

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UMB BANK, NATIONAL ASSOCIATION,  
solely in its capacities as Senior Trustee and  
Security Trustee

Plaintiff,

vs.

AIRPLANES LIMITED and  
AIRPLANES U.S. TRUST

Defendants.

Case No.: 16-cv-7717 (PAE)

**ANSWER OF UMB BANK, NATIONAL ASSOCIATION TO COUNTERCLAIM OF  
AIRPLANES LIMITED AND AIRPLANES U.S. TRUST**

UMB Bank, National Association (“UMB Bank”) submits this answer to the Counterclaim of Airplanes Limited and Airplanes U.S. Trust (together, “Defendants”) dated November 21, 2016 [Doc. No. 19] (the “Counterclaim”), and respectfully represents as follows:<sup>1</sup>

1. UMB Bank denies the allegations contained in paragraph 125 of the Counterclaim, except admits that it serves as Indenture Trustee, Pass-Through Trustee and Security Trustee under certain documents relating to notes issued by Defendants.

2. UMB Bank admits the allegations contained in the first sentence of paragraph 126 of the Counterclaim; lacks knowledge or information necessary to form a belief as to the truth of the allegations contained in the second sentence of paragraph 126 of the Counterclaim; denies the allegations contained in sentences 3 through 5 of paragraph 126 of the Counterclaim and refers the Court to the documents referenced therein for complete and accurate descriptions of their contents.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the amended complaint [Doc. No. 10] (“Amended Complaint”).

3. UMB Bank denies the allegations contained in paragraph 127 of the Counterclaim and refers the Court to the documents referenced therein for complete and accurate descriptions of their contents.

4. UMB Bank denies the allegations contained in the first sentence of paragraph 128 of the Counterclaim, except to state that it lacks knowledge or information necessary to form a belief as to whether Airplanes Limited and its subsidiaries are in the process of winding down their operations; denies the allegations contained in the second sentence of paragraph 128 of the Counterclaim, except admits that any contingent liability arising from litigation in Brazil that Airplanes Limited's subsidiary, Airplanes Holdings, faces is highly uncertain and that, upon information and belief, the litigation in Brazil has been ongoing for more than a decade; lacks knowledge or information necessary to form a belief as to the truth of the allegations contained in the third sentence of paragraph 128 of the Counterclaim; denies the allegations contained in the fourth sentence of paragraph 128 of the Counterclaim, except admits that cash reserves have been established purportedly to reserve for a potential judgment against Airplanes Holdings.

5. UMB Bank denies the allegations contained in the first sentence of paragraph 129 of the Counterclaim and refers the Court to the default notice referenced therein for a complete and accurate description of its contents; denies the allegations contained in the second sentence of paragraph 129 of the Counterclaim; denies the allegations contained in the third sentence of paragraph 129 of the Counterclaim, except admits that UMB Bank commenced this action against Defendants and refers the Court to UMB Bank's Amended Complaint for a complete and accurate description of its contents; denies the allegations contained in the fourth sentence of paragraph 129 of the Counterclaim.

6. UMB Bank denies the allegations contained in paragraph 130 of the Counterclaim and further denies Defendants' entitlement to the relief it seeks in the Counterclaim.

7. Upon information and belief, UMB Bank admits the allegations contained in paragraph 131 of the Counterclaim.

8. Upon information and belief, UMB Bank admits the allegations contained in paragraph 132 of the Counterclaim.

9. UMB Bank admits the allegations contained in paragraph 133 of the Counterclaim.

10. UMB Bank states that the allegations contained in paragraph 134 of the Counterclaim constitute legal conclusions to which no response is required.

11. UMB Bank states that the allegations contained in paragraph 135 of the Counterclaim constitute legal conclusions to which no response is required.

12. UMB Bank states that the allegations contained in paragraph 136 of the Counterclaim constitute legal conclusions to which no response is required, except admits that UMB Bank has agreed to litigate before this Court claims arising out of the indentures, pass-through trust agreement and security trust agreement referenced therein.

13. UMB Bank lacks knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraph 137 of the Counterclaim.

14. UMB Bank denies the allegations contained in paragraph 138 of the Counterclaim, except admits that each Defendant entered into indentures, issued subclasses of notes, and provided a guarantee of the notes issued by the other Defendant. UMB Bank refers the Court to the indentures referenced in paragraph 138 of the Counterclaim for complete and accurate descriptions of their contents.

15. UMB Bank denies the allegations contained in paragraph 139 of the Counterclaim and refers the Court to the documents referenced therein for complete and accurate descriptions of their contents.

