

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-11-

SUPERIOR COURT  
(Commercial Division)

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IN THE MATTER OF THE JUDICIAL  
REORGANIZATION PROCEEDINGS OF:

**COMPAÑIA MEXICANA DE AVIACION,  
S.A. DE C.V.**, a legal person incorporated  
under the laws of Mexico, having its head  
office at av. Xola 535 Col., Del Valle,  
Mexico D.F., Mexico 03100, and a place of  
business at 975 Roméo-Vachon North, suite  
413, in the city and district of Montréal,  
Province of Québec, H4Y 1H1

Insolvent Debtor

And

**MARU E. JOHANSEN**, a natural person,  
acting as Vice-President of Mexicana  
Airlines, having a place of business at 9841,  
Airport Boulevard, suite 400, in the City of  
Los Angeles, California, United States of  
America, 90045

Foreign Representative / Petitioner

And

**SAMSON BELAIR DELOITTE &  
TOUCHE INC.**, a legal person duly  
constituted under *Canada Business  
Corporations Act*, having its place of  
business at 1, Place Ville Marie, suite  
3000, Montreal, Quebec, H3B 4T9,

Information Officer

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**MOTION FOR RECOGNITION OF FOREIGN PROCEEDINGS**  
**(Section 46 and seq. of the Companies' Creditors Arrangements Act**  
**R.S.C., 1985, c. C-36, as amended)**

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 SUBMIT THE FOLLOWING:

**I. SCOPE AND PURPOSE OF APPLICATION**

1. The Petitioner makes application for an order:
  - 1.1 Abridging the time for service of this Notice of Application and the Application Record and dispensing with further service thereof;
  - 1.2 Recognizing the Judicial Reorganization Proceedings under Mexico's *Ley de Concursos Mercantiles* (the "**Concurso Proceedings**") commenced in respect of Compañía Mexicana de Aviación, S.A. de C.V. (the "**Foreign Debtor**" or "**Mexicana**") in the Federal District Court for Civil Matters of the Federal District of Mexico (the "**Mexican Court**") as a "Foreign main proceeding" for the purposes of section 47 of the *Companies Creditors Arrangements Act* ("**CCAA**");
  - 1.3 Granting a stay of proceedings (the "**Requested Stay**"), as further described below, in respect of the Foreign Debtor;
  - 1.4 Appointing Samson Belair Deloitte & Touche Inc. as information officer (in such capacity the "**Information Officer**") in respect of these proceedings;
  - 1.5 Authorizing the Petitioner and the Information Officer to apply from time to time to this Court for advice and directions;
  - 1.6 Requesting the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, Mexico, the United States of America or elsewhere; and
  - 1.7 Such further and other relief as this Honourable Court deems just;

**II. INTRODUCTION**

2. Mexicana and its affiliates operate Mexicana Airlines, 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 in the Mexican Court under Mexico's *Ley de Concursos Mercantiles* (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, communicated herewith as Petitioner's Exhibit **R-1**;
4. In connection with commencement of the Concurso Proceeding, 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 a certified English translation of said resolution, communicated herewith *en liasse* as Exhibit **R-2**;

5. 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 4<sup>th</sup>, 2010 and of a certified English translation of said resolution, communicated herewith *en liasse* as Exhibit **R-3**;
6. Following filing of the petition commencing the Concurso Proceedings, an examination of Mexicana's books and records will be conducted by a Court-appointed individual and the Mexican Court will issue a "business reorganization judgment," determining whether the Concurso petition will be granted. If the Concurso petition is granted, a stay of seizures, foreclosures and execution of judgments will be put in place, and Mexicana will begin the process of reorganization, the whole as appears from an affidavit of jurisconsult of Jaime René Guerra Gonzalez (the "**Jurisconsult Affidavit**"), communicated herewith as Petitioner's Exhibit **R-4**;
7. In this respect, on August 4<sup>th</sup>, 2010, an order was rendered in the context of the Concurso Proceedings, granting a stay of proceedings against Mexicana, the whole as appears from a copy of the original Spanish version of said Order, bearing the seal of the Federal District Court for Civil Matters of the Federal District of Mexico and from a certified English translation of same, communicated herewith *en liasse* as Petitioner's Exhibit **R-5**;
8. Additional relief in the nature of provisional injunctions is available, and will be sought by Mexicana;
9. In the Concurso Proceedings, Mexicana intends to proceed with a reorganization and obtain approval of the relevant and required number of affected creditors, and confirmation by the Mexican Court, of a debt restructuring plan in accordance with the Concurso Law (which is more fully described below). Under the Concurso Law, Mexicana has authority to pay and honor outstanding obligations to Mexicana's customers, vendors, employees and business partners during the pendency of the Concurso Proceeding;
10. The restructuring contemplated to be undertaken in the Concurso Proceedings will achieve a significant restructuring of Mexicana's business. Mexicana anticipates that it will emerge from this restructuring process as a stronger, more competitive company and airline, and believes that the benefits to be gained from the restructuring process will enable Mexicana to remain a premier global air carrier;
11. However, pending development and approval of a restructuring plan by the Mexican Court, Mexicana requires the protection afforded to foreign debtors pursuant to Part IV of the CCAA in order to protect its valuable assets in Canada. For example, Mexicana has interests in certain real estate in four (4) Canadian international airports, including Pierre Elliott Trudeau International Airport in Montreal;

