

Hearing Date: June 30, 2021 at 11:00 a.m. ET
Objection Deadline: June 23, 2021 at 4:00 p.m. ET

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
LATAM Airlines Group S.A., <i>et al.</i> ,)	Case No. 20-11254 (JLG)
)	
Debtors.)	Jointly Administered
)	

**NOTICE OF HEARING ON MOTION OF THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS FOR (I) LEAVE, STANDING, AND
AUTHORITY TO COMMENCE AND PROSECUTE CERTAIN CLAIMS AND
CAUSES OF ACTION ON BEHALF OF THE DEBTORS' ESTATES AGAINST
QATAR AIRWAYS Q.C.S.C. AND ITS AFFILIATES AND (II) NON-EXCLUSIVE
SETTLEMENT AUTHORITY REGARDING SUCH CLAIMS**

PLEASE TAKE NOTICE that a hearing on the *Motion of the Official Committee of Unsecured Creditors for (I) Leave, Standing, and Authority to Commence and Prosecute Certain Claims and Causes of Action On Behalf of the Debtors' Estates Against Qatar Airways Q.C.S.C. and Its Affiliates and (II) Non-Exclusive Settlement Authority Regarding Such Claims* (the "Motion") will be held before the Honorable Judge James L. Garrity, Jr., United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Room 723, New York, New York 10004. The Hearing will commence on **June 30, 2021 at 11:00 A.M. (Prevailing Eastern Time)**. In light of the COVID19 pandemic, the Hearing will only be conducted telephonically.

PLEASE TAKE FURTHER that parties wishing to participate in the Hearing must make arrangements through CourtSolutions LLC (www.courtsolutions.com). Instructions to register for CourtSolutions LLC are attached to General Order M-543. Any objections to entry of the final order shall be filed no later than **June 23, 2021, at 4:00 P.M. (Prevailing Eastern Time)** (the "Objection Deadline"), and served as required by the Order Implementing Certain Notice and Case Management Procedures (ECF No. 112) (the "Case Management Order").

PLEASE TAKE FURTHER NOTICE that if no objections are timely filed and served with respect to the Motion, the Committee shall, on or after the Objection Deadline, submit to the Court an order substantially in the form annexed as Exhibit A to the Motion, which order the Court may enter with no further notice or opportunity to be heard.

PLEASE TAKE FURTHER NOTICE copies of the Motion can be viewed and/or obtained by: (i) accessing the Court's website at www.nysb.uscourts.gov, or (ii) from the Debtors'

notice and claims agent, Prime Clerk LLC, located at One Grand Central Place, 60 East 42nd Street, Suite 1440, New York, New York 10165, at <https://cases.primeclerk.com/LATAM> or by calling +1 212 257 5450. Note that a PACER password is needed to access documents on the Court's website.

PLEASE TAKE FURTHER NOTICE that the Hearing may affect your rights. Please read the Motion carefully and, if you have one available, discuss it with your attorney. (If you do not have an attorney, you should consider consulting with one.)

PLEASE TAKE FURTHER NOTICE that if you oppose the relief requested in the Motion, or if you want the Court to hear your position on the Motion, then you or your attorney must attend the Hearing. If you or your attorney do not follow the foregoing steps, the Court may decide that you do not oppose the relief requested in the Motion and may enter orders granting the relief requested by the Committee.

Dated: June 16, 2021
New York, NY

Respectfully submitted,

/s/ Allan S. Brilliant _____

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**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR
(I) LEAVE, STANDING, AND AUTHORITY TO COMMENCE AND PROSECUTE
CERTAIN CLAIMS AND CAUSES OF ACTION ON BEHALF OF THE DEBTORS'
ESTATES AGAINST QATAR AIRWAYS Q.C.S.C. AND ITS AFFILIATES AND
(II) NON-EXCLUSIVE SETTLEMENT AUTHORITY REGARDING SUCH CLAIMS**

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The Official Committee of Unsecured Creditors (the “Committee”) of LATAM Airlines Group S.A., and its debtor-affiliates (collectively, the “Debtors”) respectfully submits this Motion for an Order Granting (I) Leave, Standing, and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of the Debtors’ Estates against Qatar Airways Q.C.S.C. and its Affiliates; and (II) Non-Exclusive Settlement Authority with Respect to Such Claims.

