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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 Second Supplemental Memorandum of Law in 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 Second Supplemental 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* ("Motion to Dismiss"), to describe the results of jurisdictional discovery and to provide additional authority requested by the Court since Plaintiff filed its Opposition to the Motion to Dismiss (the "MTD Opposition").[1]

PRELIMINARY STATEMENT

ECN Capital adequately alleged in its Complaint that this Court has subject matter jurisdiction over ECN Capital's claims and personal jurisdiction over Airbus for purposes of this Adversary Proceeding. Now, with the benefit of discovery produced by Airbus on jurisdictional issues, together with argument and filings in the Bankruptcy Cases, the record bolsters the Complaint's allegations and proves that this Court has subject matter and personal jurisdiction.

This Court has subject matter jurisdiction over ECN Capital's claims because the claims could conceivably affect the Debtors' estates—as verified by testimony at the plan confirmation hearing in the Bankruptcy Cases and the discovery obtained from Airbus by ECN Capital.

This Court has personal jurisdiction over Airbus because of Airbus's substantial participation in the Bankruptcy Cases before this Court, combined with Airbus's purposeful presence in Texas regarding the very Super Puma helicopters at issue—both of which are verified by the documents and information produced and stipulated to by Airbus.

The jurisdictional discovery from Airbus, together with testimony provided by the Debtors in the Bankruptcy Cases, further demonstrates why this Court should deny Airbus's requests for dismissal on grounds of *forum non conveniens* or for abstention. Airbus's discovery

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the MTD Opposition. All references herein to "¶ __" are to the Complaint.

shows that Airbus sent executives from France to this jurisdiction and coordinated with its U.S. affiliates in order to pursue its interests in litigation in this forum, as well as for the purpose of conducting business in Texas. The Debtors' testimony and the data produced by Airbus regarding Airbus's direct sales of Super Puma helicopters to the Debtors, show that the Debtors have claims for damages against Airbus relating to the same models of Super Puma helicopters at issue in this Adversary Proceeding. Those claims of the Debtors—and thus the rights, liabilities, and value of property of the Debtors—will be directly affected by the outcome of ECN Capital's claims in this Adversary Proceeding. Based on this record, neither dismissal on grounds of *forum non conveniens* nor abstention would be appropriate, and Airbus's attempts to avoid this Court's jurisdiction should be denied.

Numerous precedents support this Court's exercise of its subject matter and personal jurisdiction in this Adversary Proceeding. In similar adversary proceedings, bankruptcy courts have exercised personal jurisdiction over a foreign non-debtor defendant in a non-core proceeding that was related to an underlying bankruptcy case. Additionally, in the analogous context of civil litigation, district courts have found that a claimant submits itself to the personal jurisdiction of the district court in which its claims were filed for all related suits and countersuits—including those pursued by entities that were not parties to the original litigation.

This Court's subject matter and personal jurisdiction is established by the facts in the record and supported by case law. Accordingly, ECN Capital respectfully submits that this Court should exercise its jurisdiction and deny Airbus's Motion to Dismiss.

BACKGROUND[2]

Pleadings and Motions

ECN Capital filed the Complaint against Airbus in this Adversary Proceeding on November 17, 2016, asserting 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 helicopters. *See* ¶¶ 46–111. The allegations in the Complaint sufficiently demonstrate that ECN Capital's claims "could conceivably have an effect" on the Debtors' estates, and thus are related to the Bankruptcy Cases. *See, e.g.*, ¶¶ 8, 43.[3] The Complaint also sufficiently alleges facts demonstrating this Court's personal jurisdiction over Airbus for the purpose of this Adversary Proceeding. *See, e.g.*, ¶¶ 11, 40.

On January 3, 2017, Airbus filed its Motion to Dismiss [Docket No. 24], asking this Court to hold that it lacked subject matter jurisdiction over ECN Capital's claims or personal jurisdiction over Airbus. In the alternative, the Motion to Dismiss requested that the Court abstain from exercising its jurisdiction or dismiss the Complaint on grounds of *forum non conveniens*. In support of its Motion to Dismiss, Airbus submitted a declaration from its executive, Michel Gouraud, dated December 23, 2016 [Docket No. 26] ("Gouraud Declaration"). The Gouraud Declaration stated that Airbus "does not transact its business in the United States," Gouraud Decl. ¶ 5, that Airbus "does not sell Super Puma helicopters in the United States," *id.* ¶ 9, and that Airbus does not own Airbus Helicopters, Inc. ("AHI"), *id.* ¶ 11.

Also on January 3, 2017, Airbus filed its Motion for Withdrawal of Reference of Adversary Proceeding, and Brief in Support [Docket No. 23] (the "Withdrawal Motion").

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[2] The facts underlying ECN Capital's claims are set forth in the Complaint and in ECN Capital's MTD Opposition. ECN Capital sets forth here the salient facts relating to this Second Supplemental Memorandum of Law in Opposition to the Motion to Dismiss.

[3] As this Court recognized, for purposes of deciding Airbus's Motion to Dismiss, the factual allegations in the Complaint must be taken as true. *See* Transcript of 2/6/2017 H'r'g on Withdrawal Motion ("Tr.") 56:3-7.

On January 27, 2017, ECN Capital filed its MTD Opposition, demonstrating that this Court has personal jurisdiction over Airbus and subject matter jurisdiction to hear ECN Capital's claims against Airbus in the Adversary Proceeding, which are related to the Bankruptcy Cases.

On February 6, 2017, the Court held a hearing on Airbus's Withdrawal Motion (the "February 6 Hearing"). The Court recognized that the Motion to Dismiss raised issues that were intertwined with the Bankruptcy Cases, making it appropriate for the Court to retain the reference at least through the adjudication of the Motion to Dismiss. *See* Tr. 7:5-24; 19:4-9.

Jurisdictional Discovery

On December 30, 2016, ECN Capital served Airbus with ECN Capital's First Request for Production of Documents. On January 23, 2017, ECN Capital served Airbus with notices of depositions for Airbus employees and representatives, and a notice of a subpoena for the deposition of an employee of Airbus's U.S.-based affiliate, AHI. ECN Capital's document requests and deposition notices and subpoena were aimed in part at eliciting information regarding Airbus's presence in the U.S., including in Texas, and its substantial participation in the Bankruptcy Cases. Airbus opposed ECN Capital's discovery requests, filing a motion to stay discovery and a separate motion for a protective order seeking to quash and/or limit ECN Capital's depositions of Airbus or AHI employees. At the February 6 Hearing, the Court ruled that ECN Capital was entitled to discovery on the jurisdictional issues that were the subject of Airbus's Motion to Dismiss. *See* Tr. 36:2-3, 40:2-5.

After the February 6 Hearing, Airbus agreed to produce to ECN Capital documents and information concerning Airbus's presence in the U.S., including in Texas, and its substantial participation in the Bankruptcy Cases. Airbus produced information describing its corporate structure, which revealed that French-based Airbus and its U.S.-based affiliate AHI share the

same ultimate corporate parent, Airbus Group S.E. *See* Ex. A.[4] Airbus provided information regarding sales from 2011 to 2016 of helicopters manufactured by Airbus in France to U.S.-based customers made directly by Airbus. *See* Ex. B. The data show that Airbus directly sold 30 helicopters (each costing millions of dollars) to U.S.-based customers. The majority of this business was directed at Texas—Airbus sold 28 helicopters, including six Super Pumas, to customers headquartered in Texas. *Id.* The data also show that from 2011 to 2016, Airbus indirectly sold 58 Airbus-manufactured helicopters to Texas-based customers through its U.S.-based affiliate distributor AHI. *Id.* Airbus sold another 649 helicopters for AHI to distribute to U.S.-based customers outside of Texas. *Id.* Airbus's sales data also show that Airbus sold 19 Super Pumas to CHC Leasing (Ireland) Limited, one of the Debtors in the Bankruptcy Cases.[5] According to filings in the Bankruptcy Cases, CHC Ireland's business is run by its parent company, CHC Group, Ltd., out of Irving, Texas.[6] Airbus produced discovery regarding its maintenance operations, and revealed that Airbus ships Super Pumas owned by U.S. customers to France in order to perform any necessary main gearbox overhauls. *See* Ex. C.

ECN Capital also requested information from Airbus regarding its participation in the Bankruptcy Cases. *See* Ex. D. Airbus explained that four of its executives—Laurent Tagarian, Alain Vigneau, Eric Chartier and Valerie Le-Gall—based in Marignane, France, worked with U.S. counsel to prepare Airbus's proofs of claim in the Bankruptcy Cases. *Id.* Messrs. Tagarian and Vigneau were involved, together with Airbus's representative Kevin Cabaniss, an employee of AHI, in Airbus's efforts to become a member of the Creditors' Committee. Messrs. Tagarian

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4 All references herein to "Ex. __" are to the accompanying Declaration of Martin Flumenbaum dated February 23, 2017.

5 *Id.*; *see* Motion of Debtors for Entry of an Order Waiving the Requirement to File a List of Creditors . . . [16-31854 Docket No. 4] ("First Day Motion") Exhibit A (listing CHC Leasing (Ireland) Limited as a Debtor).

6 *See* First Day Motion ¶ 6 ("CHC manages its domestic and overseas businesses from Irving, Texas."); *see id.* (defining "CHC" to include "[t]he Debtors, together with their non-debtor affiliates").

and Vigneau traveled from Marignane, France to the U.S. the week of June 27, 2016 in connection with a hearing in the Bankruptcy Cases, and Mr. Tagarian met with Mr. Cabaniss on June 28, 2016 in connection with Airbus's participation in the Bankruptcy Cases. *Id.* Airbus's discovery also revealed that Mr. Tagarian had responsibilities for Airbus "in connection with [Airbus's] participation in the [Creditors' Committee]," but Airbus withheld specific information about Mr. Tagarian's responsibilities on grounds of privilege. *Id.* Airbus noted that Messrs. Tagarian and Vigneau contributed to the preparation of key filings by Airbus in the Bankruptcy Cases, including Airbus's Objection to ECN Capital's Motion for Order Directing 2004 Examination of Debtors and the Debtors' 2017 Omnibus Restructure Agreement with Airbus.

In addition to the jurisdictional discovery produced by Airbus, publicly available sources reveal that Airbus frequently sends executives to the U.S., including to Texas, to attend and present at industry events. For example, Airbus is a Gold Level sponsor of the HAI Heli-Expo, a major helicopter industry event taking place in Dallas, Texas. *See* Ex. E. (CHC is also a Gold Level sponsor of the event. *Id.*) Airbus's logo is prominently featured on the front page of the HAI Heli-Expo website, along with a link to Airbus's webpage that directs visitors to sales and marketing materials for Airbus's helicopters, including the Super Pumas. Airbus regularly sends executives to attend and present at the HAI Heli-Expo in the U.S. For example, in 2014, Airbus's President and CEO Guillaume Faury spoke about Airbus's customer service at a breakfast during the HAI Heli-Expo in Anaheim, California. *See* Ex. F. In 2016, Airbus executive Gilles Bruniaux delivered a presentation regarding helicopter accidents on behalf of Airbus and others at the HAI Heli-Expo in Orlando, Florida. *See* Ex. G. Last year, Mr. Faury, attended the HAI Heli-Expo when it was held in Orlando, Florida. *See* Ex. H. According to a March 4, 2015 press release on Airbus's website, Airbus announced at the Heli-Expo that it had

signed a contract for the sale of helicopters to Bristow Group, a helicopter owner and operator based in Houston, Texas with a fleet of Airbus-manufactured helicopters including multiple Super Pumas. *Id.*

Plan Confirmation Hearing

Further information regarding jurisdictional issues was produced by Airbus and elicited by ECN Capital at the February 13, 2017 Plan Confirmation Hearing ("Confirmation Hearing") held before this Court in the Bankruptcy Proceedings. At the Confirmation Hearing, David W. Fowkes of Seabury Group, restructuring advisors to the Debtors, testified that the Debtors had 56 Super Pumas in their fleet at the time of the 2016 Grounding, nine of which were owned outright by the Debtors at the time and four of which remain owned outright by the Debtors. *See* Ex. I (Confirmation H'r'g Tr.) 197:21–198:7. Mr. Fowkes also testified that CHC Helicopters (Barbados) SRL—the Debtor to which ECN Capital leased the five Super Pumas it owned—owned or leased a total of 22 helicopters impacted by the 2016 Grounding, rejected its leases on all five of ECN Capital's Super Pumas, and continues to own one Super Puma. *Id.* 200:14–205:8. Robert A. Del Genio, CHC's Chief Restructuring Officer, also testified that CHC suffered injury to its business operations of approximately $34 million as a result of the 2016 Grounding, *id.* 108:5–109:17, and that CHC suffered injury to the value of the Super Pumas in its fleet as a result of the 2016 Grounding, but that CHC is unsure of the value of its claims against Airbus arising out of the 2016 Grounding, *id.* 104:11-13, 112:22–114:1.