12. Mexicana has valuable “slots” for its aircraft at those locations. Mexicana also has approximately 18 employees, multiple aircraft at multiple airports, and aircraft-related component parts, in Canada, at any point in time. Mexicana also has interests in certain bank accounts located in Canada;
13. Mexicana seeks the protections of Part IV of the CCAA to ensure consistent and smooth operations without disruption while the Concurso Proceedings move forward. Protection of Mexicana’s Canadian based assets and ensuring that there are no operational disruptions in Canada will help ensure that Mexicana’s restructuring in the Concurso Proceedings proceeds quickly;
14. To better facilitate an efficient corporate restructuring in the Concurso Proceedings, pursuant to this Motion, the Foreign Representative seeks recognition (i) as Mexicana’s “foreign representative” within the meaning of section 45 CCAA (ii) of the Concurso Proceedings as the “foreign main proceeding” within the meaning of same section;

### **III. BACKGROUND**

#### **I. Mexicana’s Business**

15. Mexicana was founded 89 years ago. It is the airline with the fourth longest tradition of service in the world;
16. When Mexicana was founded in Mexico City on July 12, 1921, it was named Compañía Mexicana de Transportación Aérea (“CMTA”). CMTA began operations with just four open-cockpit planes that were each able to transport just one passenger and 50 kilograms of baggage and mail. CMTA’s services expanded over time with increased flights and mail delivery, and added aerial photography. With this growth, CMTA increased the size of its fleet. In 1924, CMTA became Mexicana Airlines;
17. In 1928, Mexicana expanded the range of its operations to include the Mexican southeast, which for centuries had been isolated. Then, in 1929, all of the shares in Mexicana were sold to Pan American Airways. The union of both companies provided good opportunity for the continued growth, and internationalization, of Mexicana and its operations;
18. Shortly thereafter, in March 1929, Mexicana opened the international Mexico-Tuxpan-Tampico-Brownsville Texas route, with the first of five three-engine planes to be acquired by Mexicana. With these aircrafts, significant passenger services were introduced, since the aircraft had capacity for one flight attendant and 13 passengers. Charles A. Lindbergh piloted the first trip for Mexicana between Brownsville, Texas and Mexico City;
19. Today, Mexicana is the airline with the most extensive international coverage from Mexico and the leading transportation company between Mexico and the United States. From its operations hub in Mexico City International Airport, Mexicana flies to destinations in North, Central and South America, Europe, and the Caribbean. Mexicana has on numerous occasions been recognized with World Travel Awards as the best business class airline in Mexico and Latin America, in addition to numerous awards as the overall leading airline in the same region;

## II. Mexicana's Debt Obligations

20. Mexicana is an obligor under the terms of a Credit Agreement with Banco Mercantil del Norte, S.A. ("**Banco Mercantil**"), dated as of April 17, 2008 (the "**Credit Agreement**"), pursuant to which Mexicana and affiliated non-debtor companies have approximately US\$123 Million of indebtedness. The Credit Agreement is the primary financing vehicle on which Mexicana has relied in the past. No notices of default have been issued to Mexicana or any other obligor pursuant to the terms of the Credit Agreement<sup>1</sup> and, in advance of commencement of the Concurso Proceeding, Mexicana began discussions with Banco Mercantil regarding Mexicana's financial situation and restructuring, as well as many of its aircraft lessors;
21. The Credit Agreement is collateralized through the grant of a security interest to Banco Mercantil;

