

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

FIFTH 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 ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE
PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

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 10, 2010 (hereinafter the "**Stay Period**");
3. By Order of this Honorable Court rendered on November 16, 2010, Petitioner's first *Motion for the extension of the Stay Period* (hereinafter the "**First Motion to Extend**") was granted and the Stay Period was extended until January 14, 2011 (hereinafter the "**First Extension Order**");

4. By Order of this Honorable Court rendered on January 13, 2011, Petitioner's second *Motion for the extension of the Stay Period* (hereinafter the "**Second Motion to Extend**") was granted and the Stay Period was extended until April 15, 2011 (hereinafter the "**Second Extension Order**");
5. By Order of this Honorable Court rendered on April 14, 2011, Petitioner's third *Motion for the extension of the Stay Period* (hereinafter the "**Third Motion to Extend**") was granted and the Stay Period was extended until July 15, 2011 (hereinafter the "**Third Extension Order**");
6. By Order of this Honorable Court rendered on July 8, 2011, Petitioner's fourth *Motion for the extension of the Stay Period* (hereinafter the "**Fourth Motion to Extend**") was granted and the Stay Period was extended until September 20, 2011 (hereinafter the "**Fourth Extension Order**");
7. By way of the present motion, Petitioner seeks an order granting a fifth extension of the Stay Period for a period of approximately eight (8) weeks, namely until November 15, 2011;

II. MEXICANA'S OPERATIONS AND ACTIVITIES

8. Mexicana and its affiliates operate Mexicana Airlines, historically Mexico's largest airline. Mexicana and its affiliates carry passengers and cargo to destinations worldwide;
9. To effectuate a restructuring of its business and financial affairs, on August 2, 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, filed as Exhibit R-1 in support of the Motion for Recognition of Foreign Proceedings;
10. 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 30, 2010 and of the official English translation of same resolution, communicated of the resolution of the Board of Directors filed *en liasse* as Exhibit R-2 in support of the Motion for Recognition of Foreign Proceedings;
11. 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, filed *en liasse* as Exhibit R-3 in support of the Motion for Recognition of Foreign Proceedings;
12. 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 6, 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, communicated as Exhibits R-1-A and R-1-B in support of the First Motion to Extend;

13. On August 28, 2010, Mexicana announced the suspension of its flights;

III. RESTRUCTURING DEVELOPMENTS SINCE THE INITIAL ORDER

14. Since the Initial Order, Mexicana had continued to resolve important business and legal issues relevant to its restructuring efforts, the whole as more fully detailed hereinafter;

A. U.S. CHAPTER 15 RECOGNITION

15. On November 8th, 2010, the United States Bankruptcy Court, Southern District of New York, issued an Order recognizing Petitioner herein as foreign representative and recognizing the Mexican Proceedings as “foreign main proceedings” within the meaning of Chapter 15 of the *US Bankruptcy Code* (hereinafter the “**US Recognition Order**”) extending the protection of the *US Bankruptcy Code* to the Insolvent Debtor, the whole as appears from a copy of the US Recognition Order, already communicated in support of the Second Motion to Extend as Exhibit R-1;

B. CLAIMS PROCESS AND NEGOTIATIONS WITH SUPPLIERS

16. In October 2010, the Insolvent Debtor obtained the approval from the Mexican Court authorizing a process for creditors to prove their claims. In order for its claim to be recognized in the context of the Mexican Proceedings, each creditor was required to fill out the form provided in the Information Officer’s Notice to creditors and forward same to the *Conciliador* appointed by the Mexican Court (hereinafter the “**Conciliador**”), the whole by no later than 5:00 P.M. (Mexico City time) on December 3, 2010;
17. Since the First Extension Order and subsequent to receipt by the Conciliador of Mexicana’s creditors’ claims, the Conciliador has had extensive discussions and negotiations with its main suppliers in Mexico, incidentally its most important creditors in that country, in order to obtain the required support for Mexicana’s restructuring plan;

C. SETTLEMENT OF UNION DISPUTES

18. Moreover, since the Initial Order, Mexicana has been successful in reaching final agreements with the three (3) labor unions representing Mexicana’s pilots, flight attendants and ground personnel (hereinafter the “**Labor Agreements**”), allowing Mexicana to move forward with its restructuring efforts with certainty as to the terms and conditions of employment of its unionized staff and personnel on a going forward basis;

D. STEPS IN ORDER TO RESTART FLIGHT OPERATIONS

19. In addition, concrete steps have been taken by the Insolvent Debtor to be ready to restart flight operations on a short term basis;

-
20. As such, a number of Mexicana's pilots have recently been recalled by the Insolvent Debtor in order to resume the training required to update their license certifications with respect to the various aircraft to be operated by Mexicana when it restarts operations
 21. Moreover, substantial headway was accomplished to resume the Insolvent Debtor's operations, such as the recertification of aircraft and different airports, and securing the corresponding licenses required to begin commercial implementation;
 22. Indeed, Mexicana has scheduled and / or completed station certification inspections updates (full inspections had been conducted in February 2011) in seven (7) of the airports from which it operates in Mexico, Guatemala and the United States, namely Los Angeles, San Antonio, Chicago, Mexico City, Cancun, Guadalajara and Guatemala City, the whole in order to comply with the requirements of the U.S. Federal Aviation Administration and its Mexican counterpart, the *Direccion General de Aeronautica Civil* (D.G.A.C.);
 23. The Insolvent Debtor plans to schedule, in the coming weeks and months, full station certification inspections in some of the other Mexican, American, Central American, Caribbean and Canadian cities it historically served;
 24. In addition, in order to allow the start-up of operations, the Insolvent Debtor is currently in discussion with the various governmental authorities in order to accomplish the other steps required to maintain and preserve its traffic rights and permits, including the flight licences and the landing permits ;
 25. Therefore, the planes owned by Mexicana are currently being inspected by the authorities to determine if they still comply with the legislative requirements ;
 26. As such, during the week of July 5, 2011, seven (7) aircraft were inspected and were found in good condition and in compliance by the authorities;
 27. As soon as the steps described above are completed, and once a final binding agreement is executed with an investor, Mexicana will be able to start selling tickets to and from the destinations for which the certification inspections have been duly completed, and therefore resume flight operations;
 28. Moreover, once a sale transaction is executed with an investor and some additional capital is injected in the Insolvent Debtor, the Insolvent Debtor will be able to conclude various agreements with aircraft lessors in order to add aircraft and therefore increase its routes, traffic and generate additional revenues

E. MEXICAN EXTENSION ORDER RENDERED UNDER THE CONCURSO LAW

29. The Concurso Law allows companies 185 days to enter and exit bankruptcy protection from creditors, with a possibility of two (2) 90 business days extensions if there are clear signs of progress toward restructuring;
30. The Insolvent Debtor was granted bankruptcy protection from its creditors under the Concurso Law on September 28, 2011 and therefore, said protection would normally have expired on April 1st, 2011;

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31. However, on March 28, 2011, the Mexican Court issued an Order extending the protection of the Concurso Law to the Insolvent Debtor for an additional period of ninety (90) business days, as provided for under Section 145 of the Concurso Law (hereinafter the "**Mexican Extension Order**"), the whole as appears from a copy of the Spanish version of the application for a 90 business day extension (hereinafter the "**Mexican Extension Motion**"), as well as a copy of the English version thereof, and from a copy of the Spanish version of the Mexican Extension Order, which were already communicated in support of the Third Motion to Extend as Exhibit R-1 and Exhibit R-2;
 32. As a result of the Mexican Extension Order, Mexicana's bankruptcy protection under the Concurso Law has been extended to August 10, 2011;
 33. As mentioned in the Fourth Motion to Extend, in order to complete its restructuring process, the Insolvent Debtor had most likely to file an application before the Mexican Court in order to obtain the second 90 business day extension available to it under the Concurso Law ;
 34. As such, on July 27, 2011 the Judge overseeing the Mexican Proceedings suspended temporarily the end date of the Mexicana's bankruptcy protection period under the Concurso Law, to allow the Mexican Court to review the "Revised Final Potential Investors" bids and establish if there is a possibility of concluding a transaction with one of those Investors;
 35. Following the decision made on July 27, 2011, an Order was rendered on September 7, 2011 by the Mexican Court, detailing the reasons why the extension of delay was granted, 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 "**Order**"), communicated herewith as Petitioner's Exhibits **R-1A** and **R-1B**;
 36. As a result, the August 10, 2011 suspension date was pushed forward by the Mexican Court until October 28, 2011. After that date if a transaction has not commenced between the Company and an investor group, the countdown will restart in order to end the period allowed by law. If a transaction has commenced prior or by that date, the Mexican court will decide an additional extension period under the law;

IV. GROUNDS CONSIDERED BY THE MEXICAN COURT IN THE ORDER

A. BUSINESS PLAN DEVELOPPED BY THE INSOLVENT DEBTOR

37. Substantial efforts were made over the last months by the Insolvent Debtor and the Mexican Government in order to find new investors who would ensure the future operations of Mexicana;
38. As such, Mexicana and various business partners underwent intensive work to integrate a business plan and to formalize a refinancing process that would be offered to potential investors interested in the purchase of the shares and the capitalization of the Insolvent Debtor;
39. Through the course of said works, the Insolvent Debtor developed a new business plan, which was sanctioned by the government authorities and the Conciliador, ensuring Mexicana's viability and sustainability, as well as the success of the restructuring process (hereinafter the "**New Business Plan**");

