

**Fonte: Dr. Guilherme Dantas**

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# LATIN LAWYER

## Brazilian airline makes Chapter 15 application

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Airline Avianca Brasil has sought Chapter 15 recognition of its Brazilian bankruptcy proceedings in New York, as it tries to stay potential attempts by creditors to seize its US aircraft and engines.

Avianca – officially known as Oceanair Linhas Aéreas – [filed](#) the petition in the US Bankruptcy Court for the Southern District of New York on 27 December. It said it needed the court to recognise the Brazilian judicial restructuring to stop creditors from bypassing the proceedings through ongoing attempts to take control of its assets in the US.

The company filed a recuperação judicial, a type of Brazilian voluntary insolvency proceeding, in the First Bankruptcy Court of the Central Courthouse of the Judicial District of São Paulo State Capital on 10 December. It said at the time that it intended to seek Chapter 15 recognition of the proceedings in due course.

The Brazilian bankruptcy court granted Avianca a stay on creditor action locally a day later. On 13 December it extended the stay and accepted the bankruptcy petition.

The airline operates flights between Brazil and the US, which requires it to have American leases, contracts and licences. It also has a retainer with its US counsel, Quinn Emanuel Urquhart & Sullivan LLP.

The day of the Chapter 15 filing, Avianca's chief executive officer and foreign representative, Frederico Miguel Preza Pedreira Elias Da Costa, [asked](#) the court for a moratorium on pending and future creditor actions in the US while its bankruptcy petition moves forward in Brazil.

On 28 December, Judge Sean Lane scheduled a 3 January hearing on the motion for the stay and arranged a recognition hearing for 22 January.

Avianca is already a defendant in a breach of contract suit brought by French aerospace company Zodiac Seats in Texas. In the case, Zodiac alleges that a Guernsey holding company, Synergy Group, which ultimately owns the Avianca group, failed to pay for plane seats installed by Avianca Brasil and Avianca SA, a Colombian airline.

Cayman Islands-registered Wells Fargo Trust Company also filed a suit against Synergy in New York on 30 November, alleging that it breached a lease agreement it had with Avianca over two aircraft engines.

In recent weeks, Avianca further received notice from Swiss aviation services company Swissport that it would suspend ground services if the airline did not repay overdue money, and that several mechanic's liens had been filed against aircraft it uses for US routes. It also received two enforcement notices in connection with lease obligations from the Bank of Utah.

Avianca filed the Brazilian proceedings just four days after a Brazilian court ordered it to return 11 aircraft to lessors, a ruling the court made in response to applications from Irish lessors Constitution Aircraft Leasing. Fellow Irish lessor Boc Aviation and US lessor Infinity Transportation also previously filed applications before the Brazilian court in order to recover aircraft.

The company blames fuel prices and exchange rates for its financial difficulties, which it says were compounded by the reluctance of Brazilian banks to give credit amid political and economic turmoil in the country.

According to Reuters, Avianca owes 494 million reais (US\$129 million) to creditors including Brazilian state-owned oil company Petrobras and US conglomerate General Electric.

**Siqueira Castro Advogados' partner Guilherme Dantas**, counsel to Avianca on the Brazilian bankruptcy proceedings, tells Latin Lawyer's sister publication *Global Restructuring Review* the purpose of the Chapter 15 filing is "to guarantee the operations of Avianca Brazil in the US and guarantee to the passengers that their flights to New York and Miami would not be impacted."

*In the US Bankruptcy Court for the Southern District of New York  
Judge Sean Lane*

**Counsel to Oceanair Linhas Aéreas**

Quinn Emanuel Urquhart & Sullivan LLP

Partner Eric Winston in Los Angeles and partner Michael Carlinsky, of counsel Scott Shelley and associate Samantha Gillespie in New York

**Foreign representative of Oceanair Linhas Aéreas**

Chief executive officer Frederico Miguel Preza Pedreira Elias Da Costa in São Paulo

*In the First Bankruptcy Court of the Central Courthouse of the Judicial  
District of São Paulo State Capital*

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