

Michael B. Carlinsky
Scott C. Shelley
Samantha Gillespie
QUINN EMANUEL URQUHART &
SULLIVAN LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100
Email: michaelcarlinsky@quinnemanuel.com
Email: scottshelley@quinnemanuel.com
Email: samanthagillespie@quinnemanuel.com

Eric D. Winston (*pro hac vice* pending)
QUINN EMANUEL URQUHART &
SULLIVAN LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100
Email: ericwinston@quinnemanuel.com

Attorneys for the Foreign Representative

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

In re:

Chapter 15

Oceanair Linhas Aéreas S/A,

Case No. 18-14182 (SHL)

Debtor in a Foreign Proceeding.

**FOREIGN REPRESENTATIVE'S REPLY IN SUPPORT OF
VERIFIED PETITION FOR RECOGNITION OF FOREIGN MAIN
PROCEEDING AND MOTION FOR ORDER GRANTING RELATED RELIEF
PURSUANT TO BANKRUPTCY CODE SECTIONS 1515, 1517, 1520 AND 1521**

Frederico Miguel Preza Pedreira Elias Da Costa (“Mr. Pedreira” or the “Petitioner”), in his capacity as Foreign Representative (the “Foreign Representative”) of Oceanair Linhas Aéreas S/A (“Oceanair”) in the Brazilian insolvency proceeding pending before the First Bankruptcy Court of the Central Courthouse of the Judicial District of Sao Paulo State Capital [*Direito Da 1ª Vara De Falências e Recuperações Judiciais do Foro Central da Comarca da Capital – Sao Paulo*] (the “Brazilian Bankruptcy Court”) under matter number 1125658-81.2018.8.26.0110 (the “Brazilian Insolvency Proceeding”), hereby files this reply (this “Reply”) (A) in response to

the Limited Objection to Verified Petition for Recognition of Foreign Main Proceeding and Request for Chapter 15 Relief, dated January 15, 2019 (ECF No. 40) (the “Investor Objection”)¹, and (B) in further support of the Foreign Representative’s petition and motion for related relief (ECF No. 2 (the “Verified Petition”)² seeking entry of an order (1) recognizing the Brazilian Insolvency Proceeding as a foreign main proceeding pursuant to sections 1515 and 1517 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), (2) confirming relief pursuant to Bankruptcy Code section 1520, and (3) granting further relief pursuant to Bankruptcy Code sections 105(a), 1507(a), and 1521, and respectfully states as follows:

PRELIMINARY STATEMENT

The Investor Objection asks this Court to disregard the duly entered orders of the Brazilian Bankruptcy Court, and to permit the Investors to take actions that would undermine, and possibly derail, the Brazilian Insolvency Proceeding. That request is improper. As the Investors know (having been represented by counsel at the January 14, 2019 hearing in the Brazilian Insolvency Proceeding), the Brazilian Bankruptcy Court overruled all objections raised at that hearing and ruled that creditors are stayed from taking any action to repossess aircraft or aircraft engines until February 1, 2019. This prohibition applies to all aircraft equipment of Oceanair, whether located in Brazil, the United States or elsewhere.

The Brazilian Bankruptcy Court ruled that “an extension of the suspension of the repossession orders for aircraft and/or engines and lawsuits thereof was granted until February 1, 2019.” *See* Notice Pursuant to 11 U.S.C. § 1518 (ECF No. 45) (attaching a copy of the Brazilian

¹ The Investor Objection was filed on behalf of Avolon Aerospace Leasing Limited, Aircastle Advisor LLC, Jackson Square Aviation, LLC, Wells Fargo Trust Company, N.A. (not in its individual capacity, but solely as owner trustee), Constitution Aircraft Leasing (Ireland) 9 Limited and Constitution Aircraft Leasing (Ireland) 10 Limited (collectively, the “Investors”).

² Capitalized terms used herein and not otherwise defined herein shall have the meanings set for the in the Verified Petition.

Bankruptcy Court's January 14, 2019 ruling and a certified English translation thereof (the "January 14 Ruling"). A true copy of the Notice Pursuant to 11 U.S.C. § 1518, including the January 14 Ruling, is annexed to this Reply as Exhibit A. The Investors do not dispute that the Brazilian Bankruptcy Court extended the suspension against repossession to February 1.

This Court, presiding over an ancillary chapter 15 case, is faced with the task of *assisting* a foreign proceeding and should not be asked to second guess the rulings of the Brazilian Bankruptcy Court in the foreign main proceeding.

The Investors' arguments concerning alleged conflicts with the "Cape Town Convention" are misplaced,³ but in any event, are not properly made before this Court. These arguments were made to the Brazilian Bankruptcy Court, which rejected them as a matter of Brazilian law. Because the Brazilian Bankruptcy Court has already ruled on this issue, it is improper for this Court to entertain a collateral challenge to the January 14 Ruling. Any challenge to that ruling may properly be pursued only through the Brazilian appellate court system, and not in this ancillary case.

In addition to seeking an unwarranted "do over" in this Court, the Investors also complain that the proposed form of order granting recognition of the Brazilian Insolvency Proceeding improperly extends to property outside the territorial jurisdiction of the United States, and that it is defective in that it fails to include an automatic termination provision. The Foreign Representative has agreed to address the former concern by revising the order to make clear that it applies only to actions and assets of the debtor within the territorial jurisdiction of

³ As discussed in greater detail, *see infra* at 6-7, under Brazilian law, enforcement of remedies under the Cape Town Convention is subject to authorization of the Judiciary, which has not been granted. *See* <https://www.unidroit.org/franchise-2nd-other-lang/141-instruments/security-interests/cape-town-convention-mobile-equipment-2001/depositary/declarations-by-article/446-article-54-2-declarations-deposited-under-the-cape-town-convention-on-international-interests-in-mobile-equipment>. Because no Brazilian court has granted authorization to enforce remedies against Oceanair, the Investors have no enforcement rights under the Cape Town Convention.

the United States. As to the latter concern, assuming the stay in the Brazilian Insolvency Proceeding is eventually lifted and not replaced by an injunction under a restructuring plan, creditors will be free to seek relief in this Court under Bankruptcy Code section 1517(d). There is no basis, however, to limit the automatic effects of Bankruptcy Code section 1520(a) that take effect upon recognition of a foreign main proceeding.

