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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

ECN CAPITAL (AVIATION) CORP., Plaintiff, v. AIRBUS HELICOPTER (SAS) Defendant.	Case No. 3:17-cv-00075-C **Plaintiff's Opposition To Defendant's Motion for Withdrawal of Reference**

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TO THE HONORABLE SAM R. CUMMINGS, DISTRICT COURT JUDGE:

Plaintiff ECN Capital (Aviation) Corp. (f/k/a Element Capital Corp.) ("ECN Capital"), by and through its undersigned counsel, hereby files this opposition to *Defendant Airbus Helicopters S.A.S.'s* ("Airbus") *Motion for Withdrawal of Reference of Adversary Proceeding, and Brief in Support* [Docket No. 23] (the "Withdrawal Motion"), and respectfully would show the Court as follows:

INTRODUCTION

The Withdrawal Motion is Airbus's first step towards achieving its ultimate goal—avoiding the Bankruptcy Court's lawful jurisdiction and attempting to force ECN Capital to litigate its claims in France. Airbus seeks to move ECN Capital's adversary proceeding away from the Bankruptcy Court, which is familiar with the parties and relevant facts regarding the April 2016 Airbus helicopter crash, in the hope that the District Court will be more inclined to transfer ECN Capital's claims to Airbus's forum of choice. But Airbus's brazen attempt at forum shopping is based on mischaracterizations and meritless arguments.

Airbus's mischaracterizations begin in the very first sentence of the Withdrawal Motion, where Airbus falsely states that this adversary proceeding "has no connection with the above-captioned main bankruptcy proceedings." (Withdrawal Mot. 2.) The truth is that this adversary proceeding is brought by one creditor in the bankruptcy cases against another creditor in the bankruptcy cases, it concerns property of the Debtors, it will involve representatives of the Debtors as witnesses and documents of the Debtors as evidence, and its outcome will impact the Debtors' estates—all as described in ECN Capital's *Opposition to Defendant's Motion to Dismiss* [Docket No. 63] (the "MTD Opposition").[1] The adversary proceeding thus is closely

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the MTD Opposition.

connected to the Bankruptcy Cases. The very premise of Airbus's Withdrawal Motion is a fabrication, and the motion therefore should be denied.

Further, the Bankruptcy Court is better positioned than any other forum to efficiently and expeditiously adjudicate ECN Capital's claims. Both ECN Capital and Airbus have appeared frequently before the Bankruptcy Court in these proceedings—indeed, Airbus even serves on the Creditors' Committee in the Bankruptcy Cases—and have engaged in discovery motion practice with respect to the "Super Puma" helicopters involved in and impacted by the April 2016 crash and subsequent grounding. Moreover, the Bankruptcy Court is already familiar with the facts and circumstances surrounding the accident and grounding, which precipitated the Debtors' chapter 11 filing and are inextricably linked to both the Bankruptcy Cases and ECN Capital's Complaint. ECN Capital's claims in this adversary proceeding are "non-core," but that carries little weight in the analysis here given how closely related those claims are to the Bankruptcy Cases and given the impact the outcome of the claims could have on the Debtors' estates. And it is true that the parties at this time request a jury trial, but interests of efficiency still weigh heavily in favor of the Bankruptcy Court managing the pre-trial proceedings—especially considering that the Debtors may file *in this Bankruptcy Court* similar product liability claims against Airbus, arising from the same set of facts on which ECN Capital's claims are based. Finally, that Airbus would prefer to defend against this litigation in France is of no moment because the other withdrawal factors weigh strongly in favor of keeping this proceeding in the Bankruptcy Court. Accordingly, for the reasons set forth herein, Airbus's Withdrawal Motion should be denied.

BACKGROUND

ECN Capital's claims arise out of the April 2016 crash of an Airbus-manufactured EC225 helicopter operated by an affiliate of CHC Group Ltd. (together with its affiliated debtors,

the "Debtors"), the investigations and groundings resulting therefrom, and the subsequent chapter 11 cases filed by the Debtors, in which both ECN Capital and Airbus are creditors. The facts underlying ECN Capital's claims are set forth in the *Complaint by ECN Capital (Aviation) Corp. against Airbus Helicopters (SAS)* [Docket. No. 1] (the "Complaint") and the MTD Opposition. ECN Capital sets forth here the salient facts relating to the Withdrawal Motion.