16. UMB Bank admits the allegations contained in the first sentence of paragraph 140 of the Counterclaim; denies the allegations contained in the second sentence of paragraph 140 of the Counterclaim, except admits that Defendants entered into a pass-through trust agreement that established trusts, and refers the Court to the document referenced therein for a complete and accurate description of its contents. UMB Bank admits the allegations contained in the third sentence of paragraph 140.

17. UMB Bank admits the allegations contained in paragraph 141 of the Counterclaim.

18. UMB Bank lacks knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraph 142 of the Counterclaim.

19. UMB Bank admits the first sentence of paragraph 143 of the Counterclaim; denies the remaining allegations contained in paragraph 143 of the Counterclaim and refers the Court to the loan agreement referenced therein for a complete and accurate description of its contents.

20. UMB Bank denies the allegations contained in paragraph 144 of the Counterclaim and refers the Court to the indentures referenced therein for complete and accurate descriptions of their contents.

21. UMB Bank denies the allegations contained in paragraph 145 of the Counterclaim and refers the Court to the indentures referenced therein for complete and accurate descriptions of their contents.

22. UMB Bank denies the allegations contained in paragraph 146 of the Counterclaim and refers the Court to the indentures referenced therein for complete and accurate descriptions of their contents.

23. UMB Bank denies the allegations contained in paragraph 147 of the Counterclaim and refers the Court to the indentures referenced therein for complete and accurate descriptions of their contents.

24. UMB Bank denies the allegations contained in paragraph 148 of the Counterclaim and refers the Court to the indentures referenced therein for complete and accurate descriptions of their contents.

25. UMB Bank denies the allegations contained in paragraph 149 of the Counterclaim and refers the Court to the documents referenced therein for complete and accurate descriptions of their contents.

26. UMB Bank denies the allegations contained in paragraph 150 of the Counterclaim and refers the Court to the documents referenced therein for complete and accurate descriptions of their contents.

27. UMB Bank denies the allegations contained in paragraph 151 of the Counterclaim and refers the Court to the documents referenced therein for complete and accurate descriptions of their contents.

28. UMB Bank denies the allegations contained in paragraph 152 of the Counterclaim, except admits that for approximately 15 years Airplanes Holdings, a subsidiary of Airplanes Limited, has been involved in various proceedings before courts in Brazil involving Transbrasil, a now-defunct Brazilian airline to which Airplanes Holdings had leased aircraft.

29. Upon information and belief, UMB Bank admits the allegations contained in paragraph 153 of the Counterclaim.

30. Upon information and belief, UMB Bank admits the allegations contained in paragraph 154 of the Counterclaim.

31. Upon information and belief, UMB Bank admits the allegations contained in paragraph 155 of the Counterclaim.

32. UMB Bank denies the allegations contained in paragraph 156 of the Counterclaim and refers the Court to the decisions referenced therein and other decisions in the Transbrasil Litigation for complete and accurate descriptions of their contents.

33. UMB Bank denies the allegations contained in paragraph 157 of the Counterclaim, except admits that certain orders to pay were issued against the Lessors in the Transbrasil Litigation, which orders to pay were subsequently cancelled. UMB Bank refers the Court to the orders referenced in paragraph 157 of the Counterclaim and subsequent orders in the Transbrasil Litigation cancelling the orders to pay for a complete and accurate description of their contents.

34. UMB Bank admits the allegations contained in the first sentence of paragraph 158 of the Counterclaim and refers the Court to the decisions referenced therein for complete and accurate descriptions of their contents; upon information and belief, admits the allegations contained in the second and third sentences of paragraph 158 of the Counterclaim.

35. UMB Bank lacks knowledge or information necessary to form a belief as to the truth of the allegations contained in paragraph 159 of the Counterclaim, except admits that there is not currently any judgment against Airplanes Holdings in connection with the Transbrasil Litigation.

36. UMB Bank denies the allegations contained in paragraph 160 of the Counterclaim, except admits that cash reserves have been established, purportedly to reserve for any potential judgment rendered against Airplanes Holdings in the Transbrasil Litigation.

37. UMB Bank denies the allegations contained in paragraph 161 of the Counterclaim.

38. UMB Bank denies the allegations contained in paragraph 162 of the Counterclaim, except admits that Airplanes Limited increased its liquidity reserve from \$45 million to \$110 million in or around June 2012; increased its liquidity reserve to \$140 million in or around October 2013; and increased its liquidity reserve to \$190 million in or around November 2015. UMB Bank refers the Court to the documents referenced in paragraph 162 of the Counterclaim for complete and accurate descriptions of their contents.

39. UMB Bank denies the allegations contained in paragraph 163 of the Counterclaim and refers the Court to the letter referenced therein for a complete and accurate description of its contents.