PRELIMINARY STATEMENT

1. At the beginning of 2020, LATAM and Qatar Airways were parties to sublease agreements under which Qatar leased five Airbus A350 airplanes from LATAM. Thereafter, the COVID-19 pandemic hit, bringing long-distance air travel to a halt, and the airplanes Qatar had leased from LATAM were grounded. Only days before the Petition Date, LATAM allowed Qatar to cancel those subleases and return the grounded aircraft to LATAM, which itself had no use for them, relieving Qatar of its contractual obligation to pay *REDACTED in rent in return for a payment of less than *REDACTED. Qatar thereby avoided its obligation to pay an additional *REDACTED of the rent it owed LATAM under the subleases.

2. The relevant facts give rise to fraudulent transfer claims against Qatar. It is well-recognized that the prepetition termination of a lease agreement constitutes a “transfer,” and the transfer at issue here was plainly made for less than “reasonably equivalent value” at a time when the Debtors were insolvent and/or unable to pay their debts as they became due. Because Qatar is extraordinarily solvent, there was never any reason to think that Qatar would have been unable to pay its rent as it became due. Quite simply, LATAM handed over to its shareholder and business partner (Qatar) approximately *REDACTED in value as essentially a favor. Although the Committee has requested that the Debtors pursue fraudulent transfer claims against

*All text marked “*REDACTED” is Redacted Per Amended Standing Order Regarding Redactions Dated February 2, 2021.

Qatar based on the transaction outlined above, the Debtors have refused. Accordingly, the Committee now seeks to pursue these claims on behalf of the Debtors' estates.

3. To obtain derivative standing, the Committee must satisfy two criteria. First, the Committee must offer a "colorable" claim for relief that "on appropriate proof would support a recovery"—a standard that courts have described as "a relatively easy one to make." *See In re Adelpia Comm'cns Corp.*, 330 B.R. 364, 376 (Bankr. S.D.N.Y. 2005). Second, the Committee must establish that conferring derivative standing on the Committee is "necessary and beneficial to the fair and efficient resolution of the bankruptcy proceedings," which requires only that the Committee "give the Court comfort that their litigation will be a sensible expenditure of estate resources." *Id.* at 375, 386.

4. The claims against Qatar readily meet this standard. The Debtors' estates have a colorable claim for a constructive fraudulent transfer under section 548(a)(1)(B) of the Bankruptcy Code (as well as under applicable non-bankruptcy law) because the Debtors received "less than a reasonably equivalent value"—*REDACTED—in exchange for releasing Qatar of its obligation to pay *REDACTED in rent. In addition, the Debtors' estates have a colorable claim under section 548(a)(1)(A) of the Bankruptcy Code (as well as under applicable non-bankruptcy law) on the grounds that that the transfer was made with "actual intent to hinder, delay, or defraud" LATAM's creditors.

5. Finally, conferring standing on the Committee represents a sensible expenditure of the estates' resources. Granting standing would benefit the estates because, if the Committee is not given standing to sue, a potentially valuable estate cause of action would not be pursued. In addition, the potential recoveries from the relevant causes of action—which are in excess of *REDACTED—significantly outweigh the costs associated with pursuing the litigation.

***All text marked "**REDACTED" is Redacted Per Amended Standing Order Regarding Redactions Dated February 2, 2021.**

Accordingly, the Court should grant the Committee standing to commence, prosecute, and (if appropriate) settle the claims against Qatar for the benefit of the Debtors' estates.

JURISDICTION AND VENUE

6. This Court has jurisdiction to consider this matter under 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 1103(c), and 1109(b).

BACKGROUND

7. The following facts are asserted upon information and belief in light of the Committee's investigation to date.

A. Qatar's Relationship with LATAM

8. Qatar Airways Group Q.C.S.C. ("Qatar Parent"), together with its subsidiaries and affiliates (collectively, "Qatar"), is a global airline that is wholly owned by the State of Qatar. Through one of Qatar Parent's subsidiaries, Qatar Airway Investments (U.K.) Ltd., Qatar at all relevant times has held approximately 10% of the common shares of LATAM Airlines Group S.A. ("LATAM Parent"). Qatar also is party to various bilateral agreements with the Debtors. At all relevant times, Qatar had the right to designate one of the nine members of LATAM Parent's board of directors (the "Board").

B. Qatar Subleases Five A350 Airplanes from LATAM.

9. Until May 2020, LATAM Parent and Qatar were parties to five subleases (the "Subleases") by which LATAM Parent, as lessor, subleased certain aircraft and related equipment to Qatar, as lessee. Specifically, Qatar leased from LATAM Parent five wide-body Airbus A350-900 XWB airplanes bearing manufacturer's serial numbers *REDACTED

. As of May 1, 2020, the subleases in effect were the following:

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*REDACTED

10. Airbus A350 airplanes, such as those that were subject to the Subleases, are wide-body aircraft that are used for long-haul flights. The A350-900 variant is designed to accommodate between 300 and 350 passengers and has a range of approximately 8,100 nautical miles, long enough to fly nonstop from New York to China.¹ Prior to the COVID-19 pandemic, both LATAM and Qatar deployed A350s primarily (if not exclusively) for international flights.

C. The COVID-19 Pandemic Disrupts Air Travel Across the Globe, Including the Use of A350 Aircraft by Both LATAM and Qatar.

11. On March 11, 2020, the World Health Organization declared the outbreak of the COVID-19 virus to be a global pandemic. Over the following weeks, countries around the world, including each of those in which the Debtors had their primary operations, announced severe travel restrictions and/or closures of their borders. (*See Decl. of Ramiro Alfonsín Balza in Support of First Day Motions and Applications in Compliance with Local Rule 1007-2* (ECF 3) (“Alfonsín Decl.”) ¶ 65.) By April 1, 2020, the International Air Transport Association (“IATA”) estimated that customers living in countries with severe travel restrictions accounted for 98% of global passenger revenue. (*Id.*) IATA estimated that more than 8,500 passenger aircraft had been grounded as a result. (*Id.*)

12.

*REDACTED

The effects of the COVID-19 crisis on

¹ See Airbus, A350-900, <https://www.airbus.com/aircraft/passenger-aircraft/a350xwb-family/a350-900.html>.

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global air travel were—and remain—much more severe than any slowdown in air travel in recent memory, including following the terrorist attacks of September 11, 2001, and the SARS outbreak in 2002-2003.

*REDACTED

13. LATAM's businesses were severely affected by the worldwide shutdown in air travel. As of March 16, 2020, LATAM reduced the capacity of its passenger operations by approximately 70%, representing 90% of all international operations and 40% of all domestic operations. (Alfonsín Decl. ¶ 67.) By April 2020, the Debtors had reduced their international routes by 95%. (*Id.*) As of the Petition Date, LATAM's passenger flights were limited to domestic flights in Chile and Brazil and international flights from Santiago and São Paulo to Miami—roughly 4% of LATAM's routes prior to the COVID-19 crisis. (Alfonsín Decl. ¶¶ 65, 67.)

*REDACTED

D. LATAM Obtains Rent Holidays from Certain of its Aircraft Lessors.

14. Prior to the Petition Date, LATAM leased approximately *REDACTED . Those aircraft included the five A350s that were subleased to Qatar.

15. As part of its cash preservation efforts in the context of the COVID-19 crisis,

*REDACTED

*REDACTED

16. *REDACTED

E. LATAM Terminates the Subleases on the Eve of Bankruptcy.

17. Instead, as the Debtors moved closer to filing their chapter 11 petitions, the

*REDACTED

18. *REDACTED

19. The monthly rent on the subleases ranged from *REDACTED per month. At the time the early termination agreements were executed, the Subleases at issue each had *REDACTED . In the aggregate, as of that date, *REDACTED . In total, over the course of those months, Qatar was obligated to pay LATAM approximately *REDACTED in rent for the remaining duration of the Subleases (*i.e.*, *REDACTED

*REDACTED

20. As noted, LATAM released Qatar from making the remaining rent payments in *REDACTED .

21. Accordingly, the agreement had the net effect of releasing Qatar from an obligation to pay LATAM approximately *REDACTED in rent *REDACTED of the remaining rent due under the Subleases. *REDACTED .

F. *REDACTED

22. *REDACTED

***REDACTED**

23.

***REDACTED**

***All text marked "**REDACTED" is Redacted Per Amended Standing Order Regarding Redactions Dated February 2, 2021.**

2

***REDACTED**

G. At the Time the Subleases Were Terminated, LATAM was Potentially Insolvent and Unable to Pay its Debts as they Came Due.

24. At the time of the transfer at issue here, LATAM was in significant financial distress. Although the Committee has not conducted an insolvency analysis at this stage, the Committee believes that the Debtors were undercapitalized and likely insolvent at the time the Subleases were terminated. In addition, the Debtors asserted in their first day filings that they were unable to pay their debts as they came due. As set forth in the first day declaration, as of the Petition Date, LATAM had “deferred or cancelled approximately \$900 million in investments,” had “worked to postpone delivery of new planes for its fleet,” and had engaged with its creditors and counterparties “to request accommodations based on current circumstances, including deferrals of upcoming payment obligations.” (*See* Alfonsín Decl. ¶ 70.) Despite those and other cost-saving measures, however, “LATAM’s liquidity position . . . continued to deteriorate, culminating in the filing of these Chapter 11 Cases in order to, among other things, prevent the exercise of remedies against the Debtors’ assets, including their fleet, that could otherwise result from *the Debtors’ inability to pay certain of their debts.*” (*Id.* ¶ 73 (emphasis added).) According to the Debtors, they filed these chapter 11 cases to avoid making required payments that would have put in jeopardy the airline’s ability to continue operating. (*Id.* ¶ 75.)

H. International Air Travel Continues to Be Curtailed Throughout These Chapter 11 Cases, *REDACTED

25. In the more than twelve months since the Petition Date, international air travel has continued to be subject to severe restrictions and depressed demand. *REDACTED

*All text marked "*REDACTED" is Redacted Per Amended Standing Order Regarding Redactions Dated February 2, 2021.

*REDACTED

*REDACTED

26. On or about April 8, 2021, the Debtors announced that they had decided to phase A350 aircraft out of their fleet entirely.

I. LATAM Refuses to Pursue the Claims Against Qatar.

27. On May 24, 2021, the Committee served a demand letter on the Debtors, requesting that they consent to the Committee obtaining derivative standing to prosecute the Claims against Qatar, subject to Court approval of the Committee's standing. Alternatively, the Committee demanded that the Debtors themselves pursue the claims against Qatar, although the Committee noted that it believes that the Debtors are conflicted from doing so. A copy of the Committee's demand letter is attached hereto as Exhibit 8.

28. On June 10, 2021, the Debtors responded to the Committee's demand letter

*REDACTED

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³ The data depicted in the following graph excludes data regarding the Debtors' EETC aircraft, which has not been provided in response to the Committee's requests.

*REDACTED

Accordingly, the Committee now seeks derivative standing to commence, prosecute, and (if appropriate) settle the Claims against Qatar.

RELIEF REQUESTED

29. The Committee hereby respectfully requests that the Court grant leave, standing, and authority to the Committee to prosecute, and if appropriate settle, claims against Qatar. A proposed form of order is attached hereto as Exhibit 10.

BASIS FOR RELIEF

30. For more than 35 years, the Second Circuit has recognized that sections 1103 and 1109 of the Bankruptcy Code confer an implied, qualified right for creditors' committees under certain circumstances to initiate adversary proceedings on behalf of a debtor's estate, subject to the prior approval of the Bankruptcy Court. *See In re STN Enterprises*, 779 F.2d 901, 904-05 (2d Cir. 1985); *In re Great Atlantic & Pacific Tea Co., Inc.*, 615 B.R. 71, 722-723 (Bankr. S.D.N.Y. 2020); *In re Lyondell Chemical Co.*, 541 B.R. 172, 200 n.128 (Bankr. S.D.N.Y. 2015). A committee may obtain derivative standing "when the trustee or debtor in possession unjustifiably failed to bring suit or abused its discretion in not suing to avoid a preferential transfer." *In re STN Enters.*, 779 F.2d at 904. A committee also may obtain standing when the debtor consents. *See In re Commodore International Ltd.*, 262 F.3d 96, 100 (2d Cir. 2001).

