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# Stress in the Aviation Industry

## Latin American Airlines in Chapter 11: A Continuing Saga

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# Speakers



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Latest Updates and Takeaways  
from Chapter 11 Latin American  
Airline Cases



# DIP Financing Update: Avianca

- **Avianca recently filed a motion to approve its proposed \$2 billion DIP financing.** Hearing is on October 5, 2020, at 10AM ET.
- Proposed \$2 billion DIP financing will provide \$1.2 billion in new liquidity, along with a roll-up of about \$722 million of prepetition debt.
- The facility will be split into a senior tranche A and a junior tranche B, each secured by the same pool of collateral (all asset grant) with tranche B subordinated in right of repayment to tranche A.
  - The collateral pool for the proposed DIP financing was recently substantially increased via Avianca's acquisition of LifeMiles stocks using the funds from the DIP financing.
- Bloomberg reported that Avianca is offering one of the highest premiums yet seen on a \$1.3 billion DIP loan.
- **The Administrative Court of Cundinamarca issued an injunction blocking the Colombian government disaster fund's participation of up to \$370 million in (or 20% of) Avianca's DIP financing. Avianca appealed the decision.**



# DIP Financing Update: LATAM

- **Latam's bankruptcy has included significant litigation over its initial DIP financing proposal.**
- On September 10, 2020, **the Bankruptcy Court rejected the proposed form of DIP financing, ruling that the tranche C DIP contains impermissible *sub rosa* treatment of tranche C lenders** (i.e., equity conversion option) by dictating future plan terms and impinging on creditors' rights under a plan confirmation process.
- On September 17, 2020, the debtors filed a motion to approve its revised DIP financing, which, among other things, removed the equity conversion option and expanded lender participation in the DIP financing.
- On September 19, 2020, the **Bankruptcy Court approved the revised DIP financing**, noting that the changes in the modified loan agreement addressed the previously-identified *sub rosa* issues. The modified DIP financing includes:
  - Tranche A: \$1.3 billion facility provided by Oaktree Capital Management, who would assign \$175 million to Knighthead and certain other lenders.
  - Tranche C: \$1.15 billion facility (\$750 million provided by a shareholder group; \$250 million provided by Knighthead and certain other lenders; and \$150 million offered by LATAM's shareholders or creditors, or new investors).

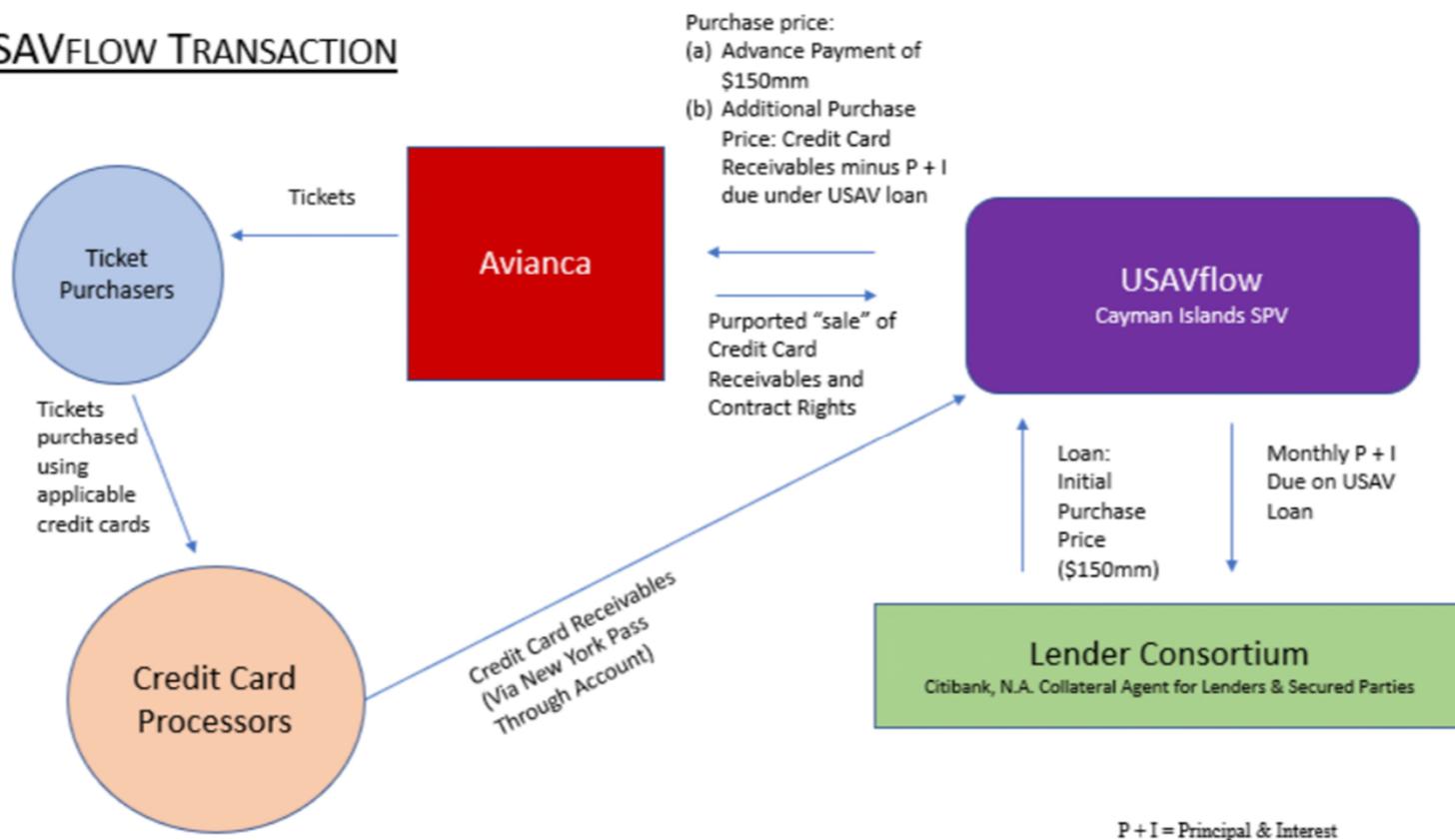
Aeromexico tail fin is visible in the top right corner of the slide, set against a blue background with a yellow vertical bar on the left.

