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AIRBUS HELICOPTERS, S.A.S.

UNITED STATES BANKRUPTCY COURT
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, S.A.S., Defendant.	Adv. Pro. No. 16-3151 (BJH)

DEFENDANT AIRBUS HELICOPTERS, S.A.S.'S REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER AND PERSONAL JURISDICTION, AND *FORUM NON CONVENIENS*

Introduction

Even assuming the truth of the facts asserted by Plaintiff ECN Capital (Aviation) Corp. ("ECN") in its 47 pages of briefing in opposition to Defendant Airbus Helicopters, S.A.S.'s ("AH's") Motion to Dismiss, there are no grounds for t

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proceeding as a matter of law. It is not related to the bankruptcy proceeding, and ECN concedes that it involves helicopters manufactured and sold in France to European purchasers that have never been owned or operated in the United States. ECN opposes dismissal based solely on contacts between AH and the United States that are entirely unrelated to ECN's claims, on illusory connections with the bankruptcy proceeding, and on misleading citations to cases that do not support ECN's arguments. The Court should grant AH's Motion to Dismiss.

Argument

A. "Related To" Subject Matter Jurisdiction Does Not Exist

ECN argues that its adversary proceeding could affect the rights, liabilities, claims, and/or property of the CHC Debtors and the administration of their estates because: (1) the CHC Debtors could rely on collateral estoppel in some speculative future lawsuit against AH if ECN prevails in the adversary proceeding; and (2) any recovery by Debtor in that future lawsuit could offset claims by ECN Capital and other creditors arising out of lease rejections that resulted from the 2016 Groundings.[1] [Pl.'s Second Supp. Opp. to Mot. to Dismiss ("Second Opp. Br.") at 8.] These arguments are built on assumptions that are contrary to the record, as the CHC Debtors have advised the Court that they do not intend to pursue such claims in this Court:

> Based on a careful review of the foregoing multitude of factors, including, without limitation, the limited number of remaining owned aircraft, the age of the aircraft, the fact that the debtors do not have products liability claims with respect to leased aircraft, and counsel's assessment of the potential risks associated with any remaining causes of action, the Debtors and their advisors determined in their reasonable judgment that a chapter 7 trustee likely would not purse [sic] Potential Airbus Claims in a liquidation. [Debtors' Supp. Letter, 8, No. 16-31854-bjh11, ECF No. 1732.]

[1] ECN appears to have abandoned its earlier argument made in its first opposition brief that "the outcome of ECN Capital's claims against AH could reduce the Debtors' liability to ECN Capital on its proofs of claim." [Pl.'s Opp. to Mot. to Dismiss ("First Opp. Br.") at 10.] This is not surprising since the two damages at issue are separate and distinct, with ECN seeking damages from the CHC Debtors for rejecting leases for the helicopters, and ECN seeking damages from AH for economic losses from alleged defects in the helicopters.

The CHC Debtors acknowledge that "any litigation against Airbus, which may need to proceed in France or at minimum require analysis of French law, would be hotly contested, lengthy, complicated, and expensive." [*Id.*] Moreover,

> Even if such claims [regarding the impact of the grounding on the Debtors' business] were recoverable by the Debtors . . . there is no evidence in the record to suggest that: (i) the benefit of such recovery would flow to entities where ECN is asserting an objection; or (ii) any value flowing to those entities would be unencumbered and inure to the benefit of the unsecured creditors like ECN. [*Id.* at 8-9.]

In other words, the CHC Debtors themselves see no relationship between their possible future claims against AH and the underlying bankruptcy proceeding.

Despite this, ECN attempts to bootstrap its adversary proceeding to these non-existent CHC Debtors' claims to try to manufacture "related to" jurisdiction. In doing so, ECN also mistakenly assumes that this Court would have post-confirmation jurisdiction, which requires ECN to ignore that after "a debtor's reorganization plan has been confirmed, the debtor's estate, and thus bankruptcy jurisdiction, ceases to exist, other than for matters pertaining to the implementation or execution of the plan." *Bank of La. v. Craig's Stores of Tex., Inc. (In re Craig's Stores of Tex., Inc.)*, 266 F.3d 388, 390-91 (5th Cir. 2001) (dismissing adversary proceeding because "the post-confirmation dispute at issue in this appeal has nothing to do with any obligation created by the debtor's reorganization plan.").