## III. Equity

22. Mexicana is owned (99.81%) by Nuevo Grupo Aeronautico, S.A. de C.V., which is a privately-owned company, and by Aeropuertos y Terrenos, S.A. de C.V. (0.16%);

## IV. Commencement of the Concurso Proceedings

23. Over the course of the past few years, Mexicana, like many other entities in a variety of industries throughout the world, has faced significant challenges. The worldwide recession that has taken hold over the past three years has created an environment of economic distress for companies and individuals alike, and that environment has impacted Mexicana's operations. In addition, Mexicana's operations have been impacted over the past few years by an unprecedented, unexpected and sustained rise in global energy prices. Indeed, the rising price of energy (in particular, jet fuel) has resulted in a rapid and very significant escalation in Mexicana's operational costs. Finally, in 2009, many businesses in Mexico, including Mexicana, suffered losses as a result of a flu epidemic that had a severe, immediate and unexpected impact upon Mexican tourism and business-related trips and travel; Also, the Canadian government's 2 days notice imposition of visa requirement for Mexican citizens, severely hampered tourism travel to Canada during the Summer of 2009, thus diminishing Mexicana's sales to Canadian cities;
24. As a result of the foregoing, Mexicana faces financial and operational hurdles that made it prudent for Mexicana to seek relief under the Concurso Law in order to preserve its value as a going concern and maximize the value of its assets for the benefit of all creditors;

## IV. GROUNDS FOR RELIEF

25. Part IV of the CCAA is designed to assist foreign representatives to protect assets located in Canada that belong to a foreign debtor that has commenced insolvency proceedings in a foreign jurisdiction. Among the purposes of Part IV are: (i) to encourage

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<sup>1</sup> Mexicana's co-obligor affiliates are not the subject of any reorganization proceedings.

cooperation between Canadian and foreign courts; (ii) to promote the fair and efficient administration of cross-border insolvencies that protect creditors, debtors, and other parties-in-interest; and (iii) to protect and maximize the value of the debtor's assets. The Foreign Representative believes that this proceeding will complement Mexicana's primary proceedings in Mexico to ensure the effective and economic administration of Mexicana's restructuring efforts.

**I. Mexicana's insolvency**

26. Mexicana is insolvent and has become subject to the Concurso Proceedings as a result of the filing of the Concurso Proceedings before the Mexican Court;
27. Indeed, it is currently estimated that Mexicana's liabilities amount to approximately 15,075,932,000 Mexican pesos (or equivalent in CAD\$ 1,220,134,000 at the rate of 1MXN = 0,0809326 CAD\$, effective on August 5<sup>th</sup>, 2010), whereas the value of its assets, globally, is currently estimated at 9,675,927,000 Mexican pesos (or equivalent in CAD\$ 782,946,000 at the same rate);

**II. The requirements for recognition as a "Foreign Main Proceeding" are satisfied**

**a. The Concurso Proceedings are a "Foreign Proceeding"**

28. The Concurso Proceedings are a "foreign proceeding" as that term is defined in section 45 CCAA, which reads as follows:
- "a judicial or administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors' collective interests generally under any law relating to the bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purposes of reorganization."*

29. As is more fully detailed in the affidavit of Jurisconsult, Exhibit R-4:

29.1 The Concurso Proceedings meet this definition because it is a collective administrative proceeding under the Concurso Law, administered in the Mexican Court, which relates to insolvency and adjustment of debt. The purpose of the Concurso Proceeding is to allow financially troubled businesses time to either craft and execute a plan of reorganization or go through an orderly liquidation of their assets. The process is controlled by the Mexico Court, which has authority at the outset to grant or deny the Concurso petition and has review and approval rights over any plan of reorganization filed by the debtor;

29.2 Under the Concurso Law, though Mexicana will remain in control of its business and operations, the process of forming the plan of reorganization is overseen by a court appointed administrator, the *Conciliador*, who exercises powers similar to those of the United States Trustee in a proceeding under the Bankruptcy Code. Moreover, because Mexicana operates under a concession of title from the Mexican government as a "Public Service," the Mexican Ministry of Transportation and Communications will participate. For these reasons,