# DIP Financing Update: Aeroméxico

- Aeromexico's proposed \$1 billion multi-tranche DIP facility includes **a unique equity election conversion feature**.
- The DIP facility, fully underwritten by Apollo, comprises (i) a secured tranche 1 term loan facility in an aggregate principal amount of \$200 million and (ii) a secured tranche 2 term loan facility in an aggregate principal amount of \$800 million.
  - The tranche 2 term loan facility would allow tranche 2 DIP lenders, at their election, to convert their DIP claims into equity of the reorganized company.
- On August 19, 2020, the DIP financing motion was approved on an interim basis, providing the Debtors with interim access to \$100 million of the secured tranche 1 facility.
- **The final DIP hearing has been adjourned to a date and time to be determined.** Judge Chapman indicated to the parties that the court's earliest availability would be Tuesday, September 29, 2020.

# Challenge to Credit Card Receivables Securitization in *Avianca*

## USA VFLOW TRANSACTION



# Treatment of Credit Card Receivables in *Avianca*

- On June 23, 2020, Avianca commenced an adversary proceeding against USAVflow Ltd. in connection with a transaction the debtors engaged in with USAV that purportedly constituted a “sale” of the debtors’ receivables under certain credit card processing agreements in exchange for cash.
  - **Avianca sought to recharacterize such transaction as a disguised secured financing.**
  - Debtors claim that the transaction was not a “true sale,” notwithstanding the contractual provisions to such effect (and supported by opinions of counsel) under Colombian law.
- Simultaneously with the above, Avianca filed a motion seeking to reject the contracts underlying the transaction, indicating that they will withdraw the complaint in the event the rejection motion is granted.
  - The debtors emphasized that the credit card receivables generate revenue that is crucial to the airline’s ability to continue operations.

# Treatment of Credit Card Receivables in *Avianca* (cont'd)

- On September 4, the bankruptcy court authorized Avianca to reject certain (but not all) agreements with USAV as executory contracts, which relieves the debtors of their future performance obligations to USAV.
  - Court concluded that the receivables purchase agreement and a related undertakings agreement were executory contracts.
  - Court ruling does indicate that the existing specified sales processed by American Express and Credomatic cannot be rescinded, and that rejection does not terminate USAV's right to receive payments for such sales.
  - However, the court ruling does permit the Avianca debtors to avoid any continuing obligations under the receivables purchase agreement, including the obligation to sell accounts receivable from any replacement credit card contracts entered into after the filing date of the bankruptcy petition to the issuer for no additional consideration.
- On September 18, USAV secured lender group appealed the court's decision.
- The Debtors had indicated they would withdraw the adversary complaint if they prevailed on the rejection motion, but to date have not withdrawn the complaint in the adversary proceeding.