31. Courts in the Second Circuit apply a two-part test to determine if the debtor unjustifiably failed to bring suit: (a) whether the "committee presents a colorable claim or claims for relief that on appropriate proof would support a recovery"; and (b) "whether an action asserting such claim is likely to benefit the reorganization estate." *See In re Am.'s Hobby Ctr., Inc.*, 223 B.R. 275, 282 (Bankr. S.D.N.Y. 1998) (quoting *STN Enters.*, 779 F.2d at 905). In

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considering whether to allow standing, the court is not required to weigh the evidence or conduct a trial. *See In re Dewey & Leboeuf LLP*, 2012 WL 5985445 at *6 (Bankr. S.D.N.Y. Nov. 29, 2012). Rather, presenting a “colorable claim” requires only a showing that the claim could survive a motion to dismiss. The second factor requires a weighing of the probability of success against the potential delay and expense associated with the litigation. As set forth below, both of those criteria are readily satisfied here.

I. THE ESTATES’ FRAUDULENT TRANSFER CLAIMS AGAINST QATAR ARE COLORABLE.

32. The showing that the relevant claims are “colorable” is a “relatively easy one to make.” *Adelphia*, 330 B.R. at 376. “A committee seeking standing need not lay bare its complete proof, but rather is required only to describe a facially valid claim, which will be evaluated under a standard ‘much the same as that undertaken when a defendant moves to dismiss a complaint for failure to state a claim.’” *Dewey & Leboeuf*, 2012 WL 5985445, at *6 (quoting *In re Am.’s Hobby Ctr., Inc.*, 223 B.R. 275, 282 (Bankr. S.D.N.Y. 1998)). The court “should not conduct a mini-trial.” *Id.* Here, the Committee describes facially colorable claims under section 548 of the Bankruptcy Code and applicable non-bankruptcy law under the frameworks of both constructive and actual fraudulent transfer.⁴

⁴ The Committee here focuses its analysis on relevant provisions of the Bankruptcy Code. The Committee has also reviewed applicable non-bankruptcy fraudulent transfer criteria, including potentially applicable New York law, which applies criteria very similar to the relevant federal standards, potentially applicable UK law, and potentially applicable Chilean law. Because demonstrably colorable claims exist under federal bankruptcy law, and because the selection of non-federal fraudulent transfer law involves a complex choice-of-law analysis, the Committee, in the interests of expediency and of avoiding burdening the court with excessive briefing, does not lay out the complete basis for pursuing claims under applicable non-bankruptcy law. In some instances, however, applicable non-bankruptcy law may be particularly favorable and is, accordingly, referenced herein. The Committee intends to pursue relief under applicable non-bankruptcy fraudulent transfer principles and reserves its rights accordingly.

A. The Predicate Elements of a Fraudulent Transfer Under Section 548(a)(1) Are Readily Satisfied.

33. Subject to other applicable requirements, section 548(a)(1) permits the avoidance of “any transfer . . . of an interest of the debtor in property, or any obligation . . . incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition.” 11 U.S.C. § 548(a)(1). Here, there can be no genuine dispute that the termination of the Subleases constituted a “transfer” of “an interest of the debtor in property.” The definition of “transfer” is exceptionally broad. *See, e.g., In re S.W. Bach & Co.*, 435 B.R. 866, 877 (Bankr. S.D.N.Y. 2010) (“‘Transfer’ under section 101(54) of the Bankruptcy Code applies to, inter alia, ‘(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—(i) property; (ii) or an interest in property.’ Under this broad provision, ‘any transfer of an interest in property is a transfer[.]’”). Courts have held consistently that the prepetition termination of a lease or other contract, where the Debtor has not breached the contract, constitutes a “transfer.” *See, e.g., In re Great Lakes Quick Lube LP*, 816 F.3d 482, 485 (7th Cir. 2016) (Posner, J.) (surrender of leases is a “transfer”); *In re Teligent, Inc.*, 325 B.R. 81, 86 (Bankr. S.D.N.Y. Apr. 7, 2005) (ECF 55); *In re Sherlock Homes of W.N.Y., Inc.*, 246 B.R. 19, 23-24 (Bankr. W.D.N.Y. 2000) (termination of exclusive real estate listing contract); *In re Durso Supermarkets, Inc.*, 193 B.R. 682, 698 (Bankr. S.D.N.Y. 1996) (“The essence of a commercial lease termination is that the remaining lease term is returned to the fee owner to merge with the fee. That is certainly a ‘transfer’ in the common legal meaning of the term. It is also a transfer under Section 101(54) of the Code.”); *In re Metro Water & Coffee Servs., Inc.*, 157 B.R. 742, 745 (Bankr. W.D.N.Y. 1993) (termination of stadium concession agreement). In addition, the termination took place *REDACTED, well within the two-year statutory window.

*All text marked "REDACTED" is Redacted Per Amended Standing Order Regarding Redactions Dated February 2, 2021.

B. The Estate Has a Colorable Claim Against Qatar for Constructive Fraud Under Section 548(a)(1)(B) and Applicable Non-Bankruptcy Law.

34. Under section 548(a)(1)(B), a transaction that satisfies the elements outlined above may be avoided as a constructively fraudulent transfer if (1) the debtor “received less than a reasonably equivalent in value in exchange for such transfer or obligation” and, as relevant here, (2) the debtor either “was insolvent on the date that such transfer was made” or, at the time of the transfer, the debtor “intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor’s ability to pay as such debts matured.” 11 U.S.C. § 548(a)(1)(B). The estates have colorable claims that both of those elements are met here.

1. LATAM did not receive reasonably equivalent value in exchange for the termination of the Subleases.

35. Whether the debtor received “reasonably equivalent value” is assessed at the time of the transfer. *See ASARCO LLC v. Americas Mining Corp.*, 396 B.R. 278, 336-37 (Bankr. S.D. Tex. 2008); *Am. Tissue Inc. v. Donaldson, Lufkin & Jenrette Secs. Corp.*, 351 F.Supp.2d 79, 106 (S.D.N.Y. 2004). Courts evaluate the reasonably equivalent value in light of “the fair market value of the economic benefit received by the debtor.” *In re Gonzalez*, 342 B.R. 165, 173 (Bankr. S.D.N.Y. 2006).

36. Here, the issue of “reasonably equivalent value” is straightforward. *REDACTED

*REDACTED

Accordingly, the Committee has a

colorable claim that LATAM received less than reasonably equivalent value for the termination of the Subleases.

2. LATAM was in financial distress at the time of the transfer.

37. The Committee has colorable claims under at least two of the prongs of section 548(a)(1)(B)(ii). First, although the Committee at this stage has not conducted a solvency analysis, the Committee believes that it is at least colorable that the Debtors were insolvent at the time of the transfer. *See* 11 U.S.C. § 548(a)(1)(B)(ii)(I). Under section 101(32), the term “insolvent” is defined as a “financial condition such that the sum of such entity’s debts is greater than all of such entity’s property, at fair valuation” 11 U.S.C. § 101(32). In their recent objection to the appointment of an official equity committee, for example, the Debtors asserted that “current evidence points to insolvency.” *See* ECF 2183 at 13.

38. Second, LATAM intended to incur, and believed it would incur, debts that LATAM would not be able to pay as they matured. *See* 11 U.S.C. § 548(a)(1)(B)(ii)(III). As set forth in the Debtors’ first day declaration, as of the Petition Date, LATAM had “deferred or cancelled approximately \$900 million in investments,” had “worked to postpone delivery of new planes for its fleet,” and had engaged with its creditors and counterparties “to request accommodations based on current circumstances, including deferrals of upcoming payment obligations.” *See* Alfonsín Decl. ¶ 70. Despite those and other cost-saving measures, however, “LATAM’s liquidity position . . . continued to deteriorate, culminating in the filing of these Chapter 11 Cases in order to, among other things, prevent the exercise of remedies against the Debtors’ assets, including their fleet, that could otherwise result from *the Debtors’ inability to pay certain of their debts.*” (*Id.* ¶ 73 (emphasis added).) The Debtors explained in their first day declaration that filing the chapter 11 cases was necessary to avoid making required payments that would have put in jeopardy the airline’s ability to continue operating.

C. The Estates Have a Colorable Claim Against Qatar Based On Actual Intent to Hinder, Delay, or Defraud Creditors.

39. A claim under section 11 U.S.C. § 548(a)(1)(A) exists when the debtor made the transfer “with actual intent to hinder, delay, or defraud” one or more of its creditors.