DISCUSSION

1. International Comity Favors Recognition of the Foreign Main Proceeding

In considering the relief requested by the Foreign Representative, this Court should remain mindful of its role in this cross-border restructuring: to assist the foreign main proceeding. “Chapter 15 cases are ‘ancillary’ cases ... [in which] a United States bankruptcy court acts ‘in aid of the [foreign] main proceedings’ to avoid ‘a system of full bankruptcies ... in each state where assets are found.’” *In re Fairfield Sentry Ltd.*, 458 B.R. 665 (S.D.N.Y. 2011) (quoting H.R. Rep. No. 109-31(I), at 108 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 171). “Thus, a Chapter 15 court in the United States acts as an adjunct or arm of a foreign bankruptcy court where the main proceedings are conducted.” *Id.* (citing 8 Collier on Bankruptcy ¶ 1501.01) (“Chapter 15 cases are generally intended to be supplementary to cases brought in the debtor’s home country.”). “The purpose is to *maximize assistance* to the foreign court conducting the main proceeding.” *Id.* (emphasis added); *see also In re Condor Ins. Ltd.*, 601 F.3d 319, 329 (5th Cir. 2010) (stating that “Chapter 15 was intended to facilitate cooperation between U.S. courts and foreign bankruptcy proceedings”).

Section 1501 of the Bankruptcy Code codifies the purposes of chapter 15, including promoting cooperation between courts of the United States and courts of foreign countries, protecting and maximizing the value of a debtor’s assets, and facilitating the rehabilitation of

financially troubled businesses. 11 U.S.C. § 1501. Comity is a key principle underlying chapter 15 proceedings, and comity dictates that this court follow the lead of the Brazilian Bankruptcy Court.

“‘American courts have long recognized the need to extend comity to foreign bankruptcy proceedings,’ because ‘[t]he equitable and orderly distribution of a debtor’s property requires assembling all claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail.’” *In re Oi S.A.*, 587 B.R. 253, 264 (Bankr. S.D.N.Y. 2018) (quoting *Victrix S.S. Co., v. Salen Dry Cargo A.B.*, 825 F.2d 709, 713-4 (2d Cir. 1987)); *see also Finanz AG Zurich v. Banco Economico S.A.*, 192 F.3d 240, 246 (2d Cir. 1999); *In re Maxwell Commc’n Corp.*, 93 F.3d 1036, 1048 (2d Cir. 1996). In the present case, the doctrine of international comity requires that this Court adhere to the rulings issued by the Brazilian Bankruptcy Court, and overrule the Investor Objection.

As this Court is well-aware, “[i]t is not this Court’s role to effectively second-guess or overrule the determinations made by the Brazilian courts, particularly under the guise of comity.” *Oi*, 587 B.R. at 270. In *Oi*, this Court considered a request by creditors to deny recognition of a Brazilian restructuring plan pending resolution of appellate proceedings lodged in Brazil. The *Oi* Court noted that acceding to that request would be the *de facto* equivalent of a granting a stay of the Brazilian proceedings, and such a request had already been denied by the Brazilian court. *Id.*

In the present case, the result must be the same as in *Oi*. All of the requirements for recognition of a foreign main proceeding have been satisfied. The Investors’ sole objection is that they are displeased with the ruling from the Brazilian Bankruptcy Court. They can appeal that decision and argue that the Brazilian Bankruptcy Court’s order is somehow in violation of

Brazil's enactment of the Cape Town Convention. But as this Court stated at the January 17, 2019 status conference, it is not appropriate for this Court to sit as an appellate court for what one party may view as an unfavorable ruling in the foreign proceeding. A dissatisfied party may pursue its appellate rights in Brazil, not before this Court.

2. Absent Authorization from a Brazilian Court, the Investors Have No Enforcement Rights Under the Cape Town Convention

The Investor Objection raises numerous points concerning the Cape Town Convention, but ignores the provision of the Cape Town Convention, as enacted in Brazil, that is dispositive of whether the Investors have any immediate rights against Oceanair. Under Article 54(2) of the Cape Town Convention, the Investors have no immediate rights against Oceanair. Article 54(2) provides:

2. A Contracting State shall, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare whether or not any remedy available to the creditor under any provision of this Convention which is not there expressed to require application to the court may be exercised only with leave of the court.

Cape Town Convention, Article 54(2).

In adopting the Convention, Brazil, as a Contracting State, declared:

The Federative Republic of Brazil declares that all remedies available to the creditor under any provision of this Convention and the Protocol may be exercised only with the authorization of the Judiciary, with the exception of the remedy provided for in Article XIII of the Protocol, which may be exercised without judicial authorization.

Declaration under Article 54, paragraph 2.⁴ The exception referenced above, Article XIII of the Protocol, is inapplicable to repossession of aircraft equipment, as it merely permits, in limited circumstances, the exercise of remedies available under Article IX(1) of the Protocol, which

⁴ See *supra*, n.3.

relate to the de-registration of aircraft and the “export and physical transfer of the aircraft object from the territory in which it is situated.” Protocol, Article IX(1).⁵ Because the Investors have not established a basis for such remedies, and do not have judicial authorization under Brazilian law to seize Oceanair’s aircraft equipment, they have no ability to transfer the aircraft from the territory where it is situated. Thus, under Brazilian law, the remedies the Investors seek to pursue in reliance on the Cape Town Convention are available only where authorized by the Judiciary. Because the Judiciary has not granted relief to the Investors in the Brazilian Bankruptcy Proceeding, they have no enforcement rights under the Cape Town Convention, and the Investor Objection should be overruled in its entirety.