ECN further ignores the fact that even if there are grounds for estoppel in some future lawsuit, such arguments could be made in any court of proper jurisdiction; they need not be made in this Bankruptcy Court.[2] Nor should they be brought here, as there will be no bankruptcy estate to credit any recovery. Rather, any recovery by the reorganized debtors would flow to creditors having equity interests in the re-organized debtors per the confirmation plan. No part

[2] For collateral estoppel to even be a possibility, ECN is assuming that the CHC Debtors would bring identical claims against AH as ECN has brought, even though the circumstances of the CHC Debtors' claims, if any, would involve different facts regarding the transactions for the helicopters. *See Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 391 (5th Cir. 1998) (collateral estoppel requires identical issues).

of ECN's scenario could have a conceivable effect on the plan's administration sufficient to give this Court "related to" jurisdiction.

ECN's lawsuit is about recovering damages for ECN, period. It has nothing to do with the bankruptcy proceeding, and none of the cases ECN cites find "related to" jurisdiction under such circumstances.[3] By contrast, in *Bass v. Denney (In re Bass)*, 171 F.3d 1016, 1022-23 (5th Cir. 1999), the Fifth Circuit made clear that "related to" jurisdiction does not exist where, as here, "any recovery that might result . . . would not accrue to the estate."[4] *Id.*

B. The Court Should Abstain Even if it Finds "Related To" Jurisdiction

This is not a case like *In re Residential Capital, LLC*, 515 B.R. 52, 67–68 (S.D.N.Y. 2014), cited by ECN, where the debtor's counterclaims could directly benefit the bankruptcy estate because there is no debtor in this adversary. It is more like *In re MontCrest Energy, Inc.*,

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[3] In *Randall & Blake, Inc. v. Evans (In re Canion)*, 196 F.3d 579, 582 (5th Cir. 1999), the Court found "related to" jurisdiction over a suit brought by a judgment creditor against the debtor's relatives under which the judgment creditor sought to hold the debtor's relatives liable for the judgment against the debtor. Here, by contrast, ECN's suit against AH does not involve the CHC Debtors at all. *Kimpel v. Meyrowitz (In re Meyrowitz)*, Nos. 06-31660-BJH-11, 10-03227, 2010 Bankr. LEXIS 4853, at *17 (N.D. Tex. Dec. 20, 2010) is distinguishable because the party who initiated the adversary proceeding asserted the same claims against the debtor and non-debtors, which meant that, unlike here, recovery against the non-debtors would reduce any recovery from the debtor.

Other cases cited by ECN involved contribution or indemnification rights vis-à-vis the debtor's estate, which is also not at issue here. *Passmore v. Baylor Health Care Sys.*, 823 F.3d 292, 296 (5th Cir. 2016) (stating that if "the Passmores ultimately prevailed in their suit, on a theory of either direct negligence or vicarious liability, the defendants may have contribution or indemnity claims against [the debtor] under Texas law."); *In re WorldCom, Inc. Sec. Litig.*, 293 B.R. 308, 321 (S.D.N.Y. 2003) ("Because the effect of contribution claims on the bankruptcy estate is at the very least 'conceivable,' the NYCERS action is related to the bankruptcy"); *In re Edwards*, 100 B.R. 973, 979-981 (E.D. Tenn. 1989) (claims arose out of lender's alleged participation with debtor in concealing improper release of collateral and had potential impact on estate through claims of contribution or indemnification); *Owens-Ill., Inc. v. Rapid Am. Corp. (In re Celotex Corp.)*, 124 F.3d 619, 626 (4th Cir. 1997).

Others found jurisdiction because the proceeding directly impacted the bankruptcy estate, which ECN's claims do not do. *See, e.g., In re Time Const., Inc.*, 43 F.3d 1041, 1044-1045 n.7 (6th Cir. 1995), (bankruptcy court had jurisdiction over action to vacate an arbitration award awarded to a construction company in bankruptcy proceedings because the award was the largest asset of bankruptcy estate); *In re Mission Bay Ski & Bike, Inc.*, 398 B.R. 250, 253 (Bankr. N.D. Ill. 2008) (adversary proceeding between a creditor and a guarantor of the debtor's note which would affect the amount of property available to creditors from the debtor).