40. UMB Bank denies the allegations contained in paragraph 164 of the Counterclaim, except admits that Deutsche Bank sent a letter on or around June 28, 2016 and refers the Court to the letter referenced in paragraph 164 of the Counterclaim for a complete and accurate description of its contents.

41. UMB Bank denies the allegations contained in paragraph 165 of the Counterclaim.

42. UMB Bank denies the allegations contained in paragraph 166 of the Counterclaim, except admits that a “Brazilian appellate court reversed the May 2007 Decision and the February 2010 Decision in October 2013, and the lower Brazilian court cancelled the last of the Orders to Pay in August 2014.” UMB Bank refers the Court to the documents referenced in paragraph 166 of the Counterclaim for complete and accurate descriptions of their contents.

43. UMB Bank denies the allegations contained in paragraph 167 of the Counterclaim and refers the Court to the documents referenced therein for complete and accurate descriptions of their contents.

44. UMB Bank denies the allegations contained in paragraph 168 of the Counterclaim and refers the Court to the documents referenced therein for complete and accurate descriptions of their contents.

45. UMB Bank denies the allegations contained in paragraph 169 of the Counterclaim and refers the Court to the documents referenced therein for complete and accurate descriptions of their contents.

46. UMB Bank denies the allegations contained in paragraph 170 of the Counterclaim and refers the Court to the documents referenced therein for complete and accurate descriptions of their contents.

47. UMB admits the allegations contained in the first sentence of paragraph 171 of the Counterclaim; denies the allegations in the second sentence of paragraph 171 of the Counterclaim; and lacks knowledge or information necessary to form a belief as to the truth of the remaining allegations in paragraph 171 of the Counterclaim.

48. UMB denies the allegations contained in paragraph 172 of the Counterclaim, except admits that it commenced this action and refers the Court to the Amended Complaint for a complete and accurate description of its contents.

49. For its response to paragraph 173 of the Counterclaim, UMB Bank repeats its responses to paragraphs 125 through 172 of the Counterclaim.

50. UMB Bank states that the allegations contained in paragraph 174 of the Counterclaim constitute legal conclusions as to which no response is required.

51. UMB Bank denies the allegations contained in paragraph 175 of the Counterclaim, except admits that it made certain allegations in its Amended Complaint and refers the Court to the Amended Complaint for a complete and accurate description of its contents.

52. UMB Bank admits that in their Answer Airplanes Limited and Airplanes U.S. Trust have made the assertions referenced in paragraph 176 of the Counterclaim, and otherwise denies the allegations contained therein.

53. UMB Bank states that the allegations contained in paragraph 177 of the Counterclaim constitute legal conclusions to which no response is required.

54. UMB Bank states that the allegations contained in paragraph 178 of the Counterclaim constitute characterizations of Defendants' claims and legal conclusions to which



no response is required, but denies Airplanes Limited or Airplanes U.S. Trust have sustained any harm for which UMB Bank can be held liable.

55. UMB Bank states that the allegations contained in paragraph 179 of the Counterclaim constitute characterizations of Defendants' claims and legal conclusions to which no response is required, but denies Airplanes Limited and Airplanes U.S. Trust are entitled to the relief referenced in paragraph 179 of the Counterclaim.

56. UMB Bank states that the allegations contained in paragraph 180 of the Counterclaim constitute a request for relief for which no response is required.

### **AFFIRMATIVE DEFENSES**

UMB Bank asserts the following defenses without assuming the burden of proof of any such defenses that would otherwise rest with Defendants:

#### **FIRST DEFENSE**

The Counterclaim fails to state a claim upon which relief may be granted.

#### **SECOND DEFENSE**

The Counterclaim is uncertain, vague, ambiguous, improper, and unintelligible.

#### **THIRD DEFENSE**

The Counterclaim is barred, in whole or in part, because Defendants have not incurred any damages in connection with the claims asserted therein.

#### **FOURTH DEFENSE**

The Counterclaim is barred in that any award to Defendants in this action would constitute unjust enrichment.

#### **FIFTH DEFENSE**

The Counterclaim is barred, in whole or in part, by the doctrine of unclean hands.

**SIXTH DEFENSE**

Because the Counterclaim only alleges conclusions of fact and law, UMB Bank cannot fully anticipate all affirmative defenses that may be applicable. Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby reserved.

*[Remainder Of Page Intentionally Left Blank]*

**PRAYER FOR RELIEF**

WHEREFORE, UMB Bank respectfully requests that this Court enter an order dismissing the Counterclaim with prejudice, awarding UMB Bank its costs, expenses and reasonable attorneys' fees in defending this action, and granting such other and further relief as is just and proper.

Dated: New York, New York  
December 12, 2016

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