

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

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In re: : Chapter 11

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AVIANCA HOLDINGS S.A., *et al.*,¹ : Case No. 20-11133 (MG)

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Debtors. : (Joint Administration Requested)

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**ORDER PURSUANT TO SECTIONS 105(a) AND 546(c) OF THE
BANKRUPTCY CODE ESTABLISHING AND IMPLEMENTING EXCLUSIVE AND
GLOBAL PROCEDURES FOR TREATMENT OF RECLAMATION CLAIMS**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), seeking entry of an order (this “Order”) pursuant to sections 546(c) and 105(a) of the Bankruptcy Code authorizing the Debtors to establish and implement procedures to address and reconcile Reclamation Claims, all as more fully described in the Motion; 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

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.



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 matter 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 in Support of 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.
2. The following procedures (the “Reclamation Procedures”) shall apply to all

Reclamation Claims:

- a. Any Seller asserting a Reclamation Claim must satisfy all procedural and timing requirements that entitle it to have the right to reclamation under section 546(c) of the Bankruptcy Code;
- b. Any Seller asserting a Reclamation Claim must submit a written demand asserting such Reclamation Claim (a “Reclamation Demand”), which must include (i) a description of the Goods subject to the Reclamation Demand, (ii) the name of the Debtor to which such Goods were delivered, (iii) copies of any purchasing orders, invoices, receipts, bills of lading and the like, identifying the Goods for which the Reclamation Demand is being asserted, (iv) any evidence regarding the date(s) such Goods were shipped to and received by the Debtors and the alleged value of such Goods, and (v) a statement indicating whether the Seller has filed or intends to file any other claim against any Debtor regarding the Goods with respect to which its Reclamation Demand is made;
- c. Unless a Seller has submitted a Reclamation Demand within forty-five (45) days prior to the Petition Date, such Seller must submit a Reclamation Demand so that it is received by the Debtors and the Debtors’ attorneys on or before twenty (20) calendar days after the Petition Date (the “Reclamation Deadline”);

Debtors:

Avianca Holdings S.A.
Avenida Calle 26 # 59 – 15
Bogotá, Colombia

Debtors' Proposed Attorneys:

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- d. Upon receipt of a Reclamation Demand, the Debtors will serve upon the applicable Seller, at the address indicated in its Reclamation Demand, a copy of this order (the “Reclamation Order”);
- e. No later than one hundred and twenty (120) days after entry of this Reclamation Order (the “Reclamation Notice Deadline”), the Debtors will file with the Court a notice (the “Reclamation Notice”), listing the timely submitted Reclamation Claims and the amount (if any) of each such Reclamation Claim that the Debtors determine to be valid. The Debtors will serve the Reclamation Notice on the following parties (the “Notice Parties”), (i) the Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”); (ii) the attorneys for any statutory committee of unsecured creditors appointed in these cases; and (iii) each Seller listed in the Reclamation Notice, at the address indicated in such Seller’s Reclamation Demand;
- f. Any party that wishes to object to the Reclamation Notice must file and serve an objection (a “Reclamation Notice Objection”) on the Notice Parties and the attorneys for the Debtors, so as to be received no later than 4:00 p.m. (Eastern Time) on the twentieth (20th) day after the date on which the Reclamation Notice is filed (the “Objection Deadline”). Any Reclamation Notice Objection must include (i) a copy of the Seller’s Reclamation Demand, with evidence of the date it was submitted to the Debtors; and (ii) a statement describing with specificity the objections to the Reclamation Notice and any legal and factual bases for such objections;

Debtors' Proposed Attorneys:

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- g. Any Reclamation Claim listed in the Reclamation Notice for which no Reclamation Notice Objection is filed and served by the Objection Deadline shall be deemed allowed in the amount identified by the Debtors in the Reclamation Notice, provided that all issues relating to the treatment of such allowed Reclamation Claim shall be reserved by all parties;
- h. If the Debtors fail to file the Reclamation Notice by the Reclamation Notice Deadline, any Seller that had submitted a timely Reclamation Demand in accordance with the Reclamation Procedures may bring a motion to seek relief with respect to its Reclamation Claim;
- i. Notwithstanding and without limiting the foregoing, the Debtors will be authorized, but not required, in their sole discretion, to negotiate with any Seller an agreement resolving the Seller's Reclamation Claim. If the Debtors and a Seller agree on the validity, amount, and treatment of the Seller's Reclamation Claim, the Debtors will file with the Court a notice of such settlement (a "Settlement Notice") and serve such Settlement Notice on the Notice Parties. Each Notice Party will have ten (10) days from the date of service of such Settlement Notice to file with the Court and serve on the other Notice Parties and attorneys for the Debtors an objection thereto (a "Settlement Objection");
- j. If no Settlement Objection with respect to a Reclamation Claim that is the subject of a Settlement Notice is timely filed and served, such Reclamation Claim will be treated in accordance with the Settlement Notice without further order of the Court;
- k. If a Settlement Objection is timely filed and served, the parties may negotiate a consensual resolution of such objection to be incorporated in a stipulation filed with the Court (a "Settlement Stipulation"). Upon the filing of a Settlement Stipulation, the applicable Reclamation Claim shall be allowed and treated in accordance with the terms of the Settlement Stipulation without further order of the Court;
- l. If no consensual resolution of a Settlement Objection is reached, the Debtors may file a motion with the Court requesting a hearing with respect to the applicable Settlement Notice; and

- m. All Sellers shall be forever barred, without further order of the Court, from asserting a Reclamation Demand after the expiration of the Reclamation Deadline, but they shall not be barred from asserting, subject to applicable deadlines, general unsecured claims or administrative expense claims pursuant to section 503(b)(9) of the Bankruptcy Code.
3. The foregoing Reclamation Procedures shall be the sole and exclusive method for addressing and resolving unpaid Reclamation Claims asserted against any Debtor.
4. All Sellers are prohibited from seeking any other means for the resolution or treatment of their Reclamation Claims, including without limitation: (a) commencing adversary proceedings and contested matters in connection with their Reclamation Claims; (b) seeking to obtain possession of any Goods except as may be permitted by the Reclamation Procedures; and (c) interfering with the delivery of any Goods to the Debtors or the retention of any Goods by the Debtors.
5. Any adversary proceedings or contested matters related to Reclamation Claims, whether currently pending or initiated in the future, except those proceedings initiated by the Debtors in accordance with the Reclamation Procedures, are stayed and the claims asserted therein shall be resolved exclusively pursuant to the Reclamation Procedures.
6. To the extent a Reclamation Claim has been paid by the Debtors pursuant to another order entered by the Court, the Reclamation Procedures shall not apply to such Seller, and any Reclamation Claim filed by such Seller shall be deemed withdrawn without the need for any further order of the Court.
7. Notwithstanding the relief granted herein, 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.
8. Nothing contained in this Order shall constitute a rejection or assumption by the Debtors of any executory contract or unexpired lease by virtue of reference to any such contract or lease in the Motion.

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

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

IT IS SO ORDERED.

Dated: May 12, 2020
New York, New York

/s/ Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge