

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

N°: 500-11-039418-104

IN THE MATTER OF THE JUDICIAL
REORGANISATION PROCEEDINGS OF:

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

Insolvent Debtor

-and-

MARU E. JOHANSEN

Foreign Representative

-and-

SAMSON BELAIR DELOITTE & TOUCHE
INC.

Information Officer

-and-

INTERNATIONAL AIR TRANSPORT
ASSOCIATION

Applicant

**MOTION FOR AN ORDER REGARDING THE FINAL SETTLEMENT OF THE
DEBTOR'S OUTSTANDING BALANCE WITH THE IATA CLEARING HOUSE AND
FOR THE FINAL DISTRIBUTION OF BSP & CASS PROCEEDS**

**TO THE HONOURABLE BRIAN RIORDAN, J.C.S, SITTING IN AND FOR THE
DISTRICT OF MONTREAL, THE APPLICANT, INTERNATIONAL AIR TRANSPORT
ASSOCIATION, RESPECTFULLY SUBMITS AS FOLLOWS:**

Introduction

1. The present Motion follows up on the Agreement on the refund of tickets (the "**Agreement on refunds**") that was approved by this Court in its orders of October 13, 2010, November 10, 2010 and January 13, 2011.
2. More specifically, the purpose of this Motion is to request the Court to approve a process whereby the parties will (i) reach a final determination on the amounts owing to the IATA Clearing House by the Debtor, (ii) pay such indebtedness through the funds remaining in IATA's possession after the execution of the Agreement on refunds, and (iii) distribute the balance of such funds, if any, to the Debtor or to its estate.
3. The context of the present Motion and the proposed process is as follows.
4. Further to the reimbursement of the travel agents and passengers conducted pursuant to the Agreement on refunds throughout 2011, a balance of approximately \$ 8.7 million US on account of pre-filing sale proceeds remains available and is currently held by IATA (the "**BSP & CASS Net Proceeds**").
5. At the same time, according to the information available to IATA, the Debtor continues to owe the IATA Clearing House, on account of the various debts incurred in the industry and filed with the IATA Clearing House, an amount of approximately \$ 11 million US (the "**ICH Balance**").
6. As will be more fully explained below, IATA's rules and procedures specifically provide for the automatic set-off of the BSP & CASS Net Proceeds against the ICH Balance.
7. However, when IATA proposed to carry such set-off, the Debtor informed IATA that (i) due to separate bilateral negotiations, the ICH Balance would no longer accurately reflect the current status of the underlying industry indebtedness, and as such, setting off of the ICH Balance against the BSP & CASS Net Proceeds as they currently stand, would result in a significant overpayment to many ICH members, and (ii) the consolidation of the industry indebtedness into the ICH Balance does not allow the Debtor with the flexibility to address specific situations with ICH Members individually, thus causing practical difficulties to the Insolvent Debtor.
8. In light of the above, and without prejudice to its set off rights, which are key to the stability and reliability of its settlement systems worldwide, IATA has on repeated occasions accepted to temporarily delay the set-off and to seek the present Motion for a court supervised process to be followed, the whole with a view to allow the Debtor to update the ICH Balance accordingly.
9. IATA is however respectfully of the view that firm dates and court supervision are essential to the successful and timely completion of the proposed process.
10. A copy of the terms and modalities of the proposed process is attached herewith as **Exhibit I-1**.

PART I - IATA and the IATA Settlement Systems

11. IATA is the main international organizations serving the international aviation industry. It was incorporated in 1945 by Special Act of the Parliament of Canada (*L.C. 1945, chapter 51*) and its headquarters are located in Montreal.

12. IATA currently represents some 240 airlines in over 115 countries from around the globe. Carrying 84% of the world's air traffic, the members of IATA include the world's leading passenger and cargo airlines.

13. IATA's mission includes promoting safe, regular and economical air transport, fostering air commerce, providing means for collaboration among the air transport enterprises of the world and co-operating with the International Civil Aviation Organization. As such, a significant part of IATA's operations consists in liaising with airlines, government bodies and other international organizations on matters affecting international air transport such as safety, flight operations, professional training, and others.

