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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	**Chapter 11**
CHC GROUP LTD., et al.,	**Case No. 16-31854(BJH)**
Debtors,	**(Jointly Administered)**
ECN CAPITAL (AVIATION) CORP.,	**Adv. No. 16-03151-bjh**
Plaintiff,	**Plaintiff's Opposition To Defendant's Motion To Dismiss**
v.	
AIRBUS HELICOPTERS (SAS),	
Defendant.	

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Plaintiff ECN Capital (Aviation) Corp. (f/k/a Element Capital Corp.) ("ECN Capital"), by its undersigned attorneys, files this Memorandum of Law in Opposition to Defendant Airbus Helicopters S.A.S.'s ("Airbus") Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction and *Forum non Conveniens*, and respectfully would show the Court as follows:

PRELIMINARY STATEMENT

Airbus does not dispute that ECN Capital's Complaint adequately states claims against Airbus for its defective design of EC225 and AS332 L2 helicopters it manufactured and sold. Instead, Airbus moves for dismissal of the Complaint solely on the basis of jurisdictional arguments, all of which are without merit.

The Motion to Dismiss makes one thing clear: Airbus does not want to litigate ECN Capital's claims in this forum. But Airbus voluntarily came to this Court and filed claims in these bankruptcy cases in hopes of recovering millions of dollars from the Debtors, who were owners, lessors, and/or operators of Airbus's EC225 and AS332 L2 helicopters—including the EC225 helicopter that crashed in April 2016, killing all 13 passengers and crew on board; the four AS332 L2s and one EC225 owned by ECN Capital that have been grounded since the April 2016 crash and that are the subject of the Complaint; and scores more EC225 and AS332 L2 helicopters owned outright by the Debtors or by other creditors in these bankruptcy cases. As much as Airbus may wish to avoid this Court's jurisdiction over ECN Capital's claims, settled law establishes that the claims and the parties are properly before this Court.

First, Airbus incorrectly contends that this Court lacks subject matter jurisdiction to hear ECN Capital's claims. Airbus misstates the legal standard for subject matter jurisdiction in this context, and completely ignores the close connection between this adversary proceeding and the rights, liabilities, and/or property of the Debtors in the related bankruptcy cases. As made clear by allegations in the Complaint—which, for purposes of deciding Airbus's motion, must be

taken as true and interpreted in the light most favorable to ECN Capital—a recovery by ECN Capital in this adversary proceeding could provide an enormous benefit to the Debtors' stakeholders. If, for example, ECN Capital succeeds on any of its claims, Airbus could be liable to the Debtors on collateral estoppel grounds for claims arising from the April 2016 crash and subsequent grounding—which claims the Debtors have expressly preserved and which involve substantially similar facts and circumstances to those at issue here. Any recovery by the Debtors in such actions post-emergence could augment their going-concern value for the benefit of their future stakeholders—*i.e.*, the Debtors' constituents that will receive a substantial portion of the reorganized Debtors' equity. Additionally, any recovery by ECN Capital in this action or by the Debtors' creditors in separate actions against Airbus could reduce the Debtors' liability on such parties' proofs of claim. Accordingly, this adversary proceeding satisfies the relevant legal threshold for related-to jurisdiction in that it "could *conceivably* have an effect" on the Debtors' estates. The cases on which Airbus relies to argue that subject matter jurisdiction does not exist are inapplicable, as they involved plaintiffs who failed to allege any connection between their claims and the debtors' estates, or who had filed actions in state court.

Second, Airbus asks the Court to refrain from exercising its lawful jurisdiction on the grounds of permissive abstention. Airbus again relies on inapposite cases and ignores the impact of ECN Capital's claims on the rights, liabilities, and/or property of the Debtors. Contrary to Airbus's protestations, the facts here, when viewed in the context of the relevant legal standard, weigh heavily in favor of this Court exercising its jurisdiction over ECN Capital's claims.

Third, Airbus incorrectly asserts that this Court lacks personal jurisdiction over Airbus. Airbus first appeared in these cases nearly eight months ago, represented by U.S. counsel. Since then, Airbus has, among other things, filed proofs of claims against the Debtors, served on the

Creditors' Committee (and in such capacity was represented by a U.S. employee of Airbus based in Dallas, Texas), and filed briefing on discovery motions in the bankruptcy cases. After all that, Airbus audaciously claims that it has not availed itself of this Court's jurisdiction and is not present before the Court for the purpose of these proceedings. The case law is to the contrary, and makes clear that once a party avails itself of the jurisdiction of a court by filing claims before that court, the party is subject to the personal jurisdiction of the court for claims arising out of the same set of facts. Having filed proofs of claim in these bankruptcy cases concerning the same helicopters that are the subject of ECN Capital's claims, Airbus has submitted to the Court's jurisdiction for this "related to" adversary proceeding. Without citing any legal authority in support of its position, Airbus attempts to cast doubt on the common sense principle underlying "related to" jurisdiction, by absurdly mischaracterizing its impact and pretending that a finding of personal jurisdiction here would mean that Airbus necessarily is subject to the general jurisdiction of *all* U.S. courts for *any* action brought by *any* party on *any* set of facts. That plainly is not the case. Rather, courts uniformly hold that when a foreign entity submits a proof of claim in a bankruptcy case, it submits to the jurisdiction of *that bankruptcy court* for adversary proceedings *related to those proofs of claim*. Airbus cannot avoid the consequences of its assertive presence in these bankruptcy cases. Moreover, to the extent a minimum contacts analysis is required, the proper scope of such an analysis is nationwide, taking into account all of Airbus's activity in the U.S. In addition to filing litigation in this forum (represented by U.S. counsel and with a U.S. employee sitting on the Creditors' Committee), Airbus has admitted that it does business in the U.S., that its U.S.-based affiliates sell EC225 and AS332 L2 helicopters in the U.S. to U.S. companies for use in the U.S., and that Airbus and its U.S.-based affiliates

deliver EC225 and AS332 L2 helicopters to the U.S. These contacts are sufficient to establish personal jurisdiction over Airbus in these proceedings.

Fourth, Airbus requests that the Court refrain from exercising its lawful jurisdiction on the grounds of *forum non conveniens*, and instead send the case to France for adjudication. The law imposes a heavy burden on Airbus to overcome the presumption in favor of ECN Capital's choice of forum, and Airbus fails to meet it. Airbus points to forum selection clauses in third-party contracts setting France as its preferred place of adjudication, but ECN Capital is not a party to those contracts and is not limited by their provisions. Airbus again asserts that there is no connection between this adversary proceeding and the bankruptcy cases, but ECN Capital's claims are intertwined with the claims, liabilities, and property of the Debtors and the value of the consideration—*i.e.*, the Debtors' post-reorganization equity—that will be distributed to their creditors under the chapter 11 plan. Airbus contends that the Court has no familiarity with the facts underlying ECN Capital's claims, but that is plainly inaccurate—the relevant parties have appeared before this Court during these chapter 11 cases, and this Court is familiar with the nature of the helicopters at issue and the facts underlying the April 2016 accident and subsequent grounding. Airbus complains of the burden of coming to Texas to litigate this case, yet Airbus has voluntarily made itself present already in this forum, and submitted to this Court's jurisdiction, through its substantial participation in the bankruptcy cases. Moreover, Airbus is involved in civil litigation in Texas state court in connection with claims brought by plaintiffs on the same set of facts that underlie ECN Capital's claims. There is no question why Airbus wants to litigate in France—France owns 10% of the voting stock of Airbus's direct parent company, and Airbus is engaged in blatant forum shopping. Airbus has failed to meet its heavy burden for

dismissal, and the Court thus should deny Airbus's request to send the claims to France, where Airbus will all but control the proceedings and their outcome. Airbus's motion should be denied.