Mexicana's assets are and will continue to be "subject to control or supervision by a foreign court" through the Concurso Proceedings, and all of the requirements of the definition of "Foreign Proceeding" contained in section 45 (1) CCAA are met;

**b. The Concurso Proceedings Qualify as a "Foreign Main Proceeding"**

30. Once it is determined that the Concurso Proceedings are a "foreign proceeding" within the meaning of section 45 (1) CCAA, the question becomes whether the foreign proceeding is entitled to recognition, and if so, whether as a "foreign main proceeding" or as a "foreign non-main proceeding";
31. Section 45 (1) CCAA defines a "foreign main proceeding" as "a foreign proceeding in a jurisdiction where the debtor company has the center of its main interests";
32. Mexicana's registered office is located at av. Xola 535 Col., Del Valle, Mexico D.F., Mexico, the whole as appears from a copy of Mexicana's "État des informations sur une personne morale" from the CIDREQ system, communicated herewith as Petitioner's Exhibit R-6;
33. Pursuant to section 45 (2) CCAA, it is presumed, in the absence of evidence to the contrary, that the Debtor's center of main interests is located where the debtor has its registered office;
34. There is no doubt that Mexico is Mexicana's "center of main interests." Mexicana is headquartered in Mexico. The vast majority of Mexicana's assets are located in Mexico and many of its employees are located in Mexico. Mexicana's worldwide flight hub is in Mexico City. Mexicana's registered office is located in Mexico, and therefore it is presumed that Mexicana's center of main interests is in Mexico. Moreover, since Mexicana operates under a concession of title from the Mexican government and it is thus a "Public Service" under Mexican law, the Mexican Ministry of Transportation and Communications will be involved in the Concurso Proceeding and reorganization process;
35. As the Concurso Proceedings are a foreign proceeding located where Mexicana's "center of main interests" are located, it is therefore a "foreign main proceeding" under the section 45 CCAA;

**c. The Foreign Representative Meets the Statutory Requirements**

36. The term "foreign representative" is also defined in section 45 (1) CCAA as follows:

*"a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding with respect to a debtor company, to*

*(a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or*

*(b) act as a representative in respect of the foreign proceeding".*

37. Petitioner Maru E. Johansen is the individual that has been duly appointed by Mexicana's Board of Directors to act as a Representative in respect of foreign

proceedings pursuant to Part IV of the CCAA, the whole pursuant to the resolution of the Board of Directors of Mexicana, Exhibit R-3;

38. Accordingly, Ms. Johansen should be recognized by the Court as Mexicana's Foreign Representative for the purposes of the present proceedings;

**d. The Requirements of Section 46(2) CCAA Have Been Met**

39. In accordance with Section 46(2) CCAA, the following documents accompany the present motion:

39.1 A certified copy of the Concurso Petition, as appears from Exhibit R-1 hereto;

39.2 A certified copy of the resolution of Mexicana's Board of Directors authorizing Petitioner herein to act as Foreign Representative for the purposes of the present proceedings, as appears from Exhibit R-3 hereto;

39.3 A statement identifying all foreign proceedings in respect of the Debtor that are known to the foreign representative, as appears from the affidavit of Petitioner Maru E. Johansen filed in support of the present motion;

**V. THE PROCEEDINGS PURSUANT TO CHAPTER 15 OF THE U.S. BANKRUPTCY CODE**

40. On August 2<sup>nd</sup>, 2010, the Foreign representative issued proceedings pursuant to Section 15 of the U.S. Bankruptcy Code (the "**U.S. Proceedings**") seeking recognition of the Concurso Proceedings before the United States Bankruptcy Court for the Southern District of New York (the "**U.S. Court**"), the whole as appears from a copy of the *Verified Petition for Recognition of Foreign Main Proceedings and Request for Chapter 15 Relief*, communicated herewith as Petitioner's Exhibit **R-7**;

41. On August 3<sup>rd</sup>, 2010, Mr. Justice Arthur Gonzalez, Chief United States Bankruptcy Judge, issued and *Amended Order to Show Cause with Temporary Restraining Order* (the "**U.S. Order**") ordering that the protections of section 362 of U.S. Bankruptcy Code apply to Mexicana and its assets in the U.S., granting the Foreign Representative and Mexicana the full protections and rights available pursuant to section 1519(a) (1) – (3) of the U.S. Bankruptcy Code and enjoining all persons and entities from seizing, attaching and/or executing liens or judgments against Mexicana's property in the United States, the whole as appears from a copy of the said Amended Order, communicated herewith as Petitioner's Exhibit **R-8**;