14. IATA's core activities also include providing the international aviation industry (members and non-members alike) with some of its most fundamental settlement systems and clearing services. Over the years, these systems and services have become the backbone of modern international aviation.

15. Of particular relevance to the present matter are the IATA Passenger and Cargo Agency Programs and the IATA Clearing House.

- The IATA Passenger Agency Program (BSPs) and the IATA Cargo Agency Program (CASS)

16. The Passenger and Cargo Agency Programs are services whereby international airlines (whether members of IATA or not) can handle their sales worldwide via standard IATA traffic documents (i.e. standard plane tickets and air waybills), using a network of IATA accredited agents.

17. An essential part of the Passenger Agency Program is that the sales made on behalf of the participating airlines by the IATA accredited travel agents are paid ("settled") through a network of "billing and settlement plans" (each, a "**BSP**") locally administered by IATA.

18. The sale proceeds are collected locally by IATA from the participating travel agents into an IATA operated "hinge account" and then redistributed to the participating airlines in conformity with the applicable local billing and remittance cycle.

19. Moreover, as is typical in the airline industry, travel agents sell airline tickets to travelers today, for travel which is scheduled to occur at a later date. As a result, since the corresponding sale proceeds are remitted to the BSP Airlines through the IATA Passenger Agency Program regardless of the date of travel and most frequently, well in advance of the date of travel, the participants are in fact extending credit to one another.

20. In light of this, and given the pooling of the participating airline's funds into the hinge accounts, upon joining a BSP, an Airline (a "**BSP Airline**") is required to enter into a Counterindemnity Agreement substantially in the form of Attachment C to the Passenger Agency Conference Resolution 850, whereby they essentially agree to hold IATA harmless, a copy of the relevant form can be found at Attachment C of the Passenger Agency Conference Resolution 850, attached herewith as **Exhibit I-2**.

21. There are currently 87 BSPs serving 167 countries and territories, and catering to approximately 400 IATA member and non-member airlines. Approximately 30,000 travel agents are currently accredited by IATA BSPs (about 3000 of which are in Canada). IATA BSPs gross sales processed in 2010 amounted to \$221 billion US, representing over 500 million transactions.

22. In parallel to the Passenger Agency Program, IATA also operates a Cargo Agency Program through a network of locally administered Cargo Accounts Settlement Systems (each a "**CASS**"). The CASS are operated under the rules laid out by the Cargo Agency Conference, which are, for all intents and purposes herein, similar to the same effect as those adopted by the Passenger Agency Conference for BSPs.

23. There are 61 CASS currently in operations, catering to over 500 airlines, cargo general sales and service agents and ground handling companies. IATA CASS gross sales processed in 2010 amounted to \$29 billion US.

- **The IATA Clearing House**

24. A very large number of accounts continuously arise between international airlines and settlement on a bilateral basis of these accounts would give rise to a huge number of financial transactions in the industry, and would involve the circulation of billions of dollars annually.

25. The IATA Clearing House (the "**Clearing House**") is the department within IATA responsible for the clearance by mutual set-off and net payments of the debts and accounts that continuously arise between the airlines of the world (and, to a lesser extent, of accounts involving other organizations active in the international air transport business).

26. The classes of transactions between participants that have to be cleared through the Clearing House include such things as aircraft servicing, fuel, catering and ground transportation services, but above all, they also include transactions between participants under the so-called *Multilateral Interline Traffic Agreements*, i.e. transactions where an airline has sold a plane ticket on another airline's flight and needs to account for it (as will be further explained below).

27. The essence of the Clearing House process is that appropriate debits and credits in accounts with IATA are entered against or in favour of one airline in respect of its dealings with all others. On a weekly basis, there are clearances of the sums relating to the services rendered by airlines between each other.

28. These clearances wherein the claims of members are transferred to IATA, result in settlements involving either a net payment by an airline operator to IATA or a net payment by IATA to an operator, but never in payments being made to or between operators.