FACTUAL BACKGROUND

ECN Capital's well-pled claims arise out of the April 2016 crash of an Airbus-manufactured EC225 helicopter operated by CHC Group Ltd. ("CHC"), the investigations and groundings resulting therefrom, and the subsequent chapter 11 cases filed by CHC and its affiliates, in which ECN Capital and Airbus are creditors. The facts underlying the claims are set forth in the allegations of the Complaint, which must be accepted as true for purposes of this motion.[1] ECN Capital sets forth here the salient facts relating to the Motion to Dismiss.

The Parties to the Adversary Proceeding

ECN Capital, an Ontario corporation, is a commercial financing business with headquarters in Toronto, Canada. (¶ 5.)[2] With its principal place of operations in North America, ECN Capital serves customers in the transportation and energy sectors throughout Canada and the U.S., including in Texas. (*Id.*)

Airbus is organized under the laws of France with its principal place of business in Marignane, France. (¶ 6.) Airbus designs, manufactures, markets, and sells aircraft, including two models of utility helicopters sold under the name "Super Puma"—the Eurocopter EC225 ("EC225") and the Eurocopter AS332 L2 ("AS332 L2"). (¶ 1.) Airbus markets EC225 and AS332 L2 helicopters for distribution and services for operation around the world and throughout the U.S., including in Texas. (¶ 6.) Airbus is primarily owned by its parent

[1] Airbus moves for dismissal under Fed. R. Civ. P. Rules 12(b)(1) and 12(b)(2). "[W]hen deciding whether to grant a 12(b)(1) motion, the Court 'must accept all factual allegations in the plaintiffs complaint as true.'" *In re Wilborn*, 401 B.R. 872, 877 (Bankr. S.D. Tex. 2009) (quoting *Ramming* v. *United States*, 281 F.3d 158, 161 (5th Cir. 2001)). "In determining whether a *prima facie* case for personal jurisdiction exists on a [12(b)(2)] motion to dismiss, uncontroverted factual allegations in the plaintiff's complaint must be taken as true." *Seghers* v. *El Bizri*, 513 F. Supp. 2d 694, 703 (N.D. Tex. 2007).

[2] All references herein to "¶ __" are to the Complaint filed by ECN Capital on November 17, 2016 (the "Complaint"). All references herein to "Ex. __" are to the accompanying Declaration of Pietro J. Signoracci dated January 27, 2017.

company, Airbus Group, S.E. ("Airbus Group").[3] France has a significant ownership interest in Airbus Group, holding over 10% of its voting stock.[4] Airbus Group is the direct parent company of Airbus Group, Inc. ("AGI"), a Delaware corporation headquartered in Virginia, which is the direct parent of Airbus Helicopters, Inc. ("AHI"), a Delaware corporation headquartered in Texas.[5] Airbus sells and delivers EC225 and AS332 L2 helicopters to AHI for sale, delivery, and operation in the U.S., including in Texas.

2016 Crash and Grounding

On April 29, 2016, an EC225 crashed near Turøy, Norway, killing all 13 individuals on board (the "2016 Crash"). (¶ 1.) Preliminary investigative reports from the 2016 Crash identified unsafe conditions in the design of the main gear box of AS332 L2s and EC225s, which connects to the helicopter frame the main rotor head that is attached to the main rotor blades. (¶¶ 3, 17–21.) The 2016 Crash and related investigations led various civil aviation authorities to issue regulations and directives that caused a total grounding of all AS332 L2s and EC225s (the "2016 Grounding"). (¶¶ 3, 17–25.)

CHC Bankruptcy

Approximately one week after the 2016 Crash, on May 5, 2016, CHC and certain of its affiliates (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, jointly administered in this Court under the caption *In re CHC Group Ltd., et al.*, No. 16-31854 (BJH) (the "Bankruptcy Cases"). (¶ 37.)

ECN Capital, a creditor in the Bankruptcy Cases, filed five separate proofs of claim against certain of the Debtors seeking a total of over $94 million from each such Debtor. (¶ 42.) These claims relate to the rejection by certain Debtors of outstanding leases between those

[3] *See* Ex. A (Airbus Helicopters SAS: Private Company Information).
[4] *See* Ex. B (Airbus Group Registration Document 2015) p. 7.
[5] *See* Ex. C (Airbus Group Inc. Corporate Tree).

Debtors and ECN Capital, including leases of four AS332 L2s and one EC225 owned by ECN Capital, which were subject to the 2016 Grounding. (*Id.*; *see also* ¶¶ 4, 34.)

In May 2016, the United States Trustee appointed Airbus to the Official Committee of Unsecured Creditors (the "Creditors' Committee"), care of Kevin Cabaniss in Grand Prairie, TX. (¶ 11.) In June 2016, Airbus's U.S. counsel filed notices of appearance in the Bankruptcy Cases on behalf of Airbus. (¶ 40.) In August 2016, Airbus filed proofs of claim in the Bankruptcy Cases against certain of the Debtors seeking a total of over $6.2 million for claims relating to EC225s and AS332 L2s owned, leased, and/or operated by CHC. (*Id.*) Airbus also filed briefing in connection with discovery motions in the Bankruptcy Cases. (*Id.*)

The Debtors owned, leased, and/or operated dozens of EC225s and AS332 L2s grounded by the 2016 Crash, causing substantial harm to the Debtors' operations and restructuring.[6] The Debtors have explained that they suffered harm as a result. At a May 6, 2016 hearing in the Bankruptcy Cases, counsel for the Debtors stated: "[The EC225] has been temporarily grounded in certain jurisdictions and that has had an impact on our fleet reconfiguration, which is central to our restructuring."[7] The Chief Restructuring Officer of CHC stated at the same hearing that a halt on flight of EC225s "could have a major difference on the aircraft values" of the Debtors' fleet.[8] In its 2016 Form 10-K filing with the Securities and Exchange Commission, CHC stated:

- "A significant portion of our property and equipment, funded residual value guarantees and related assets is tied to the aircraft type H225." (Ex. I at p. 9.)
- "We have also suffered costs due to . . . [the April 2016] accident . . . ." (*Id.* at p. 3.)
- "[The 2016 Grounding] will adversely impact our business, financial condition and results of operations . . . . We may lose revenue . . . due [to] the [2016 Grounding]." (*Id.* at p. 6.)

[6] ¶¶ 41, 43. The Debtors owned or leased at least 51 EC225s or AS332 L2s after the 2016 Grounding commenced. *See* Ex. D (Debtors' First Omnibus Motion [Dkt. No. 20]); Ex. E (Debtors' Second Omnibus Motion [Dkt. No. 210]); Ex. F (Debtors' Third Omnibus Motion [Dkt. No. 250]); Ex. G (Debtors' Omnibus Motion [Dkt. No. 275]). The original purchase price of these 51 helicopters likely exceeded $1 billion.

[7] *See* Ex. H (Excerpt of Tr. of 5/6/2016 H'r'g [Dkt. No. 105]) 17:25–18:3.

