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) **Hearing Date: February 6, 2017, 2:30 p.m.**

REPLY OF UMB BANK, NATIONAL ASSOCIATION IN SUPPORT OF RULE 12(C) MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

TABLE OF CONTENTS

PAGE

A. The Hypothetical Transbrasil Liability Is Not Anticipated To Become Due And Payable 2

B. The Hypothetical Transbrasil Liability Is Not A "Fee, Cost or Expense" Under the Indenture 4

C. Airplanes Limited Confirms That Contingent Liabilities Are Not Expenses Under The Indenture 6

D. The Hypothetical Transbrasil Liability Is Not An Expense Because It Was Not Incurred In The Course Of Permitted Business Activities 7

E. Airplanes Limited's Remaining Arguments Should be Rejected 9

CONCLUSION 10

TABLE OF AUTHORITIES

Page

Cases

Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co.,
45 Cal. App. 4th 1 (1996) 2

Chevron U.S.A., Inc. v. United States,
20 Cl. Ct. 86 (1990) 4, 5

Cortland-Clinton, Inc. v. N.Y. State Dep't of Health,
59 A.D.2d 228 (N.Y. App. Div. 1977) 4

In re Discon Corp.,
346 F. Supp. 839 (S.D. Fla. 1971) 6

Ed Peters Jewelry Co. v. C & J Jewelry Co.,
124 F.3d 252 (1st Cir. 1997) 10

Frayer Seed, Inc. v. Century 21 Fertilizer & Farm Chemicals, Inc.,
51 Ohio App. 3d 158 (1988) 10

Jordan (Berm.) Inv. Co. v. Hunter Green Invs. Ltd.,
154 F. Supp. 2d 682 (S.D.N.Y. 2001) 8

Kirschner v. KPMG LLP,
15 N.Y.3d 446 (2010) 8

Lockheed Martin Corp. v. Retail Holdings, N.V.,
639 F.3d 63 (2d Cir. 2011) 1

Mears v. Lake Country Council,
709 N.E.2d 747 (Ind. Ct. App. 1999) 4

Postlewaite v. McGraw-Hill, Inc.,
411 F.3d 63 (2d Cir. 2005) 3

SN Sands Corp. v. City & Cty. of San Francisco,
167 Cal. App. 4th 185 (Ct. App. 2008) 3

Volpe v. Am. Language Commc'n Ctr., Inc.,
No. 15 Civ. 06854 (GBD), 2016 WL 4131294 (S.D.N.Y. July 29, 2016) 8

In re W. T. Grant Co.,
4 B.R. 53 (Bankr. S.D.N.Y. 1980) 6

Way v. Berks Cty. Bd. of Assessment Appeals,
990 A.2d 1191 (Pa. Commw. Ct. 2010) 2

Statutes

NY UCC § 9-504 (2014).....10

Airplanes Limited[1] has sold all of its aircraft and has no ongoing business. It undisputedly owes its noteholders approximately $1.3 billion, but it refuses to pay them. Instead, it is "reserving" for a hypothetical tort liability of its subsidiary, Airplanes Holdings, based on a judgment that has been reversed. Airplanes Limited concedes that the hypothetical liability is, at most, "highly uncertain" and "worst case." *See* Ans. ¶ 128; Ex. D (2016 Annual Report) p. 3. In the meantime, Airplanes Limited's Directors seek to continue to pay themselves (and their industry-giant service providers) handsome fees, and thus have no incentive to ever pay the noteholders and wind down the company.

Airplanes Limited tries to justify its failure to pay the noteholders by claiming that the noteholders agreed not to be paid, *i.e.*, that the Indenture somehow permits it to reserve for this hypothetical liability. Neither the plain language nor common sense supports this position. The Indenture makes clear that Airplanes Limited may only reserve for fees, costs, or expenses that arise from permitted business activities ("Expenses"), and that are "anticipated to become due and payable." The hypothetical Transbrasil liability fails to qualify. A potential judgment based on alleged tortious acts in violation of Brazilian law is not an "Expense." And even if it is an "Expense," it is not anticipated to become due and payable because, contrary to being "expected" or "probable," all parties agree that any judgment is at best a remote possibility.