3. The Investors’ Statutory Arguments Lack Merit With Respect to Recognition

The Investors’ arguments concerning Bankruptcy Code section 1503 and 1506 also miss the mark. With respect to section 1503, nothing in the relief the Foreign Representative is requesting asks this Court to impinge on any treaty or other agreement with Brazil. As the Investors note, Brazil has adopted the Cape Town Convention, and the Brazilian Bankruptcy Court is the judicial authority tasked with applying the Convention. That court has interpreted Brazilian law and rendered a ruling. Whether it is correct or incorrect under Brazilian law, this Court granting recognition and granting comity does not conflict with the United States’ adoption of Cape Town, because this Court is doing precisely what is required under that treaty – assisting the rulings of the Brazilian Bankruptcy Court as it interprets Brazilian law.

Rather, the Foreign Representative is asking this Court to grant comity to the Brazilian Insolvency Proceeding and orders of the Brazilian Bankruptcy Court. With respect to section

⁵ The Protocol is available at: <https://www.unidroit.org/instruments/security-interests/aircraft-protocol>.

1506, the relief sought by the Foreign Representative is clearly not “manifestly contrary to the public policy of the United States.” As one example, Bankruptcy Code section 1110 contains terms that differ from the terms of the Cape Town Convention and Protocol, as it provides debtors an automatic sixty day stay *vis a vis* aircraft lessors and financiers. Clearly, if the thirty day limitation on a stay in an insolvency proceeding (as purportedly found in the Cape Town Convention) represented a fundamental public policy of United States, the Bankruptcy Code would embody that policy. It does not. Accordingly, in light of this Court’s role as an ancillary court assisting the Brazilian Insolvency Proceeding, the Investors’ statutory arguments fall short.

4. The Recognition Order

The Investor Objection asserts that the proposed recognition order “would improperly extend the injunctive relief being ordered beyond the territorial jurisdiction of the United States, in violation of the language and principles of Chapter 15.” Investor Objection, ¶ 24. It is not the intent of the Foreign Representative to seek relief beyond what is permissible under chapter 15, and to address this comment, the Foreign Representative has added language to the proposed recognition order to make clear that the injunctive relief is limited to actions and property located within the territorial jurisdiction of the United States. A blacklined revised version of the proposed order, marked to show these revisions and a handful of other comments, is annexed hereto as Exhibit B.

Finally, the Investors contend that the proposed recognition order is improper because it fails to include an automatic termination provision. In support of this proposition, the Investors cite Judge Lifland’s ruling in *In re Daewoo Logistics Corporation*, 461 B.R. 175 (Bankr. S.D.N.Y. 2011). *Daewoo*, however, is inapposite as it involved very different factual circumstances and a different legal posture. Specifically, *Daewoo* involved an attempt by a

foreign representative to enforce the stay in a recognition order against a creditor *after* the foreign main proceeding was concluded. Judge Lifland properly denied that request. In the present case, however, the stay in the foreign main proceeding remains in effect, and none of the discussion in *Daewoo* indicates that a recognition order *must* have an automatic termination provision. To the extent the stay in effect in the Brazilian Insolvency Proceeding is ultimately lifted, creditors will be free to seek relief in this Court from the stay imposed by the recognition order. Indeed, Bankruptcy Code section 1517(d) specifically contemplates this Court modifying a recognition order if the grounds for entering it have changed. Section 1517(d) would be superfluous if proposed recognition orders had to terminate automatically. The Foreign Representative will keep creditors and parties in interest apprised of developments in the Brazilian Bankruptcy Proceeding by fulfilling his obligations, under Bankruptcy Code section 1518, to report material developments in that proceeding to this Court. Accordingly, there is no basis to require an automatic termination provision in the recognition order.

CONCLUSION

For the forgoing reasons, and the reasons set forth in the Verified Petition and the supporting declarations, the Foreign Representative respectfully requests entry of an order recognizing the Brazilian Insolvency Proceeding as a foreign main proceeding (or alternatively, as a foreign nonmain proceeding), granting the other relief requested therein, and granting such other relief, at law or in equity, to which the Foreign Representative is justly entitled.

[signature page follows]

Dated: January 18, 2019
New York, New York

QUINN EMANUEL URQUHART & SULLIVAN LLP

/s/ Scott C. Shelley
Michael B. Carlinsky
Scott C. Shelley
Samantha Gillespie
51 Madison Avenue, 22nd Floor
New York, NY 10010
Tel: (212) 849-7000
Fax: (212) 849-7100
scottshelley@quinnemanuel.com
michaelcarlinsky@quinnemanuel.com
samanthagillespie@quinnemanuel.com

Eric Winston (*pro hac vice* pending)
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
Tel: (213) 443-3000
Fax: (213) 443-3100
ericwinston@quinnemanuel.com

Attorneys for the Foreign Representative

EXHIBIT A

Michael B. Carlinsky
Scott C. Shelley
Samantha Gillespie
QUINN EMANUEL URQUHART &
SULLIVAN LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100
Email: michaelcarlinsky@quinnemanuel.com
Email: scottshelley@quinnemanuel.com
Email: samanthagillespie@quinnemanuel.com

Eric D. Winston (*pro hac vice* pending)
QUINN EMANUEL URQUHART &
SULLIVAN LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100
Email: ericwinston@quinnemanuel.com

Attorneys for the Foreign Representative

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

In re:

Chapter 15

Oceanair Linhas Aéreas S/A,

Case No. 18-14182 (SHL)

Debtor in a Foreign Proceeding.