**VI. THE REQUESTED STAY IS APPROPRIATE IN THE CIRCUMSTANCES**

**I. Aircraft Seizures**

42. Mexicana is concerned about action being taken against operational assets and facilities. Indeed, action against Mexicana's aircraft or airport terminal operations and equipment would seriously disrupt Mexicana's efforts to restructure its affairs pursuant to the Concurso Proceedings considering that if creditors are permitted to initiate,



undertake or continue any actions of the type noted above, Mexicana's reorganization efforts will most probably fail;

43. Prior to commencement of the Concurso Proceedings, several of Mexicana's aircraft lessors and aircraft parts lessors, issued notices of default to Mexicana. Some of the notices of default were followed by termination notices, and notices demanding that aircraft be grounded;
44. Moreover, several of Mexicana's aircraft have been seized in the U.S., with little or no prior notice, even though Mexicana was not in arrears of rental payments;
45. As a result, in the context of the U.S. Proceedings, Petitioner has sought and obtained a temporary restraining order granting a temporary stay of proceedings to prevent further seizures of aircraft and suspend the effects of existing seizures, the whole as appears from the U.S. Order, Exhibit R-6;
46. In Canada, Air Canada has sought and obtained the issuance of two (2) writs of seizure, namely before the Superior Court of Québec in file number 500-17-060010-108 and in proceedings in Alberta, the whole as appears from proceedings evidencing such seizures, communicated herewith *en liasse* as Exhibit **R-9**;

## **II. Threatened action by IATA**

47. Mexicana is a member of the International Air Transport Association ("**IATA**"), an international organization based in Montreal, Canada, whose stated mission is to represent, lead and serve the airline industry and to define the airline rules and regulations;
48. During the course of the last few days, in light of the recent filings by Mexicana in Mexico and in the U.S., IATA has contacted Mexicana's upper management to advise that IATA requires a deposit of between US\$27,000,000 and US\$40,000,000 to serve as a prepayment for any future liabilities that IATA and its other members may face as a result of Mexicana's current status;
49. Mexicana's management was also advised that failure to provide such deposit could result in the withdrawal of Mexicana's affiliation within the trade group of major airlines that IATA represents;
50. Such withdrawal of Mexicana's affiliation with IATA would cause tremendous hardship to its business activities and could irreversibly jeopardize Mexicana's continued operation and its restructuring efforts pursuant to the Concurso Proceedings;
51. It is therefore imperative that a Stay of Proceedings be urgently issued by this Honourable Court to prevent that an irreparable prejudice be caused to Mexicana following the threatened withdrawal of its affiliation with IATA;

## **III. Trade creditors**

52. Mexicana has been contacted over the last few days by Canadian suppliers which have demanded that the terms and conditions of their agreements with Mexicana be revised in order to improve their positions towards Mexicana;

53. These requests are accompanied by threats of ceasing to deliver merchandise and/or services to Mexicana, which are necessary for the ongoing operations of Mexicana;
54. Mexicana's financial situation does not permit it to re-negotiate existing terms and conditions with these trade creditors and support the additional financial burden required to satisfy these demands;
55. It is therefore imperative that an order be rendered by this honourable Court to restrain these suppliers from discontinuing, altering, interfering or terminating the supply of goods and services to Mexicana and/or request additional amounts;

#### **IV. Conclusion**

56. Under section 48 of the CCAA, this Court shall, in the case of a foreign main proceeding, exercise its jurisdiction to prohibit the commencement or furtherance of any action suit or proceeding against the Mexicana, subject to any terms and conditions it considers appropriate;
57. The primary objective of the Concurso Proceedings is the rescue of Mexicana as a going concern and, failing that, to take certain other measures to achieve the best result for Mexicana's creditors;
58. The Requested Stay in Canada is essential to the global efforts in the Concurso Proceedings, particularly in light of the value of the air routes operated by Mexicana into Canada and between destinations in Canada, the United States and Mexico, which are an essential part of Mexicana's business;
59. For the purposes of ensuring that all interested parties cooperate in Mexicana's global efforts, Petitioner requests that the terms of the orders provided in the Foreign Proceedings be recognized by this Court;
60. The orders granted in the Foreign Proceedings provide a useful framework for the global efforts with respect to the insolvency of the Foreign Debtor, which should be adopted by this Court;

