

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

<p>SIXTH 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)</p>
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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 Order of this Honorable Court rendered on September 20, 2011, Petitioner's fifth *Motion for the extension of the Stay Period* (hereinafter the "**Fifth Motion to Extend**") was granted and the Stay Period was extended until November 30, 2011 (hereinafter the "**Fifth Extension Order**");
8. By way of the present motion, Petitioner seeks an order granting a sixth extension of the Stay Period for a period of approximately twelve (12) weeks, namely until February 20, 2011;

II. MEXICANA'S OPERATIONS AND ACTIVITIES

9. Mexicana and its affiliates operate Mexicana Airlines, historically Mexico's largest airline. Mexicana and its affiliates carry passengers and cargo to destinations worldwide;
10. 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;
11. 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;

12. 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;
13. 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;
14. On August 28, 2010, Mexicana announced the suspension of its flights;

III. RESTRUCTURING DEVELOPMENTS SINCE THE INITIAL ORDER

15. 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

16. 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

17. 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;
18. 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 and two Banks 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

19. 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. PARTIAL OPERATIONS OF MEXICANA AND ITS AFFILIATES

20. Since the Initial Order, Mexicana, through one of its affiliates, Mexicana MRO, S.A. de C.V. (hereinafter "**MRO**") has continued to operate a portion of the group's business, namely maintenance services including major services to other airlines in its maintenance bases located at Mexico City International Airport and at Guadalajara International Airport;
21. For the purposes of the operations, Mexicana provides MRO with all of the necessary administrative and technical staff, IT and other services with the exception of mechanics which is provided by another affiliate of Mexicana;
22. Mexicana therefore invoices MRO for the services provided, which generates income for Mexicana and allows for the continued, although severely diminished, operation of Mexicana's management staff in order to keep Mexicana afloat until the restructuring is complete;
23. Moreover, Mexicana continues its efforts at collection of its accounts receivables, which also generates much needed cash to support the head office operations, which are critical to the Company's restructuring efforts;

E. MEXICAN EXTENSION ORDER RENDERED UNDER THE CONCURSO LAW

24. The Concurso Law allows companies 185 days to enter and exit bankruptcy protection from creditors, with a possibility of two (2) 90 days extensions if there are clear signs of progress toward restructuring;
25. Mexicana was granted bankruptcy protection from its creditors under the Concurso Law on September 28, 2010 and therefore, said protection would normally have expired on April 1st, 2011;
26. 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;
27. As a result of the Mexican Extension Order, Mexicana's bankruptcy protection under the Concurso Law was extended to August 10, 2011;

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28. As mentioned in the Fourth Motion to Extend, in order to complete its restructuring process, it appeared likely that Mexicana would have been required to file an application before the Mexican Court in order to obtain the second 90 day extension available to it under the Concurso Law;
 29. However, on July 27, 2011, at the request of Mexicana's labour unions, the Judge overseeing the Mexican Proceedings temporarily suspended the delay under the Mexican Extension Order, 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;
 30. Following the decision made on July 27, 2011, an Order was rendered by the Mexican Court on September 7, 2011, detailing the reasons why the suspension of the 90 day delay until October 28, 2011, (hereinafter the "**Suspension Order**"), the whole as appears from a copy of the Spanish version of the Suspension Order, as well as a copy of the English version thereof, which were already communicated in support of the Fifth Motion to Extend as Exhibits R-1A and R-1B;
 31. As a result of the Suspension Order, the expiry of the first 90 business day extension was pushed back by the Mexican Court to November 11, 2011;
 32. On November 11, 2011, pursuant to another request made by Mexicana's labour unions and supported by the Company, the Mexican Court rendered an order in which it recalculated the conciliation period afforded to Mexicana to reach an agreement with its creditors and to reorganize under the Concurso Law. The reasoning of the Judge overseeing the Mexican Proceedings was to the effect that the initial 185 day period was calculated on the basis of calendar days whereas the 90 day extension period was calculated based on business days. Therefore, the Mexican Court concluded that in order to have consistency throughout the proceedings, both the initial 185 day delay and the 90 day extension delay should have been calculated on the basis of business days, the whole as appears from a copy of the said Order, in its original Spanish version as well as a copy of the official English translation thereof (hereinafter the "**November 11 Order**"), communicated herewith as Petitioner's **Exhibits R-1A and R-1B**.
 33. Moreover, in its reasoning, the Mexican Court referred to the likelihood of completing a final transaction in the near future as well as the importance of Mexicana's operations for the economy of Mexico generally as well as intent of the Concurso Law to preserve the approximately 8,500 jobs of Mexicana's employees;
 34. On November 14, 2011, the Mexican Court issued an order advising of the new computation of the delay under the Concurso Law, which ultimately results in a deadline of February 10, 2012 for the conciliation period, the whole as appears from a copy of the said Order in its original Spanish version as well as a copy of the official English translation thereof (hereinafter the "**November 14 Order**"), communicated herewith as Petitioner's **Exhibits R-2A and R-2B**;
 35. The November 11 Order and the November 14 Order supersede any previous orders with respect to the delays. They also include language which serves to advise the Conciliador and other stakeholders of the new delay;