Contrary to Airplanes Limited's assertion, there is nothing unreasonable about applying the Indenture's plain language.[2] Indeed, it would be unreasonable (and wholly improper) to ignore that language, which is precisely what Airplanes Limited would have the Court do here. UMB Bank has a lien on Airplanes Limited's accounts. Those accounts provide the principal

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[1] Capitalized terms used but not defined herein have the meanings ascribed to them in UMB Bank's opening brief in support of its 12(c) Motion [Doc. No. 30] and, unless otherwise stated, exhibits cited herein are attached to the December 22, 2016 Declaration of Benjamin I. Finestone in support of the motion [Doc. No. 31].

[2] Despite Defendants' suggestion otherwise, the parties' reliance on differing definitions does not render the Expense provision in the Indenture ambiguous. Opp. 14. A contract is ambiguous only "if it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context" of the entire agreement as a whole. *Lockheed Martin Corp. v. Retail Holdings, N.V.*, 639 F.3d 63, 69 (2d Cir. 2011). As noted, when read in context Airplanes Limited's interpretation is objectively unreasonable and contrary to basic canons of contract interpretation.

security for the noteholders' claims. The noteholders reasonably agreed to allow their collateral to be used to pay certain fees, costs, and expenses that benefitted Airplanes Limited's lawful business and, in turn, the noteholders' collateral. What they plainly did not do, however, is agree to allow their collateral to be unreasonably used or withheld to reserve for "highly uncertain" tort claims.

A. The Hypothetical Transbrasil Liability Is Not Anticipated To Become Due And Payable

Airplanes Limited acknowledges that to be proper under the Indenture, the Reserve must fall within the definition of "Permitted Accrual." Opposition ("Opp.") 14. Thus, the Reserve must be in respect of "Expenses . . . anticipated to become due and payable in any future Interest Accrual Period [*i.e.*, prior to the final maturity date of March 15, 2019]." *See* Mot. 20; Ex. A (Indenture) § 3.01(d). Airplanes Limited's own assertions, both in its public annual reports and its pleadings in this case, show that the hypothetical Transbrasil liability is not anticipated to become due and payable at any time or in any amount. To try to escape its admissions, Airplanes Limited now asks the Court to adopt an absurd interpretation of the term "anticipate." Airplanes Limited fails to cite a single case that supports its convoluted interpretation.

In the Motion, UMB Bank cited to numerous dictionary definitions and cases defining "anticipate" as "to see as a probable occurrence," and/or to "look forward to as certain: expect." Mot. 20-21; *see also Way v. Berks Cty. Bd. of Assessment Appeals*, 990 A.2d 1191, 1195 (Pa. Commw. Ct. 2010) ("'Anticipated yearly income' is different from 'hoped-for yearly income' or 'possible yearly income.' Anticipation entails an expectation, not a desire or a possibility."). Contrary to Airplanes Limited's assertions (Opp. 20), UMB Bank does not argue that those definitions require 100 percent certainty. Rather, these authorities define "anticipate" to require at least ***some*** degree of certainty ranging from probable to certain. The definition of the closely related synonym, "expect," is in line. *See Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co.*, 45 Cal. App. 4th 1, 69 (1996) ("The plain and ordinary meaning of 'expect,' as reflected in dictionary definitions, is to anticipate, to consider probable or certain."). Thus, to qualify as

"anticipated," the hypothetical Transbrasil liability must have more than a "'mere possibility'" of becoming due and payable. *See* Mot. 21 (quoting *SN Sands Corp. v. City & Cty. of San Francisco*, 167 Cal. App. 4th 185, 193 (Ct. App. 2008)).[3]