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40. The New Business Plan provided for specific conditions under which the Insolvent Debtor could re-start its operations, including maintaining and preserving its traffic rights and permits, number of planes to be operated, a new route schedule, liquidation of all employees as well as percentage of workforce to be rehired under the new Labor Agreements that have been previously negotiated and that provides great advantages in efficiencies;
 41. Moreover, the New Business Plan rendered the Insolvent Debtor much more attractive to any prospective purchasers, as said Plan is based on a thorough evaluation of Mexicana's current legal, administrative, financial and operation situation, and seeks to capitalize on the competitive edge it had carved out for itself over years and its brand value. Therefore, the New Business Plan represents a complete analysis of the business opportunity to invest in Mexicana;
 42. Considering all of the work and efforts that had been expended in order to elaborate the New Business Plan, the Insolvent Debtor and the Conciliador envisioned that the choice of successful prospective purchaser will be predicated upon the latter's financial strength and viability and its ability to adopt to the New Business Plan, which includes meeting the obligations arising from the Labor Agreements and from the agreements that Mexicana has negotiated with its suppliers;
 43. It is interesting to note that in the Order, Exhibit R-1B, the Mexican Court states the following:

*"For its part, the Conciliator and the administrator of [Mexicana], Gerardo Badin Cherit, regarding [Mexicana]'s viability, said: there is a business plan, which is confidential document, **but it can be ascertained that [Mexicana] is a viable company and may restart operations, since there is a business strategy that considers the level of customer service, loyalty program, commercial alliances, sales channels, portfolio, marketing and advertising plan, peripheral companies.** The restructuring plan indicated that the pre-agreement with the creditors [i.e. the three (3) labor unions representing Mexicana's pilots, flight attendants and ground personnel] is very favorable to the Company, since the percentage of the amount of forgiveness of debt is very high, the labor liability is designed so that the payment does not incur a financial charge that would impede growth of [Mexicana]. The risks inherent in the variation in the exchange rate, petroleum price fluctuations and variable market conditions are also taken in account."* [our emphasis]

B. INVESTOR GROUPS WHICH REMAIN INTERESTED IN ACQUIRING MEXICANA

44. Of the initial groups of prospective investors that participated in the bidding process, three (3) of them remain as the most viable contenders (hereinafter the "**Final Potential Investors**"), namely Altus Pro, Avanza Capital as well as Ivan Baron, Barona and most recently a fourth group, Grupo Perseo;
45. Although each of the Final Potential Investors have yet to confirm that they have completed their due diligence with respect to the Insolvent Person and are satisfied with same, so far only Avanza Capital has demonstrated, to a certain degree, its ability to conclude the refinancing / purchase transaction, their financial strength and viability as well as their compliance with the requirements set forth by the Conciliador ;

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46. Other parties have also expressed a serious interest in investing in and / or acquiring Mexicana's business, although the negotiations with said parties are far less advanced than those with the Final Potential Investors;
47. It is interesting to note that in the Order, Exhibit R-1B, the Mexican Court concludes as follow with respect to the potential investor groups which remain interested in acquiring Mexicana:

"Given the foregoing, we can conclude :

1. *That the shares of Mexicana De Aviación, variable stock corporation, are property of the group named Nuevo Grupo Aeronàutico, variable stock corporation, whose shares belong to an entity known as "Tenedora K", whose "visible" representative is Jorge Isaac Gastelum Miranda.*

[...]

3. ***The Ministry of Communications and Transportation has established that as a condition for the shares of Nuevo Grupo Aeronàutico to be acquired, the interested investor must previously demonstrate to the Ministry that it has the financial, technical, administrative and legal capacities; this circumstance creates a sui generis problem, in that the investors interested in acquiring the insolvent company must not only prove they have the resources to capitalize it, but must also meet a series of previous legal requirements and later perform the sale-purchase with the owner of the shares of Nuevo Grupo Aeronàutico, which has caused the investors to have questions and fears about the legal situation of the shares and books that are in the hands of Mr. Gastelum.***

4. *In another aspect, there are different groups of investors who are truly interested in acquiring the insolvent company, in a complex proces and where, as for now, the interested groups are trying to secure a loan abroad due to the favorable conditions of the requirements and interest rates, which are very high in our country. **Apparently, the group "Avanza Capital" already has a labelled" preauthorized credit to be used in the capital of the insolvent company, which is being analyzed and determined for its authenticity, validity and the time needed to determine the requirements for preauthorization and the time when the money would be ready by.***

5. *The insolvent company is an airline, with international presence, recognized around the world, which can get its market position back given the highly viable business plan, which can even be improved. For healthy competition, the insolvent company needs better prices as an advantage for transporting users in the sector. In addition, the direct and indirect jobs would be recovered in a relatively short term. Mexican air space would be protected by using mostly Mexican companies.*