[8] *Id.*

On December 19, 2016, the Debtors filed a second amended reorganization plan (the "Plan") and a related disclosure statement (the "Disclosure Statement"). In the Disclosure Statement, the Debtors expressly stated that neither the Disclosure Statement nor the Plan:

> attempts to alter any rights or claims (whatever such rights or claims may be) that any debtor, creditor, lessor, or third party may have against any OEM (original equipment manufacturer) of any helicopter or helicopter component arising out of accidents involving the "EC 225" and "AS 332 L2" helicopter types and resulting regulatory actions, including, without limitation, the April 29, 2016 EC 225 helicopter type accident near the Flesland Airport in Bergen, Norway and resulting regulatory suspension of flight operations.[9]

On January 24, 2017, the Debtors filed a motion for an order authorizing the Debtors to settle certain claims between the Debtors and Airbus. The proposed settlement similarly reserves the Debtors' claims against Airbus arising out of the 2016 Crash and the 2016 Grounding.[10]

ECN Capital's Complaint

The Complaint asserts, among other things, claims against Airbus for defective design and breach of implied warranty of merchantability regarding Airbus's manufacturing, marketing, and sale of the EC225 and the AS332 L2. (*See* ¶¶ 46–111.) The Complaint includes uncontroverted allegations demonstrating that ECN Capital's claims would likely have an impact on the rights, liabilities, and/or property of the Debtors' estates (and, at the very least, "could conceivably have an effect" on the Debtors' estates), and thus are related to the Bankruptcy Cases. (*See, e.g.*, ¶¶ 8, 43.) The Complaint also includes uncontroverted allegations demonstrating this Court's personal jurisdiction over Airbus. (*See, e.g.*, ¶¶ 11, 40.)

Related Actions Against Airbus and Its Affiliates

Other owners of EC225s filed similar claims against Airbus and/or its affiliates in Texas state court. (¶ 11.) On July 28, 2016, Wells Fargo filed breach of warranty and contract claims

[9] *See* Ex. J (Disclosure Statement [Dkt. No. 1379]) p. 39.
[10] *See* Ex. K (Motion for Order [Dkt. No. 1536]) p. 37 § 8(g).

against AHI regarding three EC225s Wells Fargo purchased from AHI.[11] On November 21, 2016, Era Group Inc. ("Era") filed breach of express and implied warranty claims against AHI and Airbus regarding ten EC225s Era purchased from AHI (the "Era Complaint").[12] Like ECN Capital's Complaint, the Wells Fargo Complaint and the Era Complaint state claims for, among other things, damages suffered by the plaintiffs relating to the 2016 Grounding.

ARGUMENT

I. This Court Has Subject Matter Jurisdiction over ECN Capital's Claims, Which Are Related to the Bankruptcy Cases.

As ECN Capital demonstrated in the Complaint, in allegations that must be taken as true,[13] the claims in this adversary proceeding would likely impact the CHC Debtors' estates in the Bankruptcy Cases. (¶¶ 8–12, 40–43.) Thus, this Court has subject matter jurisdiction to hear ECN Capital's claims under 28 U.S.C. § 1334(b), which provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in *or related to* cases under title 11." 28 U.S.C. § 1334(b) (emphasis added).

The Fifth Circuit has taken a broad view of claims that are "related to" bankruptcy proceedings, holding that "[a] proceeding is 'related to' a bankruptcy if the outcome of that proceeding *could conceivably have any effect* on the estate being administered in bankruptcy." *In re Bass*, 171 F.3d 1016, 1022 (5th Cir. 1999) (emphasis added) (quoting *In re Walker*, 51 F. 3d 562, 569 (5th Cir. 1995)).[14] Indeed, this Court has highlighted the Fifth Circuit's ruling that "an action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities,

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[11] *See* Ex. L (Wells Fargo Complaint [*Wells Fargo Bank Northwest N.A.* v. *Airbus Helicopters Inc.*, DC-16-09090 (Tex. Dist. Ct., filed Jul. 28, 2016) Dkt. No. 2]).

[12] *See* Ex. M (Era Complaint [*Era Group Inc.* v. *Airbus Helicopters Inc., et al.*, DC-16-15017 (Tex. Dist. Ct., filed Nov. 21, 2016) Dkt. No. 2]).

[13] *See supra* n.1.

[14] *See also Randall & Blake, Inc.*, v. *Evans* (*In re Canion*), 196 F.3d 579, 585 (5th Cir. 1999) (holding that the test for "related to" jurisdiction is whether the outcome of the proceeding could conceivably have an effect on the bankruptcy estate being administered).

options, or freedom of action (either positively or negatively)." *Kimpel* v. *Meyrowitz* (*In re Meyrowitz*), Nos. 06-31660-BJH-11, 10-03227, 2010 WL 5292066, at *5 (U.S. Bankr. N.D. Tex. Dec. 20, 2010) (Houser, J.) (quoting *In re Bass*, 171 F.3d at 1022).[15]

Here, there is no question that the outcome of ECN Capital's claims could conceivably have an effect on the rights, liabilities, claims, and/or property of the Debtors and the administration of their estates. Most significantly, ECN Capital's claims could pave the way for numerous other lawsuits against Airbus by similarly situated plaintiffs—including the Debtors. If Airbus is held liable for its defective design of the EC225s and AS332 L2s in this action, such plaintiffs could rely on collateral estoppel to recover from Airbus for similar claims arising from the 2016 Crash and the 2016 Grounding. The Debtors must believe that such claims are valuable given that, notwithstanding that they entered into a "global" settlement with Airbus, they expressly preserved these claims for the benefit of the reorganized Debtors and their creditors. The Debtors' post-emergence recovery from Airbus could enhance their going-concern value for the benefit of their equity holders—*i.e.*, the Debtors' constituents that will receive a substantial portion of the reorganized Debtors' equity under the Plan. As such, the Debtors' stakeholders could reap the rewards of ECN Capital's litigation in the form of an increase in the value of their post-emergence equity, and, thus, ECN's Capital's claims could have a significant and meaningful economic impact on these estates.

Additionally, the outcome of ECN Capital's claims against Airbus could reduce the Debtors' liability to ECN Capital on its proofs of claim. The five helicopters that are the subject

[15] As another court explained:

> [I]if the bankruptcy estate could suffer any conceivable benefit or detriment as a result of the determination of the adversary proceeding, then bankruptcy jurisdiction exists. The benefit can take the form of disallowance of claims against the estate or the actual recovery of assets; the detriment can take the form of either the allowance of claims against the estate or the potential loss of assets due to any number of theories.