Airplanes Limited concedes that there is nothing more than the mere possibility of the hypothetical Transbrasil liability ever becoming due and payable. Opp. 8 (asserting "it remains possible" that the Transbrasil Litigation will result in liability); Mot. 21 (citing numerous admissions). Far from having any degree of certainty, Airplanes Limited admits that the prospects for incurring the hypothetical Transbrasil liability are "'highly uncertain.'" Ans. ¶ 128. As Airplanes Limited also acknowledges, the prior judgment against Airplanes Holdings was reversed in 2013. That reversal was recently confirmed when the Federal Court of Appeals of Brazil declined Transbrasil's appeal, rendering any potential liability even more remote now than when this action was commenced. *See* Mot. 8 (citing Paes Decl. ¶ 5 [Doc. No. 25]). Thus, there is currently no outstanding judgment or liability. Opp. 8; *see also* Ans. ¶¶ 41, 159, 166.

Airplanes Limited's admissions are fatal. It does not and cannot assert that the chances of incurring the hypothetical Transbrasil liability are probable or even more likely than not. Rather, it argues that "anticipate" should be interpreted to mean merely discussing or giving advance thought to a potential judgment, without any requirement of probability or likelihood. Opp. 20.[4] Thus, according to Airplanes Limited, so long as it thought about or discussed the hypothetical Transbrasil liability becoming due and payable prior to the Notes' final maturity date of March 15, 2019, it is allowed to reserve for it no matter how remote or contingent it may be. There is no rational basis for this position. We can all think about winning the lottery; but that's a far cry from "anticipating" winning it. *See Postlewaite v. McGraw-Hill, Inc.*, 411 F.3d

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[3] As UMB Bank noted in the Motion, the *SN Sands* case interpreted the plain meaning of the phrase "anticipated expenditures," and defined "anticipate" as "to look forward to as certain" or to "expect." 167 Cal. App. 4th at 193. Airplanes Limited's only response is that the court in *SN Sands* "did not impose the requirement of 100% certainty that UMB claims here." Opp. 21. But as noted, UMB Bank has never claimed such a requirement.

[4] Airplanes Limited ignores that the definitions of "anticipate" set forth in Sinaiko Decl. Exs. 5-7 all give definitions of "anticipate" in line with the definitions cited by UMB Bank in the Motion.

63, 69 (2d Cir. 2005) (contract interpretation must be based on "common sense" and "objective, rational, and reasonable expectations of [the parties]").

Airplanes Limited also maintains that "anticipate" may mean "to foresee and deal with in advance: forestall." Opp. 20. But this definition supports UMB Bank, not Defendants, because the term "foresee" is a synonym of "expect" and "anticipate." *See Cortland-Clinton, Inc. v. N.Y. State Dep't of Health*, 59 A.D.2d 228, 231 (N.Y. App. Div. 1977) ("Ballantine [law dictionary] defines 'anticipate' as 'to expect, to foresee', and Webster defines it, inter alia, as 'to look forward to as certain'."). As noted, Defendants have not asserted—and cannot assert—that the hypothetical Transbrasil liability is probably, likely, or certain to become due and payable.

B. The Hypothetical Transbrasil Liability Is Not A "Fee, Cost or Expense" Under the Indenture

Airplanes Limited argues that the Expense provision in the Indenture includes the payment of "judgments."[5] Opp. 15. This, too, is incorrect. The Indenture expressly distinguishes "judgments" or "liabilities" from fees, costs, and expenses, including in the very same sentence. For example, the Indenture's definition of Losses includes "any loss, ***cost***, charge, ***expense***, interest, ***fee***, payment, demand, ***liability***, claim, action, proceeding, penalty, fine, damages, ***judgment***, ***order*** or other sanction other than Taxes." Expenses, by contrast, include only "fees, costs or expenses incurred by any Airplanes Group Member in the course of [permitted] business activities." Ex. A (Indenture § 1.01, p. 16). There is no provision for judgments, and certainly not for judgments resulting from unpermitted tortious activities.[6]

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[5] Airplanes Limited claims that UMB Bank does not dispute that the Expense definition covers "attorneys' fees and other costs that Airplanes Holdings may incur in defending the Transbrasil litigation." Opp. 15. This statement simply is not true, exists nowhere in the pleadings, and is irrelevant to UMB Bank's Motion.