[4] ECN also mischaracterizes the cases cited by AH in its Motion to Dismiss as cases "in which the bankruptcy court held that is had 'related to' subject matter jurisdiction." [First Opp. Br. at 11 n. 16 (citing *Barbee v. Colonial Healthcare Ctr., Inc.*, No. 3:03-cv-1658-N, 2004 U.S. Dist LEXIS 4868, at *8-9 (N.D. Tex. March 22, 2004) and *P.O'B. Apollo Tacoma, L.P. v. TJX Cos. v. TJX Cos.*, No. 3:02-cv-0222-H, 2002 U.S. Dist. LEXIS 18702, at *2-5 (N.D. Tex. Oct. 3, 2002)).] AH cited those cases because they affirmed holdings in favor of permissive abstention – they do not support the exercise of "related to" jurisdiction on these facts.

13-41129-DML-7, 2014 WL 6982643, at *7-8 (Bankr. N.D. Tex. Dec. 9, 2014), also cited by ECN, where the court abstained because state law issues predominated, bankruptcy jurisdiction was the sole source of federal jurisdiction, the adversary proceeding had limited connection to the bankruptcy, plaintiffs had demanded a jury trial, and the parties were non-debtors. *See also In re Fort Worth Osteopathic Hosp., Inc.*, 406 B.R. 741, 745-47 (N.D. Tex. 2009) (cited by ECN) ("Notwithstanding, indeed due in part to the very tenuous nature of, any 'related to' jurisdiction [the court] may have, the court believes that it should abstain from hearing the Adversary" because the proceeding involved a state law dispute between non-debtor parties, was only tangentially related to the bankruptcy case, and the estate had requested a jury trial).

Permissive abstention is proper under the twelve factors cited by ECN. This is a non-core proceeding, there is no estate property involved, and recovery will not affect ECN's claims against the estate or have any effect on the efficient administration of the estate (Factors 1, 6, 7). ECN concedes that it involves complex state law aviation product liability claims that are highly technical and can take years to prepare for trial, with discovery taking place in at least two foreign countries, and a lengthy jury trial – all of which pose a burden on the bankruptcy court's docket (Factors 2, 3, 9). Contrary to its assertion that AH is forum shopping, ECN selected this improper forum where "related to" bankruptcy jurisdiction is the only plausible basis for jurisdiction (Factors 5, 10). There are no bankruptcy claims to sever (Factor 8). Finally, this proceeding will end up in the district court anyway because the parties requested a jury trial (Factors 11, 12). The cases cited by ECN do not support its position on abstention, as each involved clearly distinguishable facts.[5]

[5] *See e.g. Snider v. Sherman*, No. CV-F-03-6605 OWW, 2007 WL 1174441, at *44 (E.D. Cal. Apr. 19, 2007) ("bankruptcy law issues control the essential elements and merits" of the core proceeding); *In re Freeway Foods of Greensboro, Inc.*, 449 B.R. 860, 880 (M.D.N.C. 2011) (most of the allegations in the complaint were identical to those in another matter in the bankruptcy court and it would be more efficient for one court to resolve the matter involving both core and non-core claims); *Hutson v. Bay Harbour Mgmt., L.C.*, No. 1:06CV01037, 2007 WL 1434834, at *1 (M.D.N.C. May 11, 2007) (not discussing abstention at all).

C. ECN Has Not Met Its Burden on Personal Jurisdiction

ECN concedes that AH is not subject to general jurisdiction since AH is not at home in the United States. Yet ECN's arguments for personal jurisdiction would require this Court to exercise general jurisdiction in clear violation of the law, because none of AH's alleged United States contacts are related to ECN's lawsuit.

None of the cases ECN cites support its argument that by filing proofs of claims and participating in the CHC bankruptcy proceeding AH consented to personal jurisdiction as to ECN's unrelated adversary proceeding. ECN's cases involve claims brought by the bankruptcy debtors or estate trustees, not third parties like ECN, and have other distinguishing facts.[6] In fact, ECN has not cited, and AH has not found, any decision where a court has found that filing a proof of claim subjects a creditor to personal jurisdiction for third party claims unrelated to the proof of claim.[7] Such a finding would expose creditors to the general jurisdiction of the bankruptcy court in direct contravention of *Daimler AG v. Bauman*, 134 S. Ct. 746, 761, n.19

