

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-039418-104

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE JUDICIAL
REORGANIZATION PROCEEDINGS OF:

**COMPAÑIA MEXICANA DE AVIACION,
S.A. DE C.V.,**

Insolvent Debtor

And

MARU E. JOHANSEN,

Foreign Representative / **Petitioner**

And

**SAMSON BELAIR DELOITTE &
TOUCHE INC.**

Information Officer

TWELFTH MOTION FOR THE EXTENSION OF THE STAY PERIOD
(Sections 46 and following of the Companies' Creditors Arrangement Act, R.C.S. 1985 c. C-36)

TO THE HONOURABLE MR. JUSTICE BRIAN RIORDAN, SITTING IN COMMERCIAL
DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, PETITIONER
RESPECTFULLY SUBMITS AS FOLLOWS:

I. INTRODUCTION

1. On August 5th, 2010, this Honourable Court issued an Order on a Motion for Recognition of Foreign Proceedings (hereinafter the "**Initial Order**") extending the protection of the *Companies' Creditors Arrangement Act* (hereinafter the "**CCAA**") to Compania Mexicana de Aviacion S.A. de C.V. (hereinafter the "**Insolvent Debtor**" or "**Mexicana**");
2. Pursuant to the Initial Order, Samson Belair Deloitte & Touche Inc. was appointed as Information Officer of the Insolvent Debtor (hereinafter the "**Information Officer**") and a stay of proceedings was ordered until November 10th, 2010 (hereinafter the "**Stay Period**");

3. By successive orders of this Honorable Court rendered on November 16th, 2010, January 13th, 2011, April 14th, 2011, July 8th, 2011, September 20th, 2011, November 29th, 2011, February 27th, 2012, May 17th, 2012, August 23, 2012 and November 20, 2012 and November 15th, 2013 the Initial Order was extended until May 15th, 2014, as appears from the court record herein;
4. By the present motion, Petitioner seeks an order granting an eleventh extension of the Stay Period for an indefinite period ending at the earliest of the following dates (i) in approximately sixty (60) days on July 15th, 2014, or (ii) ten (10) days following a notice to be given by the Foreign Representative stating that all Appeals (as such term is defined hereinafter) against the Decision (as such term is defined hereinafter) have been either dismissed, withdrawn or settled, such that the Decision is confirmed and final the new termination date to be established by the Mexican Court, the whole for the reasons more fully detailed hereinafter;

II. MEXICANA'S OPERATIONS AND ACTIVITIES

5. Mexicana and its affiliates operated Mexicana Airlines, historically Mexico's largest airline. Mexicana and its affiliates carried passengers and cargo to destinations worldwide;
6. To effectuate a restructuring of its business and financial affairs, on August 2nd, 2010 Mexicana voluntarily filed a petition for commencement of a corporate reorganization proceeding (hereinafter the "**Mexican Proceedings**") before Mexico's "*Juzgado Décimo Primero de Distrito en Materia Civil en el Distrito Federal*" (hereinafter the "**Mexican Court**") under Mexico's *Ley de Concursos Mercantiles* (hereinafter the "**Concurso Law**"), the whole as appears from a certified copy of the said petition, bearing the Seal of the Federal District Court for Civil Matters of the Federal District of Mexico, already communicated as Exhibit R-1 in support of the Motion for Recognition of Foreign Proceedings;
7. In connection with the commencement of the Concurso Proceedings, Mexicana's Board of Directors authorized the filing of the Concurso proceedings and appointed Petitioner herein Maru E. Johansen, as its Foreign Representative and specifically authorized the Foreign Representative to seek relief before US Courts under Chapter 15 of the U.S. Bankruptcy Code, the whole as appears from copies of the original Spanish version of a Resolution of the Board of Directors of Mexicana dated July 30th, 2010 and of the official English translation of same resolution, communicated of the resolution of the Board of Directors already communicated *en liasse* as Exhibit R-2 in support of the Motion for Recognition of Foreign Proceedings;
8. Similarly, Mexicana's Board of Directors appointed Petitioner herein Maru E. Johansen as its Foreign Representative and specifically authorized the Foreign Representative to seek relief before Canadian Courts under the CCAA, the whole as appears from copies of the original Spanish version of a Resolution of the Board of Directors of Mexicana dated August 4th, 2010 and of the official English translation of same resolution, already communicated *en liasse* as Exhibit R-3 in support of the Motion for Recognition of Foreign Proceedings;