40. Courts recognize that actual intent often is not subject to direct proof. Instead, the plaintiff is allowed to rely on the presence of so-called “badges of fraud,” which courts deem to be indirect proof of actual intent. *See, e.g., Adelpia Recovery Trust v. Bank of Am.*, 624 F. Supp. 2d 292, 335 (S.D.N.Y. 2009) (“due to the difficulty of proving actual intent to hinder, delay, or defraud creditors, the pleader is allowed to rely on ‘badges of fraud’ to support his case, i.e., circumstances so commonly associated with fraudulent transfers that their presence gives rise to an inference of intent”) (citation omitted). The traditional badges of fraud include: (1) a close relationship between the parties to the conveyance; (2) inadequacy of consideration received; (3) retention of control of the property by the transferor; (4) suspicious timing of the conveyance after the debt was incurred; (5) the use of fictitious parties; (6) information that the transferor was insolvent as a result of the conveyance; (7) the existence or cumulative effect of a pattern or series of transactions or course of conduct after the incurring of debt, onset of financial difficulties, or pendency or threat of suits by creditors; (8) the general chronology of the events and transactions under inquiry; (9) a questionable transfer not in the usual course of business; and (10) the secrecy, haste, or unusualness of the transaction. *In re Vivaro Corp.*, 524 B.R. 536, 554 (Bankr. S.D.N.Y. 2015). While the presence of “a single badge of fraud may spur mere suspicion, the confluence of several can constitute conclusive evidence of an actual intent to defraud, absent ‘significantly clear’ evidence of a legitimate supervening purpose.” *In re Lyondell Chemical Co.*, 554 B.R. 635, 653 (S.D.N.Y. 2016) (citation omitted). Here, multiple badges of fraud are present:

- Badge 1: There was a “close relationship between the parties to the conveyance.” At the time of the transfer, Qatar was LATAM’s third-largest shareholder, holding 10% of the equity of LATAM Parent. In addition, Qatar had the right to designate one member of LATAM Parent’s nine-member board of directors. Qatar and LATAM were parties to numerous bilateral agreements, and at the time of the transfer, Qatar was expected to participate in LATAM’s DIP financing.
- Badge 2: For the reasons set forth above, the consideration received for the termination of the Subleases was inadequate.
- Badge 4: The timing of the transfer was inherently suspicious, *REDACTED
- Badge 7: The transfer was part of a “pattern or series of transactions” in which the Debtors gave certain of their major shareholders windfalls at the expense of their creditors in the days and weeks leading up to their chapter 11 petitions. In particular, the Debtors also executed an agreement to terminate an aircraft purchase agreement with their second-largest shareholder, Delta Air Lines, Inc. (“Delta”), concerning the same model of aircraft—Airbus A350-900 wide body airplanes— *REDACTED
The Committee believes that transaction resulted in losses to the Debtors’ estates in excess of *REDACTED. The Committee is filing contemporaneously herewith a separate motion for derivative standing to bring fraudulent transfer claims against Delta on account of that aircraft purchase agreement termination.
- Badges 8 and 10: The “general chronology of events” and the “unusualness” of the termination of the Subleases is consistent with fraudulent intent. *REDACTED

Indeed, despite LATAM’s financial distress, none of its aircraft lessors had granted it any sort of rent forgiveness—only deferrals with, in many cases, the requirement to pay interest.

41. Importantly, there was no reason for LATAM to have believed that Qatar would have difficulty paying its rent as it became due. Qatar is a sovereign-owned airline that was in the process of committing to provide LATAM with DIP financing in the amount of \$600 million—far more liquidity than Qatar would have needed to pay the rent it contractually owed LATAM as it became due. *REDACTED

*REDACTED

, further supports the estates' claims both that the LATAM received less than reasonably equivalent value and that the transfer was made with "actual intent to hinder, delay, or defraud" LATAM's creditors.

42. The presence of only a few of those badges of fraud would be enough to make the Committee's claim at least "colorable." Here, even without the benefit of full discovery, it is already apparent that numerous of the badges of fraud traditionally used to establish "actual intent" are present. Accordingly, the Committee readily meets its burden of describing a colorable claim under section 548(a)(1)(A) based on "actual intent to hinder, delay, or defraud" the Debtors' creditors.

II. CONFERRING DERIVATIVE STANDING ON THE COMMITTEE IS LIKELY TO BENEFIT THE DEBTORS' ESTATES.

43. Finally, conferring derivative standing on the Committee is "is likely to benefit the reorganization estate." *See STN Enters.*, 779 F.2d at 905. In evaluating this element, courts weigh the potential benefits from the litigation against the costs, such as legal fees, and assess whether "the prosecution of the claims represents a sensible expenditure of the estate's resources." *Dewey & Leboeuf*, 2012 WL 5985445, at *6. This standard does not require the Court to "conduct a minitrial." *Am.'s Hobby Ctr.*, 223 B.R. at 282.