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[6] *Secs. Inv. Prot. Corp. v. Bernard L. Madoff Inv.*, 460 B.R. 106, 117 (S.D.N.Y. 2011) (adversary proceeding brought by debtor estate trustee, and issue was not consent to jurisdiction by filing of a proof of claim, but rather contractual forum provision); *In re Deak & Co., Inc.*, 63 B.R. 422, 433 (S.D.N.Y. 1986) (claims brought by the debtor, and defendant failed to object to jurisdiction for over a year); *Glinka v. Abraham and Rose Co. Ltd.*, 199 B.R. 484, 495-97 (Bankr. D. Vt. 1996) (claim by trustee, and the court found that the defendant had waived any jurisdiction objection by intervening in the adversary proceeding, not raising the defense and actively participating in the proceeding for two years, and the proceeding arose directly from defendant's forum contacts); *In re Schwinn Bicycle Co.*, 182 B.R. 526, 530–32 (N.D. Ill. 1995) (proof of claim subjected party to personal jurisdiction in adversary proceeding brought by the Chapter 11 plan committee that represented the estate of the debtor to recover preferential transfers – "The Committee represents the estate for limited purposes of pursuing recoverable transfers in its narrowly-defined role. As such, its preference action is properly viewed as a counterclaim to the proof of claim filed by Reynolds against the estate."); *In re Neese*, 12 B.R. 968, 971 (W.D. Va. 1981) (claim brought by trustee of debtor); *In re Quality Lease & Rental Holdings, LLC*, No. 14-60074, 2016 WL 416961, at *5 (S.D. Tex. Feb. 1, 2016) (filing proof of claim subjected creditor claim by debtor "on issues that are related to the proof of claim" – case also dealt with the issue of the availability of a jury trial, not consent to personal jurisdiction).

[7] In fact, the cases found suggest filing a proof of claim is a consent to jurisdiction in very narrow circumstances. *In re Lehman Bros. Holdings Inc.*, 544 B.R. 16, 36 (Bankr. S.D.N.Y. 2015) (filing a proof of claim represents "submission to the jurisdiction of the Court only with respect to litigation concerning the claims allowance process" and not to litigation by the debtor unrelated to that process); *In re LLS Am., LLC*, No. 09-06194-PCW11, 2012 WL 11860945, at *7 (Bankr. E.D. Wash. July 2, 2012) (adversary proceeding brought by estate trustee and noting that "The *Stern* [*v. Marshall*] opinion generally stands for the proposition that the filing of a proof of claim in bankruptcy is not a consent to personal jurisdiction over claims held by the estate which are unrelated to the bankruptcy law or unrelated to the creditor's claim against the bankruptcy estate."); *see Stern v. Marshall*, 564 U.S. 462, 462 (2011) ("The fact that Pierce filed a proof of claim in the bankruptcy proceeding did not give the Bankruptcy Court the authority to adjudicate Vickie's counterclaim . . . a state tort action that exists without regard to any bankruptcy proceeding.").

(2014) (only in an exceptional case will a defendant be deemed "at home" and subject to general jurisdiction in a place other than its principle place of business or place of incorporation). Even before *Daimler*, courts found that participation in a bankruptcy proceeding does not subject creditors to unrelated claims. *See, e.g, Gulf Ins. Co. v. The Caldor Corp.*, No. 03 CIV. 2894 (LLS), 2006 WL 1586571, *3-4 (S.D.N.Y. 2006) (filing proof of claims and participating in a bankruptcy proceeding, including seeking affirmative relief, did not subject the defendant to the court's personal jurisdiction for a declaratory relief action that arose from matters outside of the bankruptcy proceeding).

Neither *Int'l Transactions, Ltd. v. Embotelladora Agral Regionmontana SA de* CV, nor *Hess v. Bumbo Int'l Trust* are bankruptcy cases, and neither supports ECN's argument. In *Int'l Transactions,* the court found consent to jurisdiction because the defendant had affirmatively filed two separate lawsuits in the forum that were directly related to JAMS proceedings the plaintiff had filed in that forum. 277 F. Supp. 2d 654, 667–68 (N.D. Tex. 2002). In *Hess* the court found general jurisdiction based on the defendant's forum contacts, not its involvement with prior litigation, which was relevant only to the issue of burden on the defendant of litigating in the forum. 954 F. Supp. 2d 590, 593-97 (S.D. Tex. 2013). *Praetorian Specialty Ins. Co. v. Auguillard Const. Co.*, 829 F. Supp. 2d 456 (W.D. La. 2010), and *Gen. Contracting & Trading Co., LLC v. Interpole, Inc.*, 940 F.2d 20 (1st Cir. 1991), are equally irrelevant, as they involved situations where consent was found because the defendant had filed lawsuits in the same forum based on the same operative facts.[8]