9. Following the filing of the petition commencing the Concurso Proceedings, an examination of Mexicana's books and records was conducted by a Court-appointed individual and consequently, on September 6th, 2010, the Mexican Court issued a "business reorganization judgment," whereby a stay of seizures, foreclosures and execution of judgments was put in place, and Mexicana began the process of reorganization, the whole as appears from a copy of the said judgment in its original Spanish version as well as a copy of the official English translation thereof, already communicated as Exhibits R-1-A and R-1-B in support of the First Motion to Extend;
10. On August 28th, 2010, Mexicana announced the suspension of its flights;

III. RECENT RESTRUCTURING DEVELOPMENTS

11. Since the Eleventh Extension Order, Mexicana has attempted to secure an investor to capitalize its restructuring plan. However, the Mexican Court seized with the Concurso Proceedings has recently rendered an order declaring Mexicana bankrupt, the whole as more fully detailed hereinafter;

A. MEXICAN EXTENSION ORDER RENDERED UNDER THE CONCURSO LAW

12. On November 14th, 2011, the Mexican Court issued an order advising the new computation of the delays, which ultimately results in a deadline of February 10th, 2012 for the conciliation period, the whole as appears from a copy of the said Order in its original Spanish version as well as a copy of the official English translation thereof (hereinafter the "**November 14th Order**"), which were already communicated in support of the Sixth Motion to Extend as Exhibit R-2A and Exhibit R-2B;
13. On February 8th, 2012, the Mexican Court issued an order suspending indefinitely the deadline of February 10th, 2012 for the conciliation period, the whole as appears from a copy of said Order in its original Spanish version as well as a copy of the official English translation thereof (hereinafter the "**February 8th Order**"), which were already communicated in support of the Sixth Motion to Extend as Exhibits R-1A and R-1B;
14. As mentioned in the Information Officer's 14th report, on or about June 4, 2013, Mexicana filed a creditors' agreement (the "**Creditors' Agreement**") with the Mexican Court, the whole as appears from a copy of the Spanish original of said agreement and from a copy of the unofficial English translation thereof, which were already communicated in support of the Eleventh Motion to Extend as Exhibits R-1A and R-1B;
15. The Creditors' Agreement remained subject to approval by the Mexican Court, which approval was conditional on the recapitalization of Mexicana by an investor;
16. The Honorable Justice Edith E. Alarcon-Meixueiro, presiding over the Concurso proceedings, had previously indicated that she would not issue such ruling until

either i) an Investor had been secured to acquire the assets or shares of Mexicana and fund the Creditors' Agreement and the operations of the emerging airline or ii) it became obvious that such an investor would not be secured;

17. The Foreign Representative has been advised that, by decision dated April 3rd, 2014 and published on April 4th, 2014 (the "**Decision**") Justice Alarcon-Meixueiro:

17.1. Observed that, despite the passage of time, to date, the condition she had imposed for the approval of the Creditors' Agreement, namely that an investor meeting the criteria imposed by the Mexican Court and having demonstrated an interest and the ability to re-capitalize Mexicana had not been secured;

17.2. Consequently, refused to approve the Creditors' Agreement and declared Mexicana bankrupt;

the whole as appears from a copy of the Spanish version of the Decision, communicated herewith as **Exhibit R-1**;

18. The Foreign Representative's understanding of the Decision is that, in sum and substance, Mexicana's insolvency proceedings in Mexico have changed in status from proceedings seeking a reorganization to proceedings in the nature of a liquidation;

19. The Foreign Representative has been advised that the Decision contemplates a short period of time (several days) within which a trustee shall be appointed by Mexico's *Secretaria de Comunicaciones y Transportes*;

20. As a result of the foregoing, on April 17th, 2014, the Foreign Representative issued and served upon the members of the service list a *Notice to stakeholders*, advising of the Decision, the whole as appears from a copy of the said notice, communicated herewith as **Exhibit R-2**;

21. On or about April 23rd, 2014, Mexico's *Secretaria de Comunicaciones y Transportes* appointed Alfonso Ascension Triujeque (the "**Trustee**") as trustee to Mexicana, the whole as appears from a copy of a press release issued by the *Secretaria de Comunicaciones y Transportes* dated April 23rd, 2014, communicated herewith as **Exhibit R-3**;

22. Although the Trustee has been appointed by the *Secretaria de Comunicaciones y Transportes* it is the Foreign Representative's understanding that the Trustee has not yet effectively taken possession of the assets and undertaking of Mexicana;

23. The Foreign Representative's understanding is that the Trustee should formally accept the appointment as trustee to the bankruptcy of Mexicana and take possession of the assets and undertaking of Mexicana within the coming days, but has not been advised as to a specific date;