29. The Clearing House process is governed by the IATA clearing house regulations ("**Clearing House Regulations**"), which have been approved, and are amended from time to time, by the Board of Governors of IATA, a copy of the Clearing House Regulations in their 20th Edition 2012, is attached herewith as **Exhibit I-3**.

30. An essential feature of the Clearing House Regulations is that pursuant to Article 9 of the Clearing House Regulations, the participants in the Clearing House have no direct recourse against one another with regard to debts arising between themselves and which are susceptible of being filed with IATA; they only have liability to and from IATA in respect of those debts.

31. The participants have therefore assigned their rights in the Clearing House to IATA and IATA holds the exclusive right to collect the claims that fall under the scope of the Clearing House, to the exclusion of the participants in the Clearing House.

32. There are currently over 350 participants in the Clearing House, for which the Clearing House has cleared in 2011 a total of approximately \$50 billion US.

33. The Debtor participated in the ICH through its membership in the Airlines Clearing House, Inc. ("**ACH**").

34. The ACH is an independent clearing chamber from IATA and the Clearing House, with no corporate ties to IATA. The members of the ACH can however participate and take advantage of the Clearing House's services thanks to an Interclearance Agreement governing the relationship between both clearing chambers, a copy of the Interclearance Agreement is attached herewith as **Exhibit I-4**.

35. Pursuant to the Interclearance Agreement only those accounts which may be cleared through each clearing houses, pursuant to its rules and regulations and its contractual relations with its respective members, shall be eligible for settlement between the two clearing houses in the Interclearance.

- **Stability of IATA Settlement Systems and Set-off**

36. The IATA Settlement Systems are worldwide clearing systems, the foundation of which is the creditworthiness of its participants and the confidence of each participant in the robustness, stability and reliability of the systems.

37. In practice, the amounts transiting through the IATA Settlement Systems are often intertwined, and as such, the sums of money held by IATA pursuant to one system cannot be considered and dealt with in isolation from the other financial IATA services.

38. By way of example, BSP travel agents often sell international air tickets involving transportation on more than one airline. In these cases (called interlining), the travel agent gets to arbitrarily select the airline of its choice to act as the “issuing carrier”. However the payment of an interline ticket (through the IATA BSPs) is made as a whole, to the issuing carrier only, regardless of which other carrier(s) may actually fly the passenger along the way.

39. As a consequence of the above, the issuing carrier must account to all of the other carriers involved for their own share of the transportation. Although the sale proceeds are collected by the issuing carrier as part of the BSP, the accounting to the other airlines is normally done through the IATA Clearing House.

40. As a result of these interconnections between the IATA settlement systems and given the need for stability, the various rules and resolutions governing the IATA settlement systems explicitly provide for the set-off of the amounts collected in one of the IATA settlement system against any possible indebtedness in another of the IATA settlement systems.

41. Thus, Section 16.2 of the Passenger Agency Conference Resolution 850 (Exhibit I-2) provides as follows:

“Where a BSP Airline participating in a BSP defaults on a material obligation to IATA in respect of the IATA Clearing House, or other financial arrangement for services provided by IATA, it shall be grounds for IATA to withhold funds due from the BSP to such BSP Airline in order to settle the debt. [...]”

42. Likewise, Section 12 (b) of the Clearing House Regulations (Exhibit I-3) provides:

“[...] (b) set-off also applies, and may be invoked by the Clearing House, with respect to any monies held or owed by IATA or any of its divisions or affiliated entities against any debt or claim owing to IATA or any of its divisions or affiliated entities in order to effect Clearance or to collect or pay any such debt or claim”

43. The *Companies’ Creditors Arrangement Act*, (R.S.C., 1985, c. C-36) specifically recognizes the application of the law of set-off or compensation to all claims made against a debtor notwithstanding a filing for protection under the Act:

“21. The law of set-off or compensation applies to all claims made against a debtor company and to all actions instituted by it for the recovery of debts due to the company in the same manner and to the same extent as if the company were plaintiff or defendant, as the case may be.”