ARGUMENT

I. This Court's Subject Matter Jurisdiction over ECN Capital's Claims Is Established by the Debtors' Testimony and the Discovery ECN Capital Obtained from Airbus.

The Debtors' testimony at the Confirmation Hearing proved what the Complaint adequately alleged: this Adversary Proceeding is "related to" the Bankruptcy Cases because the outcome of ECN Capital's claims could conceivably impact the rights, liabilities, causes of

action, and/or value of property of the Debtors. The Debtors suffered two types of injury as a result of the 2016 Grounding. *First*, the Debtors were harmed by the detrimental impact to their business, which contributed to their need to reject their leases on the five Super Pumas owned by ECN Capital. The Debtors calculated this harm to be approximately $34 million, *id.* 109:13-15, and this impact also led to a number of creditor proofs of claim filed against the Debtors in the Bankruptcy Cases. *Second*, the Debtors were harmed by the decrease in the value of the 56 helicopters in their fleet, including the four Super Pumas the Debtors continue to own outright. *Id.* 108:5–109:17. While the Debtors could not place a value on these claims, they acknowledged that each helicopter is valued at "around $20 million." *Id.* 107:19-20.

With respect to each of these harms, the outcome of ECN Capital's claims against Airbus likely would impact the Debtors' rights and/or liabilities. If ECN Capital establishes liability against Airbus for the 2016 Grounding, the reorganized Debtors would be able to rely on collateral estoppel to recover from Airbus for the injuries the Debtors incurred as a result of the 2016 Grounding, which recovery would inure to the benefit of the Debtors' creditors by virtue of the equity interests in the reorganized Debtors that such creditors are to receive under the Plan. The Debtors also potentially could offset claims by ECN Capital and other creditors arising out of lease rejections that resulted from the 2016 Grounding. Courts in the Fifth Circuit and elsewhere have found this type of potential impact on a debtor's rights or liabilities to be sufficient to establish "related to" jurisdiction over claims in an adversary proceeding brought by one non-debtor against another non-debtor. *See Passmore* v. *Baylor Health Care Sys.*, 823 F.3d 292, 296 (5th Cir. 2016) (finding "related to" subject matter jurisdiction where outcome of 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 affect value of debtor's property).[7]

Moreover, the discovery that Airbus produced to ECN Capital further substantiates the relatedness of the Adversary Proceeding to the Bankruptcy Cases. Airbus explained that its executives, Laurent Tagarian and Alain Vigneau, were responsible for preparing the proofs of claim Airbus filed against the Debtors in the Bankruptcy Cases—which concerned the same models of Super Pumas at issue in this Adversary Proceeding. Ex. D. Messrs. Tagarian and Vigneau also were responsible for preparing Airbus's objection to ECN Capital's requests for discovery from the Debtors in the Bankruptcy Cases regarding the Super Pumas the Debtors owned or leased, and the potential claims the Debtors might have against Airbus in connection with those Super Pumas. *Id.* Airbus's discovery now proves that Airbus sold 19 Super Pumas directly to the Debtors in the last five years, *see* Ex. B; the Debtors acknowledge that they have suffered harm in connection with those Super Pumas (and other Super Pumas the Debtors leased or owned) as a result of the 2016 Grounding, and the Debtors have claims against Airbus as a result. *See* Ex. I 104:11-13, 112:22–114:1; *see also* Ex. J 48:3-11. The outcome of ECN Capital's claims against Airbus could impact the rights, liabilities, and property value of the Debtors with respect to these Super Pumas. This Court accordingly has "related to" subject matter jurisdiction under § 1334(b) over this Adversary Proceeding.

