Jason M. Katz (SBN: 24038990)
jkatz@hhdulaw.com
HIERSCHE, HAYWARD, DRAKELEY & URBACH, P.C.
15303 Dallas Parkway, Suite 700
Addison, TX 75001-4610
Telephone: (972) 701-7000
- and -
Joseph J. Ortego (New York SBN: 1673805)
jortego@nixonpeabody.com
Eric C. Strain (New York SBN: 5417621)
estrain@nixonpeabody.com
Robert N. H. Christmas (New York SBN: 2186609)
rchristmas@nixonpeabody.com
Shainee S. Shah (New York SBN: 5405683)
sshah@nixonpeabody.com
NIXON PEABODY LLP
437 Madison Ave., 18th Floor
New York, NY 10022
Telephone: (212) 940-3000
Admitted Pro Hac Vice

COUNSEL FOR DEFENDANT
AIRBUS HELICOPTERS, S.A.S.

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: CHC GROUP LTD., *et al.*, Debtors.	Chapter 11 Case No. 16-31854 (BJH) (Jointly Administered)
ECN CAPITAL (AVIATION) CORP., Plaintiff, v. AIRBUS HELICOPTERS SAS, Defendant.	Adv. Pro. No. 16-3151 (BJH)

DEFENDANT AIRBUS HELICOPTERS, S.A.S.'S
NOTICE OF FILING MOTION FOR LEAVE TO FILE REPLY BRIEF

COMES NOW, Defendant Airbus Helicopters, S.A.S. ("AH"), and files this, its Notice of Filing Motion for Leave to File Reply Brief notifying the Court and the parties to this proceeding

that on February 2, 2017, in the United States District Court for the Northern District of Texas, Civil Action No. 3:17-cv-00075-C, AH filed its Motion for Leave to File Reply Brief in response to Plaintiff's Opposition to Defendant's Motion for Withdrawal of Reference. A true and correct copy of AH's Motion for Leave to File Reply Brief is attached hereto as "Exhibit 1" and fully incorporated herein for all purposes.

Dated: February 2, 2017.

Respectfully submitted,

HIERSCHE, HAYWARD, DRAKELEY
& URBACH, P.C.

By: *Jason M. Katz*
Jason M. Katz (SBN: 24038990)
jkatz@hhdulaw.com
15303 Dallas Parkway, Suite 700
Addison, Texas 75001-4610
Telephone: (972) 701-7000
Facsimile: (972) 701-8765

- and -

Joseph J. Ortego (New York SBN: 1673805)
jortego@nixonpeabody.com
Eric C. Strain (New York SBN: 5417621)
estrain@nixonpeabody.com
Robert N. H. Christmas (New York SBN: 2186609)
rchristmas@nixonpeabody.com
Shainee S. Shah (New York SBN: 5405683)
sshah@nixonpeabody.com
NIXON PEABODY LLP
437 Madison Ave., 18th Floor
New York, NY 10022
Telephone: (212) 940-3000
Facsimile: (212) 940-3111
Admitted Pro Hac Vice

COUNSEL FOR DEFENDANT AIRBUS HELICOPTERS S.A.S.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on February 2, 2017, a true and correct copy of the above and foregoing document was filed with the court via CM/ECF and served on all parties requesting electronic notification.

/s/ Jason M. Katz
Jason M. Katz

Jason M. Katz, SBN: 24038990
jkatz@hhdulaw.com
15303 Dallas Parkway, Suite 700
Addison, Texas 75001
Tel. (972) 701-7000
Fax: (972) 701-8765
and
Joseph J. Ortego jortego@nixonpeabody.com
Eric C. Strain estrain@nixonpeabody.com
Robert N. H. Christmas rchristmas@nixonpeabody.com
Shainee S. Shah sshah@nixonpeabody.com
NIXON PEABODY LLP
437 Madison Ave., 18th Floor
New York, NY 10022
Tel.: (212) 940-3000
(admitted *pro hac vice*)
Attorneys for Defendant Airbus Helicopters, S.A.S.

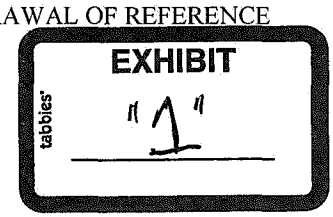
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ECN CAPITAL (AVIATION) CORP., Plaintiff, v. AIRBUS HELICOPTERS, S.A.S., Defendant.	Case No. 3:17-cv-00075-C

MOTION FOR LEAVE TO FILE REPLY IN FURTHER SUPPORT OF *MOTION BY DEFENDANT AIRBUS HELICOPTERS, S.A.S. FOR WITHDRAWAL OF REFERENCE OF ADVERSARY PROCEEDING*

TO THE HONORABLE SAM R. CUMMINGS
SENIOR UNITED STATES DISTRICT COURT JUDGE:

COME NOW, Airbus Helicopters, S.A.S. ("AH" or "Defendant"), Defendant in the above-captioned case and files this, its Motion for Leave to File a Reply in Further Support of



Defendant's Motion for Withdrawal of Reference of Adversary Proceeding ("Reply"), and respectfully shows as follows:

I. Factual Background

1. On November 17, 2016, ECN Capital (Aviation) Corp. ("Plaintiff" or "ECN") filed an adversary proceeding against AH in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") [Bankr. Ct. Adv. Pro. docket no. 1].

2. On January 3, 2017, AH filed a (a) Motion for Withdrawal of Reference of Adversary Proceeding and Brief in Support ("Motion for Withdrawal of Reference") [District Court Docket ("Docket") no. 1, Bankr. Ct. Adv. Pro. docket no. 23] (the "Motion"), (b) Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction, and on the Grounds of *Forum Non Conveniens* ("Motion to Dismiss") [Bankr. Ct. Adv. Pro. docket no. 24], (c) Brief in Support of Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction, and on the Grounds of *Forum Non Conveniens* [Bankr. Ct. Adv. Pro. docket no. 25][1] and (d) Appendix in Support of AH's Motion to Dismiss [Bankr. Ct. Adv. Pro. docket no. 26]. The Motion to Dismiss is currently set for hearing before this Court on February 28, 2017 at 9:00 a.m.

3. The Bankruptcy Court set a status conference on AH's Motion for Withdrawal of Reference on January 30, 2017 at 1:15 p.m. On January 9, 2017, AH and ECN filed a Joint Motion for Status Conference [Bankr. Doc. No. 43] whereby the parties requested, *inter alia*, the Bankruptcy Court to re-set the status conference on the Motion for Withdrawal of Reference from January 30, 2017 at 1:15 p.m. to February 6, 2017.

---

1 On January 4, 2017, AH filed an Amended Brief in Support of Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction, and on the Grounds of Forum Non Conveniens [Doc. No. 32].

4. On January 11, 2017, the Bankruptcy Court entered an Agreed Order granting the parties' Joint Motion for Status Conference [Bankr. Ct. Adv. Pro. docket no. 49] that re-set the status conference on the Motion for Withdrawal of Reference from January 30, 2017 at 1:15 p.m. to February 6, 2017 at 9:00 a.m.

5. On February 2, 2017, ECN filed its Opposition to the Motion for Withdrawal of Reference [Doc. no. 18].

II. Relief Requested

6. Defendant seeks an order granting leave to file a Reply in Further Support of the Motion for Withdrawal of Reference.

III. Brief In Support

7. This Court requires an order to permit the filing of a reply. The Bankruptcy Court provided ECN with thirty days to file its Response to the Motion For Withdrawal of Reference, leaving AH little time to seek leave to file a reply prior to the February 6, 2017 status conference. Given that the Bankruptcy Court is holding the status conference on the Motion for Withdrawal of Reference on February 6, 2017, as well as the breadth and complexity of the issues before this Court, allowing the Reply will assist (a) the Bankruptcy Court, in providing its considered recommendation on the Motion for Withdrawal of Reference to this Court and (b) this Court, in ruling on the Motion for Withdrawal of Reference.

8. A true and correct copy of the Reply that AH seeks leave to file is attached hereto and incorporated herein as Exhibit "A." At such time as leave is granted, AH intends to file the Reply.

9. The filing of the Reply will not prejudice ECN and will not cause a delay in the disposition of this matter whether by trial or otherwise. Prior to filing, counsel to AH in fact contacted counsel for ECN regarding this Motion for leave to reply, and we were informed that ECN's counsel takes no position on this Motion.

10. Defendant seeks leave of Court not for bad faith purposes but so that justice may be done and so that the Bankruptcy Court can provide a recommendation to this Court on the Motion for Withdrawal of Reference with full briefing.

WHEREFORE, PREMISES CONSIDERED, Airbus Helicopters, S.A.S. prays that its Motion for Leave to File Reply in Further Support of the Motion for Withdrawal of the Reference be granted and that Defendant be granted such other and further relief to which it is entitled.

Dated: February 2, 2017.

Respectfully submitted,

HIERSCHE, HAYWARD, DRAKELEY
& URBACH, P.C.

By: *Jason M. Katz*
Jason M. Katz (SBN: 24038990)
jkatz@hhdulaw.com
15303 Dallas Parkway, Suite 700
Addison, Texas 75001-4610
Telephone: (972) 701-7000
Facsimile: (972) 701-8765

- and -

Joseph J. Ortego (New York SBN: 1673805)
jortego@nixonpeabody.com
Eric C. Strain (New York SBN: 5417621)
estrain@nixonpeabody.com
Robert N. H. Christmas (New York SBN: 2186609)
rchristmas@nixonpeabody.com
Shainee S. Shah (New York SBN: 5405683)
sshah@nixonpeabody.com

NIXON PEABODY LLP
437 Madison Ave., 18th Floor
New York, NY 10022
Telephone: (212) 940-3000
Facsimile: (212) 940-3111
Admitted Pro Hac Vice

COUNSEL FOR DEFENDANT AIRBUS HELICOPTERS S.A.S.

CERTIFICATE OF CONFERENCE

On February 2, 2017, the undersigned attorney had a conference via email with counsel for Plaintiff to discuss the relief sought in this motion. Counsel for Plaintiff take no position on, and thus do not oppose, the relief sought in the motion.

/s/ Eric C. Strain
Eric C. Strain

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on February 2, 2017, a true and correct copy of the above and foregoing document was filed with the court via CM/ECF and served on all parties requesting electronic notification.

/s/ Jason M. Katz
Jason M. Katz

Jason M. Katz, SBN: 24038990
jkatz@hhdulaw.com
15303 Dallas Parkway, Suite 700
Addison, Texas 75001
Tel. (972) 701-7000
Fax: (972) 701-8765
and
Joseph J. Ortego jortego@nixonpeabody.com
Eric C. Strain estrain@nixonpeabody.com
Robert N. H. Christmas rchristmas@nixonpeabody.com
Shainee S. Shah sshah@nixonpeabody.com
NIXON PEABODY LLP
437 Madison Ave., 18th Floor
New York, NY 10022
Tel.: (212) 940-3000
(admitted *pro hac vice*)
Attorneys for Defendant Airbus Helicopters, S.A.S.

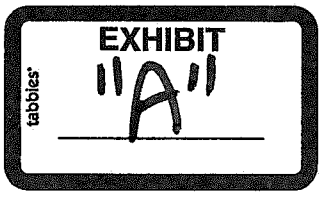
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

ECN CAPITAL (AVIATION) CORP., Plaintiff, v. AIRBUS HELICOPTERS, S.A.S., Defendant.	Case No. 3:17-cv-00075-C

REPLY BY DEFENDANT AIRBUS HELICOPTERS, S.A.S. IN FURTHER SUPPORT OF MOTION FOR ORDER OF WITHDRAWAL OF BANKRUPTCY REFERENCE

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

Defendant Airbus Helicopters, S.A.S. ("AH"), subject to and without waiving its objection to the Court's personal jurisdiction, hereby files this reply in further support of its *Motion for Withdrawal of Reference of Adversary Proceeding* [District Court Docket ("Docket") no. 1, Bankr.



Ct. Adv. Pro. docket no. 23] (the "Motion") and respectfully states as follows:[1]

INTRODUCTION

This case, solely between two non-debtor, non-US parties (French and Canadian) and involving complex aviation liability and specialized tort claims, does not belong in the Bankruptcy Court under the precedent cited by AH in its Motion. The effort by plaintiff ECN Capital (Aviation) Corp. ("ECN"), a Canadian entity, to maintain this admittedly non-core action in the Bankruptcy Court is simply a transparent ruse – to leverage a set of Chapter 11 bankruptcy cases, which have almost exited reorganization, in order to gain access to a U.S. forum.

In response to the Motion, ECN contends in its Opposition that (1) the CHC Group debtor entities (the "CHC Debtors" or "Debtors") *may* bring an action in the Bankruptcy Court in the future, (2) the Bankruptcy Court has knowledge of the parties' contractual bankruptcy claims, which knowledge ECN (by sleight of hand) transforms into institutional knowledge about helicopter design, and would effectively transform the Bankruptcy Court into a *de facto* Multi-District Litigation court for all potential EC225 claims, (3) AH is "forum shopping," and (4) the courts of France, our nation's oldest ally and a sister republic, cannot be relied upon to provide a fair and just judicial process. ECN's position is thus both breathtakingly incredible and offensive at the same time. It should be rejected, and the reference should be withdrawn.[2]

FACTUAL BACKGROUND

The essential facts are set out in the Motion. In response, ECN distorts the import of

[1] Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Motion or the *Plaintiff's Opposition to Defendant's Motion for Withdrawal of Reference* dated Feb. 2, 2017 [Docket no. 18, Bankr. Ct. Adv. Pro. docket no. 65] (the "Opposition" or "Opp."), as applicable.

[2] AH has separately moved in the Bankruptcy Court to dismiss this action for lack of personal and subject matter jurisdiction [Bankr. Adv. Pro. dkt. nos. 24, 25].

multiple undisputed facts, which we correct here below as part of addressing ECN's legal contentions.

REPLY

I. Judicial Economy Mandates Withdrawal of Reference Where ECN Admits the Adversary Proceeding Will Eventually Need to be Withdrawn for Trial

In its Opposition, ECN suggests that it would be an efficient use of judicial resources if the Bankruptcy Court were permitted to hear pre-trial proceedings and 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*." (Opp., at 14 (emphasis added).)

To the contrary, ECN's suggested solution would squander judicial resources. First, if either party files a dispositive motion at the pre-trial stage, the Bankruptcy Court lacks authority to enter a final order. Indeed, ECN has admitted (and AH agrees) that the claims at issue are non-core and neither party consents to the Bankruptcy Court's entry of final orders.[3] The applicable jurisdictional statute, 28 U.S.C. § 157(c)(1), provides that only the District Court has authority to enter final orders on non-core matters.[4] It would be highly inefficient to have the Bankruptcy Court handle such pre-trial matters where this Court would eventually have to re-hear the matter and enter a final order. Second, if the adversary proceeding will eventually need to be withdrawn

[3] *See* Complaint, at ¶ 13 ("This adversary proceeding is a non-core proceeding. The Plaintiff does not consent to entry of final orders or judgment by this Court at this time.").

[4] *See* 28 U.S.C. § 157(c)(1) ("A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge . . . .").

to the District Court at the trial stage (which ECN appears to concede, given the jury trial demands by both parties), it is more efficient for the District Court to become familiar with the case earlier rather than later, particularly because the District Court will need to rule on dispositive motions.

ECN also argues that the Bankruptcy Court should hear pre-trial proceedings because (i) both parties filed proofs of claim in the CHC Debtors' chapter 11 cases (the "CHC Bankruptcy Proceedings"), (ii) the Bankruptcy Court is familiar with the CHC Bankruptcy Proceedings, and (ii) "the Bankruptcy Court is more familiar with the facts and circumstances surrounding ECN Capital's claims." Opposition, at 10. ECN's argument would open the Bankruptcy Courthouse doors to any party to sue another party where each filed a proof of claim. This would stretch the jurisdictional limits of the Bankruptcy Court beyond what was prescribed by Congress in Title 28. Further, the Bankruptcy Court is not familiar with the extensive factual and legal issues that will be asserted in the Adversary Proceeding, including, but not limited to, expert testimony that will be presented related to products liability issues, legal theories of recovery under products liability law and factual issues underlying the relationship between non-debtor ECN and non-debtor AH.

ECN also erroneously argues that many of the events giving rise to ECN's claims occurred in the United States, such as "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." Opposition, at p. 9. This is not the case. ECN's 5 Super Pumas are based outside of the United States, which fact ECN is careful to omit, and thus not subject to the FAA's airworthiness directive.

II. The Reference Should be Immediately Withdrawn Since the Parties Have Demanded a Jury Trial

ECN's meritless judicial economy argument dovetails with its erroneous assertion that the

parties' demand for a jury trial does not require immediate withdrawal of the reference. Opposition, at p. 13. As stated above, the reference should be withdrawn at this juncture since the District Court will have to enter final orders on any non-core pre-trial dispositive motion and can thereby familiarize itself with the issues that will be raised in a jury trial it would inevitably conduct (assuming *arguendo* that jurisdiction remains in the United States). Moreover, the cases cited by ECN (Opp. at 13) are distinguishable. In *DeBaillon v. Goldking Capital Mgmt. LLC*, 2015 WL 3791536, at *4 (W.D. La. June 17, 2015), the court was "unable to determine with any reasonable certainty . . . whether a jury trial must be conducted." In *Levine v. M&A Custom Home Builder & Developer, LLC*, 400 B.R. 200, 203 (S.D. Tex. 2008), the district court deferred withdrawal of the reference until the bankruptcy court ruled on all dispositive motions. Here, that route would be inefficient since the District Court would have to enter final orders on all dispositive motions in any case. *Lehman Bros. Holdings, Inc. v. JPMorgan Chase Bank, N.A. (In re Lehman Bros. Holdings, Inc.)*, 480 B.R. 179, 194 (S.D.N.Y. 2012) is similarly distinguishable because there the "bankruptcy court ha[d] the authority to issue proposed findings of fact and conclusions of law."

AH submits that Chief Judge Houser's decision in *AE Mktg., L.L.C. v. Jenkins-Baldwin Corp. (In re Heritage Org., L.L.C.)*, Nos. 04-35574-BJH-11, 04-3624, 2007 Bankr. LEXIS 5027, at *11 (Bankr. N.D. Tex. Mar. 23, 2007), is more applicable and persuasive. In *Heritage*, Chief Bankruptcy Judge Houser recommended that the reference be withdrawn with respect to a proceeding that involved

> multiple state law claims between multiple parties, all of which (save one) are non-debtors. The Proceeding does not involve any causes of action created by the Bankruptcy Code. While a party to the Proceeding, the Debtor is largely a bystander to much of the dispute. Most importantly, the parties agree that there is a right to a jury trial, and several of the parties have declined to consent to the jury trial being conducted by this Court.

Id., 2007 Bankr. LEXIS 5027, at *11.

Similarly, the causes of action asserted here by ECN are state law products liability claims between non-debtors that are not created by the Bankruptcy Code – and the CHC Debtors are not a party to this action. By contrast, the cases cited by ECN in its Opposition, suggesting that judicial efficiency requires the Bankruptcy Court to retain this adversary proceeding, all involve a debtor asserting estate causes of action or where the bankruptcy court had already ruled and heard evidence (including theories of recovery) from the parties.[5] The Motion should be granted.

III. ECN's Non-Core Claims Have No Impact on the Debtors' Estates

ECN further argues that its claims – while non-core – could affect the Debtors' estates because

1. "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." Opposition, at 12.
2. "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, Bankruptcy Court has an interest in presiding over this adversary

[5] *See Barry v. Santander Bank, N.A. (In re Liberty State Bens. of Del. Inc.),* No. 14-677-LPS, 2015 U.S. Dist. LEXIS 30327, at *2 (D. Del. Mar. 12, 2015) (chapter 11 trustee suing bank for misappropriation of debtor funds); *City Bank v. Compass Bank*, No. EP-11-MC-372-KC, 2011 U.S. Dist. LEXIS 129654, at *15 (W.D. Tex. Nov. 9, 2011) ("Therefore, given the bankruptcy court's familiarity with the facts, the parties, and the underlying theories of recovery, the bankruptcy court is in the best position to conduct pre-trial matters relating to the alleged fraudulent transfer claim of the one million dollar payment."); *Enron Power Mktg., Inc. v. Va. Elec. & Power Co. (In re Enron Corp.),* 318 B.R. 273 (S.D.N.Y. 2004) (concerning adversary proceeding commenced by debtor).