44. This provision clearly applies to this case.

45. Moreover, in light of the peculiarity and the importance of the IATA Settlement Systems for both the Debtor and the industry, shortly after the issuance *Ex parte* of the Initial Recognition Order on August 5, 2010, the Petitioner precisely asked this Court to declare that such Initial Recognition Order did in fact not affect the rights and obligations of the various participants in the IATA Settlement Systems, the whole as appears from the Court record;

46. Upon hearing both parties, the Court issued the following order on October 13, 2010 (the “**Order on Motion to Rescind**”), the whole as appears from the Court record:

“[11] **ORDERS AND DECLARES** that, with effect *nunc pro tunc*, Paragraph 12 of the Initial Order issued by this Court on August 5, 2010 in the present file does not affect the rights of Petitioner under the IATA Distribution Plans, nor those of any other person in respect of said IATA Distribution Plans”;

47. “IATA Distribution Plans” in the Order on Motion to Rescind is defined by reference to the various IATA distribution plans and settlement systems referred to in Paragraph 12 of the Initial Recognition Order, which the Order on Motion to Rescind alters “*nunc pro tunc*”:

“**ORDERS** 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.”

(our emphasis)

48. Thus, on the basis of the above, IATA submits that the set-off (or compensation) between the BSP & CASS Net Proceeds and the ICH Balance clearly applies in the present case.

PART II – The Debtor’s Suspension and the Agreement on Refunds

49. On August 3, 2010, when the Debtor (also called “**Mexicana**” down below) significantly reduced its international operations, sought creditor protection in Mexico and elsewhere, and indicated it would not meet IATA’s requirement for continued participation in the BSPs and CASS, IATA had no other choice but to suspend Mexicana’s continued participation in BSPs and CASS worldwide, in order to protect the participants in the BSPs and CASS, the whole as appears from a copy of the letter by IATA to the Debtor and dated August 3, 2010 attached herewith as **Exhibit I-5**.

50. As is the standard IATA policy in these circumstances (see example Resolution 850, Attachment F, Exhibit I-2), all remittances to the suspended member were immediately frozen in order to account, inter alia, for the airline’s possible defaults towards agents, passengers and freight forwarders.

51. A few days later, on August 17, 2010, the Petitioner and the Debtor entered into the Agreement on refunds (which, as mentioned above, was later approved by the Court). The agreement provided a refund process whereby passengers who could not fly on Mexicana would be reimbursed.

52. There was no question at that time that Mexicana would eventually default on its Clearing House obligations towards IATA.

53. Yet, a few weeks later, on or about September 15, 2010, the Debtor did default on its obligations towards the Clearing House (through its participation in the ACH), the whole as appears inter alia from a memo from ACH to its participants attached herewith as **Exhibit I-6**.

54. As a result of this default of the Debtor towards the ACH, all of the participants of the Clearing House that were net creditors with respect to Mexicana in the September 15, 2010 ACH-ICH interclearance, and that had been paid accordingly by IATA, were charged back the corresponding amounts in the September 30, 2010 clearance. This amounted to an amount of \$3,965,152 US. Moreover, all of the ICH members who had filed claims against Mexicana in the September 30, 2010 clearance prior to the airline’s suspension from the ACH were also short paid in this interclearance. In total the outstanding balance unpaid by Mexicana in respect of the September 2010 interclearances is approximately \$11 million US.

55. Pursuant to the Clearing House Regulations, the right to collect the underlying claims lies exclusively with IATA.

56. Consequently, following Mexicana’s suspension from the ACH and related defaults towards the Clearing House, the Debtor is now indebted towards the Clearing House in an amount of approximately \$11 million US (the ICH Balance).

57. Subsequently, in early 2011, Mexicana contacted IATA and indicated that it was now very close to restarting flight operations. Regarding the ICH Balance, Mexicana stated in an e-mail dated February 2, 2011 that its internal reconciliation of

debts showed that the amounts owing were “significantly lower than that” and also indicated that it was in the process of contacting the major airlines and expected to have answers “by early next week”, the whole as appears from a copy of said e-mail dated February 2, 2011 attached herewith as **Exhibit I-7**.