In re Michigan Real Estate Ins. Trust, 87 B.R. 447, 458 (E.D. Mich. 1988).

of ECN Capital's claims against Airbus are the same five helicopters that ECN Capital leased to certain of the Debtors, which leases the Debtors rejected due in part to operational difficulties arising from the 2016 Grounding, and which rejection formed the basis of ECN Capital's proofs of claim against the Debtors. And, creditors who were similarly impacted by the 2016 Crash could—like the Debtors—bring successful claims against Airbus on collateral estoppel grounds, which could further reduce the Debtors' liability on account of such creditors' proofs of claim. This alone is sufficient to establish "related to" subject matter jurisdiction. *See In re Horn*, 264 B.R. 848, 849 & n.1 (Bankr. E.D. Tex. 2001) ("Courts . . . have held that a claim between two non-debtors that will potentially reduce the bankruptcy estate's liabilities produces an effect on the estate sufficient to confer 'related to' jurisdiction.").[16] The Court consequently has subject matter jurisdiction over ECN Capital's claims.[17]

Airbus argues this Court lacks subject matter jurisdiction because ECN Capital's claims are not asserted against the Debtors, are non-core claims, and do not involve the property of the

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[16] *See also Owens Illinois, Inc.* v. *Rapid American Corp* (*In re Celotex Corp.*), 124 F.3d 619, 626 (4th Cir. 1997) (finding "related to" jurisdiction when a creditor's claim against a non-debtor would reduce its claim in bankruptcy); *Kaonohi Ohana, Ltd.* v. *Sutherland*, 873 F.2d 1302, 1306–07 (9th Cir. 1989) (upholding "related to" jurisdiction over third-party action where remedy in third-party action would reduce amount of claim against bankruptcy estate). This Court, in a case cited in Airbus's own Motion to Dismiss briefing, concluded that subject matter jurisdiction is established where the outcome of non-core claims in an adversary proceeding by a creditor against a non-debtor could reduce the size of the creditor's claim against the debtor:

> To the extent the [creditor-plaintiffs] prevail on any of the[ir] claims [against non-debtor defendants], obtain judgments against [non-debtor defendants], and then ultimately collect on those judgments, the [creditor-plaintiffs'] allowable claims against the [debtors'] bankruptcy estate would be reduced by any such recovery. . . . Thus, it is "conceivable" that the outcome of the [creditor-plaintiffs'] claims against [non-debtor defendants] could "alter the debtor's liabilities and impact the handling and administration of the bankruptcy estate. Accordingly, the Court concludes that it has "related to" jurisdiction over the claims asserted against [non-debtor defendants] in the Complaint.

In re Meyrowitz, 2010 WL 5292066, at *6. Airbus's brief in fact cites a number of cases in which the bankruptcy court held that it had "related to" subject matter jurisdiction over non-core adversary claims against a non-debtor defendant. *See* Airbus Br. pp. 10–11 (citing *Barbee* v. *Colonial Healthcare Ctr., Inc.*, No. 3:03-cv-1658-N, 2004 U.S. Dist. LEXIS 4868, at *8–9 (N.D. Tex. Mar. 22, 2004), and *P.O'B. Apollo Tacoma, L.P.* v. *TJX Cos.*, No. 3:02-cv-0222-H, 2002 U.S. Dist. LEXIS 18702, at *2–5 (N.D. Tex. Oct. 3, 2002)).

[17] *See Passmore* v. *Baylor Health Care Sys.*, 823 F.3d 292, 296 (5th Cir. 2016) (finding "related to" subject matter jurisdiction where outcome of creditor's adversary proceeding could lead to claims by other parties impacting the estate); *8300 Newburgh Rd. Partnership* v. *Time Constr., Inc. (In re Time Constr., Inc.)*, 43 F.3d 1041, 1045 (6th Cir. 1995) (explicitly applying same standard as Fifth Circuit and noting that third-party action was related to bankruptcy because outcome of action would impact value of debtor's property).

Debtors' estates. (Airbus Br. pp. 6–8.) Settled case law establishes that these are not legitimate bases to deny § 1334(b) subject matter jurisdiction over claims that are related to bankruptcy cases. Courts in the Fifth Circuit and elsewhere have confirmed that "related to" jurisdiction extends to claims brought in adversary proceedings that do not involve the debtor as a party,[18] to "non-core claims",[19] and to claims that concern property that does not belong to the debtor.[20]

The authorities Airbus points to are not to the contrary. While Airbus relies on *Singer* v. *Adamson*, 334 B.R. 1, 11 (Bankr. D. Mass. 2005), the court in that case held that it was compelled to decline jurisdiction as a result of "exceptional circumstances" of the adversary proceeding, including the fact that plaintiff's claims against non-debtor defendants could "have no conceivable effect on the administration of th[e] bankruptcy estate," in part because the estate had already been fully administered. That is not the case here, where the outcome of Plaintiff's claims in this adversary proceeding will directly impact rights, liabilities, and property involved in the administration of the Debtors' estates, which have not been fully administered.[21] In

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[18] *Matter of Zale Corp.*, 62 F.3d 746, 752 (Bankr. 5th Cir. 1995) (stating that a purpose of § 1334(b) "is to force into the bankruptcy court suits to which *the debtor need not be a party* but which may affect the amount of property in the bankrupt estate") (emphasis added) (quoting *Zerand–Bernal Group, Inc.* v. *Cox*, 23 F.3d 159, 161–62 (7th Cir. 1994)).

[19] *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, No. Civ.A. G-02-0299, 2002 WL 32107216, at *10 (S.D. Tex. Aug. 12, 2002) (holding that abstention was not warranted in non-core proceeding "[e]ven though the . . . suit . . . involve[d] adjudication of rights between nondebtor parties"); *see also Carr* v. *Michigan Real Estate Ins. Trust* (*In re Michigan Real Estate Ins. Trust*), 87 B.R. 447 (E.D. Mich. 1988) (finding that adversary claims, though "not core proceedings . . . are, however, otherwise related to" bankruptcy proceedings, and therefore were "well within the subject matter jurisdiction of the district court to determine" under § 1334(b)).

[20] *Walker* v. *Cadle Co.* (*In re Walker*), 51 F.3d 562, 565 (5th Cir. 1995) ("§ 1334(b) gives bankruptcy courts jurisdiction over 'more than [] simply proceedings involving the property of the estate.'") (quoting *Celotex Corp.* v. *Edwards*, 115 S.Ct. 1493, 1498 (1995)).

[21] Subject matter jurisdiction over this adversary proceeding is determined at the time ECN Capital filed its claims, and any subsequent confirmation of a reorganization plan in the Bankruptcy Cases would not divest the bankruptcy court of subject matter jurisdiction over the adversary proceeding. *See Nuveen Mun. Trust* v. *Withumsmith Brown, P.C.*, 692 F.3d 283, 299–300 (3d Cir. 2012) (holding that subject matter jurisdiction is determined when the action is filed, regardless of whether the debtor's reorganization plan is confirmed while the action is pending) (citing *Grupo Dataflux* v. *Atlas Global Grp., L.P.*, 541 U.S. 567 (2004)); *Fried* v. *Lehman Bros. Real Estate Assocs. III, L.P.*, 496 B.R. 706, 710 (S.D.N.Y. 2013) (holding that confirmation of a plan did not divest the court of "related to" subject matter jurisdiction where it existed prior to confirmation, and that to hold otherwise would "create perverse incentives for the parties to engage in delay and gamesmanship"); *see also In re Doctors Hosp. 1997, L.P.*, 351 B.R. 813, 829 n.10 (Bankr. S.D. Tex. 2006) (holding that the

particular, under the Plan, the reorganized Debtors expressly retained all claims and "Causes of Action" (as defined in the Plan) they had prior to the effective date of the Plan (unless otherwise released), including claims against Airbus arising from the 2016 Crash and 2016 Grounding.[22]

Airbus also quotes at length from the decision in *Yashiro Co.* v. *Falchi* (*In re Falchi*), Case No. 97 B 43080, 1998 WL 274679 (Bankr. S.D.N.Y. May 26, 1998). In *Falchi*, the court held that the plaintiff's claims would not conceivably have an impact on the rights, liabilities, or property of the debtor because the claims concerned only property that was in the possession of the non-debtor adversary defendant, and would not affect any property of the debtor. 1998 WL 274679, at *7. As alleged in the Complaint and explained above, ECN Capital's claims in this adversary proceeding concern property that is the subject of ECN Capital's claims in the Bankruptcy Cases and will have a direct impact on the value of the Debtors' estates. This Court accordingly has subject matter jurisdiction over this adversary proceeding under § 1334(b).