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[7] *See also In re Canion*, 196 F.3d 579, 586–87 (5th Cir. 1999) (finding "related to" jurisdiction, since the outcome of an adversary proceeding between two non-debtors could have affected the bankruptcy estate at the time the district court referred the case to the bankruptcy court); *In re Mission Bay Ski & Bike, Inc.*, 398 B.R. 250, 253–55 (Bankr. N.D. Ill. 2010) (explaining that while "the Seventh Circuit interprets 'related to' jurisdiction more narrowly than other circuits," "related to" jurisdiction exists "when the non-debtor plaintiff is a creditor in the bankruptcy case and recovery in the action will reduce its claim against the bankruptcy estate"); *In re WorldCom, Inc. Secs. Litig.*, 293 B.R. 308, 323 (Bankr. S.D.N.Y. 2003) (finding "related to" jurisdiction over a claim against defendants connected to the debtor, because of "[t]he potential alteration of the liabilities of the estate and change in the amount available for distribution to other creditors"); *In re Edwards*, 100 B.R. 973, 982 (Bankr. E.D. Tenn. 2001) (finding "related to" jurisdiction over plaintiff's claims against a third-party lender "because of the impact a judgment against the [defendant] could have upon the bankruptcy estate").

II. This Court's Personal Jurisdiction over Airbus Is Established by Airbus's Significant Participation in the Bankruptcy Cases, Combined with Its Substantial Business in the U.S.

Airbus has submitted to this Court's personal jurisdiction through its substantial participation in the Bankruptcy Cases in this forum, where Airbus filed proofs of claim, participated as a member of the Creditors' Committee, and objected to ECN Capital's Motion for an Order Directing 2004 Examination of Debtors. *See* MTD Opp. 2–3, 25–26. The discovery shows that Airbus's actions were directed from France toward this forum, where Airbus availed itself of the benefits and protections of this Court's jurisdiction. Airbus's executives worked with U.S. counsel to prepare the filings in the Bankruptcy Cases. *See* Ex. D. The same Airbus executives traveled to this district to participate in the Bankruptcy Cases, including in connection with the Creditors' Committee meetings. *Id.* Airbus also has directed relevant business into this forum, directly selling hundreds of millions of dollars' worth of Super Pumas and other helicopters to U.S. customers based in this district, and using its U.S.-based affiliate to distribute even more helicopters in this district and to other U.S.-based customers. *See* Ex. B. This evidence—voluntarily produced and stipulated to by Airbus—directly contradicts the statements in the Gouraud Declaration submitted by Airbus in support of its attempt to avoid this Court's jurisdiction. *See* Gouraud Decl. ¶¶ 5, 9.

Courts have exercised personal jurisdiction over a creditor in an adversary proceeding in similar circumstances—where the defendant participated in the bankruptcy case and the claims in the adversary proceeding were related to the facts underlying the bankruptcy cases. *See*, *e.g.*, *In re LLS America, LLC*, 2012 WL 2564722, *7 (Bankr. E.D. Wash. 2012) (holding that by filing proof of claim and participating in motion practice, claimant submitted to bankruptcy court's jurisdiction for related claims); *Glinka* v. *Abraham and Rose Co. Ltd.*, 199 B.R. 484 (Bankr. D. Vt. 1996) (finding extensive participation in adversary proceeding, coupled with

contacts in relevant forum, sufficient for bankruptcy court to exercise personal jurisdiction over foreign non-debtor defendant); *In re Schwinn Bicycle Co.*, 182 B.R. 526, 531–32 (Bankr. N.D. Ill. 1995) (finding jurisdiction over creditor defendant for adversary proceedings and noting that "[e]stablishing jurisdiction over a party already voluntarily before a court is markedly different from doing so over a party not before it because he or she must first be hailed into court"); *In re Neese*, 12 B.R. 968, 971 (Bankr. W.D. Va. 1981) ("Having filed their proofs of claims in the underlying bankruptcy case, the defendants cannot now deny this Court's personal jurisdiction over them in a proceeding directly related to that case.").[8]

In the highly analogous district court context, courts have expressly held that filing a claim in one lawsuit subjects the claimant to the personal jurisdiction of the court in a subsequent related case, *even if the subsequent case is brought by an entity that was not a party to the first lawsuit.* For example, in *Int'l Transactions, Ltd.* v. *Embotelladora Agral Regionmontana SA de CV*, 277 F. Supp. 2d 654 (N.D. Tex. 2002), the court held that the 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. 277 F. Supp. 2d at 667–68 ("Voluntarily 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."). That a party has previously chosen to litigate in a court eliminates any claim it has that defending a subsequent case filed in that forum—even if the subsequent case is brought by litigants who were not involved in the first case—would be "unreasonably burdensome." *See Hess* v. *Bumbo Int'l Trust*, 954 F. Supp. 2d 590, 597 (S.D.