# Treatment of Credit Card Receivables in *Avianca* (cont'd)

- As a result, on September 25, 2020, USAVflow Ltd. filed motion to dismiss the adversary on the grounds that debtors cannot seek re-characterization of the USAV transaction as a disguised financing in adversary since the court already has found in ruling on the rejection motion that it was a sale transaction.
  - USAVflow makes three arguments:
    - **First**, that the debtors are estopped from pursuing claims in the adversary that are contradictory and inconsistent to relief obtained in the rejection motion;
    - **Second**, that the complaint fails to state a claim since the USAV transaction cannot be unwound now that the court has ruled on the rejection motion; and
    - **Third**, that the court should stay the adversary proceeding pending the outcome of the appeal of the order on the rejection motion.
  - The USAV secured lender group has filed a joinder in support of the motion to dismiss.

# Status

	Avianca	LATAM	Aeroméxico
Petition Date	5/10/2020	5/26/2020	6/30/2020
Exclusivity Period to Propose a Plan and Solicit Votes ( <b>No plan of reorganization filed so far</b> )	<b>Court extended</b> <ul style="list-style-type: none"> <li>- Filing Period: January 5, 2021</li> <li>- Solicitation Period: March 6, 2021</li> </ul>	<b>Court extended</b> <ul style="list-style-type: none"> <li>- Filing Period: January 29, 2021</li> <li>- Solicitation Period: March 23, 2021</li> </ul>	<b>Plan due by October 28, 2020</b> <ul style="list-style-type: none"> <li>- No motions to extend so far.</li> </ul>
Debtors took longer than customary to file schedules and financial statements	May 10, 2020 – September 8, 2020 ( <b>121 days</b> )	May 26, 2020 – September 8, 2020 ( <b>105 days</b> )	June 30, 2020 – August 25, 2020 ( <b>56 days</b> )
Section 341 Meetings of Creditors Delayed	Initial meeting on September 21, 2020	341 meeting for initial debtors held on July 22, 2020	341 Meeting held on August 27, 2020
Claims Bar Date Not Established or Set Later than Customary	No bar date motion filed so far	<b>Court approved general bar date of December 18, 2020 at 4PM ET</b>	No bar date motion filed so far



# Key Takeaways

- At the heart of the each airline's efforts to successfully restructure is the need to right-size their aircraft fleet and determine which markets/routes will be necessary for a viable business model going forward.
  - That is hard to do in the midst of so much continuing uncertainty as to when and to what extent domestic and international travel will pick up.
  - Further complicated by the difficulty of managing local creditors in numerous foreign jurisdictions and formulating and implementing a cross-border plan of reorganization.
- Progress is being made, with most of the work occurring behind the scenes, towards negotiating a plan of reorganization in each of these cases.
- Until the macro-economic issues caused by the COVID-19 pandemic are adequately addressed, it will remain difficult for the airlines and their stakeholders to determine what sort of exit strategy for the chapter 11 cases may be acceptable and achievable.
- For now, it looks like the airlines will be in a holding pattern for at least a while longer, before they'll be able to bring their chapter 11 proceedings in for a smooth landing.

Questions?



# Speaker Biographies





**Joaquin M. C de Baca**  
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Joaquin M. C de Baca is a partner in Mayer Brown's New York office and a member of the firm's Global Restructuring practice. His practice includes both transactional and litigation work in a wide range of in-court and out-of-court workouts and reorganization proceedings. He has represented clients in complex bankruptcy proceedings, debtor-in-possession and exit financings, litigations, international insolvency proceedings and negotiated restructuring transactions in an extensive scope of distressed contexts

Joaquin was recognized by *New York Super Lawyers* as a 2018-19 Rising Star in Bankruptcy and represented a major international financial institution as administrative agent in connection with a contested chapter 11 sale transaction that was awarded "Health Care Services Restructuring of the Year" at Global M&A Network's 11th Annual Turnaround Atlas Awards and "Chapter 11 Reorg of the Year (\$500MM to \$1B)" at the 2019 M&A Advisor Turnaround Awards.