24. The Foreign Representative's understanding is that when the Trustee formally accepts the appointment, the latter may select a new foreign representative in connection with these proceedings or may ask the Foreign Representative to

remain in place. When such determinations or appointments are made, the Foreign Representative shall provide further disclosure to the stakeholders and to this Court;

25. Moreover, the Foreign Representative has been advised that three (3) of Mexicana's trade unions have launched appeals of the Decision namely *Asociacion Sindical de Pilotos Aviadores (ASPA)*, Mexicana's pilots' union, *Asociacion Sindical de Sobrecargos de Aviacion (ASSA)*, Mexicana's flight attendants' union and *Sindicato Nacional de Trabajadores de transportes, Transformacion, Aviacion, Servicios y Similares (SNTTTASS)*, Mexicana's ground personnel union;
26. In addition, two (2) other groups of creditors, including a group of employees of Mexicana, have also launched appeals of the Decision (such appeals, together with the appeals launched by Mexicana's trade unions identified in the previous paragraph, shall hereinafter be defined as the "**Appeals**");
27. In light of the foregoing, until the Appeals are dealt with, the bankruptcy of Mexicana remains subject to contestation and the possibility of being overturned in appeal;
28. Once the Trustee formally accepts his appointment and takes a decision with respect to the identity of the foreign representative, such foreign representative will be able to petition this Honorable Court for an order seeking a temporary stay of proceedings pending the Appeals and/or for a permanent stay in light of the pending bankruptcy of Mexicana;
29. Meanwhile, Mexicana sits in a juridical limbo, as the Trustee has not yet formally taken office and neither the current management nor the Conciliator are willing or able to exercise effective management of the affairs of Mexicana as a result of the Decision and of the bankruptcy of Mexicana;
30. However, until the status of Mexicana is resolved, the latter continues to have various assets in Canada which, if the Initial Order is not temporarily renewed, would be subject to seizure and or execution by creditors of Mexicana;
31. As a result, it is necessary that the Initial order be extended, on a short term basis, until the Trustee takes office and appoints a new foreign representative or maintains the Foreign Representative in her functions and instructs such foreign representative to seek the appropriate stay of proceedings required in Canada and the United States of America as a result of Mexicana's bankrupt status;

B. DEVELOPMENTS WITH IATA

32. On or about October 1st, 2012, IATA and Mexicana executed a letter agreement with respect to the start date of the Approved Process and regarding notices to be provided, the whole as appears from a copy of the said letter agreement, already communicated as Exhibit R-12 of the Tenth Motion for the Extension of the Stay Period;

33. Since the Eleventh Extension order, representatives of IATA and Mexicana, as well as their counsel, have met at Mexicana's headquarter in Mexico City, to attempt to settle certain disputes raised by various airlines outside the Approved Process. These discussions have been fruitful and Mexicana and IATA have now agreed on final numbers with respect to the payment to be remitted by IATA to Mexicana in accordance with the June 4th, 2013 order rendered by this Honorable Court, pending satisfaction of certain conditions imposed by Mexicana, including the withdrawal of IATA's proof of claim;
34. It is expected that the final payment by IATA to Mexicana should occur within the next few weeks;

IV. EXTENSION OF THE STAY PERIOD

35. In light of the foregoing, because the Stay Period expires on May 15th, 2014, the extension of such Stay Period is necessary in order to maintain the judicial protection of Mexicana in Canada while the issues relating to the appointment of the Trustee and the Appeals launched against the Decision are settled and/or decided;
36. Given the uncertainty related to the pending bankrupt status of Mexicana as a result of the Appeals against the Decision and to the identity of the foreign representative under the Trustee's mandate, Petitioner respectfully submits that this Honourable Court should render an Order extending the Stay Period for a period ending on the earlier of the following dates, namely (i) July 15th, 2014, and (ii) ten (10) days following a notice to be given by the Foreign Representative stating that all Appeals against the Decision have been either dismissed, withdrawn or settled, such that the Decision is confirmed and final;
37. It is the Foreign Representative's understanding that the stay of proceedings imposed in Mexico under the Concurso Law continues to apply notwithstanding the Decision;
38. In this respect, Petitioner Maru E. Johansen, in her capacity as Foreign Representative, undertakes to immediately upon the occurrence of such event(s), advise the Information Officer, this Honorable Court and the members of the service list that i) all Appeals against the Decision have been either dismissed, withdrawn or settled, such that the Decision is confirmed and final and/or ii) that her mandate as Foreign Representative has been terminated;
39. It is the Foreign Representative's view that extending the Stay Period for such a period is appropriate in the present circumstances;
40. The Information Officer has indicated that it will be filing with the Court a report informing the Court and Mexicana's stakeholders of the developments since the Eleventh Extension Order;
41. Since the Eleventh Extension Order, the Insolvent Debtor has acted and continues to act in good faith and with due diligence;