6. ***Despite the complexity involved in the process, the Ministry of Communications and Transportation is holding the probability that Mexicana De Aviación is acquired is high and with this, the new group of investors may be in the legal possibility of entering into the Business Agreement that is pre-agreed with the creditors.***

7. *The settlement stage's main purpose is to maximize the corporate value of the failed company, precisely by executing the agreement between it and its creditors, since this reduces the time, expenses, complications and other problems that create a declaration of bankruptcy, where everybody loses.*

8. *When it comes to a public service concessioned by the Federal Government for use of Mexican air space, subject to national domain, it is clear that there is an even greater social interest; Therefore, it is the Federal Government's obligation to protect the security and continuity of the rendering of this public service. However, both ministries informed the undersigned of the Federal Government's position to not provide a single centavo of public treasury money to a private company.*

9. *In this situation, it is clear that the only option available is for one of the interested investors to achieve formalization of the requirements to acquire and capitalize the company and be able to execute the Bidding Agreement to save Mexicana De Aviación from Bankruptcy." [Our emphasis]*

C. SOCIAL AND ECONOMIC IMPORTANCE OF MEXICANA

48. In the Order, Exhibit R-1B, the Mexican Court also recognizes that an additional extension of delay should be granted to Mexicana in order to attempt to successfully complete its restructuring process, given the social and economic importance of the Insolvent Person in Mexico as well as worldwide;

49. As such, the following paragraphs of the Order, Exhibit R-1B, reflects the weight that was given by the Mexican Court to those factors:

"[...] in eleven years of the Insolvency law, no case as significant and important as this one has occurred, not only due to the number of creditors or of the liabilities, but also because of the social and economic priority, since [Mexicana] represents thirty percent of the aviation transportation market and affects the national economy, since the creditors will obtain greater benefits with a participation as strong as Mexicana in the air transportation market.

[...]

*In conclusion, this is regarding the fourth oldest airline in the world, with ninety years on the market; the brand is recognized across the continent; it is the third most-recognized Mexican brand in the United States; the forgiveness of debt with creditors is very high, which facilitates restructuring of the company; the pre-agreement regarding the collective bargaining agreements [i.e. the Labor Agreements] makes the company highly competitive; the personnel that works at Mexicana is highly trained. **Therefore, it is obvious that this is a highly viable restructuring project.**" [Our emphasis]*

V. EXTENSION OF THE STAY PERIOD

50. Notwithstanding the progress made by the Insolvent Debtor since the Fourth Extension Order, the extension of the Stay Period sought through the present Motion is necessary in order to provide the Insolvent Debtor an adequate time period to, notably, complete the steps required in order to restart flight operations, finalize negotiations with the successful Final Potential Investor in order to draft and execute a binding agreement that

will provide the funding of Mexicana's restructuring plan and continued operations, as well as submit the restructuring agreement to the Mexican Court for approval ;

51. Petitioner and the Insolvent Debtor are of the view that extending the Stay Period to November 15, 2011, is appropriate in the present circumstances;
52. The Information Officer filed a report on August 9, 2011, informing the Court and Mexicana's stakeholders of the various steps taken by Mexicana since the Fourth Extension Order, the whole as appears form a copy of such report, communicated herewith as Petitioner's **Exhibit R-2**;
53. Moreover, the Information Officer has indicated that it will be filing with the Court a report apprising the Court of the events which occurred since August 9, 2011;
54. Since the Fourth Extension Order, the Insolvent Debtor has acted and continues to act in good faith and with due diligence;
55. Based on the foregoing, Petitioner prays this Court to extend the Stay Period up to and including November 15, 2011, by which date the Mexican Court would have ordered a new stay or termination date, the whole subject to all the other terms of the Initial Order, as amended;
56. The present Motion is well founded in fact and in law.

WHEREFORE, MAY IT PLEASE THIS COURT:

- [1] **GRANT** the present Motion;
- [2] **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, 2011) until November 15, 2011, the whole subject to all the other terms thereof;
- [3] **DECLARE** that the notice of presentation hereof is proper and sufficient;
- [4] **ORDER** that the order to be rendered on the present motion shall be executory notwithstanding appeal;
- [5] **THE WHOLE WITHOUT COSTS**, save and except in the event of contestation.