[8] While some courts have held that submitting a proof of claim in a bankruptcy case does not subject an entity to general jurisdiction in the forum, those holdings have been limited to situations where "the bankruptcy proceeding was unrelated to" the subsequent action in which personal jurisdiction was challenged. *See Encompass Holdings, Inc.* v. *Daly*, No. C09–1816 BZ, 2010 WL 5088878, at n.9 (N.D. Cal. Dec. 8, 2010).

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).

District courts outside the Fifth Circuit also have exercised personal jurisdiction over a party because it filed a related suit in the same jurisdiction against a third party. For example, in *Praetorian Specialty Ins. Co.* v. *Auguillard Const. Co.*, 829 F. Supp. 2d 456 (W.D. La. 2010), plaintiffs who filed a suit for permanent injuries suffered in a car accident moved to dismiss for lack of personal jurisdiction a separate action filed against them by a non-party insurer seeking a declaratory judgment recognizing that its insurance policies did not cover the accident. *Id.* at 460–61. The court followed the First Circuit Court of Appeals' analysis from *Gen. Contracting & Trading Co., LLC* v. *Interpole, Inc.*, 940 F.2d 20 (1st Cir. 1991), and held that the plaintiffs "waived objection to or consented to the personal jurisdiction" of the court by electing to file a lawsuit in the same forum arising from the same nucleus of operative facts. *Id.* at 465.[9]

It is well-established law that "the filing of a proof of claim" in a bankruptcy proceeding is "analogous to the filing of a complaint in a civil action." *O'Neill* v. *Cont'l Airlines* (*Matter of Cont'l Airlines*), 928 F.2d 127, 129 (5th Cir. 1991); *see also Simmons* v. *Savell,* (*In re Simmons*),

[9] Courts have continued to apply this principle after the issuance of the Supreme Court's ruling in *Daimler AG* v. *Bauman*, 134 S. Ct. 746 (2014). *Daimler* concerns *general* jurisdiction over a foreign corporation, *see* 134 S. Ct. at 754–58. When a defendant has consented to the personal jurisdiction of a court by filing a separate lawsuit arising from the same general transaction, it has not submitted itself to the court's general jurisdiction, but has rather submitted itself to jurisdiction of that court on the specific transaction at issue. *See Int'l Transactions, Ltd.*, 277 F. Supp. 2d at 667–68 (recognizing that filing a lawsuit voluntary constitutes "purposeful availment" of the jurisdiction in the context of a specific personal jurisdiction analysis). Since *Daimler*, courts have continued to recognize the principle that a defendant consents to the personal jurisdiction of a court when it has availed itself of the court's jurisdiction in a case arising out of similar facts. *See Furnari* v. *Wallpang, Inc.*, 2014 WL 1678419, at *11 (Del. Super. Ct. Apr. 16, 2014) (defendant consented to personal jurisdiction by filing suit on a related matter, since "[a] party may waive personal jurisdiction 'on the ground that the party consented to jurisdiction by submitting itself to a court's jurisdiction by instituting another, related suit'") (quoting *Foster Wheeler Energy Corp.* v. *Metallgesellschaft AG*, 1993 WL 669447, at *1 (D. Del. Jan. 4, 1993)); *New Media Holding Co., LLC* v. *Kagalovsky*, 985 N.Y.S.2d 216, 222 (2014) (finding that defendants "waived the right to challenge personal jurisdiction by freely using the protections of the New York courts when pursuing rights related to the partnership [at issue in the present case]").

765 F.2d 547, 552 (5th Cir. 1985) (stating that "the filing of a proof of claim is tantamount to the filing of a complaint in a civil action").[10]

In *In re Int'l Payment Grp., Inc.*, 2011 WL 5330783 (Bankr. D.S.C. Nov. 3, 2011), a federal bankruptcy court denied a motion to dismiss an adversary proceeding asserting "causes of action unrelated to or far beyond the scope of Defendant's claims against the estate," which was brought by the debtor's trustee against a creditor. *Id.* at *1. The court concluded that a creditor's proof of claim was akin to filing a complaint for the purposes of an adversary proceeding of a non-debtor against a creditor, even though "resolution of Defendant's claim against the estate [would] not result in a resolution of the disputes raised in this lawsuit," and the claims made in the adversary proceeding "dwarf[ed] those involved in any dispute that may arise over allowance of the proof of claim." *Id.* at *2.

District courts exercise personal jurisdiction over parties that have availed themselves of the court in related lawsuits, and claimants submit to bankruptcy courts' personal jurisdiction in the same respect as complainants in civil actions before district courts. Thus, a bankruptcy court also has personal jurisdiction over a creditor in an adversary proceeding brought by a non-debtor, when the non-debtor's claims are sufficiently related to the issues underlying the creditor-defendant's proofs of claim in the bankruptcy cases.

III. The Jurisdictional Discovery Demonstrates That the Court Should Deny Airbus's Requests for *Forum Non Conveniens* Dismissal and Abstention.

The discovery ECN Capital obtained from Airbus further shows that Airbus's attempts to avoid this Court's jurisdiction should be denied.

[10] *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 because a proof of claim is analogous to a complaint.").

Airbus seeks dismissal on the grounds of *forum non conveniens*, arguing in its Motion to Dismiss that it would be significant cost and burden for Airbus to bring witnesses to Texas and that this Adversary Proceeding has "no connection with Texas or the United States." Am. Br. in Supp. of Mot. to Dismiss 28. The record proves otherwise. Airbus voluntarily sent executives from France to this district for purposes of participating in the Bankruptcy Cases to which this Adversary proceeding is related. *See* Ex. D. And Airbus frequently sends executives to Texas for business purposes, including to attend industry events and to market and sell the very same models of Super Puma helicopters that are at issue here. *See* Ex. E. Further, Airbus sells helicopters to customers based in this district, and Airbus works with AHI—its U.S. affiliate based in Grand Prairie, Texas—to sell and distribute even more helicopters to customers in Texas and throughout the U.S. Along with sending its executives from France to Texas, Airbus's coordination with Mr. Cabaniss of AHI (together with U.S. counsel) for purposes of representing Airbus's interest in the Bankruptcy Cases further ties Airbus to this district and demonstrates Airbus's ability and willingness to appear in this district for legal proceedings. *See* Ex. D.

The discovery ECN Capital has obtained and the Debtors' testimony also support denial of Airbus's request that this Court abstain from exercising the jurisdiction it has to hear the Adversary Proceeding. In its MTD Opposition, ECN Capital set forth the criteria for the Court's consideration of Airbus's abstention request, which include "the degree of relatedness [] of the proceeding to the main bankruptcy case." MTD Opp. 22 (quoting *In re MontCrest*, 2014 WL 6982643, at *7 (Bankr. N.D. Tex. Dec. 9, 2014)). As explained in Section I above, Mr. Del Genio's testimony makes clear that the Debtors were harmed by the 2016 Grounding, which contributed to their need to cancel leases on certain helicopters, including the Super Pumas

owned by ECN Capital that are the subject of ECN Capital's proofs of claim in the Bankruptcy Cases. *See* Ex. I 108:5–109:17. And Airbus's jurisdictional discovery shows that Airbus sold 19 Super Pumas directly to certain of the Debtors, and the Debtors may have product liability or express or implied warranty claims to bring against Airbus with respect to these helicopters (along with others the Debtors owned or leased). *See* Ex. B. Thus, the testimony and discovery prove that the outcome of ECN Capital's claims in this Adversary Proceeding could significantly impact the rights, liabilities, and/or value of property of the Debtors: If ECN Capital establishes liability against Airbus, the Debtors could rely on collateral estoppel to recover significant damages from Airbus, and the Debtors potentially could offset proofs of claims from various creditors to the extent they relate to the Super Pumas. For these reasons and the reasons set forth in ECN Capital's MTD Opposition (pp. 13–16), this Court should deny Airbus's request for abstention.

CONCLUSION

For the foregoing reasons, and the reasons stated in ECN Capital's MTD Opposition and MTD Opposition Supplement, this Court should deny Defendant's Motion to Dismiss the Complaint.

Dated: February 23, 2017
Dallas, Texas

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on February 23, 2017, I caused the foregoing Second Supplemental Memorandum of Law in Opposition to Defendant's Motion to Dismiss to be filed with the Court via CM/ECF and served on all parties requesting electronic notification, including the following counsel of record for the Defendant:

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