

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,) No. 06 CR 964
)
v.) Judge Ronald Guzman
)
MICHAEL E. KELLY)

MOTION TO APPROVE THE SALE OF THE SABRE 80 JET AIRCRAFT

Douglas A. Doetsch, the court-appointed special master (the “Special Master”) in the case of *United States of America v. Michael E. Kelly*, hereby submits this Motion to Approve the Sale of the Sabre 80 Jet Aircraft (the “Motion”).

A. Background

The Sabre 80 Jet Aircraft (the “plane”) is the sole asset of First Sabre, S.A. de C.V., a Mexican *sociedad anónima de capital variable* (“First Sabre”). The plane was primarily used for travel by the Kelly family and was occasionally offered for charter or rental to third parties. During one such charter in 2008, the plane was badly damaged in an accident and is not currently airworthy. Routine maintenance on the plane was historically performed by Servicios Aereos JEM, S.A. de C.V. (“JEMSA”).

As a result of this accident, the plane was not able to fly back to Cancún for a period of approximately 6 months, thus it failed to undergo the 2008 inspection required by the Mexican Aeronautical Authorities (*Dirección General de Aeronáutica Civil*) and routine maintenance was not performed during this period. When the plane arrived in the JEMSA hangar, Grupo Kelly was informed that insurance coverage for the accident damage would not be available because of the missed inspection and the fact that the flight log books had been lost.

The plane is presently located in JEMSA's hangar in Toluca, Mexico. As of May 31, 2011, First Sabre owes JEMSA approximately USD296,379 for post-accident maintenance and storage of the plane. Such amount is currently increasing by approximately USD4,500 a month due to the continued costs associated with storing the plane. Based upon FTI Consulting, Inc.'s valuation ("FTI"), a net realizable value of USD230,000 has been assigned to the plane. The Special Master has not been able to identify a buyer willing to pay a purchase price higher than the debt owed to JEMSA (which debt exceeds the valuation amount assigned to this asset by FTI).

In light of this, the Special Master has determined that the best course of action is to sell the plane to JEMSA in exchange for the cancellation of the debt owed on the plane. First Sabre will enter into a Debt Acknowledgement, Payment, Offset and Release Agreement (the "Agreement") with JEMSA. Pursuant to the terms and conditions of the Agreement: (i) First Sabre will acknowledge its debt (the "Debt") before JEMSA, *plus* any and all additional taxes for maintenance of the plane and other services rendered by JEMSA, (ii) First Sabre will repay the Debt to JEMSA in kind through the conveyance of the plane to JEMSA, (iii) since the amounts of value added tax or IVA (*Impuesto al Valor Agregado*) triggered for the services rendered by JEMSA and for the transfer of the First Sabre Plane to JEMSA are identical, the parties will offset such amounts, (iv) JEMSA will cancel First Sabre's debt with respect to maintenance fees for the plane and (v) the parties will release each other from any liability with respect to the Debt, the plane and all services rendered by JEMSA to First Sabre.

B. Compliance with Sale Procedure

On October 28, 2009, this Court approved by minute order the Proposed Sale Procedure for Real Property of the Special Master (the "Sale Procedure"). The Special Master has

coordinated the sale of the plane in accordance with the procedure for the disposition of discrete parcels of real property whose sale is not part of the ordinary course of business as described in the Sale Procedure in the absence of a specific sale procedure for non-real property assets valued more than USD100,000. Specifically, the Special Master completed the following steps in anticipation of the sale of the Property:

Step (1): The Special Master sought out an appraisal of the market value of the plane and relied on such appraisal in evaluating the proposed Agreement with JEMSA. In light of the condition of the plane, the debts owed to JEMSA and the appraised market value of the property, the Special Master has determined that the proposed Agreement is acceptable.

Step (2): The Special Master published the Original Sale Terms in *Novedades*, a newspaper of general circulation in Cancun, Mexico, for the 10-day publication period required under the Sale Procedures. (Two-column English and Spanish version attached hereto as Exhibit A). No higher counteroffers were received by the Special Master.