proceeding." *Id.*

ECN assembles this and other "facts" regarding the connection of this litigation to the CHC Bankruptcy Proceedings, but this assemblage lacks all credibility. In short, ECN's primary argument is, again, that if two non-debtors have filed claims in a bankruptcy case against a debtor, litigation between them also belongs in the Bankruptcy Court. ECN thus claims that the Bankruptcy Court is the proper forum because (i) ECN and AH have appeared before it in regard to their respective contractual claims against the CHC Debtors, (ii) helicopter groundings have been generally discussed before the Bankruptcy Court and in the CHC Debtors' SEC documents, and the Debtors could be (third-party) witnesses in any litigation between ECN and AH, (iii) after resolving contractual disputes with AH, the CHC Debtors have reserved the right to commence litigation against AH and therefore might do so in the Bankruptcy Court, and (iv) AH has served on the unsecured creditors' committee in the CHC Bankruptcy Proceedings. *See, e.g.,* Objection at 1-2, 5-6, 9-10.

These facts are makeweight, and do not show that this case belongs before the Bankruptcy Court. At the outset, it is important to note that not only are the CHC Debtors absent from this action, their Chapter 11 case is essentially over – as the CHC Plan of Reorganization was filed in December, 2016 and is shortly expected to be confirmed. *See, e.g.,* CHC Bankr. docket, case no. 16-31854-BJH ("CHC Bankr. dkt."), no. 1371. The CHC Debtors and AH have in fact resolved their contractual claims, and that settlement has been filed with the Bankruptcy Court for approval. [CHC Bankr. dkt. no. 1536.] That ECN's claims here are tenuously connected with the CHC Bankruptcy Proceeding is starkly shown by the fact that the CHC Debtors' bankruptcy plan is shortly to be confirmed without CHC having to do anything regarding ECN's claims in this case. In fact, as stated, CHC resolved its contractual claims with AH. The fact that the CHC Debtors

have reserved the right to commence aviation liability litigation in the future, which ECN speculates would be filed in the Bankruptcy Court (Opp. at 10),[6] or that AH served on the CHC creditors committee,[7] does not make the Bankruptcy Court the proper forum for this litigation. As to the CHC Debtors having to provide witnesses or documents regarding ECN's claims, that "tail" does not "wag the dog" for determination of the proper forum or jurisdiction.

In *Morrison v. Amway Corp. (In re Morrison)*, 409 B.R. 384, 396 (Bankr. S.D. Tex. 2009), a case cited by ECN (Opp. at 12), the court found that the plaintiffs-debtors' claims could conceivably affect their bankruptcy estate because if "Plaintiffs' claims are successful, at least a portion of the recovery will go to at least some of Plaintiffs' bankruptcy estates." Here, if ECN is successful, any recovery will go to ECN – not the CHC Debtors' creditors. To get around that fact, ECN hypothesizes that the CHC Debtors ***may*** bring similar actions against AH and ***if*** ECN is successful, the CHC Debtors ***could*** rely on collateral estoppel. The CHC Debtors have not brought any such actions and the Court does not sufficient facts before it to even estimate whether or not collateral estoppel would apply.[8]

This hypothetical and speculative scenario does not create a "conceivable effect" on the

---

[6] The fact that the Bankruptcy Court may approve a reservation of jurisdiction in the confirmation order for the CHC Debtors' plan (ECN Obj. at 10) does not create jurisdiction or judicial efficiency that does not otherwise exist.

[7] ECN's position would create great mischief for the office of the United States Trustee in trying to create unsecured creditors committees, if, as ECN submits, based on committee service non-U.S. creditors can be made subject to claims of jurisdictional reach or bankruptcy court "knowledge" for litigations commenced by third parties.

[8] *See Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 391 (5th Cir. 1998) ("Four conditions must be met before collateral estoppel may be applied to bar relitigation of an issue previously decided by a court of competent jurisdiction: (1) the issue under consideration is identical to that litigated in the prior action; (2) the issue was fully and vigorously litigated in the prior action; (3) the issue was necessary to support the judgment in the prior case; and (4) there is no special circumstance that would make it unfair to apply the doctrine") (internal citations omitted).