II. This Court Should Not Abstain from Exercising Subject Matter Jurisdiction over ECN Capital's Claims.

Airbus argues that the Court should abstain, under 28 U.S.C. § 1334(c)(1), from exercising its lawful jurisdiction over these claims, but has not satisfied its burden of establishing that permissive abstention is warranted.[23] Airbus's arguments on this point suffer from the same fatal flaws as its arguments against subject matter jurisdiction. While Airbus argues that resolution of this dispute "will have no effect" on the Debtors' estates, ECN Capital's well-pled allegations demonstrate just the opposite.

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bankruptcy court has and retains subject matter jurisdiction over an adversary proceeding filed pre-confirmation if, at the time of filing, the outcome of the claims could conceivably have an impact on the debtor's estate).

22 *See* Ex. N (Second Amended Joint Chapter 11 Plan [Dkt. No. 1371]) §§1.1, 10.7, 10.12.

23 *See In re Residential Capital, LLC*, 515 B.R. 52, 67 ("The movant bears the burden of establishing that permissive abstention [under § 1334(c)(1)] is warranted.") (Bankr. S.D.N.Y. 2014). Airbus argues only for permissive abstention under 28 U.S.C. § 1334(c)(1). *See* Airbus Br. pp. 8–11. Airbus does not argue for mandatory abstention under 28 U.S.C. § 1334(c)(2). Mandatory abstention is appropriate only where a state court proceeding has been "commenced and can be timely adjudicated in a state forum," which is not the case here. *See* 28 U.S.C. § 1334(c)(2); *see In re TXNB Internal Case*, 483 F.3d 292, 300 (5th Cir. 2007).

Tellingly, Airbus fails to provide any framework to determine whether permissive abstention would be appropriate here. Airbus merely points to a few cases in which permissive abstention was granted and wrongly asserts that those cases involved "similar circumstances" as the case here. Airbus Br. at pp. 9, 10. To the contrary, those cases are readily distinguishable because both parties to this adversary proceeding are creditors in the Bankruptcy Cases, no state court action has been commenced concerning ECN Capital's claims, and the outcome of ECN Capital's claims will directly impact the rights, liabilities, and/or property of the Debtors estates:

- In *In re Meyrowitz*, the adversary plaintiff had not filed a proof of claim in the bankruptcy, and this Court found that the claims in the adversary proceeding "ha[d] little to do with the main [] bankruptcy case" and that their outcome would have "no real effect on the efficient administration of the [] bankruptcy estate." 2010 WL 5292066, at *7. This Court thus permissively abstained to reserve the Court's resources for "'related to' proceedings that have a more substantial impact upon an active bankruptcy estate." *Id.* at 8.

- In *Efurd* v. *Baylor Health Care Sys.*, No. 3:14-cv-556, 2015 WL 11027603 (N.D. Tex. Mar. 25, 2015), the court stated it was "likely required [] to abstain from hearing this action" on mandatory abstention grounds, given that a state court proceeding concerning the claims had been commenced. 2015 WL 11027603, at *4.

- In *Barbee* v. *Colonial Healthcare Ctr., Inc.*, No. 3:03-cv-1658-N, 2004 WL 609394, at *2 (N.D. Tex. Mar. 22, 2004), the court abstained only after finding that "the resolution [of the claims in the adversary proceeding] would not impact the bankruptcy estate."

- In *P.O'B. Apollo Tacoma, L.P.* v. *TJX Cos.*, No. 3:02-cv-0222-H, 2002 WL 31246633 (N.D. Tex. Oct. 3, 2002), the plaintiff had no involvement in the bankruptcy in question when it filed a breach of contract claim against a non-debtor defendant in state court. The defendant removed the state court action to federal court and sought to join it with the bankruptcy case on the grounds that the defendant had an indemnification agreement with the debtor. The court held that such connection was too attenuated to preclude permissive abstention, especially considering that plaintiff already had commenced its action in state court and neither plaintiff nor defendant was a debtor in the bankruptcy proceedings. *Id.* at *2.

Airbus in fact provides no applicable precedent supporting its request that the Court abstain from exercising the jurisdiction it has to adjudicate ECN Capital's claims.

Rather than taking Airbus at its word that "similar circumstances" exist here to warrant permissive abstention, the Court should look to the appropriate legal standard for analyzing

requests for permissive abstention under 28 U.S.C. § 1334(c)(1). In *In re MontCrest Energy, Inc.*, this Court set out 12 factors that may be considered in a permissive abstention analysis:

> (1) the effect, or lack thereof, on the efficient administration of the estate if a court recommends abstention;
> (2) the extent to which state law issues predominate over bankruptcy issues;
> (3) the difficulty or unsettled nature of the applicable state law;
> (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court;
> (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334;
> (6) the degree of relatedness [] of the proceeding to the main bankruptcy case;
> (7) the substance rather than form of an asserted "core" proceeding;
> (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court . . . ;
> (9) the burden on the bankruptcy court's docket;
> (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
> (11) the existence of a right to a jury trial; and
> (12) the presence in the proceeding of nondebtor parties.[24]

Courts have held that "[t]hese factors should be flexibly applied since 'their relevance and importance will vary with the particular circumstances of each case, and no one factor is necessarily determinative.'"[25] In this case, the most important factors all weigh heavily in favor of declining Airbus's request for permissive abstention. Six of the factors—**Factors 1, 3, 4, 6, 9, and 10**—clearly weigh against abstention. Because ECN Capital's claims are closely related to the value of the Debtors' estates (**Factor 6**), abstention would negatively affect the efficient administration of the Debtors' estates by, among other things, delaying adjudication of claims by creditors against the Debtors or by the Debtors against Airbus (**Factor 1**). For the same reasons, it would not be unduly burdensome for the Court to adjudicate ECN Capital's claims in the adversary proceeding, as they are closely related to the Debtors' rights, liabilities, and property (**Factor 9**). Abstention also is strongly disfavored in cases like this one, where no proceeding

[24] *In re MontCrest*, 2014 WL 6982643, at *7 (Bankr. N.D. Tex. Dec. 9, 2014).
[25] *In re Hearthside Baking Co., Inc.*, 391 B.R. 807, 817 (Bankr. N.D. Ill. 2008) (quoting *Matter of Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 6 F.3d 1184, 1189 (7th Cir. 1993)).

involving ECN Capital's claims against Airbus has been commenced in state court or any other non-bankruptcy court (**Factor 4**). Further, abstention is unwarranted because ECN Capital's claims do not involve difficult or unsettled areas of law (**Factor 3**), and because Airbus does not suggest that ECN Capital engaged in forum-shopping by commencing the adversary proceeding (**Factor 10**)—in fact, it is Airbus that has engaged in forum-shopping by seeking permissive abstention, as discussed further below in Section IV (*see infra*, pp. 23–25).