NOTICE PURSUANT TO 11 U.S.C. § 1518

Frederico Miguel Preza Pedreira Elias Da Costa, in his capacity as Foreign Representative (the “Foreign Representative”) of Oceanair Linhas Aéreas S/A in the Brazilian insolvency proceeding pending before the First Bankruptcy Court of the Central Courthouse of the Judicial District of Sao Paulo State Capital [*Direito Da 1ª Vara De Falências e Recuperações Judiciais do Foro Central da Comarca da Capital – Sao Paolo*] (the “Brazilian Bankruptcy Court”) under matter number 1125658-81.2018.8.26.0110 (the “Brazilian Insolvency Proceeding”), hereby files this update concerning events in the foreign main proceeding pursuant to 11 U.S.C. § 1518. Attached as Annex A is a true copy of the “Hearing Transcript” from the

January 14, 2019 hearing before the Brazilian Bankruptcy Court in the Brazilian Insolvency Proceeding (the "January 14 Order"). Attached as Exhibit B is a certified translation of the January 14 Order.

Dated: January 16, 2019
New York, New York

QUINN EMANUEL URQUHART & SULLIVAN LLP

/s/ Scott C. Shelley
Scott C. Shelley
Michael B. Carlinsky
Samantha Gillespie
51 Madison Avenue, 22nd Floor
New York, NY 10010
Tel: (212) 849-7000
Fax: (212) 849-7100
scottshelley@quinnemanuel.com
michaelcarlinsky@quinnemanuel.com
samanthagillespie@quinnemanuel.com

Eric Winston (*pro hac vice* pending)
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
Tel: (213) 443-3000
Fax: (213) 443-3100
ericwinston@quinnemanuel.com

Attorneys for the Foreign Representative

EXHIBIT A



TRIBUNAL DE JUSTIÇA DO ESTADO DE SÃO PAULO
COMARCA DE SÃO PAULO
FORO CENTRAL CÍVEL
1ª VARA DE FALÊNCIAS E RECUPERAÇÕES JUDICIAIS
Praça João Mendes s/nº, Sala 1608, Centro - CEP 01501-900, Fone: (11)
2171-6505, São Paulo-SP - E-mail: sp1falencias@tj.sp.gov.br
Horário de Atendimento ao Público: das 12h30min às 19h00min

TERMO DE AUDIÊNCIA

Processo Digital nº: **1125658-81.2018.8.26.0100**
Classe - Assunto **Recuperação Judicial - Concurso de Credores**
'OCEANAIR - LINHAS AÉREAS LTDA., CNPJ 02.575.829/0001-48
Requerido: 'OCEANAIR - LINHAS AÉREAS LTDA., CNPJ 02.575.829/0001-48
Data da audiência: **15/08/2018 – 15:00 horas**

Aos **14 de janeiro de 2018, às 14h00min**, na sala de audiências da 1ª Vara de Falências e Recuperações Judiciais do Foro Central Cível, Comarca de SÃO PAULO, Estado de São Paulo, sob a presidência do MM. Juiz de Direito Dr. **TIAGO HENRIQUES PAPATERRA LIMONGI**, comigo Assistente Judiciário ao final nomeado, foi aberta a audiência de conciliação. Cumpridas as formalidades legais e apregoadas as partes, compareceram a **Administradora Judicial ALVAREZ E MARSAL Administração Judicial Limitada**, representada pela Sra. Luciana Fagundes Gasques CRE – 30.146-9/SP e pelo Dr. Luis Augusto Roux Azevedo – OAB/SP 120528; a **Recuperanda**, representada pela Dra. Marcela Quental, OAB/SP 105107, acompanhada dos advogados Drs. Ivo Waisberg OAB/SP 146176, Joel Luis Thomaz Bastos, OAB/SP 122443 e Gilberto Gornati, OAB/SP 296778, bem como do assessor financeiro Sr. Bruno de Queiroz, CPF 043.034.547-02; **AGÊNCIA NACIONAL DE AVIAÇÃO CIVIL – ANAC**, representada pela Sra. Luciana Ferreira da Silva, CPF 272.209.728/14, e acompanhada pelos advogados Drs. Gustavo Carneiro de Albuquerque, OAB/SP 22537 e Alice Serpa Braga, OAB/GO 24465; e os arrendadores **Wells Fargo Trust Company National Association, ACG Acquisition 4891 LIc, ACG Acquisition 4913 LIc, ACG Acquisition 4941 LIc, ACG Acquisition 4942 LIc, ACG Acquisition 5193 LIc, ACG Acquisition 5278 LIc, ACG Acquisition 5754 LIc, ACG Acquisition 5941 LIc, ACG Acquisition 5299 LIc, Vermillion Aviation (Two) Limited, Constitution Aircraft Leasing (Ireland) 9 e 10 Limited**, representados pelos advogados Dra. Renata Duarte Iezzi, OAB/SP 126825, Dra. Larissa Regina Souza Paganelli Torelli, OAB/SP 310864, Dr. Lucas Leite Marques, OAB/SP 415648; **Sumisho Aero Engine Lease B.V.**, representada pelos advogados Drs. Paulo Fernando Campana Filho, OAB/SP 221090 e João Paulo de Carvalho Vianna Servera, OAB/SP 298744; **ELFC - Engine Lease Finance Corporation**, representada pela advogada Dra. Ana Carolina Crepaldi de Arruda Penteadó, OAB/SP 208188; **Celestial Aviation Trading 4 Limited, Celestial Aviation Trading 26 Limited e Celestial Aviation Trading 55 Limited, Wilmington Trust SP Services (Dublin) Limited e PK Airfinance S.A.R.L.**, representados por



TRIBUNAL DE JUSTIÇA DO ESTADO DE SÃO PAULO
COMARCA DE SÃO PAULO
FORO CENTRAL CÍVEL
1ª VARA DE FALÊNCIAS E RECUPERAÇÕES JUDICIAIS
Praça João Mendes s/nº, Sala 1608, Centro - CEP 01501-900, Fone: (11)
2171-6505, São Paulo-SP - E-mail: sp1falencias@tj.sp.gov.br
Horário de Atendimento ao Público: das 12h30min às 19h00min

Publique-se o presente termo de audiência. **Nada Mais.** Lido e achado conforme vai por mim assinado. Eu, Lucia Moreira Roscio, digitei.