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 United States, 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 United States, including in Texas. (¶ 6.) Airbus is primarily owned by its parent 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., a Delaware corporation headquartered in Virginia, which is the direct parent of Airbus Helicopters, Inc. ("AHI"), a Delaware corporation headquartered in Texas.[5]

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[2] All references herein to "¶ __" are to the Complaint. All references herein to "Ex. __" are to the Declaration of Pietro J. Signoracci in Support of the MTD Opposition dated January 27, 2017 [Docket No. 64].

[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).

Airbus sells and delivers EC225 and AS332 L2 helicopters to AHI for sale, delivery, and operation in the United States, including in Texas.[6]

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 the Bankruptcy 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 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

[6] *See* Ex. O (Special Appearance [*Era Group Inc.* v. *Airbus Helicopters Inc., et al.*, DC-16-15017 (Tex. Dist. Ct., filed Nov. 21, 2016) Dkt. No. 20]) at 4).

Grand Prairie, TX. (¶ 11.) In June 2016, Airbus's United States 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 affected by the 2016 Crash and the 2016 Grounding, causing substantial harm to the Debtors' operations and restructuring.[7] 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."[8] 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.[9] 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.)

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[7] ¶¶ 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.

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

[9] *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.[10]

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.[11]

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 the Bankruptcy 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

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

claims against AHI regarding three EC225s Wells Fargo purchased from AHI.[12] 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").[13] 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. Further, as part of its proposed settlement with Airbus and the jurisdiction retention provision under the Plan, the Debtors have expressly reserved the right to bring suit against Airbus in this bankruptcy forum for claims similar to those that ECN Capital has brought against Airbus.[14]

ARGUMENT

Airbus fails to meet the burden it bears for demonstrating that cause exists to withdraw the reference from the Bankruptcy Court. *See* 28 U.S.C. § 157(d) (requiring a showing of "cause" for permissive withdrawal of the reference); *Holland America Ins. Co.* v. *Roy*, 777 F.2d 992, 998 (5th Cir. 1985) (stating that the movant bears the burden of establishing a "sound, articulated foundation" for permissive withdrawal). In determining whether cause exists to withdraw the reference, courts in the Fifth Circuit generally consider whether: (1) withdrawal will promote uniformity in bankruptcy administration and economical use of estate resources, and will expedite the bankruptcy process; (2) the underlying claims are core or non-core; (3) a party has demanded a jury trial; and (4) forum shopping and confusion will be reduced. *See Holland*, 777 F.2d at 999; *see also Mirant Corp.* v. *Southern Co.*, 337 B.R. 107, 115 (N.D. Tex.

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[12] *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]).

[13] *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]).

[14] *See* Ex. K (Airbus Restructuring Motion) at 37; Ex. N (Second Amended Joint Chapter 11 Plan [Docket No. 1371]) at § 11.1.

2006). These factors, on balance, weigh heavily in favor of denying Airbus's Withdrawal Motion.

I. Judicial Economy Would Best Be Served by the Bankruptcy Court Overseeing Pre-Trial Proceedings

Efficiency is a "critical factor" in the withdrawal analysis. *City Bank* v. *Compass Bank*, 2011 WL 5442092, at *5 (W.D. Tex. Nov. 9, 2011). Where, as here, the Bankruptcy Court has institutional knowledge with respect to the parties involved in the action, the events giving rise to the underlying claims, and the products that are the subject of the claims, efficiency considerations mandate that the adversary proceeding remain with the Bankruptcy Court. *See, e.g.*, *Barry* v. *Santander Bank, N.A.* (*In re Liberty State Benefits of Delaware, Inc.*), 2015 WL 1137591, at *3 (D. Del. Mar. 12, 2015) (holding that bankruptcy court should maintain the reference because it had more knowledge of the relevant facts of the case and was "clearly more informed about the underlying facts and issues" than district court); *City Bank* v. *Compass Bank*, 2011 WL 5442092, at *4 (W.D. Tex. Nov. 9, 2011) (declining to withdraw reference as to non-core claims where bankruptcy court was familiar with the facts of the case and, thus, in the best position to monitor discovery and narrow issues to be resolved trial); *Enron Power Mktg., Inc.* v. *Va. Elec. & Power Co.* (*In re Enron Corp.*), 318 B.R. 273, 275 (S.D.N.Y. 2004) (declining to withdraw the reference because bankruptcy court was in superior position to manage complex pretrial proceedings, had extensive familiarity with contracts of the type at issue and the facts and circumstances concerning the events leading to the debtor's bankruptcy filing).