Montreal, September 15, 2011



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

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-039418-104

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Foreign Representative / **Petitioner**

And

**SAMSON BELAIR DELOITTE &
TOUCHE INC.**

Information Officer

**ATTESTATION D'AUTHENTICITÉ
SELON L'ART. 82.1 C.p.c.**

Je, soussigné, Simon-Luc Dallaire, avocat, exerçant ma profession au 1000, de la Gauchetière ouest, suite 900, Montréal, Québec, H3B 5H4, district de Montréal, atteste ce qui suit :

1. En date du 15 septembre 2011, à 2h17pm, j'ai reçu par télécopieur de Madame Maru E. Johansen, un affidavit dûment signé par elle;
2. Madame Maru E. Johansen m'a transmis ledit affidavit de Los Angeles, de l'État de la Californie, États-Unis d'Amérique;
3. La copie dudit affidavit jointe à la présente attestation est conforme au fac-similé ainsi reçu par télécopieur de Madame Maru E. Johansen.

Montréal, le 15 septembre 2011



Simon-Luc Dallaire

BORDEN LADNER GERVAIS LLP

JURAT

State of California)
) SS.
County of Los Angeles)

Subscribed and sworn to (or affirmed) before me on this 15th day
of September, 2011, by
Maru E. Johansen

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before
me.

Signature Candace D. Yip



OPTIONAL INFORMATION

The information below is optional. However, it may prove valuable and could prevent fraudulent attachment of this form to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- INDIVIDUAL
- CORPORATE OFFICER

Vice-President, Legal & Corporate Affairs
TITLE(S)

- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- SUBSCRIBING WITNESS
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

AFFIDAVIT OF MARU E. JOHANSEN
TITLE OR TYPE OF DOCUMENT

9 Pages
NUMBER OF PAGES

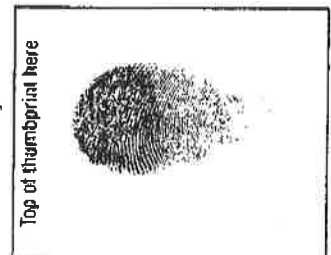
September 15, 2011
DATE OF DOCUMENT

OTHER _____

ABSENT SIGNER (PRINCIPAL) IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

[Signature]

RIGHT THUMBPRINT
OF
SIGNER



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PROVINCE OF QUEBEC
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And

**SAMSON BELAIR DELOITTE & TOUCHE
INC.**

Information Officer

AFFIDAVIT OF MARU E. JOHANSEN

I, the undersigned, Maru E. Johansen, having my place of business at 9841 Airport Boulevard, Suite 400, Los Angeles, California, United States of America, solemnly declare as follows :

1. I am the Vice-President, Legal & Corporate Affairs, U.S., Canada & U.K. for Compania Mexicana de Aviacion, S.A. de C.V. ("Mexicana");
1. **MEXICANA'S OPERATIONS AND ACTIVITIES**
2. Mexicana and its affiliates operate Mexicana Airlines, historically Mexico's largest airline. Mexicana and its affiliates carry passengers and cargo to destinations worldwide;
3. To effectuate a restructuring of its business and financial affairs, on August 2, 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, filed as Exhibit R-1 in support of the Motion for Recognition of Foreign Proceedings;

4. In connection with 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 30, 2010 and of the official English translation of same resolution, communicated of the resolution of the Board of Directors filed en liasse as Exhibit R-2 in support of the Motion for Recognition of Foreign Proceedings;
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6. Following 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 6, 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, communicated as Exhibits R-1-A and R-1-B in support of the First Motion to Extend;
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B. CLAIMS PROCESS AND NEGOTIATIONS WITH SUPPLIERS

10. In October 2010, the Insolvent Debtor obtained the approval from the Mexican Court authorizing a process for creditors to prove their claims. In order for its claim to be recognized in the context of the Mexican Proceedings, each creditor was required to fill out the form provided in the Information Officer's Notice to creditors and forward same to the *Conciliador* appointed by the Mexican Court (hereinafter the "**Conciliador**"), the whole by no later than 5:00 P.M. (Mexico City time) on December 3, 2010;
11. Since the First Extension Order and subsequent to receipt by the Conciliador of Mexicana's creditors' claims, the Conciliador has had extensive discussions and negotiations with its main suppliers in Mexico, incidentally its most important creditors in that country, in order to obtain the required support for Mexicana's restructuring plan;

C. SETTLEMENT OF UNION DISPUTES

12. Moreover, since the Initial Order, Mexicana has been successful in reaching final agreements with the three (3) labor unions representing Mexicana's pilots, flight attendants and ground personnel (hereinafter the "**Labor Agreements**"), allowing Mexicana to move forward with its restructuring efforts with certainty as to the terms and conditions of employment of its unionized staff and personnel on a going forward basis;

