The Guide to Restructuring - Fifth Edition

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The fifth edition of ***The Guide to Restructuring*** – edited by Richard J Cooper, Carina S Wallance, Theodore L Leonhardt and Lucas Davidenco of Cleary Gottlieb Steen & Hamilton – is designed to assist restructuring advisers of all disciplines, and affected companies, as they negotiate complicated restructurings. This Guide delivers specialist insight to our readers across the region – advisers, practitioners, corporate decision-makers and court officials – to help them navigate this complex process.

Generated: January 7, 2026

LATIN LAWYER

Laying the runway: how airline bankruptcies have revolutionised Chapter 11 Latin American restructuring

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Summary

Chapter 11 has long provided important tools for distressed companies, including the ability to obtain new financing that might otherwise be unavailable without the bankruptcy court protections of a court-approved loan. That is no different for companies around the globe who have often found refuge in US bankruptcy courts rather than their own local courts, given the well-developed market and predictability of US courts coupled with the minimal jurisdiction requirements for a non-US company to avail itself of Chapter 11. But the landscape for Latin American companies seeking relief under Chapter 11 of the US Bankruptcy Code has undergone a significant transformation in recent years, making Chapter 11 even more attractive for foreign companies in need of capital while they restructure their operations and balance sheets.

In particular, the exponential growth of the private credit market has provided an even greater opportunity for distressed Latin American companies to access the capital markets through debtor-in-possession (DIP) and exit financing packages. In the context of Chapter 11 restructurings, private credit lenders have demonstrated a willingness to provide DIP and exit financing – capital that is essential for companies to maintain operations, pursue successful reorganisations and emerge from in-court proceedings. Globally, private credit presents a quickly growing market.[1]

Historically, distressed Latin American companies encountered barriers to accessing credit, including regulatory restraints on banks and relatively untested insolvency regimes in the home countries of these companies. However, a confluence of market forces taking shape during the covid-19 pandemic, the retreat of traditional banking institutions from the DIP financing market in the wake of the 2008 financial crisis, regulatory shifts and high-profile restructurings – most notably in the airline sector – has ushered in a new era for DIP financing in the region. And the sophisticated precedents developed during this period will likely be relied on for future deals as the Latin American DIP financing market continues to evolve.

NARRATIVE OF NECESSITY: COVID-19 AND AIRLINES

The onset of the covid-19 pandemic exposed a critical vulnerability in Latin America's corporate landscape: the absence of meaningful government financial support for distressed companies facing liquidity challenges and major business disruptions from covid lockdowns and travel restrictions. Unlike their counterparts in the United States and Europe, Latin American businesses – most notably in the airline sector – did not receive significant state-backed rescue packages.[2] This left companies with an urgent need for liquidity and operational margin to survive as going concerns, compelling them to seek alternative sources of capital to survive and restructure.

In this environment, the US Chapter 11 process emerged as a lifeline. As noted, the unique protections and predictability of Chapter 11, combined with its low jurisdictional bar for companies (including foreign companies) to file for Chapter 11,[3] created a natural synergy between Latin American companies in need of capital and the global private credit market eager to deploy funds. Chapter 11's well-established DIP financing regime (with decades of precedent) offered private credit funds the comfort of US court orders replete with typical and robust lender protections, such as super-priority claims, priming liens, roll-ups, liens on unencumbered assets, court approval, high yields and a transparent, predictable process – features not available in some local Latin American regimes, or untested even where ostensibly offered under the letter of non-US laws.

While global investors in pursuit of additional yields from private credit opportunities and traditional banks have retreated from riskier lending in the wake of 2008, increased awareness of DIP financing structures and the demonstrated success of the high-profile restructurings of Latin American airline operators have resulted in the growing role of private credit financing as a solution for distressed Latin American companies. Additionally, the US DIP market's predictability and the availability of lender protections as noted above, coupled with flexible financial packages offered to debtors through competitive marketing processes, have made it easier for Latin American companies to secure financing compared with local regimes. Some private credit lenders may also have the flexibility to provide DIP and exit financings in either loan or bond formats. The former allows for private trading without blowout of material non-public information because loans are not securities.[4] The latter generally allows for more transferable instruments in the public securities markets. DIP financing can also provide opportunities for paid-in-kind interest, allowing lenders to capitalise loans while the borrower maintains the option to defer cash payment. Although there is growing activity in local Latin American bankruptcy financing markets – particularly in Brazil, where recent cases such as OAS[5] and Odebrecht[6] have featured financings in Brazilian bankruptcy cases – the scale, speed and certainty of the US process remain unmatched, making Chapter 11 a preferred option for many large-scale Latin American restructurings and potential private credit capital providers.