#### **VII. THE APPOINTMENT OF AN INFORMATION OFFICER IS APPROPRIATE**

61. The Information Officer will assist the Court, the Foreign Representative and Canadian stakeholders of Mexicana and its appointment is therefore required to ensure the proper communication of information with said Canadian stakeholders while providing assistance to Mexicana in its restructuring efforts in Canada;
62. Samson Belair Deloitte & Touche Inc. has the requisite capacity and expertise and has accepted to act as Information Officer, subject to the granting of the Administrative Charge;

#### **VIII. ADMISTRATIVE CHARGE**

63. An administrative charge is required in order to protect the professionals assisting Mexicana with respect to Mexicana's restructuring efforts, including the Foreign Representative, its counsel and the Information officer and its counsel, if any, the whole pursuant to the provisions of sections 11.52 and 50 CCAA;
64. Following verifications in the PPSA systems in Alberta, British Columbia, Manitoba and Ontario, as well as in the RPMRR in Quebec, where the Canadian assets of Mexicana are located, it appears that no security is registered against the assets of Mexicana, save and except with respect to:
  - 64.1 A movable hypothec affecting the universality of Mexicana's movable assets registered at the RPMRR in favour of SITQ for an amount limited to \$29,000. This hypothec relates to sums owing under a lease for premises formerly occupied by Mexicana located on Sherbrooke Street in downtown Montréal, but which lease is no longer in force, such that there is no obligation by Mexicana to pay any sums to SITQ secured by such hypothec;
  - 64.2 A security interest in favor of Air Canada with respect to a used Airbus A319-100 Aircraft, bearing Manufacturer's Serial Number 1630, Aircraft registration mark XA-MXG (the "**Air Canada aircraft**"), which aircraft is subject to the seizure executed in the context of the Alberta proceedings mentioned in paragraph 46 hereof, the whole as appears from a Personal Property Registry Search Results Report dated August 4<sup>th</sup>, 2010, communicated herewith as Petitioner's Exhibit R-10;
65. Petitioner therefore respectfully submits that the Administrative Charge should charge all of Mexicana's Canadian assets, with the exception of the Air Canada Aircraft;
66. The present motion is well founded in fact and in law;

**WHEREFORE, MAY IT PLEASE THIS COURT:**

- [ 1 ] **ORDER** that the time for service of the present Motion be abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof;

**RECOGNITION OF THE MEXICAN CONCURSO PROCEEDINGS**

- [ 2 ] **ORDER** that the restructuring proceedings commenced by **COMPañIA MEXICANA DE AVIACION, S.A. DE C.V.** (the "**Foreign Debtor**") pursuant to Mexico's *Ley de Concursos Mercantiles* (the "**Foreign Proceedings**") be recognized as a "foreign main proceeding" for the purposes of section 47 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**");
- [ 3 ] **ORDER** that Maru E. Johansen be recognized as "Foreign representative" as defined in section 45 of the CCAA;