D. STEPS IN ORDER TO RESTART FLIGHT OPERATIONS

13. In addition, concrete steps have been taken by the Insolvent Debtor to be ready to restart flight operations on a short term basis;
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15. Moreover, substantial headway was accomplished to resume the Insolvent Debtor's operations, such as the recertification of aircraft and different airports, and securing the corresponding licenses required to begin commercial implementation;
16. Indeed, Mexicana has scheduled and / or completed station certification inspections updates (full inspections had been conducted in February 2011) in seven (7) of the airports from which it operates in Mexico, Guatemala and the United States, namely Los Angeles, San Antonio, Chicago, Mexico City, Cancun, Guadalajara and Guatemala City, the whole in order to comply with the requirements of the U.S. Federal Aviation Administration and its Mexican counterpart, the *Direccion General de Aeronautica Civil* (D.G.A.C.);
17. The Insolvent Debtor plans to schedule, in the coming weeks and months, full station certification inspections in some of the other Mexican, American, Central American, Caribbean and Canadian cities it historically served;

18. In addition, in order to allow the start-up of operations, the Insolvent Debtor is currently in discussion with the various governmental authorities in order to accomplish the other steps required to maintain and preserve its traffic rights and permits, including the flight licences and the landing permits ;
19. Therefore, the planes owned by Mexicana are currently being inspected by the authorities to determine if they still comply with the legislative requirements ;
20. As such, during the week of July 5, 2011, seven (7) aircraft were inspected and were found in good condition and in compliance by the authorities;
21. As soon as the steps described above are completed, and once a final binding agreement is executed with an investor, Mexicana will be able to start selling tickets to and from the destinations for which the certification inspections have been duly completed, and therefore resume flight operations;
22. Moreover, once a sale transaction is executed with an investor and some additional capital is injected in the Insolvent Debtor, the Insolvent Debtor will be able to conclude various agreements with aircraft lessors in order to add aircraft and therefore increase its routes, traffic and generate additional revenues

E. MEXICAN EXTENSION ORDER RENDERED UNDER THE CONCURSO LAW

23. The Concurso Law allows companies 185 days to enter and exit bankruptcy protection from creditors, with a possibility of two (2) 90 business days extensions if there are clear signs of progress toward restructuring;
24. The Insolvent Debtor was granted bankruptcy protection from its creditors under the Concurso Law on September 28, 2011 and therefore, said protection would normally have expired on April 1st, 2011;
25. However, on March 28, 2011, the Mexican Court issued an Order extending the protection of the Concurso Law to the Insolvent Debtor for an additional period of ninety (90) business days, as provided for under Section 145 of the Concurso Law (hereinafter the "**Mexican Extension Order**"), the whole as appears from a copy of the Spanish version of the application for a 90 business day extension (hereinafter the "**Mexican Extension Motion**"), as well as a copy of the English version thereof, and from a copy of the Spanish version of the Mexican Extension Order, which were already communicated in support of the Third Motion to Extend as Exhibit R-1 and Exhibit R-2;
26. As a result of the Mexican Extension Order, Mexicana's bankruptcy protection under the Concurso Law has been extended to August 10, 2011;
27. As mentioned in the Fourth Motion to Extend, in order to complete its restructuring process, the Insolvent Debtor had most likely to file an application before the Mexican Court in order to obtain the second 90 business day extension available to it under the Concurso Law ;
28. As such, on July 27, 2011 the Judge overseeing the Mexican Proceedings suspended temporarily the end date of the Mexicana's bankruptcy protection

period under the Concurso Law, to allow the Mexican Court to review the "Revised Final Potential Investors" bids and establish if there is a possibility of concluding a transaction with one of those Investors;

29. Following the decision made on July 27, 2011, an Order was rendered on September 7, 2011 by the Mexican Court, detailing the reasons why the extension of delay was granted, 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 "Order"), communicated herewith as Petitioner's Exhibits **R-1A** and **R-1B**;
30. As a result, the August 10, 2011 suspension date was pushed forward by the Mexican Court until October 28, 2011. After that date if a transaction has not commenced between the Company and an investor group, the countdown will restart in order to end the period allowed by law. If a transaction has commenced prior or by that date, the Mexican court will decide an additional extension period under the law;