Debtors' estates. As the court in *Costa v. Kitrell & Kitrell, P.C. (In re Balensweig)*, 410 B.R. 157, 164 (Bankr. S.D.N.Y. 2008) held: "as the outcome of the Adversary Proceeding will only have a 'speculative, indirect or incidental' effect on the Debtor's estate the matter is not 'related to' the bankruptcy estate and the Court lacks jurisdiction." *Id.* (citing *Turner v. Ermiger (In re Turner)*, 724 F.2d 338, 341 (2d Cir. 1983) ("Congress must have intended to put some limit on the scope of 'related to' jurisdiction.")).

IV. ECN Is the Party Who Is Forum Shopping

ECN claims (Opp. at 14) that AH is engaged in forum shopping. ECN is in fact projecting its own motivations on AH. ECN, based in Canada, is surely well familiar with the restrictions on jurisdiction that exist post-*Daimler*.[9] It is ECN that is attempting to bring a product liability claim in the United States that has nothing to do with the U.S., other than that a debtor entity, that once leased helicopters from ECN, sought bankruptcy relief in the U.S.

ECN's final argument, that the courts of France would not provide an impartial forum for it, as a Canadian company (Opp. at 15), is both highly offensive and absurd. Courts in the United States have long found that the courts of France, our oldest ally, are fair and impartial.[10] By

---

[9] For general jurisdiction, the defendant's contacts with the United States must be so continuous and systematic as to render it "at home" in the United States. *Daimler AG v. Bauman*, 134 S. Ct. 746, 761 (2014); *Patterson v. Aker Solutions Incorporated*, 826 F.3d 231, 234 (5th Cir. 2016). For specific jurisdiction, the plaintiff's causes of action must arise out of or result from the defendant's purposeful contacts with the United States. *Monkton Ins. Servs., Ltd. v. Ritter*, 768 F.3d 429, 432-33 (5th Cir. 2014).

[10] *See, e.g., Int'l Nutrition Co. v. Horphag Research Ltd.*, 257 F.3d 1324. 1330-31 (Fed. Cir. 2001)(stating that "the French courts abided by 'fundamental standards of procedural fairness,' . . . and [finding] no abuse of discretion in the district court's judgment that international comity should be extended") (quoting *Cunard S.S. Co. v. Salen Reefer Services AB*, 773 F.2d 452, 457 (2nd Cir. 1985)); *Gschwind v. Cessna Aircraft Co.*, 161 F.3d 602, 606-08 (10th Cir. 1998)(holding France is adequate alternative forum in litigation involving airplane crash), *Magnin v. Teledyne Continental Motors*, 91 F.3d 1424, 1429 (11th Cir. 1996) (same); *Gambra v. Int'l Lease Fin. Corp.*, 377 F. Supp. 2d 810, 817 (C.D. Cal. 2005) (granting motion to dismiss on *forum non conveniens*

(Footnote continued on next page)

resorting to such arguments, ECN should have no credibility before this Court.

CONCLUSION

In light of the overwhelming weight of the factors favoring withdrawal of the reference, Defendant Airbus Helicopters, S.A.S. respectfully requests that the District Court overrule ECN's objections and enter an order granting immediate withdrawal of the reference pursuant to 28 U.S.C. § 157(d), and all other relief to which AH is justly entitled.

Dated: February 2, 2017.

Respectfully submitted,

HIERSCHE, HAYWARD, DRAKELEY & URBACH, P.C.

By: */s/Jason M. Katz*

Jason M. Katz, SBN: 24038990
jkatz@hhdulaw.com
15303 Dallas Parkway, Suite 700
Addison, Texas 75001
Tel. (972) 701-7000
Fax: (972) 701-8765

---AND---

Joseph J. Ortego jortego@nixonpeabody.com
Eric C. Strain estrain@nixonpeabody.com
Robert N. H. Christmas
rchristmas@nixonpeabody.com
Shainee S. Shah sshah@nixonpeabody.com
NIXON PEABODY LLP
437 Madison Ave., 18th Floor
New York, NY 10022
Tel.: (212) 940-3000
(Admitted *pro hac vice*)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on February 2, 2017, a true and correct copy of the above and foregoing document was filed with the court via CM/ECF and served on all parties requesting electronic notification.

/s/ Jason M. Katz

---

grounds in part because "French courts have a rigorous judicial system that seeks to promote fair proceedings and debate").