## STAY OF PROCEEDINGS

- [ 4 ] **ORDER** from this date and until such date as this Court may further order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Foreign Debtor, the Foreign Representative, or affecting the business or the property of the Foreign Debtor (the "**Business**" and the "**Property**", respectively), except with the written consent of the Foreign Debtor and the Foreign Representative, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Foreign Debtor or the Foreign Representative or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court;
- [ 5 ] **ORDER** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Foreign Debtor or the Foreign Representative, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Foreign Debtor and the Foreign Representative, or leave of this Court, provided that nothing in this Order shall (i) empower the Foreign Debtor to carry on any business which the Foreign Debtor are not lawfully entitled to carry on, (ii) exempt the Foreign Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien;
- [ 6 ] **ORDER** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Foreign Debtor, except with the written consent of the Foreign Debtor and the Foreign Representative, or leave of this Court;
- [ 7 ] **ORDER** that, during the Stay Period, (a) all persons, firms, corporations, governmental authorities, airports or air navigation authorities or any other entity (including, without limitation, NAV Canada, Office of the Superintendent of financial Institutions ("OSFI"), having written or oral agreements with Foreign Debtor (including, without limitation, leases, pooling or consignment agreements, multilateral interline traffic agreements, codeshare agreements, Tier III Commercial Agreements, gate access agreements, frequent flyer programs or statutory or regulatory mandates) for the supply of goods and/or services (including, without limitation, real property, computer software and hardware, aircraft parts, aircraft maintenance services and related equipment, ground handling services and equipment, catering, office supplies and equipment, reservations, employee uniforms, crew accommodations, meals and commissary, communication and other data services, accounting and payroll servicing, insurance or indemnity, clearing, banking, cash management, credit cards or credit card processing, transportation, utility or other required services), by or to Foreign Debtor or any of the Foreign Debtor's Business or Property are hereby restrained until further order of this Court from discontinuing, failing to renew on terms no more onerous than those existing prior to these proceedings, altering, interfering with or terminating the supply of such goods or services so long as the normal prices or charges for such goods and services received after the date of this order are paid in accordance with present payment practices (for greater certainty and notwithstanding the terms of any federal or provincial statute or the terms of any lease or any present payment practices, lessors cannot alter, reconcile or

recalculate the amount of any rent, operating, maintenance or other expenses payable by Foreign Debtor so as to recover in whole or in part any amount payable by Foreign Debtor in respect of any period of time prior to August 2<sup>nd</sup>, 2010 or to compensate it in whole or in part for not receiving amounts owing to it by Foreign Debtor in respect of any period of time prior to August 2<sup>nd</sup>, 2010, or as may be hereafter negotiated from time to time, and (b) subject to Section 34(7) of the CCAA, all persons being party to fuel consortia agreements, or agreements or arrangements for hedging the price of, or forward purchasing of fuel, are hereby restrained from terminating, suspending, modifying, cancelling or otherwise interfering with such hedging agreements or arrangements, notwithstanding any provisions in such agreements or arrangements to the contrary, provided that nothing herein shall require any bank to accept bankers acceptances issued after August 2<sup>nd</sup>, 2010.

- [ 8 ] **ORDER** that all persons involved in the collection and distribution of monies in connection with passenger and air cargo operations (including, without limitation, travel agents, tour operators, general sales agents, air carriers and all persons who are members of or associated with the International Air Transport Association ("IATA")) are restrained from suspending Foreign Debtor from membership in IATA or any other air carriers or travel organization or from stopping, withholding, redirecting or otherwise interfering with any payments payable to Foreign Debtor whether pursuant to bank settlement plans, Airline Reporting Corporation arrangements, the IATA Clearing House or otherwise, provided that the Foreign Debtor shall make all required payments in accordance with the terms of such plans, arrangements and agreements, after the date of this order.
- [ 9 ] **ORDER** that, notwithstanding anything else contained herein, no creditor of the Foreign Debtor shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any new credit to the Foreign Debtor;
- [ 10 ] **PROHIBIT** the Foreign Debtor from selling or otherwise disposing of, outside the ordinary course of its business, any of its Property in Canada that relates to the Business and prohibit the Foreign Debtor from selling or otherwise disposing of any of its other Property in Canada, without the prior approval of this Honourable Court;

#### **NO INTERFERENCE WITH RIGHTS**

- [ 11 ] **ORDER** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Foreign Debtor, except with the written consent of the Foreign Representative and the Foreign Debtor, or leave of this Court.

#### **INFORMATION OFFICER**

- [ 12 ] **ORDER** that:
- a) **SAMSON BELAIR DELOITTE & TOUCHE INC.** be appointed as information officer (in such capacity, the "**Information Officer**");

- b) The Information Officer be authorized and empowered, but not obligated, to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may require;
- c) The Information Officer be authorized and empowered to respond to reasonable requests for information from stakeholders;
- d) Establish and maintain a Service List of all parties who will have filed a Notice of Appearance with the Information Officer;
- e) The Information Officer shall deliver to the Court a report at least once every three (3) months outlining the status of these proceedings, the Foreign Proceedings and such other information as the Information Officer believes to be material; and
- f) The Foreign Representative and the Information Officer shall incur no liability or obligation as a result of the appointment of the Information Officer or the fulfillment of the duties of the Information Officer in carrying out the provisions of this Order and no action or other proceedings shall be commenced against the Foreign Representative or the Information Officer for the fulfillment of the duties of the Information Officer, except with prior leave of this Court obtained on not less than seven (7) days notice to the Information Officer and the Foreign Representative;

#### **AID AND ASSISTANCE OF OTHER COURTS**

[ 13 ] **REQUEST** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or territory of Canada or any court or any judicial, regulatory or administrative body of Mexico and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this order.