[6] Defendants cite two non-binding cases for the proposition that "judgments" are "expenses" (Opp. 15-16). Those cases interpreted the term "expenses" in contexts completely different than here, and thus they are inapposite. In *Mears v. Lake Country Council*, 709 N.E.2d 747 (Ind. Ct. App. 1999), the court interpreted an Indiana statute that required a county to pay "all expenses" of a juvenile detention center. The Indiana statute did not separately use the term "judgment." The Indenture here, by contrast, uses the term "judgment" in various places, but not in the definition of "Expense." Additionally, the court opined that because the county was enjoying the "benefit" of the detention center, it was appropriate for the county to pay the entire "'price' that must be paid to derive the 'benefit.'" *Id.* at 749.

Contrary to Airplanes Limited's assertion (Opp. 16), the fact that the term "Loss" does not appear in the Indenture's payment waterfall does not transform a "judgment" into an "Expense." Rather, this proves UMB Bank's point. The Indentures do not permit Airplanes Limited to pay—ahead of noteholders—"Losses" (*i.e.*, judgments) from the noteholders' collateral. In several places where the parties intended to cover adverse judgments—not just fees, costs, and expenses—they made that clear. For example, the Indenture provides that Airplanes Limited "shall indemnify the Indenture Trustee . . . for, and hold it harmless against, any ***loss, liability or expense*** incurred by it . . . including the costs and expenses of defending itself against any claim or liability . . . ." Ex. A (Indenture) § 8.01 (emphasis added). Similarly, Airplanes Limited agreed that it would obtain indemnity from aircraft lessees in respect of any "losses or liabilities" arising from the use of the aircraft. *Id.* § 5.03(i). If these sophisticated parties (inexplicably) intended to prioritize adverse judgments against Airplanes Group as an "Expense," they were more than capable of doing so. They would have either included the term "loss," "liability," or "judgment" in the definition of "Expense," or replaced the term "Expenses" in the payment priorities with the defined term "Losses." They did neither.

Airplanes Limited argues that UMB Bank's reading of the Indenture would leave it unable to "satisfy any judgment." Opp. 16. That is not true. In addition to procuring indemnity from lessees, Airplanes Limited agreed to maintain liability insurance policies to cover the risk of judgments and other Losses. *See* Ex. A. (Indenture) § 5.03(h)[7] (requiring Airplanes Limited to maintain, among other things, airline hull, airline liability, and airline political risk insurance).

In *Chevron U.S.A., Inc. v. United States*, 20 Cl. Ct. 86 (1990), the contract at issue also did not use the term judgment elsewhere, but rather was "spartan in its description of the kinds of expenses" covered. *Id.* at 88. The court relied on the parties' custom and practice, noting that defendant did not dispute eighteen other cases where "legal fees, judgments and/or settlements" had been paid as "operating costs." *Id.* The court concluded that judgments were intended to be expenses in a context in which the parties "certainly must have anticipated the risk of litigation expenses" given they were operating an "oil and gas producing [r]eserve." *Id.* Nonetheless, the court recognized that, in other circumstances, such a broad interpretation of expense could "pose definitional problems in cases of unanticipated or unusual expenses," *id.*, such as here respecting the Transbrasil judgment in the aircraft securitization industry.

[7] Indeed, it is hardly a coincidence that the deductibles on insurance could not exceed $10,000,000 in the aggregate—an amount that matches dollar-for-dollar the Indenture's "Permitted Balance."

Moreover, Airplanes Limited's leases required the aircraft lessees to carry substantial insurance coverage. *See* Ex. J (April 2001 Prospectus) at 48-49. In the event insurance did not cover a Loss, a judgment creditor could look to the unencumbered assets of Defendants' subsidiaries to satisfy its judgment (which included Airplanes Limited's aircraft before they were sold). Finally, as is common in all debtor–secured creditor relationships, Airplanes Limited and UMB Bank could discuss a waiver under the Indentures on a case-by-case basis.

C. Airplanes Limited Confirms That Contingent Liabilities Are Not Expenses Under The Indenture

In support of its argument that the hypothetical Transbrasil liability is an "Expense," Airplanes Limited cites to the "Risk Factors" section in an April 26, 2001 prospectus for the A-9 Certificates. Opp. 6. The Risk Factors confirm UMB Bank's position that a contingent liability (*e.g.*, the hypothetical Transbrasil liability) is not an Expense under the Indenture.[8]

Airplanes Limited asserts that the Risk Factors in the prospectus "expressly warned potential purchasers of [the] Certificates that, under the Indentures, the subclass A-9 Notes are subordinate to the expenses – including contingent liabilities – of APG and its subsidiaries." Opp. 6. This is very misleading. The prospectus does *not* include contingent liabilities as "expenses"; indeed, it expressly *distinguishes* between them. One Risk Factor states that "***Administrative and lease expenses and some other specified payments in the ordinary course of business*** of Airplanes Limited and Airplanes Trust ***rank senior in priority of payment*** to the notes and guarantees." *Id*. at 19 (emphasis added). This Risk Factor merely reflects the priority of "Expenses" under section 3.08 of the Indenture (*i.e.*, the focus of the current dispute). Notably, this Risk Factor does not mention contingent or tort liabilities.

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[8] Even if Airplanes Limited did accurately describe the prospectus, it would not matter because the Indenture (not the prospectus) governs the legal rights between the noteholders and Airplanes Limited. *See* Ex. J (April 2001 Prospectus) at 107; *see also In re W. T. Grant Co*., 4 B.R. 53, 73 (Bankr. S.D.N.Y. 1980) ("In those cases in which a conflict exists between an indenture and a prospectus, the indenture controls."); *In re Discon Corp*., 346 F. Supp. 839, 844 (S.D. Fla. 1971) ("It is the indenture which spells out the debenture agreement; the prospectus in this case, merely summarized it . . . .").

In an entirely separate Risk Factor, the prospectus addresses claims (including contingent claims) against Airplanes Limited's subsidiaries. It states that such claims are "***effectively*** senior" to the Notes (as opposed to "senior in priority of payment"). *Id.* at 19 (emphasis added). As the prospectus makes clear, contingent claims against Airplanes Limited's subsidiaries are "effectively" senior, not because of any *contractual* payment priorities in the Indenture, but rather because Airplanes Limited's "*subsidiaries* [*i.e.*, not Airplanes Limited itself] would generally have to make payments on those claims before making payments or distributions to Airplanes Limited or Airplanes Trust." *Id.* (emphasis added). The inescapable conclusion is that, as UMB Bank argues, contingent liabilities of Airplanes Limited's subsidiaries do not rank senior to the Notes under the Indenture. Rather, there was a risk that they may get paid first only because they are *structurally* senior to the Notes, and only to the extent there were funds at the subsidiaries to pay those liabilities when they ceased to be contingent (*i.e.*, became due and payable). *Id.* (stating that "if the subsidiaries ***are called upon to pay*** any of these contingent liabilities, we may not have enough funds to make payments to you.") (emphasis added).

Airplanes Limited's position is based on contractual payment subordination under the Indenture—not *structural* subordination, which is the general concept that a subsidiary's assets go to pay the subsidiary's debts before payment of its parent's debts. *Structural* seniority is not at issue here because no subsidiary has made any payment on the hypothetical Transbrasil liability, nor is any subsidiary currently holding funds to pay that liability. Rather, as Airplanes Limited asserts, the funds are currently being held in the Expense Account (Ans. ¶¶ 13, 147), which secures Airplanes Limited's obligations on the Notes. *See* Mot. 5; *see also* Ex. A (Indenture) § 3.01(d). Thus, the Risk Factor relied upon by Airplanes Limited is relevant here only because it supports UMB Bank's position that contingent tort liabilities are not Expenses.