Airbus argues that concerns of judicial economy warrant withdrawal because this matter has "no United States connection." (Withdrawal Mot. 9.) However, many of the events giving rise to ECN Capital's claims (and its grounds for jurisdiction) occurred in the United States, meaning that some of the critical evidence ECN Capital will present in support of its

claims is in the United States. For example, the United States Federal Aviation Authority is among the federal aviation authorities investigating the 2016 Crash, and it issued from Fort Worth, Texas an Emergency Airworthiness Directive requiring the grounding of all EC225s and AS332 L2s in response to the 2016 Crash.[15] And Airbus's argument completely ignores that the claims in this adversary proceeding are closely connected to the Bankruptcy Cases pending in the Bankruptcy Court. As explained in the MTD Opposition, ECN Capital's claims arise from the accident that triggered the Debtors' chapter 11 filing and the grounding of the Airbus-manufactured helicopters that once formed the backbone of the Debtors' business. (*See* MTD Opp. 10–11.) More importantly, and also as explained in the MTD Opposition, ECN Capital's claims have the potential to provide the Debtors' stakeholders with a major windfall if the reorganized Debtors (or a litigation trust) rely on ECN Capital's action to bring their own successful claims against Airbus. *Id.* Any recovery from such causes of action will accrue to the benefit of the Debtors' creditors by virtue of their new equity interests in the reorganized Debtors (or, if a litigation trust is established, the proceeds of any recovery would directly benefit the Debtors' creditors). Moreover, it was the Debtors that sold the Super Pumas to ECN Capital, and it was the Debtors that rejected the leases in the Bankruptcy Cases that caused the damages to ECN Capital that are the subject of ECN Capital's proofs of claim in the Bankruptcy Cases. As such, ECN Capital's claims in this adversary proceeding are "related to" the Bankruptcy Cases, and judicial economy thus will be served by the Bankruptcy Court retaining the reference.

Airbus also argues that withdrawal would be in the interest of judicial economy simply because the parties are non-debtors. But Airbus and ECN Capital are no strangers to the Bankruptcy Court. Both parties filed proofs of claim in the Bankruptcy Cases and participated in motion practice with respect to ECN Capital's motion requesting discovery from the Debtors.

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

And the Bankruptcy Court also has substantial familiarity with the events that gave rise to the Debtors' chapter 11 filings, including the 2016 Crash and the 2016 Grounding, which form the basis of ECN Capital's Complaint. The Debtors owned, leased and/or operated dozens of EC225 and AS332 L2 helicopters that were affected by the 2016 Crash and the 2016 Grounding, which, as the Debtors acknowledged at the first-day hearing and in SEC filings, caused substantial harm to their operations. Moreover, Airbus actively participated in the Bankruptcy Cases as a member of the Creditors' Committee. Because the Bankruptcy Court is more familiar with the facts and circumstances surrounding ECN Capital's claims than the District Court, withdrawal of the reference would only cause additional expense and delay.

Further, withdrawing the reference could result in inefficient use of estate resources. The Debtors' have not publicly disclosed their intentions with respect to claims against Airbus relating to the 2016 Crash and the 2016 Grounding. However, in the Debtors' motion to enter into and perform under a restructuring agreement with Airbus, the Debtors expressly reserved the right to pursue such claims.[16] The reorganized Debtors would likely bring such claims in the Bankruptcy Court following emergence since their proposed restructuring plan includes a broad retention of jurisdiction provision that would cover the Debtors' product liability claims against Airbus concerning the Super Puma helicopters that the Debtors owned, leased and/or operated.[17] Such claims by the Debtors against Airbus would arise from the same set of facts underlying ECN Capital's claims against Airbus in this adversary proceeding. In fact, the Debtors could even intervene or otherwise participate in ECN Capital's adversary proceeding given the estates' interest in the outcome. Retaining the reference with respect to ECN Capital's claims thus would prevent inconsistent rulings if the Debtors file claims against

[16] *See* Ex. K (Motion for Order [Dkt. No. 1536]) at 37.
[17] *See* Ex. N (Second Amended Joint Chapter 11 Plan [Docket No. 1371]) at § 11.1.

Airbus in the Bankruptcy Court, and it would reduce the administrative burden on the estates if the Debtors participate in ECN Capital's litigation.