58. On February 11, 2011 a conference call took place between the representatives of IATA and those of Mexicana during which the need for Mexicana to pay the entire ICH Balance in whole, unless appropriate releases could be obtained from participating airlines, was discussed at length. Mexicana represented then that it was negotiating with eight carriers, which represented the majority of the ICH Balance in order to obtain appropriate releases. Mexicana also undertook to pay the entire remaining balance of the ICH Balance through the Clearing House, the whole as appears from a copy of an e-mail dated February 11, 2011 attached herewith as **Exhibit I-8**.

59. As also appears from the same e-mail, Exhibit I-8, Mexicana had virtually completed at the time the refunds pursuant to the Agreement on refunds.

60. Things however did not progress so fast, and several months later, on July 29, 2011, Mexicana wrote an e-mail to IATA to inform the Clearing House that according to the conciliation process apparently conducted by Mexicana, the indebtedness underlying the ICH Balance should be adjusted so that only the amount of \$1,686,128.57 US would be owing by Mexicana. However no release by any other Clearing House participant was provided by Mexicana in support of its proposal at that time. Mexicana also indicated that it agreed that the ICH Balance revised accordingly should be paid with the BSP & CASS Net Proceeds, the whole as appears from a copy of an e-mail dated July 29, 2011 attached herewith as **Exhibit I-9**.

61. On July 31, 2011, Nicholas Coote, manager of the Clearing House, wrote back to Mexicana and emphasized once again that IATA was bound by the amounts notified to the Clearing House by the participants, could not ignore them, and needed to receive valid releases acceptable to IATA (releasing IATA, not Mexicana) before it could adjust down the amount of the ICH Balance as requested by Mexicana, the whole as appears from a copy of an e-mail dated July 31, 2011 attached herewith as **Exhibit I-10**.

62. Several weeks again went by, and in October 2011, Mexicana wrote again to IATA to inform that the Mexican court had suspended the concurso restructuring process, that the interlining reconciliation was still going on, and that it should be finalized “*within the next weeks*”, the whole as appears from two e-mails respectively dated October 4 and 7, 2011, attached herewith en liasse as **Exhibit I-11**.

63. On October 17, 2011, IATA acknowledged receipt of the information and reminded Mexicana that the BSP & CASS Net Proceeds were directly applicable against the ICH Balance, as appears from a copy of an e-mail dated October 17, 2011 attached herewith as **Exhibit I-12**.

64. On October 20, 2011, Mexicana replied to IATA that it disagreed with the set-off of the BSP & CASS Net Proceeds against the ICH Balance, and indicated once again that the issuance of the releases to adjust down the ICH Balance were “pending just the development of the restructuring”, the whole as appears from a copy of an e-mail dated October 20, 2011 attached herewith as **Exhibit I-13**.

65. On October 24, IATA responded to the Mexicana e-mail by reiterating that the right of set-off was automatic, that IATA cannot take into account any debts that were not notified to the Clearing House in due course (unless the appropriate releases were obtained) and that any further delay in the operation of the set-off would be short and as a pure courtesy to Mexicana, the whole as appears from a copy of an e-mail dated October 24, 2011 attached herewith as **Exhibit I-14**.

66. Then, on December 13, 2011, the Debtor informed IATA by letter that it wished IATA to continue to refrain from carrying the set-off between the ICH Balance and the BSP & CASS Net Proceeds, and that Mexicana was still “presently working with a number of IATA member airlines to finalize the compensation/reconciliation of numbers and has reached agreements with a large number of them”, the whole as appears from a copy of said letter dated December 13, 2011, attached herewith as **Exhibit I-15**.

67. Upon receipt of the letter Exhibit I-15, IATA’s attorneys informed the attorneys of the Debtor that the situation was no longer tolerable, that the set-off could not be delayed indefinitely and that the reconciliation process undertaken by the Debtor with its airline counterparts had to come to an end.