As a result, access to capital markets through DIP financings is not only possible but attractive to distressed borrower companies and lenders alike, causing these types of financings to take off. Specifically, for distressed Latin American companies, Chapter 11 has provided a gateway to much-needed liquidity, while for private credit investors, it offered a structured, court-supervised environment with enhanced downside protection, high credit returns and the potential for strategic influence, including opportunities to participate in the equity upside of recapitalised companies.

LATIN AMERICAN AIRLINE CHAPTER 11: CATALYSTS FOR CHANGE

The role of the airline sector in Latin America has been pivotal as a bellwether for the adoption of private credit DIP financing for operators in the region. Several interrelated factors explain why airlines were at the forefront of this trend, setting important precedents for other industries and signalling a broader transformation in Latin American restructuring practices.

UNIQUE VULNERABILITY AND LACK OF GOVERNMENT SUPPORT

Unlike their counterparts in the United States and Europe, Latin American airlines did not receive significant government aid during periods of financial distress, particularly during the covid-19 pandemic. This absence of state-backed rescue packages left these companies with few options to secure the liquidity necessary to maintain operations during shutdowns and to restructure their debts. As a result, they were compelled to seek alternative sources of capital, making them early and prominent users of private credit DIP financing.

SCALE AND VISIBILITY OF AIRLINE BANKRUPTCIES

The sheer size and cross-border nature of Latin American airlines that have availed themselves of the Chapter 11 process – Avianca, LATAM, GOL and Aeroméxico – made their restructurings highly visible and complex. These companies required substantial amounts of capital to continue operations during bankruptcy, but traditional banks – already retreating from riskier lending post-2008 – were not in a position to provide the large multi-hundred million or billion dollar facilities the airlines needed under exigent circumstances. Notably, each of these cases was filed in bankruptcy courts in the Southern District of New York (SDNY), which serves as the principal financial hub in the United States and is typically the jurisdiction whose state law governs under applicable financing documents. The high-profile nature of these cases attracted the attention of global private credit funds, which were eager to deploy capital in large, sophisticated transactions with the potential for attractive returns and strategic influence in an industry many believed would rebound post-covid. Moreover, a number of private credit lenders served as pre-petition lenders to the airline operators, giving them a foothold in the companies' capital structures, well-positioning them to provide DIP financing. As DIP lenders, they could consent to the priming of their incumbent debt, while simultaneously rolling up their pre-petition debt, effectively transforming the pre-petition debt into a new, post-petition, super-priority secured claim benefiting from the unique protections of a bankruptcy court order. In other instances, private credit firms have provided fresh third-party capital as debtors have shopped financing terms during Chapter 11 to procure refinancings or favourable exit facilities.

FLEXIBILITY AND INNOVATION IN PRIVATE CREDIT SOLUTIONS

Private credit lenders demonstrated a willingness to craft bespoke, flexible financing solutions tailored to the unique needs of distressed airlines. These solutions often included structured protections for lenders, such as downside risk mitigation, high returns, backstop fee opportunities and the potential for debt-to-equity conversions. The ability of private credit to provide certainty, speed, a competitive funding process and tailored terms was particularly valuable in the fast-moving and uncertain context of airline bankruptcies.