MM. Juiz

Administradora Judicial ALVAREZ E MARSAL

Sra. Luciana Fagundes Gasques

Dr. Luis Augusto Roux Azevedo

Recuperandas

Dra. Marcela Quental

Dr. Ivo Waisberg

Dr. Joel Luis Thomaz Bastos

Dr. Gilberto Gornati

Sr. Bruno de Queiroz

AGÊNCIA NACIONAL DE AVIAÇÃO CIVIL – ANAC

Sra. Luciana Ferreira da Silva

Dr. Gustavo Carneiro de Albuquerque

Dr. Alice Serpa Braga



TRIBUNAL DE JUSTIÇA DO ESTADO DE SÃO PAULO

COMARCA DE SÃO PAULO

FORO CENTRAL CÍVEL

1ª VARA DE FALÊNCIAS E RECUPERAÇÕES JUDICIAIS

Praça João Mendes s/nº, Sala 1608, Centro - CEP 01501-900, Fone: (11)

2171-6505, São Paulo-SP - E-mail: sp1falencias@tj.sp.gov.br

Horário de Atendimento ao Público: das 12h30min às 19h00min

Wells Fargo Trust Company National Association, ACG Acquisition 4891 LIc, ACG Acquisition 4913 LIc, ACG Acquisition 4941 LIc, ACG Acquisition 4942 LIc, ACG Acquisition 5193 LIc, ACG Acquisition 5278 LIc, ACG Acquisition 5754 LIc, ACG Acquisition 5941 LIc, ACG Acquisition 5299 LIc, Vermillion Aviation (Two) Limited, Constitution Aircraft Leasing (Ireland) 9 e 10 Limited

Dra. Renata Duarte Iezzi

Dra. Larissa Regina Souza Paganelli Torelli

Dr. Lucas Leite Marques

Sumisho Aero Engine Lease B.V.

Dr. Paulo Fernando Campana Filho

Dr. João Paulo de Carvalho Vianna Servera

ELFC - Engine Lease Finance Corporation

Dra. Ana Carolina Crepaldi de Arruda Penteadó

Celestial Aviation Trading 4 Limited, Celestial Aviation Trading 26 Limited e Celestial Aviation Trading 55 Limited, Wilmington Trust SP Services (Dublin) Limited e PK Airfinance S.A.R.L.

Dra. Patrícia Yuriko Matsubara

Dra. Gláucia Mara Coelho

Dr. Fábio Falkenburguer



TRIBUNAL DE JUSTIÇA DO ESTADO DE SÃO PAULO
COMARCA DE SÃO PAULO
FORO CENTRAL CÍVEL
1ª VARA DE FALÊNCIAS E RECUPERAÇÕES JUDICIAIS
Praça João Mendes s/nº, Sala 1608, Centro - CEP 01501-900, Fone: (11)
2171-6505, São Paulo-SP - E-mail: sp1falencias@tj.sp.gov.br
Horário de Atendimento ao Público: das 12h30min às 19h00min

RRPF ENGINE LEASING LIMITED

Dr. Pedro Paulo Barradas Barata

Sra. Joana Gomes Baptista Bontempo

Manchester Elliot

Dr. Bruno Lardosa,

Dr. Guilherme Vaz Leal da Costa,

Dra. Renata Machado Veloso

AEROVIAS DEL CONTINENTE AMERICANO S.A. AVIANCA, AVIANCA HOLDINGS S.A.

Dr. Marcos Gomes da Costa

Dra. Fernanda Neves Piva

EXHIBIT B



COURT OF JUSTICE OF THE STATE OF SÃO PAULO

COUNTY OF SÃO PAULO CIVIL CENTRAL

DISTRICT COURT

1st CIRCUIT COURT FOR BANKRUPTCY COURT AND RECEIVERSHIP

Praça João Mendes s/nº, Sala 1608, Centro - CEP 01501-900, Tel: (11) 2171-6505,

São Paulo-SP - Email: sp1falencias@tj.sp.gov.br

Opening hours to the public: 12:30 to 19:00

HEARING TRANSCRIPT

Digital Case no.: **1125658-81.2018.8.26.0100**
Category - Subject **Receivership - Collective Insolvency**
'OCEANAIR - LINHAS AÉREAS LTDA., CNPJ [Corporate Tax] 02. 575.829/0001-48
Respondent: 'OCEANAIR - LINHAS AÉREAS LTDA., CNPJ [Corporate Tax] 02. 575.829/0001-48
Hearing date: **08/15/2018 – 15:00**