68. The IATA attorneys further indicated that they would petition this Court for issuance of an order which would give the Debtor a final deadline for collecting appropriate releases from the other Clearing House participants, and that until then IATA agreed to temporarily delay the operation of the set-off. However, this was without admission and without any renunciation whatsoever to its rights by IATA.

PART III – Conclusion and the Proposed Process

69. As previously indicated, IATA’s rules and resolutions explicitly provide for an automatic right of IATA to set-off the funds held in BSP and CASS programs with the debts occurring out of the Clearing House.

70. The Debtor has been saying for over a year now that the ICH Balance would not reflect the true indebtedness between Mexicana and the other Clearing House participants, in particular since other claims should be taken into account.

71. However, given Mexicana’s suspension from the ACH, these claims were not properly entered into the interclearance system and, as such, they cannot be recognized by IATA.

72. The only way for IATA to recognize such claims would be for Mexicana to obtain proper releases from the appropriate ICH Members.

73. Without admission and without prejudice to its legal rights, and strictly as a practical matter to address Mexicana's request and concerns, IATA has shown some openness to the position of Mexicana and has so far accepted to temporarily defer the operation of the set-off to allow Mexicana some time to gather the appropriate releases.

74. However, up until a few days ago, the Debtor had failed to communicate to IATA virtually any releases in this regard. Some releases were indeed communicated a few days ago, but have not been analyzed in details yet by IATA, and in any event, were not presented by Mexicana as a final list upon which the set-off could operate by consent.

75. Without the proper releases, IATA cannot take into account any other claims that may exist between the Debtor and other Clearing House participants and as a result, these claims would normally have to be dealt with (in the absence of the proposed process Exhibit I-1) on a bilateral basis, outside of the Clearing House clearance.

76. In conclusion, IATA understands that as a practical matter (i) the dichotomy between the ACH and the ICH and Mexicana's suspension from the ACH has made it impossible for Mexicana to post into the clearing systems the various claims that Mexicana believes should have legitimately applied against the ICH Balance, and (ii) for various reasons it has been difficult for Mexicana to obtain the appropriate releases which would have allowed the airline to overcome this impossibility.

77. As a proposed solution to this imbroglio, IATA is prepared to recognize that the claims invoked by Mexicana, provided that they would have been legitimately applied against the ICH Balance should Mexicana not have been suspended from the ACH, will be taken into consideration and given credit by the Clearing House.

78. However given the delays incurred to date and the circumstances, IATA cannot delay the set-off of the ICH Balance with the BSP& CASS Net Proceeds indefinitely.

79. Indeed, in the context where (i) more than a year has passed since the Clearing House's relevant clearances took place, (ii) the Debtor still has not produced to IATA a final set of releases from Clearing House participants with definitive figures for the set-off, and (iii) there is no end in sight to the restructuring process of Mexicana, a further (seventh) postponement of the Court protection in Canada for an additional three months being even sought at the present moment from the Court, IATA believes that this Court should order that a process be followed with a view to reach a final determination on the ICH Balance available for set-off within a specified time period, so that appropriate payments will be made, and any excess funds will be distributed to Mexicana or its estate.

80. In the context described above the purpose of the process proposed by IATA in Exhibit I-1 is to provide Mexicana with the technical possibility to enter all of the admissible claims into the records of the ICH within a reasonable period of time, so that IATA can adjust once and for all the ICH Balance payable by the Debtor.

81. The process then provides for the final payment of the ICH Balance and all applicable costs through set-off with the BSP & CASS Net Proceeds, the balance of which will be thereafter returned to Mexicana (or its estate).

82. The whole process would be conducted within the seventh extension of the stay period currently sought by the company in Canada, and would be unaffected by any subsequent change in status or liquidation of Mexicana.

83. In conclusion, the proposed process will allow IATA:

- a. to unfreeze BSP & CASS Net Proceeds and allow the definitive settlement of the ICH Balance;
- b. to return to the Debtor (or its estate) any net amount owing; and
- c. to eventually lift the suspension of the Debtor from the IATA Financial Services, if or when all debts of the Debtor in the Clearing House are cleared.