Allowing the Bankruptcy Court to oversee pre-trial matters will also promote efficiency considerations given the potential importance of ECN Capital's claims to the Debtors' estates. As discussed herein and in the MTD Opposition, ECN Capital's claims could pave the way for an action against Airbus by the reorganized Debtors or a litigation trust, and any recovery therefrom would either indirectly (via equity interests in the reorganized Debtors) or directly (via stakes in a litigation trust) benefit the Debtors' stakeholders. Thus, the Bankruptcy Court has an interest in quickly and efficiently resolving the present dispute between ECN Capital and Airbus so that any potential recovery for the Debtors' creditors is realized as soon as possible.

II. The District Court Should Not Withdraw the Reference Even Though ECN Capital's Claims Are Non-Core

ECN Capital does not dispute that its claims against Airbus are non-core. Nevertheless, the fact that such claims are non-core is insufficient to justify withdrawal of the reference. *See, e.g.*, *In re Liberty State Benefits of Delaware*, 2015 WL 1137591, at *3 (holding that cause did not exist to withdraw reference as to non-core claims because bankruptcy court could serve in a role similar to that of a magistrate for pre-trial issues and was more informed about underlying facts and issues in the case than district court); *Lehman Bros. Holdings Inc.* v. *JPMorgan Chase Bank, N.A.* (*In re Lehman Bros. Holdings Inc.*), 480 B.R. 179, 195 (S.D.N.Y. 2012) (concluding that bankruptcy court could issue report and recommendation and need not decide whether claims at issue were core or non-core as it was not "dispositive"); *City Bank*, 2011 WL 5442092, at *4, *6 (declining to withdraw reference as to non-core claims given weight of efficiency and forum shopping factors); *Morrison* v. *Amway Corp.* (*In re Morrison*),

409 B.R. 384, 389 (S.D. Tex. 2009) (noting that the "non-core" factor, while important, is "not alone determinative").

In *Morrison*, the court declined to withdraw the reference with respect to an adversary proceeding that presented solely non-core claims (and hypothetical core claims) because a portion of the recovery would benefit some of debtors' estates and, thus, "could conceivably affect" such estates. 409 B.R. at 396. *Morrison* emphasized that, "if Congress intended for all non-core matters to be heard by district courts, then it would have stripped bankruptcy courts of all jurisdiction over non-core matters." *Id.* Instead, "Congress expressly authorized bankruptcy courts to resolve 'related to' non-core matters." *Id.* (noting that a finding of "cause" for withdrawal based solely on inefficiency of having a bankruptcy court issue a report and recommendation "would be inconsistent with Congressional intent").

The claims presented in the Complaint, like the non-core claims in *Morrison*, could "conceivably affect" the Debtors' estates by enhancing the reorganized Debtors' enterprise value for the benefit of their creditors who will own substantially all of the Debtors' post-emergence equity (or by creating a pool of recovery for the benefit of a litigation trust) or reducing the Debtors' liability on proofs of claim. If any of ECN Capital's claims against Airbus are successful, the reorganized Debtors (or a litigation trust or similar structure established for the benefit of creditors) could rely on collateral estoppel to recover from Airbus for similar causes of action. Such recovery would yield indirect economic benefits for the Debtors' creditors by virtue of their new membership interests in the reorganized Debtors, or direct economic benefits if the Bankruptcy Court requires that the Debtors establish a litigation trust or similar structure. The outcome of ECN Capital's litigation could also reduce the Debtors' liability to those creditors who rely on collateral estoppel to bring their own successful actions

against Airbus. Thus, ECN Capital's claims could impact the Debtors' estates, and the Bankruptcy Court has an interest in presiding over this adversary proceeding.

III. Although ECN Capital and Airbus Have Each Demanded a Jury Trial at This Time, the Bankruptcy Court Should Manage Pre-Trial Proceedings