D. The Hypothetical Transbrasil Liability Is Not An Expense Because It Was Not Incurred In The Course Of Permitted Business Activities

Airplanes Limited contends the Court should conclude as a matter of law that any potential Transbrasil judgment will have been incurred in the course of business activities

permitted by the Indenture. Opp. 16. Airplanes Limited asserts that its permitted activities include "all related activities incidental to leasing . . . of Aircraft," including permitting Airplanes Limited to "accept, exchange or hold . . . promissory notes . . . of Lessees in settlement of delinquent obligations." It argues that because the Transbrasil litigation arose from the promissory notes issued by Transbrasil, any liability will necessarily arise from a permitted business activity. Opp. 17.

This argument is without merit. The Transbrasil litigation extends far beyond the scope of "accepting, exchanging or holding" promissory notes. Rather, it concerns whether GECAS, Airplanes Holdings' authorized agent, violated Brazilian law, or acted with "malice" or "bad faith" in seeking to enforce the promissory notes.[9] "Malicious" and "bad faith" litigation are not permitted business activities under section 5.02(e) of the Indenture, nor are they "incidental" to the leasing of the Aircraft. Ex. A (Indenture) § 5.02(e). Common sense compels the conclusion that no reasonable noteholder would ever have agreed to subordinate its right to payment to expenses related to such wrongful conduct.

Trying to distance itself from GECAS's alleged misconduct, Airplanes Limited also argues that *Airplanes Holdings'* only relevant business activity was the mere retention of GECAS as servicer for the aircraft leases. Opp. 17-18. But, the putative Expense does not arise from the mere retention of GECAS—it arises from GECAS's alleged unlawful conduct, acting on behalf of the Transbrasil Lessors.[10] To the extent that GECAS's conduct was outside the

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[9] Airplanes Limited strains to make an issue of the fact that UMB Bank relies on an "unofficial translation of the February 2010 Decision that UMB [Bank] did not attach to its complaint, and the accuracy of which [Defendants have] not admitted" to establish that the lower Brazilian court had found that GECAS had violated Brazilian law by engaging in improper collection efforts. This argument is baseless. It is well settled that foreign judgments are matters subject to judicial notice. *See, e.g.*, *Jordan (Berm.) Inv. Co. v. Hunter Green Invs. Ltd.*, 154 F. Supp. 2d 682, 689 (S.D.N.Y. 2001). Further, while Airplanes Limited claims that it has not admitted the accuracy of the translation, it has posted the translation publicly on its website and cites to it in annual reports and even pleadings in this case. Airplanes Limited cannot now disclaim its accuracy. *Volpe v. Am. Language Commc'n Ctr., Inc.*, No. 15 Civ. 06854 (GBD), 2016 WL 4131294, at *2 (S.D.N.Y. July 29, 2016) ("a court may take judicial notice of information publicly announced on a party's website, as long as the website's authenticity is not in dispute and 'it is capable of accurate and ready determination'").

[10] *See Kirschner v. KPMG LLP*, 15 N.Y.3d 446, 465 (2010) ("Agency law presumes imputation even where the agent acts less than admirably, exhibits poor business judgment, or commits fraud.").

scope of its agency, then any potential judgment arising from GECAS's conduct is even further removed from the activities authorized by the Indenture. In either case, the Reserve is not on account of a proper Expense. Airplanes Limited has no answer to the fact that if Airplanes Holdings ever is found liable to Transbrasil, that liability would arise from GECAS's violations of Brazilian law and/or malicious and bad faith conduct, and would thus not be a permitted business activity under the Indenture.[11]

E. Airplanes Limited's Remaining Arguments Should be Rejected

Airplanes Limited asserts it must maintain the Reserve "to comply with [its] contractual obligations to Airplanes Holdings to ensure that Airplanes Holdings' expenses are paid." Opp. 23. That assertion mischaracterizes Airplanes Limited's contractual obligations.