Joaquin regularly represents a variety of commercial banks, agent banks and lending syndicates, real estate investment and holding companies, insurance companies, investment fund managers and individual directors and officers, individual institutional lenders and lender syndicates in all types of distressed situations. His recent or significant representations include:

**Non U.S. financial institutions and service providers** in the ongoing chapter 11 proceedings of primarily non-U.S. airlines.

A **non-U.S. broker** in connection with plan enforcement issues with respect to Lehman Brothers Holdings, Inc. and its affiliated debtors.

An **equipment finance lessor** in connection with complex equipment lease assumption and claims resolution issues arising out of the Westinghouse chapter 11 proceedings.

A **major international bank** in connection with the administration of loans to a distressed hospital system.

A **non-U.S. bank** in connection with the dissolution and wind down of related U.S. entities as directed by foreign insolvency proceedings.

A **major international bank** in connection with the workout and potential insolvency proceedings related to the financing of a Brazilian oil field business.

A **major international bank**, as agent on behalf of a syndicate of lenders, in connection with the restructuring of loans for four cancer-treatment centers across the United States. This involved novel out-of-court refinancing transactions and both consensual and disputed bankruptcy court supervised 363 sale transactions. These deals were awarded "Health Care Services Restructuring of the Year" at *Global M&A Network's* 2019 Annual Turnaround Atlas Awards and "Chapter 11 Reorg of the Year (\$500MM to \$1B)" at the 2019 *M&A Advisor* Turnaround Awards.

A **non-U.S. financial entity** in connection with the defense of constructive fraudulent conveyance claims arising from the liquidation of Bernard L. Madoff Investment Securities LLC (and various related feeder funds).

A **major international bank** in connection with the DIP financing of PG&E and affiliated debtors and related administration issues.



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Craig Reimer represents administrative agents, secured lenders, indenture trustees, pension funds, insurance companies, Fortune 100 companies and other creditors in all aspects of out-of-court workouts, financial restructurings and bankruptcy proceedings. In addition, Craig has served as debtor's counsel in a number of complex chapter 11 cases in a range of industries including energy, retail, technology and services. Craig also has extensive experience in real estate foreclosure actions across the country, including representing secured lenders, special servicers and other stakeholders in CMBS transactions, and has substantial experience advising secured creditors in connection with exercising the full range of remedies under Article 9 of the Uniform Commercial Code.

Craig currently is advising clients in Avianca Airlines, Latam Airlines, and Speedcast International. Other recent institutional engagements include advising the indenture trustee for the successful cross-border restructuring of more than \$2 billion of secured notes issued by an affiliate of Odebrecht Oil & Gas, the administrative agent of a lender syndicate that provided

more than \$5.8 billion of financing to a privately owned and operated toll road system. Craig also served as one of the lead bankruptcy attorneys in ATP Oil & Gas Corp.'s multi-billion dollar chapter 11 proceeding and represents clients in several other recent energy cases.

During the course of Craig's almost thirty years at Mayer Brown, he has represented parties in many of the largest and most complex chapter 11 cases in the country, including Caesars, Lehman Brothers, Toys R Us, Hawker Aircraft, United Airlines, US Airways, Northwest Airlines, General Motors, Global Crossing, Nortel, and Federated Department Stores. Over the years, Craig has represented the secured lenders in some of the largest real estate foreclosure cases in the Midwest and has extensive experience representing secured lenders from workouts, restructurings, foreclosures and bankruptcy proceedings involving all types of commercial real estate, including Class A office buildings, multi-use properties, hotels and golf resorts, big box retail stores and large industrial properties.



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Sean Scott is a partner in the Chicago office of Mayer Brown LLP and is a member of the firm's Restructuring practice. Sean has extensive experience in complex insolvency matters, including in-court bankruptcy proceedings and out-of-court restructurings and recapitalizations. Sean typically acts on behalf of companies, boards of directors, administrative agents, lender syndicates and other significant stakeholders in all types of distressed scenarios. In the course of his practice, Sean frequently counsels corporate clients seeking to acquire or sell assets as part of the bankruptcy process. Sean also regularly advises lending and investor clients on structuring considerations in the areas of fund finance, securitization and trade receivables financing.