The remaining factors do not, on balance, suggest that abstention should be granted. Two of the factors—**Factors 7 and 8**—are not applicable here, because the adversary proceeding does not involve core claims. Two more factors—**Factors 2 and 5**—have very little relevance here, where Airbus does not assert that ECN Capital's claims ought to be heard in state court. Indeed, Airbus has not consented to jurisdiction in state court, and Airbus is fighting jurisdiction in related product liability actions brought against Airbus in Texas state court by other owners or operators of EC225s regarding damages arising from the 2016 Crash. One factor—**Factor 12**—is neutral in this context, as the adversary proceeding involves two non-debtor parties, but both non-debtor parties are creditors in the Bankruptcy Cases, and certain of the Debtors at a minimum will be necessary witnesses in this proceeding and will have a substantial interest in the outcome of the claims by (creditor) ECN Capital against (creditor) Airbus.[26] That leaves just one factor—**Factor 11**—favoring abstention, as the parties request a jury trial. But bankruptcy courts routinely exercise jurisdiction, and deny requests for permissive abstention, where one or more party has requested a jury trial.[27]

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[26] In any event, a bankruptcy court "may consider 'related to' actions between third party non-debtors under 28 U.S.C. § 1334(b) in appropriate circumstances." *Estate of Johnny Fisher* v. *JPMorgan Chase Bank, N.A.* (*In re Fort Worth Osteopathic Hosp., Inc.*), 406 B.R. 741, 745 (Bankr. N.D. Tex. 2009).

[27] For example, in *In re Freeway Foods of Greensboro, Inc.*, 449 B.R. 860, 889–90 (Bankr. M.D.N.C. 2011) the court explained:

> Because mandatory abstention does not apply, and because the majority of the factors in this case weigh against permissive abstention and equitable remand, the Motion to Remand will be denied. For the time

III. This Court Has Personal Jurisdiction over Airbus in this Action.

A. By Participating in the Bankruptcy Cases, Airbus Has Submitted Itself to Personal Jurisdiction for ECN Capital's Related Claims.

Airbus admits that by filing proofs of claim in the Bankruptcy Cases it has submitted itself to personal jurisdiction for related claims. (Airbus Br. p. 12.) Without citing any authority for the proposition, Airbus argues that its submission extends only to claims brought by the Debtors. (*Id.*) Airbus argues that the Court must hold that the principle "does not extend to *unrelated* claims by co-creditors," (*id.* (emphasis added)), claiming that a finding of jurisdiction here would be tantamount to a ruling that by filing a proof of claim Airbus "would be subjecting itself to the *general jurisdiction* of United States courts" for any claim arising from any set of facts. (*Id.* (emphasis added).)

Airbus's arguments are pure hyperbole. This adversary proceeding is not an "unrelated claim," as Airbus suggests. As explained above, ECN Capital's claims are inextricably linked to the facts underlying the Bankruptcy Cases and the Debtors' estates. ECN Capital by no means suggests that Airbus has submitted itself to the general jurisdiction of all U.S. courts for any claim by any party, regardless of the underlying facts giving rise to the claim. Rather, Airbus has

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being, the Adversary Proceeding will proceed in this Court. The Court realizes that issues involving the right to a jury trial will eventually need to be addressed by the parties. They can agree to a bench trial before this Court. 28 U.S.C. § 157(c)(2). They can agree to a jury trial before this Court. 28 U.S.C. § 157(e); Fed. R. Bankr. P. 9015(b). They can move the United States District Court to withdraw the reference so that a jury trial may be held there. 28 U.S.C. § 157(d); *see, e.g.*, *Hutson* v. *Bay Harbour Mgmt., L.C.*, No. 1:06CV01037, 2007 WL 1434834, at *1 (M.D.N.C. May 11, 2007) (withdrawing a matter from the bankruptcy court solely for the purpose of conducting a jury trial).

See also Snider v. *Sherman*, 2007 WL 1174441, at *44–45 (E.D. Cal. Apr. 19, 2007) (holding that request for jury trial does not preclude exercise of bankruptcy court's discretion over adversary proceeding, given availability of procedures in bankruptcy court and district court to hold jury trial at appropriate time). Courts also have held that a party, like Airbus, should not be rewarded for its refusal to consent to a jury trial before the bankruptcy court in furtherance of its attempt to seek abstention. *In re Schlotzky's, Inc.*, 351 B.R. 430, 437 (Bankr. W.D. Tex. 2006) ("Nor ought we to institute a rule of decision that in effect rewards the party seeking abstention if that party insists on being as obstructionist as possible by refusing to consent either to the entry of final judgment by the bankruptcy judge or the conduct of a jury trial by that court.").

submitted itself to the specific personal jurisdiction of this Court for claims related to the Bankruptcy Cases in which Airbus filed its own proofs of claim.

It is well established that when a party avails itself of a court's jurisdiction, it cannot escape claims related to the proceedings. In Texas, "[v]oluntarily filing a lawsuit in a jurisdiction is a purposeful availment of the jurisdiction's facilities and can subject a party to personal jurisdiction in another lawsuit when the lawsuits arise from the same general transaction."[28] That a party has previously chosen to litigate in a court eliminates any claim it has that defending another case in that forum—even if brought by other litigants—would be "unreasonably burdensome."[29] Bankruptcy courts have applied this principle to the precise issue here, holding that by filing a proof of claim in a bankruptcy case, a foreign creditor consents to personal jurisdiction of the bankruptcy court for related adversary proceedings.[30]

Moreover, Airbus has done more than simply file claims against the Debtors in the Bankruptcy Cases. Airbus jockeyed to become a member of the Creditors' Committee, represented by its Texas-based employee, Kevin Cabaniss, and subsequently has attended various Creditors' Committee meetings in this forum. When ECN Capital filed a Motion for an Order Directing 2004 Examination of Debtors in the Bankruptcy Cases, Airbus filed an objection

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[28] *Int'l Transactions, Ltd.* v. *Embotelladora Agral Regionmontana SA de CV*, 277 F. Supp. 2d 654, 667–68 (N.D. Tex. 2002) (holding that defendant had purposefully availed itself of the forum court because it had brought two lawsuits in the same district against a third party relating to a dispute arising out of similar facts) (quoting *Primera Vista S.P.R. de R.L.* v. *Banca Serfin, S.A. Institucion de Banca Multiple Grupo Financiero Serfin*, 974 S.W.2d 918, 926 (Tex. App.–El Paso 1998)).

[29] *See Hess* v. *Bumbo Int'l Trust*, 954 F. Supp. 2d 590, 597 (S.D. Tex. 2013) (holding that foreign entity purposefully availed itself of the forum court, for purposes of consumer product liability claim, when it filed litigation against its prior distributor in the federal court in Texas).