The conciliation hearing opened on **January 14, 2018, at 14.00**, in the courtroom of the 1st Circuit of the Bankruptcy and Receivership Court, Civil Central District Court OF SÃO PAULO, State of São Paulo, chaired by the Honorable Justice **TIAGO HENRIQUES PAPATERRA LIMONGI**, with my assistance, the below mentioned Court Assistant. Following the legal formalities and calling of the parties, there appeared **ALVAREZ AND MARSAL Limited Receiver**, represented by Ms. Luciana Fagundes Gasques CRE - 30.146-9/SP and by Mr. Luis Augusto Roux Azevedo - OAB/SP 120528 [Brazilian Bar Association Member No.]; the **Party in Receivership**, represented by Ms. Marcela Quental, OAB/SP 105107 [Brazilian Bar Association Member No.], assisted by attorneys Mr. Ivo Waisberg OAB/SP 146176 [Brazilian Bar Association Member No.], Joel Luis Thomaz Bastos, OAB/SP 122443 [Brazilian Bar Association Member No.] and Gilberto Gornati, OAB/SP 296778 [Brazilian Bar Association Member No.], as well as Mr. Bruno de Queiroz, financial advisor, CPF [Taxpayer ID] 043.034.547-02; **AGÊNCIA NACIONAL DE AVIAÇÃO CIVIL – ANAC**, represented by Ms. Luciana Ferreira da Silva, CPF 272.209.728/14, and assisted by attorneys Mr. Gustavo Carneiro de Albuquerque, OAB/SP 22537 [Brazilian Bar Association Member No.] and Ms. Alice Serpa Braga, OAB/GO 24465 [Brazilian Bar Association Member No.]; and lessors **Wells Fargo Trust Company National Association, ACG Acquisition 4891 LIc, ACG Acquisition 4913 LIc, ACG Acquisition 4941 LIc, ACG Acquisition 4942 LIc, ACG Acquisition 5193 LIc, ACG Acquisition 5278 LIc, ACG Acquisition 5754 LIc, ACG Acquisition 5941 LIc, ACG Acquisition 5299 LIc, Vermillion Aviation (Two) Limited, Constitution Aircraft Leasing (Ireland) 9 and 10 Limited**, represented by attorneys Ms. Renata Duarte Iezzi, OAB/SP 126825 [Brazilian Bar Association Member No.], Ms. Larissa Regina Souza Paganelli Torelli, OAB/SP 310864 [Brazilian Bar Association Member No.], Mr. Lucas Leite Marques, OAB/SP 415648 [Brazilian Bar Association Member No.]; **Sumisho Aero Engine Lease B.V.**, represented by attorneys Mr. Paulo Fernando Campana Filho, OAB/SP 221090 [Brazilian Bar Association Member No.] and Mr. João Paulo de Carvalho Vianna Servera, OAB/SP 298744 [Brazilian Bar Association Member No.]; **ELFC - Engine Lease Finance Corporation**, represented by attorney Ms. Ana Carolina Crepaldi de Arruda Penteadó, OAB/SP 208188 [Brazilian Bar Association Member No.]; **Celestial Aviation Trading 4 Limited, Celestial Aviation Trading 26 Limited and Celestial Aviation Trading 55 Limited, Wilmington Trust SP Services (Dublin) Limited and PK Airfinance S.A.R.L.**, represented by attorneys Mr. Fabio Falkenburguer, OAB/SP 174862 [Brazilian Bar Association Member No.], Ms. Patrícia Yuriko Matsubara, OAB/SP 248771 [Brazilian Bar Association Member No.] and Glauca Mara Coelho, OA/SP 173018



COURT OF JUSTICE OF THE STATE OF SÃO PAULO

COUNTY OF SÃO PAULO CIVIL CENTRAL

DISTRICT COURT

1st CIRCUIT COURT FOR BANKRUPTCY COURT AND RECEIVERSHIP

Praça João Mendes s/nº, Sala 1608, Centro - CEP 01501-900, Tel: (11) 2171-6505,

São Paulo-SP - Email: sp1falencias@tj.sp.gov.br

Opening hours to the public: 12:30 to 19:00

[Brazilian Bar Association Member No.]; **RRPF ENGINE LEASING LIMITED**, represented by attorney Mr. Pedro Paulo Barradas Barata, OAB/SP 221727 [Brazilian Bar Association Member No.] and by Ms. Joana Gomes Baptista Bontempo, CPF 059.923.536-58; as creditor concerned, **Manchester Elliot**, represented by attorney Mr. Bruno Lardosa, OAB/SP 107633 [Brazilian Bar Association Member No.], Mr. Guilherme Vaz Leal da Costa OAB/SP 158892 [Brazilian Bar Association Member No.], Ms. Renata Machado Veloso, OAB/SP 192300 [Brazilian Bar Association Member No.], and, as concerned parties, **AEROVIAS DEL CONTINENTE AMERICANO S.A. AVIANCA, AVIANCA HOLDINGS S.A.**, represented by attorneys Mr. Marcos Gomes da Costa, OAB/SP 173369 [Brazilian Bar Association Member No.] and Ms. Fernanda Neves Piva, OAB/SP 356170 [Brazilian Bar Association Member No.].

Following the start of the agenda, as it was not possible to achieve agreement between the parties and with the lessors reserving all their rights under the Cape Town Convention, at the request of this Court, an extension of the suspension of the repossession orders for aircraft and/or engines and lawsuits thereof was granted until February 1, 2019, under the following terms: the Parties in Receivership undertake: (i) to submit, by the above date, proposals for making payments of arrears due prior to the above date and/or staggered return of the aircraft/engines for examination by each lessor individually; (ii) to make payments due as from February 1, 2019 on the dates laid down in the originally signed contracts. If the Parties in Receivership fail to fulfill any of the obligations set out above, the right to repossess the aircraft may be exercised automatically by any and all lessors with respect to all aircraft, with the Parties in Receivership undertaking to carry out the actions necessary for the friendly return of the aircrafts and/or engines, as well as all accessories thereof, to each of the lessors, including all the arrangements for export and cancellation of their registrations. If the above obligations assumed by the Parties in Receivership are fulfilled, but there is no agreement by the respective lessors regarding the proposals to be submitted in accordance with item (i) above, the parties who have not reached an agreement shall return to this court, which will rule on whether or not to extend the suspension of actions, as well as on the repossession of the aircrafts and/or engines. For the purpose of item (i) above, the Parties in Receivership shall submit notification of the fulfillment of the item in question into the records by the date above, , and any creditor may challenge the receipt of such a proposal. Due to the above, the period of suspension of the actions and of the administrative measures as determined in the decision on pages 4,417/4,428 remains extended until February 1, 2019 for all creditors, including those who did not attend this hearing. Those present are hereby given notice of this order