ECN makes much of the undisputed fact that AH has business contacts with the United States, including attending trade shows, and that between 2011 and 2016 AH sold hundreds of

[8] ECN's statement that AH has admitted that it is subject to personal jurisdiction in the United States in *Newman v. Airbus Helicopters Inc., et al.*, No. 16-2-26710-6 SEA (Wash. Super. Ct., filed Nov. 1, 2016), ignores the fact that, unlike here, the helicopter entered and crash in the State of Washington where the lawsuit was brought.

helicopters to customers in the United States (the vast majority of which were sold to one customer – Airbus Helicopters, Inc. – an independent distributor located in Texas).[9] While such contacts might establish purposeful availment, they are completely unrelated to ECN's claim over helicopters that were never sold, owned, registered or operated in the United States. These contacts thus cannot satisfy the relatedness requirement for specific jurisdiction. *See, e.g., Prejean v. Sonatrach, Inc.*, 652 F.2d 1260, 1270 (5th Cir. 1981) (no specific jurisdiction over aircraft manufacturer despite substantial activities in forum because they were unrelated to the plaintiff's claim); *Monkton Ins. Servs. v. Ritter*, 768 F.3d 429, 423-33 ("Specific jurisdiction 'focuses on the relationship among the defendant, the forum, and the litigation.'") (quoting *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014)).[10]

ECN argument that stream of commerce jurisdiction may be premised on the presence of *other* helicopters that AH sold to *other* customers that have flowed into the United States is directly contrary *Goodyear Dunlop Tires Ops. S.A. v. Brown*, 564 U.S. 915, 930 n. 6 (2011) ("even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales"). There, the Supreme Court declined to find stream of commerce jurisdiction in North Carolina for claims arising from an allegedly defective tire that caused an injury in France based on the presence in the forum of other tires manufactured and distributed by the defendants. *Id*.; *see also Luv n' Care, Ltd. v. Insta-Mix, Inc.*, 438 F.3d 465, 473 (5th Cir. 2006), *cert. denied*, 548 U.S. 904 (2006) (cited by ECN) ("Luv n' care claims

[9] ECN attempts to portray the fact that AH has sold helicopters to customers located in the United States as contrary to Paragraphs 5 and 9 of the Declaration of Michel Gouraud, which state that AH does not transact business or sell Super Puma helicopters in the United States. Mr. Gouraud explained that AH sells helicopters, including selling ECN's five helicopters, from its place of business in France. Id. at ¶¶ 3, 7. He did not state that AH has no customers in the United States.

[10] Such contacts also do not establish general jurisdiction. *See Martinez v. Aero Caribbean*, 764 F.3d 1062, 1069-70 (9th Cir. 2014) (finding that, after *Daimler*, sales of hundreds of millions of dollars of aircraft to purchaser in California, contracts with component suppliers in California, attendance at trade shows in California, and advertising in California was "plainly insufficient to subject [aircraft manufacturer] to general jurisdiction in California").

infringement from the same bottle that traveled through the stream of commerce from Colorado to Louisiana. This connection between the allegedly infringing product and the forum state is sufficient to confer personal jurisdiction.").[11]

D. Dismissal on *Forum Non Conveniens* Grounds is Proper

ECN concedes that all of the evidence, including third-party witnesses, related to ECN's claims against AH are located in Europe or Canada.[12] ECN has also not identified a single interest of the United States in expending its resources or requiring its citizens to act as jurors in this foreign dispute. ECN also does not dispute the authorities favoring dismissal cited in AH's Motion to Dismiss, including those that have found France to be an adequate, alternative forum.