For the same reasons that the hypothetical Transbrasil liability is not an "Expense" under the Indenture, it also is not an "Expense" under the intercompany loan agreement (ILA) upon which Airplanes Limited relies. *See* McCann Decl. Ex. A (ILA) § 1.1, p. 3 ("Relevant Borrower Expenses" are "the amount of any fees, costs or expenses ***due on such [monthly payment] date or expected to become due in the month following such date***, ***which have been incurred*** by such Borrower in the course of business activities of the type permitted under Section 5.02(e) of the Notes Indenture . . . .") (emphasis added). Moreover, as the bolded language above indicates, Airplanes Limited is only obligated to pay—subject to the terms of the Indenture—expenses that have been incurred and that are already due and payable or expected to become due within one

[11] Airplanes Limited argues that it is immaterial that it cannot articulate what portion of any hypothetical Transbrasil liability would arise from the business activities of Airplanes Holdings as opposed to one of the other Transbrasil Lessors. Opp. 19 n.6. That is incorrect. Even if all of Airplanes Limited's other arguments are accepted, it can only reserve for Expenses arising out of *Airplanes Group's* permitted business activities. Here, the actions GECAS took on behalf of Airplanes Holdings cannot be distinguished from the actions GECAS took on behalf of the other unrelated Transbrasil Lessors. Thus, Airplanes Limited cannot meet its burden of showing what portion of the Reserve is actually on account of Airplanes Holdings' permitted business activities, as opposed to business activities of the other Transbrasil Lessors.

month. *Id.* §§ 12.2, 12.3. Airplanes Limited has no obligation to reserve for its subsidiaries' future potential expenses.[12]

Airplanes Limited also asserts that "under UMB's construction of the Indentures, third parties would have no effective legal remedy against APG or its subsidiaries following an event of default under the Indentures because APG would be obliged to pay all of its assets over to Note holders and hence unable to satisfy a judgment." As discussed above, judgment creditors could pursue claims against the aircraft lessees, insurance providers, and APG's aircraft-owning subsidiaries. Otherwise, and more fundamentally, that risk is borne of any unsecured judgment creditor where, as here, there is a secured party with a lien on substantially all of a company's assets.[13] *See, e.g.*, *Ed Peters Jewelry Co. v. C & J Jewelry Co.*, 124 F.3d 252, 261 (1st Cir. 1997) ("It noted that, as an unsecured creditor of Anson, Peters was simply experiencing a fate common among unsecured creditors who lose out to a partially *secured* creditor . . . which forecloses on their debtor's collateral."); *Frayer Seed, Inc. v. Century 21 Fertilizer & Farm Chemicals, Inc.*, 51 Ohio App. 3d 158, 163 (1988) ("Secured creditors are normally satisfied before unsecured creditors, and unsecured creditors may receive nothing if the claims of the secured creditors exhaust the money available from the sale of the assets.").

CONCLUSION

For the reasons set forth above, UMB Bank respectfully submits that the Court should grant the relief sought in UMB Bank's 12(c) Motion.[14]

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[12] Airplanes Limited's reliance on the ILA also is grossly misplaced because, like the Indenture, the ILA distinguishes between liabilities and expenses, and thus supports UMB Bank's argument (*supra* § B) that "judgments" or similar litigation liabilities are not "fees, costs or expenses" entitled to priority under the Indenture. As noted, in a subsection titled "Expenses and Other Costs," Airplanes Limited undertook to pay "Relevant Borrower Expenses." ILA §§ 12.2, 12.3. In a separate subsection (titled "Indemnities") the borrower subsidiaries agreed to indemnify Airplanes Limited against "loss or liability" under certain circumstances.

[13] It is undisputed that the Notes (and guarantees) are secured by substantially all of Defendants' cash. *See* Ans. ¶ 139 ("Airplanes Limited and Airplanes Trust pledged substantially all of their cash and certain other assets as collateral for the Notes under the terms of [the Security Trust Agreement]."). There is nothing unusual about such a "blanket lien" on a borrower's assets; the Uniform Commercial Code expressly authorizes them. *See* NY UCC § 9-504 (2014) (financing statement is sufficient if it "covers all assets or all personal property").

[14] Defendants also move for judgment on the pleadings as to issues not raised in UMB Bank's Motion. *See* Opp. § II, pp. 23-25. UMB Bank will file an opposition to that motion and address those arguments in that filing.

Dated: New York, New York
January 30, 2017

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