

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-039418-104

DATE: SEPTEMBER 19, 2012

PRESIDING: THE HONOURABLE BRIAN RIORDAN, J.C.S.

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

and

SAMSON BELAIR DELOITTE & TOUCHE INC.
Information Officer

and

INTERNATIONAL AIR TRANSPORT ASSOCIATION
Applicant

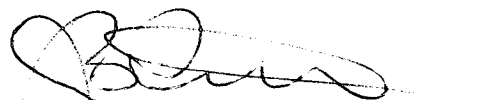
**INTERIM ORDER REGARDING THE FINAL SETTLEMENT OF THE DEBTOR'S
OUTSTANDING BALANCE WITH THE IATA CLEARING HOUSE AND
FOR THE FINAL DISTRIBUTION OF BSP & CASS PROCEEDS**

[1] **CONSIDERING** the Applicant's *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* dated February 24th, 2012 (the « **Motion** ») and the exhibits produced in support of said Motion;

- [2] **CONSIDERING** the affidavit of Nicholas Coote dated February 24, 2012 in support of the Motion;
- [3] **CONSIDERING** the evidence adduced by both parties;
- [4] **CONSIDERING** the representations of the attorneys of the Applicant and of the Insolvent Debtor;

THE COURT:

- [5] **GIVES EFFECT** to the proposed process (the "**Approved Process**") filed into the Court Record by the Applicant's attorneys under the Exhibit I-1/IATA, except with respect to section 5 of the said process regarding the final distribution of BSP & CASS Proceeds, as such term is defined in said Exhibit I-1/IATA, a copy of the Approved Process being annexed to the present judgment;
- [6] **DECLARES** that no distribution of the BSP & CASS Proceeds may take place until further order by this Court;
- [7] **ORDERS** the parties to abide by the Approved Process;
- [8] **AUTHORIZES** the Applicant and the Insolvent Debtor to give effect to the Approved Process, and to perform all acts and enter into any agreement or document for this purpose;
- [9] **ORDERS** that the present order shall have full force and effect notwithstanding appeal;
- [10] **THE WHOLE WITHOUT COSTS.**



BRIAN RIORDAN, J.C.S.

Me Éric Vallières
Me Andrei Pascu
McMillan S.E.N.C.R.L., s.r.l./LLP
Attorneys for the Applicant

Me François D. Gagnon
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Attorneys for Foreign Representative / Petitioner

Approved Process

1. Objective

To create a process whereby Mexicana, as a non-operating, court protected, indirect participant in the ICH, is provided with the technical possibility to enter all of its admissible claims into the records of the ICH, so that IATA can adjust the ICH Balance payable by Mexicana, set it off against the BSP & CASS Proceeds, pay the appropriate costs & debts, and remit any balance remaining to Mexicana (or its estate). The process will need to be approved by the Court.

2. Acknowledgment of receipt of releases

IATA hereby recognizes the receipt of 14 releases listed in Annex B of this Process and has corrected the amount of the ICH Balance accordingly.

3. Proposed reconciliation process for ICH Balance

The proposed reconciliation process will work as follows:

- a. Within two weeks of a mutually agreed date following Court order, the ICH will set up a test environment to a special clearance environment (the "Special Environment") for the purpose of allowing Mexicana to enter all of its admissible claims into the records of the ICH. Once the Special Environment has been set up, IATA shall give written notice thereof to Mexicana.
- b. Within the same time frame, all recorded transactions by and against Mexicana in the ICH live system will be copied by the ICH to the Special Environment. Once this information has been copied to the Special Environment, IATA shall give written notice thereof to Mexicana.
- c. Upon receipt of the written notice provided in section 3 b. above, Mexicana will be given access to the special environment for a period of four weeks, or any mutually agreed additional delay, to load its claims data into the Special Environment. Once Mexicana will have completed the loading of its claims, it shall give written notice thereof to IATA.
- d. Upon receipt of the written notice provided in section 3 c. above, during the following five weeks, the ICH will validate the claims posted by Mexicana and may reach out to the ICH Members for their views if required. The ICH will then post the balances in the system and will determine a Final ICH Balance, after which date no claim whatsoever, by either Mexicana or ICH Members will be accepted.

4. Further modalities

- a. Data entry may then be done by Mexicana in its own offices via secured web access, or via e-mail using the ICH Web F12 format.
- b. Before entering any claim, Mexicana must be in a position to demonstrate that any such invoice relates to a transportation service delivered on or before Closure Day of the 4th Period of August (September 7, 2010), has been properly created and delivered to the corresponding ICH Member in accordance with RAM rules and timelines, and conforms with ICH Regulations.
- c. Invoices not in USD must be converted to USD at the rates of exchange applicable to the original month of billing in accordance with RAM rules.
- d. A Statement indicating all the Invoices entered into the system, and their respective dates, must be supplied to IATA to enable validation of the above within two weeks of entry in the special system. Upon request by IATA, Mexicana will also provide to IATA, within two weeks of such request, copies of any and all invoices entered in the system.
- e. As part of the present process, no rejections may be entered by Mexicana related to billings submitted by ICH Members for a service delivered after Closure Day of the 4th Period of August (September 7, 2010)
- f. Moreover, for greater clarity, Mexicana's rights pursuant to the section 2.6 of Section A-2 of the RAM rules shall not be affected regarding services delivered prior to said period.
- g. IATA will accept into the clearance all claims relating to services delivered on or before Closure Day of the 4th Period of August (September 7, 2010) posted by Mexicana, provided that they are not (i) contrary to timelines RAM rules and timelines or (ii) "Improper Billings" as such term is defined in the ICH Regulations. Any claim not in conformity with the above will be excluded.
- h. Once the present process will be completed, RAM rules relating to rejections will not apply. Any residual disputes between Mexicana and any ICH Member regarding claims entered by Mexicana whether or not excluded from the ICH system by IATA will need to be dealt with bilaterally, outside of the ICH system.