[30] *See, e.g.*, *Secs. Inv. Prot. Corp.* v. *Bernard L. Madoff Inv.*, 460 B.R. 106, 117 (Bankr. S.D.N.Y. 2011) (participation in bankruptcy cases demonstrated "consent to personal jurisdiction in . . . adversary proceeding") (citing *In re Deak & Co., Inc.*, 63 B.R. 422, 431 (Bankr. S.D.N.Y. 1986) (holding that foreign defendant-creditors effectively consented to personal jurisdiction by purposefully availing themselves of the protections afforded by United States bankruptcy law)); *In re Quality Lease and Rental Holdings, LLC*, 2016 WL 416961, at *5 (Bankr. S.D. Tex. Feb. 1, 2016) ("Filing a proof of claim brings a creditor within the equitable jurisdiction of a bankruptcy court."); *see also* U.S. Dep't of Justice, U.S. Attorneys' Manual § 1-188, https://www.justice.gov/usam/civil-resource-manual-188-bankruptcy-jurisdiction-personal-jurisdiction ("[A] foreigner filing a proof of claim submits to the personal jurisdiction of the bankruptcy court.").

and actively litigated to prevent ECN Capital from obtaining documents in the Debtors' possession regarding the EC225 and AS332 L2s that are the subject of ECN Capital's claims against Airbus here and of ECN Capital's proofs of claim against the Debtors in the Bankruptcy Cases. Given Airbus's assertive presence in the Bankruptcy Cases—including with regard to the very helicopters that are the subject of this adversary proceeding—Airbus cannot escape the personal jurisdiction to which it submitted. *See Secs. Inv. Prot. Corp.* v. *Bernard L. Madoff Inv.*, 460 B.R. 106, 114–115 (Bankr. S.D.N.Y. 2011) (exercising personal jurisdiction in adversary proceeding on grounds that defendant "has been and remains a 'player' in the bankruptcy").

B. This Court Has Specific Jurisdiction over Airbus for ECN Capital's Claims.

This Court also has specific personal jurisdiction over Airbus for the purposes of hearing ECN Capital's claims on account of Airbus's relevant contacts with the U.S. Courts in the Fifth Circuit follow a three-step analysis to determine whether specific jurisdiction exists:

> (1) whether the defendant has minimum contacts with the forum state, i.e., whether it purposely directed its activities toward the forum state or purposefully availed itself of the privileges of conducting activities there; (2) whether the plaintiff's cause of action arises out of or results from the defendant's forum-related contacts; and (3) whether the exercise of personal jurisdiction is fair and reasonable.

Luci Bags LLC v. *Younique, LLC*, 2017 WL 77943, at *2 (E.D. Tex. Jan. 9, 2017). "If the plaintiff successfully satisfies the first two steps, the burden shifts to the defendant to defeat jurisdiction by showing that its exercise would be unfair or unreasonable." *Sarkar* v. *Petrol. Co. of Trinidad & Tobago Ltd.*, 2016 WL 3568114, at *14 (S.D. Tex. June 23, 2016).

"A plaintiff may establish specific jurisdiction over a nonresident defendant by showing that the defendant purposefully directed his activities at residents of the forum and that the litigation results from injuries that arise out of *or relate to* those activities." *Verde* v. *Stoneridge, Inc.*, 2015 WL 1384373, at *3 (E.D. Tex. Mar. 23, 2015) (emphasis added) (internal quotation omitted). "Even a *single act* by a defendant may establish specific jurisdiction if the act in the

forum state is substantially related to the suit." *Luci Bags*, 2017 WL 77943, at *2 (emphasis added) (citing *Moncrief Oil Int'l* v. *OAO Gazprom*, 481 F.3d 309, 311 (5th Cir. 2007)).

In this adversary proceeding brought pursuant to § 1334(b), the relevant forum state is not Texas, but the entire U.S.[31] Airbus falsely claims in its Motion to Dismiss that it has no U.S. contacts or activity relevant to ECN Capital's claims. Airbus's own statements in its filings in other cases in the U.S.—including cases in Texas regarding the EC225 and AS332 L2 helicopters at issue here—prove otherwise. In the Era Complaint, Louisiana-based owners of EC225s asserted product liability claims regarding Airbus's defective design of EC225s, in Texas state court, against Airbus and its U.S.-based affiliate, AHI.[32] In a responsive pleading Airbus filed in the case earlier this month, Airbus admitted that it sold EC225s to its U.S. affiliate, AHI, "with final delivery [of the EC225s] occurring at [AHI's] facility in Texas." (Ex. O (Special Appearance) p. 4.) Airbus also admitted that AHI in turn sold the EC225s to U.S. purchasers (including Louisiana-based Era) for operation in the U.S. *Id.* Airbus admitted that it "has sold helicopters, including the [EC225s] at issue, to [AHI], a distributor in Texas;" and that Airbus-manufactured EC225s "passed through Texas-based transactions between [AHI] and their Louisiana purchasers, and four [EC225s] passed physically though Texas." *Id.* p. 14. Airbus also has acknowledged, as further set forth in its proofs of claim in the Bankruptcy Cases, that Airbus has sold and delivered EC225 and AS332 L2 helicopters and/or parts to Texas-based CHC and its affiliates. (*See* Ex. P (Airbus Proofs of Claim Nos. 353, 365).) These CHC entities,

[31] *In re Celotex*, 124 F.3d at 630 ("[W]hen an action is in federal court on 'related to' jurisdiction, the sovereign exercising authority is the United States, not the individual state where the federal court is sitting."); *In re Paques*, 277 B.R. 615, 633 (Bankr. E.D. Pa. 2000) ("[T]he proper exercise of personal jurisdiction [in 'related to' proceedings] must focus upon the minimum contacts of [foreign defendant] with the United States.").

[32] *See* Ex. M (Era Complaint).

headquartered in Texas, act as nationwide distributors, sellers, and operators of Airbus-manufactured helicopters.[33]

Courts in the Fifth Circuit have held that such contacts are sufficient to establish specific personal jurisdiction on claims like those ECN Capital asserts here over a foreign defendant manufacturer on a stream of commerce theory. In *Verde* v. *Stoneridge, Inc.*, 2015 WL 1384373 (E.D. Tex. Mar. 23, 2015), the court held that specific personal jurisdiction existed over a defendant manufacturer for product liability, design defect, and negligence claims where the manufacturer delivered products to a distributor without limiting distribution to the forum state. 2015 WL 1384373, at *3–4. The court in *Verde* relied on the Fifth Circuit's decision in *Bean Dredging Corp.* v. *Dredge Tech. Corp.*, 744 F.2d 1081 (5th Cir. 1984), which similarly held that specific personal jurisdiction existed for product liability and negligence claims against a foreign manufacturer that did not seek to limit the sale, distribution, or use of its products in the forum state. 744 F.2d at 1085; *Verde*, 2015 WL 1384373, at *4; *see also Luv n' care, Ltd.* v. *Insta–Mix, Inc.*, 438 F.3d 465, 470–71 (5th Cir. 2006), *cert. denied*, 548 U.S. 904 (2006) (finding jurisdiction over defendant that expected its products to be purchased in the forum state).

