other charge or claim of any Lien Claimant on any ground.

10. Nothing contained in this Order or the Motion shall constitute a rejection or assumption by the Debtors, as debtors-in-possession, of any executory contract or unexpired lease.

11. Any payment made pursuant to this Order is not, and shall not be, deemed an admission as to the validity of the underlying obligation or waiver of any rights the Debtors may have to dispute such obligation.

12. Notwithstanding entry of this Order, the Debtors' rights to enforce the automatic stay provisions of section 362(a) of the Bankruptcy Code with respect to any creditor who demands payment of their prepetition debts as a condition to doing business with the Debtors postpetition are preserved.

13. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any party.

14. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

15. This Interim Order is effective from the date of entry through this Court's disposition of the Motion on a final basis; provided that the Court's ultimate disposition of the Motion on the final basis shall not impair or otherwise affect any action taken pursuant to this Order.

16. The Debtors are authorized and empowered to take all actions necessary to implement the relief requested in this Order.

17. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

Dated: _____, 2020

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re: : Chapter 11
: :
AVIANCA HOLDINGS S.A., *et al.*,¹ : Case No. 20-11133 (MG)
: :
Debtors. : (Joint Administration Requested)
: :
-----X

**FINAL ORDER PURSUANT TO SECTIONS 105(a) AND 363 OF
THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO PAY
CERTAIN OUTSIDE MAINTENANCE AND SERVICE PROVIDERS, SHIPPERS,
AND CONTRACTORS IN SATISFACTION OF PERFECTED OR POTENTIAL
MECHANICS', MATERIALMEN'S OR SIMILAR LIENS OR INTERESTS**

Upon consideration of the motion (the "Motion")² of the above-captioned debtors and debtors-in-possession (the "Debtors"), seeking entry of a final order (the "Final Order") pursuant to sections 105(a) and 363 of the Bankruptcy Code (a) authorizing, but not directing, the Debtors to pay certain Outside Maintenance & Service Providers, Shippers and Contractors in satisfaction of perfected or potential mechanics', materialmen's, or similar liens or interests in the ordinary course of business; (b) scheduling the Final Hearing to consider entry of the Proposed Final Order;

¹ The Debtors in these chapter 11 cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

and (c) granting related relief; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and it appearing that venue of these chapter 11 cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the Motion and the *Declaration of Adrian Neuhauser Pursuant to Local Bankruptcy Rule 1007-2 and in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings*, dated as of the Petition Date; and upon the statements of counsel in support of the relief requested in the Motion at the Final Hearing; and all of the proceedings had before the Court; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED and approved in all respects on a final basis.
2. The Debtors are authorized, but not directed, to pay any undisputed prepetition claim of any Lien Claimant that has given or may give rise to a Lien or similar interest, and to honor the contracts of the Outside Maintenance & Service Providers, Shippers and Contractors in the ordinary course of the Debtors' business.
3. All applicable banks and other financial institutions are authorized and directed, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor, and pay any and all checks drawn on the Debtors' accounts by the Lien Claimants, whether those

checks were presented prior to or after the Petition Date, and make other transfers, *provided* that sufficient funds are available in the applicable accounts to make the payments.

4. Upon satisfaction of any prepetition claim, the applicable Lien Claimant shall agree to release promptly its Liens, if any; *provided, however* that should such Lien Claimant fail to promptly release such Liens upon payment by the Debtors, any such Liens shall be deemed released and expunged, without necessity of any further action, and this Order shall be all that is required to evidence such release and expungement.

5. The Debtors are authorized, in their discretion and in the exercise of their business judgment, to make payment under this Order to the Lien Claimants on the condition that by accepting payment, the Lien Claimants agree to maintain, reinstate or otherwise comply with the On-Going Obligations/Terms during the pendency of these cases.

6. Any Lien Claimant's acceptance of payment is deemed to be acceptance of the terms of the Order, and if such Lien Claimant thereafter does not provide the Debtors with, or otherwise comply with, the On-Going Obligations/Terms during the pendency of these Chapter 11 Cases, then any payments of prepetition claims held by such Lien Claimant and made after the Petition Date will be deemed to be unauthorized postpetition transfers and automatically recoverable by the Debtors in their discretion.

7. The Debtors are authorized, but not required, to obtain written verification of the On-Going Obligations/Terms from the Lien Claimants before issuing payment hereunder, provided, however, that the absence of such written verification shall not limit the Debtors' rights hereunder.

8. This Order shall not be construed to limit, or in any way affect, the Debtors' ability to contest any invoice or other charge or claim of any Lien Claimant on any ground.

9. Nothing contained in this Order or the Motion shall constitute a rejection or assumption by the Debtors, as debtors-in-possession, of any executory contract or unexpired lease.

10. Any payment made pursuant to this Order is not, and shall not be, deemed an admission as to the validity of the underlying obligation or waiver of any rights the Debtors may have to dispute such obligation.

11. Notwithstanding entry of this Order, the Debtors' rights to enforce the automatic stay provisions of section 362(a) of the Bankruptcy Code with respect to any creditor who demands payment of their prepetition debts as a condition to doing business with the Debtors postpetition are preserved.

12. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any party.

13. Notwithstanding any applicability of Bankruptcy Rule 6004, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

14. The Debtors are authorized and empowered to take all actions necessary to implement the relief requested in this Order.

15. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

Dated: _____, 2020

UNITED STATES BANKRUPTCY JUDGE