44. The granting of derivative standing is likely to benefit the Debtors' estates because, in light of the Debtors' refusal to pursue the relevant claims, if the Committee is not given standing to sue, a valuable estate cause of action would likely be lost. That would be a

*All text marked "**REDACTED" is Redacted Per Amended Standing Order Regarding Redactions Dated February 2, 2021.

waste to the detriment of creditors. *In re Hydrogen L.L.C.*, 2009 WL 2913448 at *2 (Bankr. S.D.N.Y. May 7, 2009) (“The suit by the Committee is necessary because the Debtor is conflicted from bringing the suit itself . . . and is beneficial because if the Committee did not have standing to sue, potentially valuable estate causes of action would be wasted.”) (citation omitted); *In re Housecraft Industries USA, Inc.*, 310 F.3d 64, 71-72 (2d Cir. 2002) (finding creditor derivative standing to be appropriate because otherwise fraudulent transfers would not be recovered). In addition, the potential recoveries from the estates’ causes of action—which in excess of *REDACTED—significantly outweigh the costs associated with pursuing the litigation.

CONCLUSION

45. For the reasons set forth above, the Committee respectfully requests that the Court enter an order granting it standing to commence, prosecute, and (if appropriate) settle the Claims against Qatar.

Dated: June 16, 2021
New York, NY

Respectfully submitted,

/s/ Allan S. Brilliant

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Unsecured Creditors*

27826561

*All text marked "**REDACTED" is Redacted Per Amended Standing Order Regarding Redactions Dated February 2, 2021.

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
LATAM Airlines Group S.A., <i>et al.</i> ,)	Case No. 20-11254 (JLG)
)	
Debtors.)	Jointly Administered
)	

**ORDER GRANTING MOTION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS FOR (I) LEAVE, STANDING, AND AUTHORITY
TO COMMENCE AND PROSECUTE CERTAIN CLAIMS AND CAUSES OF
ACTION ON BEHALF OF THE DEBTORS’ ESTATES AGAINST
QATAR AIRWAYS Q.C.S.C. AND ITS AFFILIATES AND (II) NON-EXCLUSIVE
SETTLEMENT AUTHORITY REGARDING SUCH CLAIMS**

Upon the motion (the “Motion”)¹ of the Official Committee of Unsecured Creditors (the “Committee”) appointed in the above-captioned jointly administered chapter 11 cases of LATAM Airlines Group S.A. and each of its affiliated debtors in possession (collectively, the “Debtors”), for leave, standing and authority to prosecute certain claims on behalf of the Debtors’ estates against Qatar Airways Q.C.S.C. and its Affiliates and non-exclusive settlement authority; and it appearing that (i) the relief requested in the Motion is appropriate; (ii) this Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (iii) this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b); (iv) venue of the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and (v) notice of the Motion was appropriate under the particular circumstances and no other or further notice need be given; and after due deliberation and sufficient cause appearing therefore;

IT IS HEREBY ORDERED THAT:

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1. The Motion is GRANTED as set forth herein.
2. All objections, if any, to the Motion or the relief requested therein, that have not been withdrawn, waived, or settled, are overruled.
3. The Committee shall be, and hereby is, granted, on behalf of the Debtors' estates, leave, standing and exclusive authority to prosecute the claims set forth and described in the Motion (the "Claims").
4. The Committee is granted non-exclusive authority to settle the Claims on behalf of the Debtors' estates, subject to the further order of this Court approving such settlements.
5. The Committee is authorized and empowered to take all actions necessary to implement the relief granted in this Order.
6. This Order shall be effective and enforceable immediately upon entry.
7. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

New York, New York
Dated: _____, 2021

THE HONORABLE JAMES L. GARRITY, JR.,
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Filed Under Seal

Exhibit 2

Filed Under Seal

Exhibit 3

Filed Under Seal

Exhibit 4

Filed Under Seal

Exhibit 5

Filed Under Seal

Exhibit 6

Filed Under Seal

Exhibit 7

Filed Under Seal

Exhibit 8

Filed Under Seal

Exhibit 9

Filed Under Seal