Airbus cannot credibly claim unfairness where it submitted to the jurisdiction of this Court by actively participating in the Bankruptcy Cases and delivering products into the stream of commerce without restricting their distribution—indeed, with knowledge the products would be marketed, sold, distributed, and delivered by U.S. entities to U.S. entities for operation in the U.S. *See Verde*, 2015 WL 1384373, at *3–4; *Bean Dredging*, 744 F.2d at 1085. Airbus's burden

[33] Airbus attempts to distance itself from its U.S. affiliates, *see* Airbus Br. pp. 3, 13, but the fact that Kevin Cabaniss is both an employee of U.S.-based AHI and the designated representative for Airbus Helicopters (SAS) on the Creditors' Committee undermines this position. In any event, as explained below, Airbus's distribution of its products into the U.S.—whether through its own affiliate or through an unaffiliated distributor—gives rise to specific personal jurisdiction over ECN Capital's claims. *See, e.g.*, *Verde* v. *Stoneridge, Inc.*, 2015 WL 1384373, at *3–4 (E.D. Tex. Mar. 23, 2015).

of litigating in this jurisdiction—where it sold and sent its helicopters, where it chose to file its claims, and where it is currently defending other lawsuits regarding the same helicopters—does not preclude this Court's reasonable exercise of personal jurisdiction over Airbus. *See Verde*, 2015 WL 1384373, at *5.[34] In addition to Airbus's substantial participation in the Bankruptcy Cases, where both ECN Capital and Airbus have filed proofs of claims regarding EC225s and AS332 L2s, Airbus's contacts with the U.S. provide a sufficient basis for exercising specific personal jurisdiction in this case.[35]

IV. This Court Should Deny Airbus's Attempt To Forum-Shop.

Airbus argues that the Court should abstain from exercising the jurisdiction it has to hear ECN Capital's claims and dismiss this case on *forum non conveniens* grounds because the action involves two foreign entities and concerns some events that occurred in foreign districts. (Airbus Br. pp. 18–24.) Airbus fails to meet its heavy burden for dismissal on such grounds.

"'A defendant invoking *forum non conveniens* ordinarily bears a heavy burden in opposing plaintiff's chosen forum.'" *Tempur-Pedic Int'l, Inc.* v. *Go Satellite Inc.*, 758 F. Supp. 2d 366, 379 (N.D. Tex. 2010) (quoting *Sinochem Int'l Co.* v. *Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430 (2007)); *see also Alpine View Co. Ltd.* v. *Atlas Copco AB*, 205 F.3d 208, 222 (5th Cir. 2000) ("[T]he court must give the relevant deference to the plaintiff's choice of forum."). Dismissal on grounds of *forum non conveniens* is only permitted where there is an adequate alternative forum that is "substantially more convenient" *for all parties*. *Snaza* v. *Howard Johnson Franchise Sys., Inc.*, 2008 WL 5383155, at *2 (N.D. Tex. Dec. 24, 2008).

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[34] *See also First Capital Asset Mgmt., Inc.* v. *Brickellbush, Inc.*, 218 F. Supp. 2d 369, 403 (S.D.N.Y. 2002) (finding personal jurisdiction over Swiss defendant despite "significant" burden).

[35] In a case concerning alleged defects in another model of helicopter it manufactured that was sold and delivered to and operated in the U.S., Airbus admitted that it is subject to jurisdiction in the U.S. *See* Airbus Answer ¶ 2.1, *Newman* v. *Airbus Helicopters Inc., et al.*, No. 16-2-26710-6 SEA (Wash. Super. Ct., filed Nov. 1, 2016).

Airbus fails to prove, or even argue, that France is a "substantially more convenient" forum for ECN Capital, which is headquartered in North America, regularly does business in Texas, and—like Airbus—is currently participating in the Bankruptcy Cases in this Court, to which its claims in this adversary proceeding are related. In similar circumstances, courts have ruled that "related to" claims in adversary proceedings should be adjudicated in the Court where the bankruptcy cases are pending. *In re Bernard L. Madoff Inv. Secs. LLC*, 418 B.R. 75, 82 (Bankr. S.D.N.Y. 2009) ("[T]he most efficient resolution of the controversy would be in the United States, where the inextricably-related [bankruptcy] is ongoing before this Court.").

Airbus argues that dismissal is appropriate because, in certain Airbus contracts (to which ECN Capital is *not* a party), France is designated as the governing law and chosen forum. This fact is irrelevant to the *forum non conveniens* analysis, as ECN Capital is not a party to any such contract with Airbus and has not asserted breach of contract claims against Airbus. Airbus also suggests dismissal is appropriate because this matter has "no connection with Texas or the United States." (Airbus Br. 19.) That is patently false. As explained above, this adversary proceeding is closely related to the Bankruptcy Cases, in which both ECN Capital and Airbus are creditors—with each party's proofs of claim concerning the helicopters at issue in this lawsuit—and ECN Capital's claims are intertwined with the claims, liabilities, and property of the Debtors. Airbus also contends that the Court has no familiarity with the facts underlying ECN Capital's claims, but this again is false. From months of presiding over the proceedings in the Bankruptcy Cases, this Court has become familiar with the parties to this action; the factual circumstances giving rise to ECN Capital's claims; and the property that is the subject of, and will be affected by, this adversary proceeding. Airbus claims that none of the evidence relevant to ECN Capital's claims is in the U.S., but this is untrue—among the federal aviation authorities

investigating the 2016 Crash is the U.S. Federal Aviation Authority, which issued *from Fort Worth, Texas* an Emergency Airworthiness Directive requiring the grounding of all EC225s and AS332 L2s in response to the 2016 Crash.[36] Airbus also refers to issues of "comity" and the fact that certain of Airbus's contracts designate France as the governing law and chosen forum for disputes. International comity is an appropriate concern in a *forum non conveniens* analysis only if the movant shows that a true conflict of law exists, which Airbus has not done.[37] Airbus's grounds for *forum non conveniens* dismissal are pure pretext.

Airbus's real reason for wanting to escape this Court's jurisdiction and force ECN Capital to adjudicate its claims in France is clear. The government of France owns over 10% of the voting stock in Airbus's parent company, Airbus Group.[38] Until recently, France held an even greater stake in Airbus Group. In 2014, France sold off a small portion of its holdings in Airbus Group. Airbus Group's Chief Executive, Thomas Enders, acknowledged that the sale was designed to reduce—but not eliminate—the direct influence the French government held over the company, and to help Airbus Group become a more "normal" firm.[39] Courts do not dismiss cases on grounds of *forum non conveniens*, however, where one of the parties is likely to be treated unfairly. *Alpine View Co. Ltd.* v. *Atlas Copco AB*, 205 F.3d 208, 221 (5th Cir. 2000). Courts especially disfavor requests like Airbus's, where a foreign defendant attempts to move a case from its proper forum to the foreign defendant's home turf. *Magnolia Ocean Shipping Corp.* v. *M/V Marco Azul*, 1981 A.M.C. 2071, 2075, (E.D. Va. 1981) ("[T]he Supreme Court, as well as other courts in our federal system, has demonstrated a strong reluctance to applying the doctrine of *forum non conveniens* where the foreigners involved belonged to different nations.").

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[36] *See* Ex. Q (June 3, 2016 FAA Airworthiness Directive).

[37] *See In re Maxwell Comm. Corp.*, 93 F.3d 1036, 1049 (2d Cir. 1996) ("International comity comes into play only when there is a true conflict between American law and that of a foreign jurisdiction.").

[38] *See* Ex. B (Airbus Group Registration Document 2015) p. 90.

[39] *See* Ex. R (Ruth David, *France Selling $618 Million Airbus Stake to Institutions*, Bloomberg (Jan. 16, 2014)).

CONCLUSION

For the foregoing reasons, this Court should deny Defendant's Motion to Dismiss the Complaint.

Dated: January 27, 2017
Dallas, Texas

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on January 27, 2017, I caused the foregoing Opposition to Defendant's Motion to Dismiss to be served via electronic mail and First Class U.S. Mail, postage prepaid, to the following counsel of record for the Defendant:

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