Instead, ECN makes the offensive argument that the courts of France – the United States' oldest ally and sister democracy – would be unfair to ECN because the French government has a 10% (and declining) ownership interest in AH's ultimate parent – but not in AH itself. [First Opp. Br. at 24.] Such arguments have been rejected before. *In re Arbitration between Monegasque De Reassurances S.A.M. v. Nak Naftogaz of Ukraine*, 311 F.3d 488, 499 (2d Cir. 2002) ("It is hardly unusual, considering the number of state-owned business entities throughout the world, for a finding of *forum non conveniens* to be made in favor of the forum of a state whose entity is a party litigant.") (citing *Forsythe v. Saudi Arabian Airlines Corp.*, 885 F.2d 285 (5th Cir. 1989) (dismissing action against state-owned corporation in favor of Saudi Arabian forum)). Indeed, ECN says nothing about the fact that the Court *In re Air Crash over the Mid-*

[11] The cases ECN cites confirm that stream of commerce jurisdiction is premised on the specific product at issue being located in the forum. *Verde v. Stoneridge, Inc., et al.*, No. 6:14CV157, 2015 WL 1384373, at *1, 5 (E.D. Tex. March 23, 2015) (defendant's spring traveled through the stream of commerce and injured plaintiff in Texas – "It is not unfair or unjust to require the manufacturer of a good that is knowingly delivered to a specific state to respond to a lawsuit arising out of defects in the good *in that state*." (emphasis added)); *Bean Dredging Corp. v. Dredge Tech. Corp.*, 744 F.2d 1081, 1084 (5th Cir. 1984) ("it is not unreasonable to subject [defendant] to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owners or others.") (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98 (1980)).

[12] ECN points out that the FAA's office in Fort Worth issued an Airworthiness Directive ("AD") that grounding United States registered Super Puma helicopters following the accident in Norway, but ignores the fact that none of ECN's aircraft are registered in the United States and thus are not subject to the FAA's jurisdiction or its AD.

Atlantic on June 1, 2009, 760 F. Supp. 2d 832, 847-848 (N.D. Cal. 2010), dismissed claims brought against Air France and Airbus in favor of litigation in both defendants' home forum of France.[13]

Plaintiff's reliance on *Magnolia Ocean Shipping Corp. v. M/V Marco Azul* is misplaced, as that case involved admiralty jurisdiction, where (unlike in diversity cases) United States courts have jurisdiction over suits between foreigners, and the proceedings had reached an advanced stage, with depositions and extensive hearings having occurred. 1981 A.M.C. 2071, 2075 (E.D. Va. July 2, 1981). Thus, the court found that the "equities of preserving jurisdiction . . . greatly outweigh any relatively minor inconveniences to this Court or any of the parties involved." *Id.* at 2077. This case presents the exact opposite situation, where the inconveniences to the litigants, this Court and its jurors greatly outweigh the retention of tenuous "related to" bankruptcy jurisdiction. The other cases ECN relies upon to argue against dismissal on *forum non conveniens* grounds involved very different circumstances.[14]

Conclusion

ECN's lawsuit has nothing to do with the United States, the bankruptcy proceeding or any contacts between AH and the United States. AH's Motion to Dismiss should be granted.

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[13] As of 2015, the government of France reportedly owned roughly 17% of Air France – KLM. *See* https://en.wikipedia.org/wiki/Air_France%E2%80%93KLM#Ownership.

[14] *Tempur-Pedic Int'l, Inc. v. Go Satellite Inc.*, 758 F. Supp. 2d 366, 381–82 (N.D. Tex. 2010), involved claims brought by American plaintiffs under United States trademark, Lanham Act and Texas state law, where the court found that the United States had an interest in "protecting its federally recognized trademarks and protecting United States consumers from infringing products . . . [because] [t]he complained-of injury to plaintiffs' trade reputation occurred entirely in the United States." Similarly, in *Snaza v. Howard Johnson Franchise Sys., Inc.*, No. 3:07-CV-0495-O, 2008 WL 5383155, at *13 (N.D. Tex. Dec. 24, 2008), the Court found that the magistrate judge had not given due deference to the United States citizen plaintiffs' choice of forum, and found that sources of proof and witnesses would be easier to access if the case remained in the United States because some of the defendants were also located in the United States. This case is more like *Alpine View Co. Ltd. v. Atlas Copco AB*, 205 F.3d 208, 221 (5th Cir. 2000), also cited by ECN, where the court found no abuse discretion when the lower court dismissed claims against the United States subsidiaries of a Swedish parent in part because merits based evidence was located outside the United States. It is unclear why ECN cites to *In re Bernard L. Madoff Inv. Secs. LLC*, 418 B.R. 75, 82 (Bankr. S.D.N.Y. 2009), as that case did not involve *forum non conveniens*.

Dated: February 25, 2017.

Respectfully submitted,

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