In peer ranking publications and other industry sources, Sean is frequently recognized as a standout in the restructuring field. Early in his career, Sean was named by *Institutional Investor News* as one of its ten "Rising Stars of Bankruptcy/Restructuring Law and Workouts" and was recognized by *Law 360*, a leading newswire for business lawyers, as one of its "10 bankruptcy lawyers under 40 to watch" among all practitioners nationwide. More recently, *Chambers USA* has noted that clients laud Sean for being "very focused" on "the best path to get the best results for us and our interests."

Sean regularly represents individual institutional lenders and lender syndicates in all types of distressed situations. His recent or significant representations include the administrative agent for the first lien lenders in the Chapter 11 cases of **Samson Resources**

**Group** and its affiliates; the administrative agent and DIP facility agent in the Chapter 11 cases of **Dune Energy Inc.**; the predecessors in title to **Memorial Production Partners** with respect to a \$150 million dispute over a decommissioning trust relating to oil and gas operations offshore of the Port of Long Beach, California; and a prepetition lender and clearing bank in connection with a \$300 million secured claim in the Chapter 11 case of **Sentinel Management Group, Inc.**

Sean also frequently counsels corporate clients seeking to acquire or sell assets as part of the bankruptcy process. His notable representations in this regard include **Carrington Capital Management, LLC**, and **Carrington Mortgage Services, LLC**; in their \$180 million acquisition of the mortgage loan servicing business of New Century Mortgage Corporation and **Tenneco Automotive Operating Company**, in its acquisition in the Delphi bankruptcy of certain assets and inventory.

Sean was counsel for **ATP** in one of the largest offshore exploration and production company bankruptcies, involving more than \$3 billion in energy assets, in *In re ATP Oil & Gas Corporation*, in the United States Bankruptcy Court, Southern District of Texas, Houston Division. This matter was awarded "Energy & Services Turnaround of the Year" by *Global M&A Network*.



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Richard Stock is a partner in Mayer Brown's Hong Kong office. He is a co-leader of Mayer Brown's Banking & Finance practice, and a leader of the firm's Asset Finance team. He focuses his practice on the aviation industry, with nearly thirty years' experience assisting airlines, lessors and financial institutions to document aircraft and aviation-related transactions.

Richard has extensive experience in advising on aircraft finance and leasing matters for both commercial and business aircraft as well as documenting the acquisition and disposal of aircraft. He has negotiated OEM documentation for the purchase of new aircraft with a total value exceeding USD 27 billion. Richard also advises airlines and lessors on the acquisition and disposal of portfolios of used aircraft.

Richard has a particular interest in airline operational matters, having advised airlines on long-term engine maintenance agreements and inventory technical management agreements with total revenues exceeding USD 7 billion.

In recent years, an increasing proportion of Richard's practice has included advising investors on large, strategically important projects, including the establishment of new airlines, the re-purposing of existing airlines and the establishment of aircraft leasing platforms.

*Chambers Asia Pacific* (2019) noted that "He is responsive, proactive, pragmatic and commercial. He goes the extra mile and provides expert advice." And "well-respected" and "very well-known." Richard is ranked Band 1 by *Chambers* (2011-2020) and Leading Individual by *The Legal 500 Asia Pacific* (2008-2020).

Richard's experience includes representing:

A shareholder in a joint-venture to establish a dedicated express-freight airline and its subsequent restructuring, and a shareholder in a joint venture seeking to re-purpose a general freight airline located in the PRC.

Several airlines on their refueling programmes (e.g. a recent transaction involved the purchase and financing of narrowbody aircraft, the disposal of its existing fleet and associated engine and equipment procurement programmes, together with a long term engine maintenance programme).

Various airlines engaged in sale-and-leaseback financings for aircraft and for engines (in 2020 alone, with a value exceeding USD1.5bn).

Various PRC lessors, each owned by a financial institution, in the purchase of new narrow-body aircraft (including subsequent competitions to supply power plants).

Various lessors in portfolio acquisitions, purchase-and-leaseback transactions involving a broad range of jurisdictions, and portfolio disposals.

Various financial institutions lending to aircraft lessors to finance or refinance the acquisition of aircraft on lease to a range of airlines (on a recourse and on a limited-recourse basis).

A leading airline on a series of long-term engine maintenance agreements with scheduled revenues in excess of USD 7 billion.



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