Latin American airlines – such as Avianca, GOL, LATAM, Aeroméxico and Azul SA – all sought Chapter 11 protection in the United States, each turning to private credit for critical DIP financing.[7]

AVIANCA

Avianca Holdings SA[8] filed for Chapter 11 protection following a series challenges posed by the economic standstill of the covid-19 pandemic in addition to substantial leveraging in the years prior to filing that ultimately outpaced the growth of the airline's market.[9] The company secured a DIP facility of nearly US$2 billion, divided into Tranche A (approximately US$1.3 billion, including new money split between Tranche A-1 and A-2 loans and a roll-up of pre-petition debt) and Tranche B (approximately US$700 million, again a combination of new money and roll-up). Avianca originally received DIP financing from institutional bank lenders but later ran a marketing process to refinance its DIP after fully drawing the loans.-[10] The refinanced-DIP was backed by collateral such as the LifeMiles frequent flyer loyalty programme (one of the largest loyalty programmes in Latin America), cargo business, trademarks and credit card receivables. A notable feature was the option for the borrower to elect to repay the Tranche B lenders by converting their claims into at least 72 per cent of the reorganised company's pro forma equity, which represented an 8.5 per cent discount to plan value, subject to a market test. The structure was carefully negotiated to avoid legal pitfalls, such as sub rosa plan issues, and included mechanisms for additional funding if needed to cure financial covenant breaches. The DIP also included various fees (e.g., commitment fee and back end fees) and protections for lenders.

LATAM AIRLINES

The challenges of the pandemic, including travel restrictions in every country in which it operated, landed LATAM Airlines Group SA in Chapter 11.[11] The company entered bankruptcy with a DIP financing of approximately US$2.5 billion: a US$1.3 billion Tranche A and a US$1.15 billion Tranche C. Tranche B lenders also provided US$750 million of uncommitted financing. The DIP, provided by a number of private credit investors, was secured by valuable assets such as the frequent flyer loyalty programme, cargo business and trademarks. Although the original DIP proposal allowed Tranche C lenders to convert their debt to equity at a significant discount, the court rejected this as an improper sub rosa plan, leading to a revised DIP that eliminated this equity conversion feature.[12] According to the court, approval of the equity conversion would solidify a 20 per cent discount to the equity, which would not be subject to creditor comment or a court's review, thereby circumventing the strictures of Chapter 11. Importantly, the court noted, the 20 per cent discount would not be subject to a market test, which can be contrasted with the discount value in the Avianca equity conversion. It is notable that the LATAM conversion was at the option of the lenders, as opposed to the Avianca debtors, who decided to opt in to the conversion. Ultimately, the final DIP structure included milestones for plan filing and confirmation, robust market testing and protections to ensure fairness, especially in transactions involving insiders. The DIP also featured various fees and covenants to protect lender interests and maintain flexibility for the reorganisation process.

GRUPO AEROMÉXICO

In filing for Chapter 11, Grupo Aeroméxico SAB de CV[13] noted that although its balance sheet was strong prior to the outbreak of covid-19, the pandemic led to a liquidity crisis.[14] The company arranged a US$1 billion DIP financing (with a US$200 million Tranche 1 and an US$800 million Tranche 2) after the airline filed for Chapter 11. The DIP, primarily funded by private credit investors and an ad hoc group of noteholders, was secured by first-priority liens on unencumbered assets and junior liens on encumbered assets. Although an SDNY bankruptcy court had rejected the equity conversion feature in the LATAM case just a month before, the court approved the Tranche 2 lenders, maintaining their option to convert their DIP claims into equity in the reorganised company, with Mexican investors required to hold at least 51 per cent of voting shares to comply with Mexican ownership laws.[15] Although the court did not address sub rosa concerns in approving the conversion, importantly the conversion would be allocated for Tranche 2 holders on a dollar-for-dollar basis based on the plan valuation less any other valuation any party was permitted to subscribe for common stock of the debtors. In contrast, the LATAM DIP sought to lock in a 20 per cent discount to plan value for converting lenders. If a majority of Tranche 2 lenders opted for conversion, all would be deemed to have elected conversion, except for certain exceptions. The DIP included a range of fees, lock-up periods, drag-along and tag-along rights and minority protections in governance. It also set out milestones for plan filing and confirmation, as well as operational requirements such as negotiating labour agreements. Grupo Aeroméxico also secured exit financing from a consortium of strategic investors as well as private credit in the form of a US$762.5 million loan, including US$575 million to repay Tranche 1 of the DIP facility, certain working capital and cash distributions to unsecured creditors.