42. In light of the foregoing, Petitioner respectfully asks this Court to extend the Stay Period (as defined in the Order on a Motion for Recognition of Foreign Proceedings rendered by this Court in this matter on August 5th, 2010) until the earlier of the following dates:

- (i) July 15th, 2014 or;
- (ii) Ten (10) days following the service by Petitioner or by the Information Officer to this Honorable Court and to the members of the service list, of a Notice advising that all Appeals against the Decision have been either dismissed, withdrawn or settled, such that the Decision is confirmed and final;

43. The present Motion is well founded in fact and in law.

WHEREFORE, MAY IT PLEASE THIS COURT:

[1] **GRANT** the present Motion;

[2] **PRAY ACTE** of the undertaking of Petitioner Maru E. Johansen to immediately advise the Information Officer, this Honorable Court and the members of the service list that i) all appeals against the decision rendered by the Honourable Justice Edith E. Alarcon-Meixueiro, justice of Mexico's "*Juzgado Décimo Primero de Distrito en Materia Civil en el Distrito Federal*" and dated April 3rd, 2014 and published on April 4th, 2014, Exhibit **R-1** (hereinafter, the "**Decision**") declaring Mexicana bankrupt, have been either dismissed, withdrawn or settled, such that the Decision is confirmed and final and/or ii) that her mandate as Foreign Representative has been terminated;

[3] **ORDER** that, in the event the Foreign Representative gives notice to the Information Officer, this Honorable Court and the members of the service list, of the termination of her mandate as Foreign Representative pursuant to the previous paragraph, the Foreign Representative shall be exempted from providing further notices to the Information Officer, this Honorable Court and the members of the service list;

[4] **EXTEND** the Stay Period (as defined in the Order on a Motion for Recognition of Foreign Proceedings rendered by this Court in this matter on August 5th, 2010) until the earlier of the following dates:

- (i) July 15th, 2014 or;
- (ii) Ten (10) days following the service by Petitioner or the Information Officer to the members of the service list of a Notice advising that all appeals against the Decision have been either dismissed, withdrawn or settled, such that the Decision is confirmed and final;

the whole subject to all of the other terms of the Initial Order, as amended and extended

[5] **DECLARE** that the notice of presentation hereof is proper and sufficient;

[6] **ORDER** that the order to be rendered on the present motion shall be executory notwithstanding appeal;

[7] THE WHOLE WITHOUT COSTS, save and except in the event of contestation.

Montreal, May 13th, 2013

A handwritten signature in blue ink, appearing to be "B. Gervais", written over a horizontal line.

Borden Ladner Gervais L.L.P.
Attorneys for Petitioner

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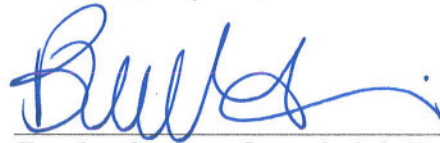
**SAMSON BELAIR DELOITTE & TOUCHE
INC.**

Information Officer

LIST OF EXHIBITS

- EXHIBIT R-1:** Spanish version of the Decision dated April 3rd, 2014;
- EXHIBIT R-2:** Notice to stakeholders dated April 17th, 2014;
- EXHIBIT R-3:** Mexico`s *Secretaria de comunicaciones y Transportes* dated April 23rd, 2014.

Montreal, May 13th, 2013



Borden Ladner Gervais L.L.P.
Attorneys for Petitioner

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NOTICE OF PRESENTATION

TO: Service List

PLEASE TAKE NOTICE that the *Eleventh Motion for the Extension of the Stay Period* will be presented for adjudication before the Honourable Judge Brian Riordan of the Superior Court, sitting in and for the district of Montreal, on **May 15th, 2014, in room 17.09 at 9:30 a.m.**, or so soon thereafter as counsel may be heard at the Montreal Courthouse located, at 1 Notre-Dame Street East.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

Montreal, May 13th, 2014



Borden Ladner Gervais L.L.P.
Attorneys for Petitioner

SUPERIOR COURT
(Commercial Division)
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TWELFTH MOTION FOR THE EXTENSION
OF THE STAY PERIOD

O R I G I N A L

Borden Ladner Gervais LLP
Lawyers • Patent & Trade-mark Agents
1000 de La Gauchetière Street West
Suite 900, Montréal, Québec H3B 5H4
tel.: (514) 879-1212 fax: (514) 954-1905

Me François D. Gagnon
B.M. 2545

File: 289149-000009