84. IATA submits respectively that the intervention of this Court is required so that the question of the ICH Balance and the BSP & CASS Net Proceeds is brought to a closure.

85. IATA submits that this motion and the process suggested by IATA are in the best interest of justice, in the interest of all parties involved, including all of the participants to the IATA Clearing House and prejudices no one.

86. IATA further submits that any further delay in resolving this matter is unfair, unjustified by the facts, and causes prejudice to the industry and to the IATA settlement systems and financial services.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

DECLARE that the service and Notice of Presentation of this Motion are proper and sufficient;

GIVE EFFECT to the proposed process attached to the present Motion as Exhibit I-1;

ORDER the parties to abide by such process;

AUTHORIZE IATA and the Debtor to give effect to such process, and to perform all acts and enter into any agreement or document for this purpose;

AUTHORIZE IATA to apply any part of the BSP & CASS Net Proceeds in full payment of the ICH Balance in accordance with such process and to pay all associated costs and fees owing by Mexicana to IATA.

ISSUE any other order as this Court may deem appropriate in the circumstances;

THE WHOLE, without costs.

MONTREAL, February 24, 2012

A handwritten signature in black ink that reads "McMillan LLP". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

McMILLAN LLP
Attorneys for Applicant
International Air Transport Association

AFFIDAVIT

I, the undersigned, Nicholas Coote, Director, Industry Clearing Services, of the International Air Transport Association, exercising my profession at the head office of the International Air Transport Association at 800 Place Victoria, Montreal, Quebec, H4Z 1M1, having been duly sworn, do hereby depose and say, having been duly sworn, do hereby depose and say:

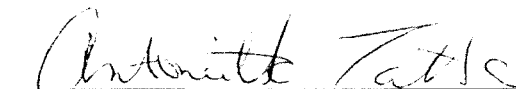
1. I am one of the representatives of the International Air Transport Association ("IATA" or the "Petitioner") in the present matter.
2. I have read the foregoing Motion and all the facts alleged therein are true and correct, the said allegations being repeated herein in their entirety to form an integral part of the present Affidavit.

AND I HAVE SIGNED



Nicholas Coote

SOLEMNLY DECLARED BEFORE ME,
AT MONTREAL, QUÉBEC,
THIS 24TH DAY OF FEBRUARY 2012



COMMISSIONER OF OATHS FOR QUEBEC



NOTICE OF PRESENTATION

TO: Me François D. Gagnon
Borden Ladner Gervais LLP
1000 de la Gauchetière Street West
Suite 900
Montreal, Quebec H3B 5H4


Attorneys for Debtor Compania Mexicana de Aviacion

SAMSON BÉLAIR DELOITTE & TOUCHE INC.
1 Place Ville Marie
Suite 3000
Montreal, Quebec H3B 4T9

Information Officer

TAKE NOTICE THAT the foregoing Motion to Approve an Agreement between the Petitioner and the Insolvent Debtor, and to Rescind certain Provisions of the Order of Recognition of Foreign Proceedings will be presented for adjudication before one of the Honourable Judges of the Superior Court, sitting in and for the judicial district of Montreal, at the Montreal Courthouse, located at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6, in Room 16.10 on **February 27, 2012** at 9:00 a.m. or so soon thereafter as counsel may be heard and do you therefore govern yourselves accordingly.

MONTREAL, February 24, 2012



McMILLAN S.E.N.C.R.L., S.R.L. / LLP
Attorneys for Applicant
International Air Transport Association

N° / No.: 500-11-039418-104

SUPERIOR COURT
(COMMERCIAL DIVISION)
DISTRICT DE / OF MONTREAL

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PROCEEDS, AFFIDAVIT AND
NOTICE OF PRESENTATION**

M^e ÉRIC VALLIÈRES

Réf. / Ref.: 557190-09900/EV/fb

Procureurs pour / Attorneys for

Applicant International Air Transport Association

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