GOL

Although its business was profitable, rising costs and limited access to financing reduced the capacity of GOL Linhas Aéreas Inteligentes SA to pay off existing obligations and to fund necessary investments.[16] It therefore turned to Chapter 11.[17] The company secured a US$950 million new-money DIP facility and a backstop from private credit noteholders, which was increased to US$1 billion by the debtors' final DIP hearing. The DIP facility was secured by priming liens on certain company collateral and an adequate protection package for the lenders included the continued payment of paid-in-kind interest under the underlying collateral for the duration of the Chapter 11 process, the repayment of a US$15 million pre-petition bridge loan from the private credit group and super-priority claims. Additionally, during GOL's Chapter 11 cases, its parent completed a US$1.25 billion refinancing transaction with Abra Group Limited. Prior to GOL's filing, Abra, which was also the majority owner of a post-Chapter 11 Avianca, participated in a liability management exercise with GOL, purchasing the company's pre-petition debt and emerging from the transaction as GOL's largest secured lender. Abra then exchanged the debt for approximately US$1.45 billion in equity. As a result of GOL's filing, Abra was in default of its own debt. The refinancing included a US$510 million private placement of senior secured notes due in 2029 by its subsidiary, Abra Global Finance, and a US$740 million five-year senior secured term loan credit facility led by a private credit investor.

The proceeds from these transactions, along with cash in hand, were used to fully repay Abra Global Finance's senior secured notes (due in 2028) and cover related fees and expenses. Additionally, approximately 99.9 per cent of holders of the senior secured exchangeable notes due in 2028 agreed to amend the governing indenture, thereby resolving all existing defaults, including those relating to GOL's Chapter 11 filing. Once this refinancing was completed, Abra was able to negotiate a settlement regarding its claims against GOL. This resolution then paved the way for private credit lenders to fully commit to replacing the DIP lenders, thereby facilitating a new phase of financing for GOL. GOL then raised approximately US$1.9 billion in capital as part of its Chapter 11 exit financing package. A consortium of private credit investors agreed to a US$1.25 billion backstop commitment in secured exit financing for GOL. Features such as the backstop allowed lead investors to provide capital and earn up-front fees while the borrower received necessary, committed capital. The debtors highlighted that they conducted a competitive process to secure exit financing from private credit investors.

AZUL

Although Azul SA[18] completed a number of restructuring transactions in 2024, the company filed for bankruptcy protection five years after the outbreak of covid-19, citing the challenges posed by the pandemic and liquidity stress resulting from high foreign exchanges rates in 2024.[19] The company received final approval for its US$1.6 billion DIP financing from the bankruptcy court in July 2025. The DIP was funded by a subset of pre-petition supporting bondholders, which injected US$671 million worth of new-money loans into the company. The debtors' plan proposal also involves a US$650 million equity rights offering backstopped by members of a supporting bondholder group and commitments for between US$200 million and US$300 million of additional equity investment from partners United Airlines and American Airlines. Proceeds from the US$650 million equity rights offering would be used to partially repay the DIP. Azul's Chapter 11 process is currently ongoing.

PRECEDENT-SETTING TRANSACTIONS AND MARKET CONFIDENCE

The successful deployment of private credit DIP financing in these airline cases established important legal and commercial precedents. For example, as discussed above, the restructurings of Avianca and Grupo Aeroméxico featured equity conversion structures and demonstrated that private credit could be a central part of complex, cross-border Chapter

11 proceedings. These successes built market confidence, encouraging other distressed companies – and their advisers – to consider private credit as a viable and attractive option for DIP financing.

The airline bankruptcies served as an early sign regarding the evolving landscape of Latin American restructurings, highlighting both the urgent need for flexible capital solutions in Latin America and the ability of private credit to fill the gap left by traditional lenders. The visibility and complexity of these cases accelerated the evolution of the region's restructuring landscape, fostering greater awareness, legal innovation and acceptance of private credit DIP financing across other sectors.

The experience of the airline sector demonstrated that private credit could successfully support large, cross-border restructurings in Latin America, even in the face of regulatory and legal complexities. The willingness of private credit funds to engage in these high-stakes transactions signalled to the broader market that similar solutions could be applied to other distressed companies, paving the way for the expansion of private credit DIP financing throughout the region.