III. GROUNDS CONSIDERED BY THE MEXICAN COURT IN THE ORDER

A. BUSINESS PLAN DEVELOPPED BY THE INSOLVENT DEBTOR

31. Substantial efforts were made over the last months by the Insolvent Debtor and the Mexican Government in order to find new investors who would ensure the future operations of Mexicana;
32. As such, Mexicana and various business partners underwent intensive work to integrate a business plan and to formalize a refinancing process that would be offered to potential investors interested in the purchase of the shares and the capitalization of the Insolvent Debtor;
33. Through the course of said works, the Insolvent Debtor developed a new business plan, which was sanctioned by the government authorities and the Conciliador, ensuring Mexicana's viability and sustainability, as well as the success of the restructuring process (hereinafter the "**New Business Plan**");
34. The New Business Plan provided for specific conditions under which the Insolvent Debtor could re-start its operations, including maintaining and preserving its traffic rights and permits, number of planes to be operated, a new route schedule, liquidation of all employees as well as percentage of workforce to be rehired under the new Labor Agreements that have been previously negotiated and that provides great advantages in efficiencies;
35. Moreover, the New Business Plan rendered the Insolvent Debtor much more attractive to any prospective purchasers, as said Plan is based on a thorough evaluation of Mexicana's current legal, administrative, financial and operation situation, and seeks to capitalize on the competitive edge it had carved out for itself over years and its brand value. Therefore, the New Business Plan represents a complete analysis of the business opportunity to invest in Mexicana;
36. Considering all of the work and efforts that had been expended in order to elaborate the New Business Plan, the Insolvent Debtor and the Conciliador

envisioned that the choice of successful prospective purchaser will be predicated upon the latter's financial strength and viability and its ability to adopt to the New Business Plan, which includes meeting the obligations arising from the Labor Agreements and from the agreements that Mexicana has negotiated with its suppliers;

37. It is interesting to note that in the Order, Exhibit R-1B, the Mexican Court states the following:

"For its part, the Conciliator and the administrator of [Mexicana], Gerardo Badin Cherit, regarding [Mexicana]'s viability, said: there is a business plan, which is confidential document, but it can be ascertained that [Mexicana] is a viable company and may restart operations, since there is a business strategy that considers the level of customer service, loyalty program, commercial alliances, sales channels, portfolio, marketing and advertising plan, peripheral companies. The restructuring plan indicated that the pre-agreement with the creditors [i.e. the three (3) labor unions representing Mexicana's pilots, flight attendants and ground personnel] is very favorable to the Company, since the percentage of the amount of forgiveness of debt is very high, the labor liability is designed so that the payment does not incur a financial charge that would impede growth of [Mexicana]. The risks inherent in the variation in the exchange rate, petroleum price fluctuations and variable market conditions are also taken in account." [our emphasis]

B. INVESTOR GROUPS WHICH REMAIN INTERESTED IN ACQUIRING MEXICANA

38. Of the initial groups of prospective investors that participated in the bidding process, three (3) of them remain as the most viable contenders (hereinafter the "Final Potential Investors"), namely Altus Pro, Avanza Capital as well as Ivan Baron, Baron and most recently a fourth group, Grupo Perseo;
39. Although each of the Final Potential Investors have yet to confirm that they have completed their due diligence with respect to the Insolvent Person and are satisfied with same, so far only Avanza Capital has demonstrated, to a certain degree, its ability to conclude the refinancing / purchase transaction, their financial strength and viability as well as their compliance with the requirements set forth by the Conciliador ;
40. Other parties have also expressed a serious interest in investing in and / or acquiring Mexicana's business, although the negotiations with said parties are far less advanced than those with the Final Potential Investors;
41. It is interesting to note that in the Order, Exhibit R-1B, the Mexican Court concludes as follow with respect to the potential investor groups which remain interested in acquiring Mexicana:

"Given the foregoing, we can conclude :

1. *That the shares of Mexicana De Aviación, variable stock corporation, are property of the group named Nuevo Grupo Aeronáutico, variable stock*

corporation, whose shares belong to an entity known as "Tenedora K", whose "visible" representative is Jorge Isaac Gastelum Miranda.

[...]

3. **The Ministry of Communications and Transportation has established that as a condition for the shares of Nuevo Grupo Aeronáutico to be acquired, the interested investor must previously demonstrate to the Ministry that it has the financial, technical, administrative and legal capacities;** this circumstance creates a *sui generis* problem, in that the investors interested in acquiring the insolvent company must not only prove they have the resources to capitalize it, but must also meet a series of previous legal requirements and later perform the sale-purchase with the owner of the shares of Nuevo Grupo Aeronáutico, which has caused the investors to have questions and fears about the legal situation of the shares and books that are in the hands of Mr. Gastelum.

4. In another aspect, there are different groups of investors who are truly interested in acquiring the insolvent company, in a complex process and where, as for now, the interested groups are trying to secure a loan abroad due to the favorable conditions of the requirements and interest rates, which are very high in our country. **Apparently, the group "Avanza Capital" already has a labelled preauthorized credit to be used in the capital of the insolvent company, which is being analyzed and determined for its authenticity, validity and the time needed to determine the requirements for preauthorization and the time when the money would be ready by.**

5. The insolvent company is an airline, with international presence, recognized around the world, which can get its market position back given the highly viable business plan, which can even be improved. For healthy competition, the insolvent company needs better prices as an advantage for transporting users in the sector. In addition, the direct and indirect jobs would be recovered in a relatively short term. Mexican air space would be protected by using mostly Mexican companies.