Step (3): The Special Master requested a confirmation hearing for the closing of the sale of the Property on [July 14, 2011] and, at such time, he will present the Court with the terms of the bid and recommend approval of the same.

RESPECTFULLY SUBMITTED this **13th day of July, 2011**.

/s/ Douglas A. Doetsch

Douglas A. Doetsch, Special Master

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Exhibit A

Sabre 80 Jet Aircraft Notice Publication (Dated June 24 – identical version filed through July 3, 2011)

Exhibit B

Sabre 80 Jet Aircraft Notice Publication English Translation

NOTICE OF SALE OF AIRPLANE	AVISO DE VENTA DE AERONAVE
<p>Subject to confirmation by the Honorable Ronald A. Guzman of the U. S. District Court for the N. District of Illinois (E. Div.), 1219 South Dearborn Street, Chicago, Illinois (the “<u>Court</u>”), Douglas A. Doetsch, Special Master in United States of America v. Michael E. Kelly, Case No. 06 CR 964, U.S. Dist. Ct., N. Dist. Ill. (E. Div.) (the “<u>Special Master</u>”) will seek the Court’s confirmation to sell an airplane (the “<u>Plane</u>”) on or about July 14th, 2011 with the following features:</p>	<p>Sujeto a la confirmación del Honorable Ronald A. Guzmán del Tribunal de los Estados Unidos de América para el Distrito Norte de Illinois (División Este), ubicado en 1219 South Dearborn Street, Chicago, Illinois (el “<u>Tribunal</u>”), el señor Douglas A. Doetsch, Coadyuvante en el caso United States of America v. Michael E. Kelly, No. 06 CR 964, U.S. Dist. Ct., N. Dist. Ill. (División Este) (el “<u>Coadyuvante</u>”), buscará la aprobación del Tribunal para vender una aeronave (el “<u>Avión</u>”) en o alrededor del 14 de julio de 2011 con las siguientes características:</p>
<p>Private plane, brand Sabreliner model 265-80, serial number 380-005, nationality and registration marks XA-TUD (EXTRA ALFA TANGO UNION DELTA), certificate of registration number 23322-I and recorded in the Mexican Aeronautical Registry under docket number 31, volume 11, pages 16 on April, 29, 2002. The Plane (i) is not in satisfactory technical conditions to fly, (ii) does not have a certificate of airworthiness, (iii) does not have an insurance policy, and (iv) does not have a private commercial air transport permit issued by the Ministry of Communications and Transports through its General Direction of Civil Aeronautics.</p>	<p>Aeronave privada (la “<u>Aeronave</u>”) marca Sabreliner modelo 265-80, número de serie 380-005, marcas de nacionalidad y matrícula XA-TUD (EXTRA ALFA TANGO UNION DELTA), certificado de matrícula número 23322-I e inscrita en el Registro Aeronáutico Mexicano bajo el número 31, Tomo 11, a fojas 16 con fecha 29 de abril de 2002. El Avión (i) no está en condiciones técnicas satisfactorias para realizar operaciones de vuelo, (ii) no cuenta con el certificado de aeronavegabilidad, (iii) no cuenta con póliza de seguro, y (iv) no cuenta con el permiso de transporte aéreo privado comercial emitido por la Secretaría de Comunicaciones y Transportes, por conducto de la Dirección General de Aeronáutica Civil.</p>
<p>Presently, the owner of the Plane, First Sabre, S.A. de C.V., a Mexican corporation, entered into a Mexican law governed Agreement to transfer the Plane for a consideration of USD\$252,586.21 (Two Hundred Fifty Two Thousand Five Hundred and Eighty Six Dollars 21/100 U.S. Currency) plus the applicable Value Added Tax equivalent to USD\$40,413.79</p>	<p>Actualmente, el dueño del Avión, First Sabre, S.A. de C.V., una sociedad Mexicana, celebró un Contrato sujeto a ley Mexicana para transmitir el Avión por una contraprestación de E.U.A.\$252,586.21 (Doscientos Cincuenta y Dos Mil Quinientos Ochenta y Seis Dólares 21/100 Moneda de los Estados Unidos de América) más el correspondiente Impuesto</p>