KEY TAKEAWAYS: EXPANDING OPPORTUNITY FOR PRIVATE CREDIT IN LATIN AMERICAN DISTRESSED FINANCING

The airline cases illustrate several important developments:

- Conversion of DIP to equity: In many instances, DIP lenders negotiated the right to convert their loans into equity in the reorganised company, aligning their interests with long-term recovery and control.
- Structured and tailored solutions: Private credit providers demonstrated a willingness to craft favourable financing structures after competitive marketing processes, with features such as backstop commitments and fee arrangements, liability management exercise blockers and make-whole provisions, accommodating the unique operational and jurisdictional challenges faced by Latin American airlines while protecting lender commitments.
- Higher yields and control: For private credit platforms looking for approaches to put private capital to work, DIP financing offers attractive risk-adjusted returns, often with enhanced protections in the form of court orders and downside protection. For example, DIP financing terms usually contain milestones – specific deadlines or performance targets that generally require the debtor to achieve certain procedural, financial or operational objectives by predetermined dates. Common examples include deadlines for filing or confirming a plan of reorganisation, obtaining court approval for the DIP loan on a final basis, securing approval of a disclosure statement or conducting an asset sale. DIP milestones and lending subject to a budget impose accountability on the borrower and mitigate risk on the part of the lender. DIP financing can also provide parties with access to information rights and innovative financing arrangements, such as backstop commitments and related fees.
- Access for underserved borrowers: Many mid-market enterprises – such as many Latin American companies – have historically been underbanked, lacking access to traditional sources of capital. Private credit fills this gap, providing much-needed liquidity during periods of distress.
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Trend markers: While each of the Latin American airline cases resulted in a successful reorganisation,[20] the role of private credit in successful airline restructurings is not isolated to the Latin American region. The successful restructuring of SAS, Scandinavia's flagship airline, was anchored by a private credit DIP facility that provided critical stabilisation following a pilot strike. Subsequently, private credit sources refinanced the DIP facility, and this financing was partially converted into equity as part of an exit transaction. This exit deal involved a consortium of bidders who acquired ownership of the airline, enabling SAS to emerge from Chapter 11. These successful emergences have set a precedent for other sectors, signalling to the market that private credit DIP financing is both viable and advantageous for companies globally.

The confluence of events that paved the way for the burgeoning private credit industry to be the financial saviour of Latin America's leading airlines might go down in history as a one-time covid-induced phenomenon, just as the last Latin American airline restructuring works its way through the Chapter 11 process. But, as the saying goes, history may not repeat itself but it often rhymes. And the highly sophisticated deals that developed from this era of financing, which started out as emergency loans, may well have laid the runway for future Latin American enterprises facing existential liquidity needs to procure capital. It will be up to market participants and practitioners to continue to innovate for these tools to continue to develop for the next crisis.

ENDNOTES

[1] Apollo Global Management values private credit as a US$40 trillion market opportunity. See John Cortese, et al., 'Demystifying the Opportunity in Investment Grade Private Credit', Apollo Glob. Mgmt. (11 December 2024), https://www.apollo.com/insights-news/insights/2024/12/demystifying-the-opportunity-in-investment-grade-private-credit.

[2] International Air Transport Association (IATA), IATA Presentation to the Fourth Meeting of the North American, Central American and Caribbean Directors General of Civil Aviation (NACC/DGCA/4), ICAO NACC Doc. NACCDGVC4-P12 (October 2020).

[3] The Bankruptcy Code only requires that a company has property in the United States to be eligible to file for Chapter 11. Courts have interpreted that requirement to be satisfied by minimal or even intangible property, such as retainers paid to professionals or an indenture that contains New York choice of law and forum selection clauses. In re Berau, Capital Resources, Pte Ltd., 580 B.R. 80 (Bankr. S.D. N.Y. 2015).

[4] Kirschner v. JPMorgan Chase Bank, N.A., 79 F.4th 290, 308 (2d Cir. 2023).

[5] Guillermo Parra-Bernal, 'Brazil court approves DIP loan for engineering firm OAS', Reuters (15 July 2015), https://www.reuters.com/article/business/brazil-court-approves-dip-loan-for-engineering-firm-oas-idUSL2N0ZV0NT.

[6] Vince Sullivan, 'Brazilian Construction Giant Files Ch. 15 Case In NY', Law360 (17 March 2025), https://www.law360.co.uk/articles/2311765/brazilian-construction-giant-files-ch-15-case-in-ny.