F. INVESTOR GROUPS INTERESTED IN ACQUIRING MEXICANA

36. Mexicana, the Conciliador and the Mexican Government are still in negotiation with at least six (6) groups of prospective investors for the acquisition and recapitalization of Mexicana, including Ivan Barona, Group Med Atlantica, Grupo Perseo, Altus Pro, Avanza Capital and Union Swiss (hereinafter the "**Potential Investors**");
37. All of the Potential Investors have received the complete package of information available from Mexicana for the purposes of their due diligence. Although a number of them have completed their due diligence with respect to the Insolvent Debtor and advised Mexicana and the Conciliador accordingly, some of the Potential Investors are still in the process of finalizing their due diligence;
38. However, neither of the Potential Investors have complied with the prerequisite condition imposed by the Concilador and the Mexican Government to demonstrate the existence, availability and specific purpose of the funds through a good faith deposit of US\$1M in a trust account and evidence of availability of US\$250M, to demonstrate the financial ability of completing the recapitalization of Mexicana, although the Potential Investors have indicated having the availability of the funds but are in process of compiling the information to demonstrate same;
39. Moreover, the judge overseeing the Mexican Proceedings has publicly announced to the media in Mexico that potential investors in Mexicana had advised him that they had received threats. The judge provided details of the allegations in a report, in which he said that potential investors told him they had been anonymously contacted by phone and warned not to put their money in a trust to salvage Mexicana, the whole as appears from a copy of a news article from "Hispanically Speaking News" dated November 13, 2011, communicated herewith as Petitioner's **Exhibits R-3**;
40. The Judge also indicated that the threats could serve to explain the why, although the sale and recapitalization process of Mexicana has been ongoing for almost a year, none of the potential investors have confirmed the availability of the funds required to recapitalize the company;

G. SOCIAL AND ECONOMIC IMPORTANCE OF MEXICANA

41. In the November 11 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;
42. These statements recall the earlier reasoning of the Mexican Court in the context of the Suspension Order, communicated as Exhibit R-1B of the Fifth Extension Motion, wherein it stated that:

"[...] 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

43. Notwithstanding the progress made by the Insolvent Debtor since the Fifth 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 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, submit the restructuring agreement to the Mexican Court for approval and restart flight operations;
44. Petitioner and the Insolvent Debtor are of the view that extending the Stay Period to February 20, 2012, is appropriate in the present circumstances;
45. On September 16, 2011, the Information Officer filed its Seventh report, 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-4**;
46. 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 its last report, 2011;
47. Since the Fifth Extension Order, the Insolvent Debtor has acted and continues to act in good faith and with due diligence;
48. Based on the foregoing, Petitioner prays this Court to extend the Stay Period up to and including February 20, 2012, 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;
49. 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, 2010) until February 20, 2012, 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, November 25th, 2011

Borden Ladner Gervais

Borden Ladner Gervais L.L.P.

Attorneys for Petitioner

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

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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 *Sixth 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 **November 29, 2011 at 9:00 a.m, in room 14.07** 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, November 25, 2011


BORDEN LADNER GERVAIS LLP
Attorneys for Petitioner