Airbus argues that the reference should be withdrawn simply because the parties have demanded a jury trial and Airbus does not consent to a jury trial before the Bankruptcy Court. (Withdrawal Mot. 7.) Even if a party has demanded a jury trial, however, district courts often decline to withdraw the reference where the bankruptcy court is better positioned to conduct pre-trial matters. *See, e.g.*, *DeBaillon* v. *Goldking Capital Mgmt. LLC*, 2015 WL 3791536, at *4 (W.D. La. June 17, 2015) ("[D]emand does not mandate *immediate* withdrawal of a reference to bankruptcy court, as judicial economy may be better served by the bankruptcy court resolving pretrial matters."); *Levine* v. *M & A Custom Home Builder & Developer, LLC*, 400 B.R. 200, 206–07 (S.D. Tex. 2008) (declining to withdraw the reference where party demanded a jury trial because "[a] right to a jury trial does not arise until jury issues are presented" and noting that "a party can not use the jury right as a tool for forum shopping"). Courts reason that, during the early stages of a proceeding, efficiency concerns outweigh a jury trial request because the claims at issue "may be resolved before the matter is ripe for a trial before a jury." *In re Lehman Bros.*, 480 B.R. at 194 (quoting *In re Arbco Capital Mgmt.*, 479 B.R. 254, 267 (S.D.N.Y. 2012)). Moreover, in the context of abstention, courts 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 avoid the bankruptcy court's jurisdiction. *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."). The same holds true here, in the context of Airbus's Withdrawal Motion, by which Airbus seeks to avoid the Bankruptcy Court's lawful jurisdiction.

As explained above, the Bankruptcy Court is in the best position to conduct pre-trial matters relating to ECN Capital's claims, and likely will preside over any claims the Debtors file against Airbus arising out of the same set of facts that underlies ECN Capital's claims. Accordingly, immediate withdrawal of the reference should not be permitted. If, following dispositive motions and the conclusion of pre-trial proceedings, ECN Capital's claims still have not been resolved, and if Airbus continues to withhold its consent to have a jury trial before the Bankruptcy Court, ECN Capital's claims can be transferred to the District Court at such time.[18] Transferring ECN Capital's claims today, however, would only cause further cost and delay given the time it would take the District Court to gain the knowledge that the Bankruptcy Court already has with respect to the facts underlying ECN Capital's claims.

IV. Airbus's Forum Shopping Should Not Be Permitted

Airbus states that ECN Capital's grounds for pursuing its claims in the Bankruptcy Court is "the purported relationship [of the claims] to the CHC Debtors' bankruptcy." (Withdrawal Mot. 7.) As explained above, the facts here establish more than just a "purported relationship" between the adversary proceeding and the Bankruptcy Cases. ECN Capital, a creditor in the Bankruptcy Cases, brought claims against Airbus, another creditor in the Bankruptcy Cases, regarding property that is the issue of proofs of claim filed in the Bankruptcy Cases. Moreover, the outcome of ECN Capital's claims will impact the rights, liabilities, and property of the Debtors and the administration of the Debtors' estates. Of course,

[18] ECN Capital would consent to a jury trial before the Bankruptcy Court if Airbus also consents to such jury trial. *See* 28 U.S.C. § 157(c)(2).

claimants in similar circumstances often file adversary proceedings in the court that is overseeing the debtor's bankruptcy case, particularly where such an adversary proceeding raises claims that are inextricably linked to the bankruptcy case and creditor recovery. *See, e.g., In re Liberty State Benefits*, 2015 WL 1137591, at *4. Airbus should not be surprised that a co-creditor plaintiff has filed suit against it in the Bankruptcy Court concerning claims that involve the same property and underlying facts that are at issue in the Bankruptcy Cases, especially considering that Airbus filed proofs of claim in the Bankruptcy Cases, entered into a settlement agreement with the Debtors, objected to ECN Capital's motion requesting discovery from the Debtors, and participated in the Bankruptcy Cases as a member of the Creditors' Committee.

Airbus's desire to litigate ECN Capital's claims in France is not "cause" to withdraw the reference. Airbus makes no effort to hide its strong desire to transfer this adversary proceeding to its preferred forum—France. That the French government owns an equity stake in Airbus raises additional fairness concerns in the event that ECN Capital is forced to bring its claims overseas. *See City Bank*, 2011 WL 5442092, at *6 (noting that forum shopping "raises fairness concerns—*i.e.*, it is unfair for a party to have a better chance of winning the case because of the forum when the underlying law should be the same"). Accordingly, ECN Capital's claims should proceed in the Bankruptcy Court until a jury trial is necessary.

CONCLUSION

For the foregoing reasons, the Withdrawal Motion should be denied.

Dated: February 2, 2017
Dallas, Texas

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on February 2, 2017, I caused the foregoing Opposition to Defendant Airbus Helicopters, S.A.S's Motion for Withdrawal of the Reference of Adversary Proceeding, and Brief in Support 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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/s/ Pietro J. Signoracci
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