[7] Skadden, Arps, Slate, Meagher & Flom LLP advised private credit lenders in the Avianca, Grupo Aeroméxico and GOL deals.

[8] Chapter 11 Voluntary Petition for Non-Individual, In re Avianca Holdings S.A., No. 20-11133 (MG) (Bankr. S.D.N.Y. filed 10 May 2020), ECF No. 1.

[9] Declaration of Adrian Neuhauser in Support of Chapter 11 Petitions and First Day Pleadings,*In re Avianca Holdings S.A.*, No. 20-11133 (MG) (Bankr. S.D.N.Y. filed 10 May 2020), ECF No. 20.

[10] Declaration of John E. Luth in Support of Debtors' Motion for Entry of a Final Order (I) Authorizing the Debtors to Enter into Amendments to Their Postpetition DIP Credit Documents and Enter into Additional Documents in Furtherance Thereof, (II) Granting and Reaffirming Liens, (III) Granting Superpriority Administrative Expense Claims, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief,*In re Avianca Holdings S.A.*, No. 20-11133 (MG) (Bankr. S.D.N.Y. filed 4 August 2021), ECF No. 1971.

[11] Chapter 11 Voluntary Petition for Non-Individual, In re LATAM Airlines Grp. S.A., No. 20-11254 (JLG) (Bankr. S.D.N.Y. filed 26 May 2020), ECF No. 1. See also Declaration of Ramiro Alfonsín Balza in Support of First Day Motions and Applications in Compliance with Local Rule 1007-2, In re LATAM Airlines Grp. S.A., No. 20-11254 (JLG) (Bankr. S.D.N.Y. filed May 26, 2020), ECF No. 3.

[12] SeeMemorandum Decision on Debtor's Motion for an Order (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing and (B) Grant SuperPriority Administrative Expense Claims and (II) Granting Related Relief, In re LATAM Airlines Grp. S.A., No. 20-11254 (JLG) (Bankr. S.D.N.Y. filed 10 September 2020), ECF No. 1056.

[13] Chapter 11 Voluntary Petition for Non-Individual, In re Grupo Aeroméxico, S.A.B. de C.V., No. 20-11563 (SCC) (Bankr. S.D.N.Y. filed 30 June 2020), ECF No. 1.

[14] Declaration of Richard Javier Sánchez Baker in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings, In re Grupo Aeroméxico, S.A.B. de C.V., No. 20-11563 (SCC) (Bankr. S.D.N.Y. filed 1 July 2020), ECF No. 20.

[15] SeeFinal Order Granting Debtors' Motion to (I) Authorize Certain Debtors in Possession to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363 and 364; (II) Grant Liens and Superpriority Administrative Expense Claims to DIP Lenders Pursuant to 11 U.S.C. §§ 364 and 507; (III) Modify Automatic Stay Pursuant to 11 U.S.C. §§ 361,362, 363, 364 and 507; and (IV) Grant Related Relief, In re Grupo Aeroméxico, S.A.B. de C.V., No. 20-11563 (SCC) (Bankr. S.D.N.Y. filed 13 October 2020), ECF No. 527.

[16] Chapter 11 Voluntary Petition for Non-Individual, In re GOL Linhas Aéreas Inteligentes S.A., No. 24-10118 (MG) (Bankr. S.D.N.Y. filed 25 January 2024), ECF No. 1.

[17] Declaration of Joseph W. Bliley in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings, In re GOL Linhas Aéreas Inteligentes S.A., No. 24-10118 (MG) (Bankr. S.D.N.Y. filed 25 January 2024), ECF No. 11.

[18] Chapter 11 Voluntary Petition for Non-Individual, In re Azul, S.A., No. 25-11176 (SHL) (Bankr. S.D.N.Y. filed 28 May 2025), ECF No. 1.

[19] Declaration of Fabio Barros Franco de Campos in Support of the Chapter 11 Proceedings and First Day Pleadings, In re Azul S.A., No. 25-11176 (SHL) (Bankr. S.D.N.Y. filed 28 May 2025), ECF No. 8.

[20] Although *Azul* is still pending, at the time of writing, the *Azul* debtors had filed a plan.

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