#### **ADMINISTRATION CHARGE**

[ 14 ] **ORDERS** that COMPANIA MEXICANA DE AVIACION, S.A. DE C.V. shall pay the fees and disbursements of the Foreign Representative, the Foreign Representative's counsel, the Information Officer and the Information Officer's counsel, if any, incurred in connection with or with respect to the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested;

[ 15 ] **DECLARE** that the Petitioner's legal counsel, the Information Officer and the Information Officer's legal counsel, if any, as security for the professional fees and disbursements incurred both before and after the issuance of an order of the present Motion, as the case may be, be entitled to the benefit of and are hereby granted a hypothec, mortgage, lien, charge and security interest in the Property, save and except that certain Airbus

A319-100 Aircraft, bearing Manufacturer's Serial Number 1630, Aircraft registration mark XA-MXG, the whole for an amount limited to \$250,000 (the "**Administration Charge**");

- [ 16 ] **ORDER** that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect;
- [ 17 ] **DECLARE** that the Administration Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interest, priorities, charges, encumbrances or security of whatever nature or kind affecting the Property;

### **GENERAL PROVISIONS**

- [ 18 ] **ORDER** that the Information Officer or the Foreign Representative may apply to this Court for advance and direction in connection with the discharge or variation of their powers and duties under this order;
- [ 19 ] **ORDER** that nothing in this Order shall prevent the Foreign Representative or the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Foreign Debtor, the Business or the Property;
- [ 20 ] **DECLARE** that the order to be rendered on the present Motion and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [ 21 ] **ORDER** that each of the Foreign Representative, the Foreign Debtor and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
- [ 22 ] **ORDER** that the Foreign Representative shall publish a notice as required by subsection 53(b) of the CCAA in The National Post and La Presse for one (1) day in two (2) consecutive weeks without delay following the issuance of this Order.
- [ 23 ] **ORDER** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon seven days notice to the Foreign Representative / Petitioner's attorneys, to the Information Officer, at the coordinates indicated below, and to any other party likely to be affected by the order sought or upon such other notice, if any, as this court may order:

- i) Me. Marc Duchesne  
Me. François D. Gagnon  
Me. Mathieu Lévesque  
**BORDEN LADNER GERVAIS LLP**  
1000 De La Gauchetière West, Suite 900  
Montréal, Québec, H3B 5H4  
Counsel for the Foreign Representative / Petitioner  
Emails: [mduchesne@blqcanada.com](mailto:mduchesne@blqcanada.com)  
[fgagnon@blqcanada.com](mailto:fgagnon@blqcanada.com)

malevesque@blqcanada.com

ii) Mr. Pierre Laporte  
Mr. Jean-François Nadon  
**SAMSON BÉLAIR/DELOITTE TUOCHE INC.**  
1, Place Ville-Marie, Suite 3000  
Montréal, Québec, H3B 5K1  
Information Officer  
Emails : [pilaporte@deloitte.ca](mailto:pilaporte@deloitte.ca)  
[jinadon@deloitte.com](mailto:jinadon@deloitte.com)

- [ 24 ] **ORDER** that the Foreign Representative, the Foreign Debtor, the Information Officer, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List to be kept by the Information officer, to the extent practicable, and the Information Officer may post a copy of any or all such materials on its website;
- [ 25 ] **ORDER** that the order to be rendered on the present Motion be effective as of 12:00 a.m. eastern standard daylight time on the date of the order;
- [ 26 ] **DECLARE** that the order to be rendered on the present Motion shall be executory notwithstanding appeal;

Montreal, August 5<sup>th</sup>, 2010

  
**Borden Ladner Gervais LLP**  
Attorneys for Petitioner



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

**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

**MOTION FOR RECOGNITION OF FOREIGN  
PROCEEDINGS**

ORIGINAL

**Borden Ladner Gervais LLP**  
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Me François D. Gagnon File: 289149-000009  
B.M. 2545