5. Final distribution of BSP & CASS Proceeds

Within one week after the determination by the ICH of the ICH Balance, IATA will distribute the BSP & CASS Proceeds as follows:

- a. Firstly, to IATA in payment or reimbursement of any costs or expenses of IATA and any other amounts owing by Mexicana under the Counterindemnity Agreement or pursuant to any other IATA financial services;
- b. Secondly, to the ICH Members concerned in order to discharge the Final ICH Balance; and
- c. Thirdly, to Mexicana, or alternatively to its liquidator or trustee, as may be applicable.
- e. All payments received by IATA and ICH Creditor Airlines will be reported by Mexicana or IATA to the Mexican Court overseeing the business reorganization proceedings in order for the Court to delete such amounts from the list of recognized creditors. As such, IATA shall, as soon as practicable, withdraw or amend its proof of claim in Mexicana's Concurso proceedings accordingly.

Any remaining unpaid portion of the ICH Balance will remain owing by Mexicana to IATA and shall be payable accordingly by Mexicana.

6. Reinstatement of Mexicana into IATA Services

- a. Mexicana will only be reinstated into any of IATA financial services, including without limitations, the ICH, the BSPs and the CASS, if the Final ICH Balance and any other amounts owing by Mexicana under the Counterindemnity Agreement or pursuant to any other IATA financial services has been paid in full.
- b. If and when Mexicana is reinstated in the ACH or if it is directly admitted in the ICH, any and all claims submitted by Mexicana to the ICH as part of this process or submitted to the ACH prior to Closure Day of the 4th Period of August (September 7, 2010), just like any claim submitted to the ICH by any other ICH Member in respect of Mexicana prior to Closure Day of the 4th Period of August (September 7, 2010), will not be admissible for clearance through the ICH.
- c. For greater certainty, upon reinstatement into the ACH (or admission in the ICH), Mexicana would not be entitled to the rebilling procedures set out in the RAM in respect of any claim involving another ICH Member that would pre-date Closure Day of the 4th Period of August (September 7, 2010). Any dispute regarding such claims should be resolved outside of ICH, directly between Mexicana and such ICH Member.

Annex A to the Approved Process - Definitions

For the purposes of the present Mexicana ICH Reconciliation & Payment Process, the following defined terms shall have the following respective meanings:

- a. "ACH" means the Airlines Clearing House, Inc.;
- b. "Agreement on Refunds" the Agreement on the refund of tickets entered into between Mexicana and IATA dated August 17, 2010 and which was approved and given effect to by the Court through its orders made on October 13, 2010, November 16, 2010, and January 13, 2011;
- c. "BSP" means anyone of the billing and settlement plans administered by IATA under its Passenger Agency Program, and "BSPs" means all of said plans;
- d. "BSP & CASS Proceeds" means the amount of BSP and CASS funds which remains in the possession of IATA after payment of the reimbursements owing by Mexicana to travel agents and passengers pursuant to the Agreement on Refunds (and related costs), and after effective conversion in USD;
- e. "CASS" means anyone of the IATA Cargo Account Settlement Systems;
- f. "Counterindemnity Agreement" means the Counterindemnity Agreement entered into by Mexicana in favour of IATA relating to the operation of the BSPs bank accounts, and which is in a form substantially similar to the Passenger Agency Conference Resolution 850, Attachment "C";
- g. "Court" means the commercial chamber of the Quebec Superior Court, District of Montreal (Canada);
- h. "Final ICH Balance" means the Final ICH Balance as calculated pursuant to Paragraph 2d of the Process;
- i. "IATA" means the *International Air Transport Association*;
- j. "ICH" means the IATA Clearing House;
- k. "ICH Members" means all of the participants in the ICH;
- l. "ICH Regulations" means the ICH Regulations, CHM 19th edition, January 2011;
- m. "Information Officer" means the firm of Samson Bélair Deloitte & Touche Inc., acting in its capacity of information officer to Mexicana as it was appointed by the Court in the proceedings bearing docket number 500-11-039418-104;
- n. "Mexicana" means *Compania Mexicana de Aviacion, S.A. de C.V.*;
- o. "RAM" means the IATA Revenue Accounting Manual in force at the relevant time for each related billing;
- p. "Special Environment" shall have the mean ascribed in section 3 a. hereof.
- q. "USD" means United States Dollars.