(Forty Thousand Four Hundred and Thirteen Dollars 79/100 U.S. Currency) (the " <u>Proposed Sale Terms</u> ").	al Valor Agregado equivalente a la cantidad de E.U.A.\$40,413.79 (Cuarenta Mil Cuatrocientos Trece Dólares 79/100 Moneda de los Estados Unidos de América) (los " <u>Términos Propuestos de Venta</u> ").
<p>The Special Master expects to seek Court approval of the sale of the Plane on or about July 14th, 2011 at a confirmation hearing (the "<u>Confirmation Hearing</u>") during which the Proposed Sale Terms or an Approved Counteroffer (as defined below) will be accepted. If you would like to make a counteroffer on the Plane for consideration by the Court at the Confirmation Hearing, you must submit a bona fide counteroffer on conditions that guarantee more favorable terms than the Proposed Sale Terms to the Office of the Special Master on or before July 5, 2011 (Attention: Office of the Special Master, c/o Mayer Brown LLP; Telephone: 312-701-8408; Email: malevras-chen@mayerbrown.com), which counteroffer will be considered and may be forwarded by the Special Master, in his sole discretion, for Court consideration (once so forwarded by the Special Master, an "<u>Approved Counteroffer</u>"). During the Confirmation Hearing, the Court will consider the Proposed Sale Terms and any Approved Counteroffer and make a determination regarding the sale of the Plane. For more information, contact the Office of the Special Master (please see contact information above).</p>	<p>El Coadyuvante espera obtener la aprobación del Tribunal para la venta del Avión en o alrededor del 14 de julio de 2011 en una audiencia de confirmación (la "<u>Audiencia de Confirmación</u>") durante la cual los Términos Propuestos de Venta o una Contraoferta Aprobada (según dicho término se define mas adelante) será aprobada. Si usted desea someter una contraoferta para adquirir el Avión a consideración del Tribunal en la Audiencia de Confirmación, debe de enviar una contraoferta de buena fe en condiciones que garanticen términos más favorables que los Términos Propuestos de Venta a la oficina del Coadyuvante en o antes del 5 de julio de 2011 (Atención de: Oficina del Coadyuvante, c/o Mayer Brown LLP; Teléfono: 312-701-8408; Correo Electrónico: malevras-chen@mayerbrown.com), cuya contraoferta será considerada y puede ser sometida por el Coadyuvante, a su entera discreción, a consideración del Tribunal (una vez sometida por el Coadyuvante, una "<u>Contraoferta Aprobada</u>"). Durante la Audiencia de Confirmación, el Tribunal considerará los Términos Propuestos de Venta y cualquier Contraoferta Aprobada y resolverá acerca de la venta del Avión. Para más información, contacte a la Oficina del Coadyuvante (favor de ver información de contacto más arriba).</p>

Exhibit C

Proposed Order Approving Sale of Sabre 80 Jet Aircraft

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,) No. 06 CR 964
)
 v.) Judge Ronald Guzman
)
MICHAEL E. KELLY)

ORDER TO APPROVE THE SALE OF THE SABRE 80 JET AIRCRAFT

Upon the Motion to Approve the Sale of the Sabre 80 Jet Aircraft by the Special Master, suitable notice and an opportunity for interested parties to object having been given, the Court, having heard from the Special Master, the government and defendant Kelly, and being fully advised in the premises, hereby orders:

- (a) The sale of the Sabre 80 Jet Aircraft under the terms proposed to the Court is in the best interest of the victims.
- (b) The Special Master is authorized and directed to conclude the sale of the Sabre 80 Jet Aircraft under the terms presented to the Court for the proposed Debt Acknowledgement, Payment, Offset and Release Agreement.

DATED:

UNITED STATES DISTRICT COURT JUDGE