COURT OF JUSTICE OF THE STATE OF SÃO PAULO

COUNTY OF SÃO PAULO CIVIL CENTRAL

DISTRICT COURT

1st CIRCUIT COURT FOR BANKRUPTCY COURT AND RECEIVERSHIP

Praça João Mendes s/nº, Sala 1608, Centro - CEP 01501-900, Tel: (11) 2171-6505,
São Paulo-SP - Email: sp1falencias@tj.sp.gov.br

Opening hours to the public: 12:30 to 19:00

This hearing transcript shall be published accordingly. **Nothing Further.** Having been read and found to be in agreement, signed by myself. I, Lucia Moreira Roscio, typed it.

Honorable Justice

Receiver ALVAREZ AND MARSAL

Ms. Luciana Fagundes Gasques

Mr. Luis Augusto Roux Azevedo

Parties in Receivership

Ms. Marcela Quental

Mr. Ivo Waisberg

Mr. Joel Luis Thomaz Bastos

Mr. Gilberto Gornati

Mr. Bruno de Queiroz

AGÊNCIA NACIONAL DE AVIAÇÃO CIVIL – ANAC

Ms. Luciana Ferreira da Silva

Mr. Gustavo Carneiro de Albuquerque

Ms. Alice Serpa Braga



COURT OF JUSTICE OF THE STATE OF SÃO PAULO
COUNTY OF SÃO PAULO CIVIL CENTRAL
DISTRICT COURT
1st CIRCUIT COURT FOR BANKRUPTCY COURT AND RECEIVERSHIP
Praça João Mendes s/nº, Sala 1608, Centro - CEP 01501-900, Tel: (11) 2171-6505,
São Paulo-SP - Email: sp1falencias@tj.sp.gov.br
Opening hours to the public: 12:30 to 19:00

Wells Fargo Trust Company National Association, ACG Acquisition 4891 LIc, ACG Acquisition 4913 LIc, ACG Acquisition 4941 LIc, ACG Acquisition 4942 LIc, ACG Acquisition 5193 LIc, ACG Acquisition 5278 LIc, ACG Acquisition 5754 LIc, ACG Acquisition 5941 LIc, ACG Acquisition 5299 LIc, Vermillion Aviation (Two) Limited, Constitution Aircraft Leasing (Ireland) 9 and 10 Limited

Ms. Renata Duarte Iezzi

Ms. Larissa Regina Souza Paganelli Torelli

Mr. Lucas Leite Marques

Sumisho Aero Engine Lease B.V.

Mr. Paulo Fernando Campana Filho

Mr. João Paulo de Carvalho Vianna Servera

ELFC - Engine Lease Finance Corporation

Ms. Ana Carolina Crepaldi de Arruda Penteadó

Celestial Aviation Trading 4 Limited, Celestial Aviation Trading 26 Limited and Celestial Aviation Trading 55 Limited, Wilmington Trust SP Services (Dublin) Limited and PK Airfinance S.A.R.L.

Ms. Patrícia Yuriko Matsubara

Ms. Gláucia Mara Coelho

Ms. Fabio Falkenburguer



COURT OF JUSTICE OF THE STATE OF SÃO PAULO
COUNTY OF SÃO PAULO CIVIL CENTRAL
DISTRICT COURT
1st CIRCUIT COURT FOR BANKRUPTCY COURT AND RECEIVERSHIP
Praça João Mendes s/nº, Sala 1608, Centro - CEP 01501-900, Tel: (11) 2171-6505,
São Paulo-SP - Email: sp1falencias@tj.sp.gov.br
Opening hours to the public: 12:30 to 19:00

RRPF ENGINE LEASING LIMITED

Mr. Pedro Paulo Barradas Barata

Ms. Joana Gomes Baptista Bontempo

Manchester Elliot

Mr. Bruno Lardosa,

Mr. Guilherme Vaz Leal da Costa,

Ms. Renata Machado Veloso

AEROVIAS DEL CONTINENTE AMERICANO S.A. AVIANCA, AVIANCA HOLDINGS S.A.

Mr. Marcos Gomes da Costa

Ms. Fernanda Neves Piv



100 Park Avenue, 16th Fl
New York, NY 10017
www.consortra.com

STATE of NEW YORK)
)
COUNTY of NEW YORK) ss:

CERTIFICATE OF ACCURACY

This is to certify that the attached document, "2019.01.14 - Avianca_Termo de Audiência - 14.01.2019" -- originally written in Portuguese -- is, to the best of our knowledge and belief, a true, accurate, and complete translation into English.

Dated: 01/16/2019

Heather Cameron
Projects Manager
Consortra Translations

Sworn to and signed before ME
This 16th day of January, 2019

Notary Public

JAMES G. MAMERA
Notary Public- State of New York
No. 01MA6157195
Qualified in New York County
My Commission Expires December 4, 2022



EXHIBIT B

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

In re:

Oceanair Linhas Aéreas S/A

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 18-~~14182~~ [14182 \(SHL\)](#)