6. **Despite the complexity involved in the process, the Ministry of Communications and Transportation is holding the probability that Mexican De Aviación is acquired is high** and with this, the new group of investors may be in the legal possibility of entering into the Business Agreement that is pre-agreed with the creditors.

7. The settlement stage's main purpose is to maximize the corporate value of the failed company, precisely by executing the agreement between it and its creditors, since this reduces the time, expenses, complications and other problems that create a declaration of bankruptcy, where everybody loses.

8. When it comes to a public service concessioned by the Federal Government for use of Mexican air space, subject to national domain, it is clear that there is an even greater social interest; Therefore, it is the Federal Government's obligation to protect the security and continuity of the rendering of this public service. However, both ministries informed the undersigned of the

Federal Government's position to not provide a single centavo of public treasury money to a private company.

9. *In this situation, it is clear that the only option available is for one of the interested investors to achieve formalization of the requirements to acquire and capitalize the company and be able to execute the Bidding Agreement to save Mexicana De Aviación from Bankruptcy.*" [Our emphasis]

C. SOCIAL AND ECONOMIC IMPORTANCE OF MEXICANA

42. In the Order, Exhibit R-1B, the Mexican Court also recognizes that an additional extension of delay should be granted to Mexicana in order to attempt to successfully complete its restructuring process, given the social and economic importance of the Insolvent Person in Mexico as well as worldwide;
43. As such, the following paragraphs of the Order, Exhibit R-1B, reflects the weight that was given by the Mexican Court to those factors:

"[...] in eleven years of the Insolvency law, no case as significant and important as this one has occurred, not only due to the number of creditors or of the liabilities, but also because of the social and economic priority, since [Mexicana] represents thirty percent of the aviation transportation market and affects the national economy, since the creditors will obtain greater benefits with a participation as strong as Mexicana in the air transportation market.

[...]

In conclusion, this is regarding the fourth oldest airline in the world, with ninety years on the market; the brand is recognized across the continent; it is the third most-recognized Mexican brand in the United States; the forgiveness of debt with creditors is very high, which facilitates restructuring of the company; the pre-agreement regarding the collective bargaining agreements [i.e. the Labor Agreements] makes the company highly competitive; the personnel that works at Mexicana is highly trained. Therefore, it is obvious that this is a highly viable restructuring project." [Our emphasis]

IV. EXTENSION OF THE STAY PERIOD

44. Notwithstanding the progress made by the Insolvent Debtor since the Fourth Extension Order, the extension of the Stay Period sought through the present Motion is necessary in order to provide the Insolvent Debtor an adequate time period to, notably, complete the steps required in order to restart flight operations, finalize negotiations with the successful Final Potential Investor in order to draft and execute a binding agreement that will provide the funding of Mexicana's restructuring plan and continued operations, as well as submit the restructuring agreement to the Mexican Court for approval ;
45. Petitioner and the Insolvent Debtor are of the view that extending the Stay Period to November 15, 2011, is appropriate in the present circumstances;
46. The Information Officer filed a report on August 9, 2011, informing the Court and Mexicana's stakeholders of the various steps taken by Mexicana since the Fourth

Extension Order, the whole as appears form a copy of such report, communicated herewith as Petitioner's **Exhibit R-2**;

47. Moreover, the Information Officer has indicated that it will be filing with the Court a report apprising the Court of the events which occurred since August 9, 2011;
48. Since the Fourth Extension Order, the Insolvent Debtor has acted and continues to act in good faith and with due diligence;
49. Based on the foregoing, Petitioner prays this Court to extend the Stay Period up to and including November 15, 2011, by which date the Mexican Court would have ordered a new stay or termination date, the whole subject to all the other terms of the Initial Order, as amended;
50. All of the facts alleged in the present affidavit are true;

 9/15/2011
Maru E. Johansen

MTL01: 2311256: v1

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

NOTICE OF PRESENTATION

TO: Service List

PLEASE TAKE NOTICE that *Fifth Motion for the Extension of the Stay Period* will be presented for adjudication before one of the Honourable of the Superior Court, Commercial Division, sitting in and for the district of Montreal, on **September 20, 2011 at 9:30 p.m, in room 2.07** of the Montreal Courthouse located, at 1 Notre-Dame Street East, or so soon thereafter as counsel may be heard.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

Montreal, September 15, 2011



BORDEN LADNER GERVAIS LLP
Attorneys for Petitioner

SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTREAL
No.: 500-11-039418-104

**IN THE MATTER OF THE JUDICIAL
REORGANIZATION PROCEEDINGS OF:**

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

Insolvent Debtor

and
MARU E. JOHANSEN

Foreign Representative/Petitioner

And

SAMSON BELAIR DELOITTE & TOUCHE

Information Officer

**FIFTH MOTION FOR THE EXTENSION OF
THE STAY PERIOD**

O R I G I N A L

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