**ORDER GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDING
AND DISCRETIONARY RELIEF**

This matter having come before the Court upon the Verified Petition (the “Verified Petition”) of Oceanair Linhas Aéreas S/A (“Oceanair” or the “Debtor”) filed by Frederico Miguel Preza Pedreira Elias Da Costa (“Mr. Pedreira” or the “Petitioner”), in his capacity as the Foreign Representative (as defined under section 101(24) of title 11 of the United States Code (the “Bankruptcy Code”) of the Debtor (the “Foreign Representative”), in the above-captioned case under chapter 15 of the Bankruptcy Code, seeking the entry of an order (1) recognizing the Brazilian Insolvency Proceeding (as defined in this Verified Petition¹) as a foreign main proceeding pursuant to sections 1515 and 1517 of the Bankruptcy Code; (2) confirming relief pursuant to Bankruptcy Code section 1520; (3) granting interim relief pursuant to Bankruptcy Code sections 1519 and 1521; and (4) granting further relief pursuant to Bankruptcy Code sections 105(a), 1507(a), 1509(b)(2)-(3), 1521(a), and 1525(a); and upon the Court’s review and consideration of the Verified Petition; the Declaration of Mr. Pedreira, dated December 26, 2018; and the Declaration of Andre Pinto da Rocha Osorio Gondinho, an expert on Brazilian restructuring and bankruptcy law, dated December 26, 2018; and the Foreign Representative having given notice by first class mail; and the Court having held a hearing and heard the

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Verified Petition.

arguments presented at the hearing held on , ~~201~~ January 22, 2019; and based on the foregoing, the Court finds and concludes as follows:

1. The Foreign Representative has demonstrated that:
 - a. the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334(a) and (b) and 11 U.S.C. § 1501;
 - b. venue is properly located in this District pursuant to 28 U.S.C. §§ 1410(a)(1) and (3);
 - c. this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P);
 - d. the Debtor is subject to foreign main proceedings within the meaning of Section 1502 of the Bankruptcy Code;
 - e. the Petitioner is a “person” and the Foreign Representative of the Debtor within the meaning of Section 101(24) of the Bankruptcy Code;
 - f. the above-captioned Chapter 15 case was properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code;
 - g. the Debtor has its center of main interests and an establishment in Brazil; and
 - h. the Verified Petition satisfies the requirement of section 1515 of the Bankruptcy Code.

2. The Foreign Representative has demonstrated that the relief requested is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States and warranted pursuant to section 1521 of the Bankruptcy Code; and

3. The interest of the public will be served by this Court’s granting the relief requested by the Foreign Representative.

NOW, THEREFORE, IT IS HEREBY

ORDERED, that the Verified Petition is granted, and the Brazilian Insolvency Proceeding is granted recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code; and it is further

ORDERED that all relief afforded to a foreign main proceeding automatically upon recognition pursuant to section 1520 of the Bankruptcy Code is granted; and it is further

ORDERED, that the Petitioner is granted recognition as a “Foreign Representative” pursuant to section 101(24) of the Bankruptcy Code in respect of the Brazilian Insolvency Proceeding; and it is further

ORDERED, that the Petitioner is granted entrustment of the administration, realization and distribution of any and all of the Debtor’s assets within the territorial jurisdiction of the United States pursuant to sections 1521(a)(5) and 1521(b) of the Bankruptcy Code; and it is further

ORDERED, that, to the extent not provided by section 1520 of the Bankruptcy Code, all creditors are enjoined from disposing of or otherwise taking any action against any property of the Debtor [located within the territorial jurisdiction of the United States](#); and it is further

ORDERED, that, to the extent not provided by section 1520 of the Bankruptcy Code, all creditors are enjoined pursuant to section 1521 of the Bankruptcy Code from (1) disposing of or otherwise taking any action against any property of the Debtor [located within the territorial jurisdiction of the United States](#); (2) taking or continuing any act to obtain possession of or exercise control over any property of the Debtor [located within the territorial jurisdiction of the United States](#); and (3) commencing any suit, action or proceeding in the territorial jurisdiction of the United States to resolve any dispute arising from the Brazilian Insolvency Proceeding or any

orders issued by the Brazilian Bankruptcy Court identified in the Verified Petition, or the Brazilian law relating thereto; and it is further

ORDERED, that no creditors may take any action within the territorial jurisdiction of the United States inconsistent with any orders issued in the Brazilian Insolvency Proceeding identified in the Verified Petition; and it is further

ORDERED, that no action taken by the Petitioner in preparing, disseminating, applying for, implementing or otherwise in connection with this Order, any order entered in respect of the Verified Petition, this Chapter 15 Proceeding, any further order for additional relief in this Chapter 15 Proceeding, or any adversary proceedings or contested matters in connection therewith, constitutes a waiver of any immunity afforded to the Petitioner as Foreign Representative, including without limitation pursuant to section 1510 of the Bankruptcy Code; and it is further

ORDERED, that notwithstanding anything herein to the contrary, the relief granted in this order shall not apply to the action entitled *Wells Fargo Trust Co., N.A. v. Synergy Group Corp.*, No. 18-cv-11151 (S.D.N.Y.); *provided, however, that nothing herein waives any right of any person to seek to stay such action or any person's right to oppose such request; and it is further*

ORDERED, that the automatic stay pursuant to Bankruptcy Code section 1520(a)(1) and section 362, or any other additional or injunctive relief ordered by the Court herein, does not enjoin, prohibit, prevent, stay, or otherwise limit Associated Energy Group, LLC ("AEG") from pursuing any rights or remedies it may have solely against third parties arising from the provision of any fuel or other services AEG provided to the Debtor or provided to any aircraft operated by the Debtor at its request, including, but not limited to, the aircraft owners for which AEG has filed verified claims of lien in Miami, FL; *provided, however, nothing in this paragraph*

Document comparison by Workshare 9 on Friday, January 18, 2019 12:12:45 PM

Input:	
Document 1 ID	interwovenSite://USNY-DMS/QuinnEmanuel/10632534/1
Description	#10632534v1<QuinnEmanuel> - Order Granting Recognition
Document 2 ID	I:\NRPortb\QuinnEmanuel\SCOTTSHALLEY\10632534_2.docx
Description	I:\NRPortb\QuinnEmanuel\SCOTTSHALLEY\10632534_2.docx
Rendering set	Standard no moves

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	11
Deletions	4
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	15

