

DLA PIPER LLP (US)

Richard F. Hans
Richard A. Chesley
Rachel Ehrlich Albanese
1251 Avenue of the Americas
New York, New York 10020-1104
Tel.: (212) 335-4500
Fax: (212) 335-4501
Richard.Hans@dlapiper.com
Richard.Chesley@dlapiper.com
Rachel.Albanese@dlapiper.com

Counsel to Fundación Rafael Dondé, I.A.P.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

MIAMI METALS I, INC., et al.,

Debtors.

Chapter 11

Case No. 18-13359 (SHL)

(Jointly Administered)

**DESIGNATION OF RECORD AND STATEMENT OF ISSUES
BY APPELLANT
FUNDACIÓN RAFAEL DONDÉ, I.A.P.**

Pursuant to Federal Rule of Bankruptcy Procedure 8009(a)(1), Fundación Rafael Dondé, I.A.P. (the “Foundation”) designates the following parts of the record¹ and states the following issues for its appeal of the bankruptcy court’s *Order Granting Debtors’ Emergency Motion (I) to Enforce Automatic Stay Against Fundacion Rafael Donde I.A.P., (II) to Hold Fundacion Rafael Donde I.A.P. in Contempt of Court, (III) for an Award of Sanctions Against Fundacion Rafael Donde I.A.P., and (IV) for Related Relief* dated June 28, 2019 [ECF No. 1217] (the “Order”):

¹ All documents designated include all exhibits and submissions attached thereto and, as to hearing transcripts, any and all documents admitted into evidence.

**DESIGNATION OF ITEMS TO BE INCLUDED IN THE
RECORD ON APPEAL²**

Docket Number	Document Name	Date Filed
ECF No. 1 ³	Voluntary Petition for Non-Individuals Filing for Bankruptcy	November 21, 2018
ECF No. 205	Notice of Appearance and Demand for Service of Papers	November 28, 2018
ECF No. 227	Fundación Rafael Dondé, I.A.P.'s Limited Objection, Joinder and Reservation of Rights Regarding Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors' Use of Cash Collateral, (II) Granting Adequate Protection to the Secured Parties, (III) Scheduling a Final Hearing and (IV) Granting Related Relief	November 29, 2018
ECF No. 232	Certificate of Service	November 30, 2018
ECF No. 239	Order Directing Joint Administration of Additional Related Chapter 11 Cases	December 4, 2018
ECF No. 307	Debtors' Expedited Motion for Authority to Settle Compromises Pursuant to Bankruptcy Rule 9019 (RTMM Product Settlement)	December 14, 2018
ECF No. 354	Transcript regarding Hearing Held on 12/14/2018 at 3:06 pm RE: Status conference re: cash-collateral objections (CourtCall approved)	December 18, 2018
ECF No. 374	Notice of Presentment of Order Approving RTMM Product Settlement with Fundación Rafael Dondé, I.A.P.	January 4, 2019
ECF No. 395	Order Approving Uniform Procedures for Resolution of Ownership Disputes	January 11, 2019
ECF No. 398	Order Approving RTMM Product Settlement with Fundación Rafael Dondé, I.A.P.	January 11, 2019

² The Foundation expressly reserves the right to supplement the record on appeal and to adopt the designation of any items counter-designated by the Appellee.

³ Case No. 18-13644 (SHL). All other "ECF No." designations are to the lead case docket, Case No. 18-13359 (SHL).

Docket Number	Document Name	Date Filed
ECF No. 454	Customer Statement of Fundación Rafael Dondé, I.A.P. in Accordance With the Order Approving Uniform Procedures for Resolution of Ownership Disputes	January 18, 2019
ECF No. 455	Certificate of Service	January 18, 2019
ECF No. 648	Debtors' Omnibus Response to Customer Statements Pursuant to the Order Approving Uniform Procedures for Resolution of Ownership Disputes	February 19, 2019
ECF No. 758	Supplemental Customer Statement of Fundación Rafael Dondé, I.A.P. in Accordance with the Order Approving Uniform Procedures for Resolution of Ownership Disputes	March 11, 2019
ECF No. 913	First Amended Order Approving Uniform Procedures for Resolution of Ownership Disputes	April 15, 2019
ECF No. 1003	Debtors' Emergency Motion (I) to Enforce Automatic Stay Against Fundacion Rafael Donde I.A.P., (II) to Hold Fundacion Rafael Donde I.A.P. in Contempt of Court, (III) for an Award of Sanctions Against Fundacion Rafael Donde I.A.P., and (IV) for Related Relief	May 3, 2019
ECF No. 1004	Ex Parte Motion to Shorten Time of Notice Period for Hearing on Debtors' Emergency Motion (i) to Enforce Automatic Stay against Fundacion Rafael Donde I.A.P., (ii) to Hold Fundacion Rafael Donde I.A.P. in Contempt of Court, (iii) for an Award of Sanctions Against Fundacion Rafael Donde I.A.P. and (iv) For Related Relief	May 3, 2019
ECF No. 1008	Objection of Fundación Rafael Dondé, I.A.P. to Debtors' Ex-Parte Motion for an Order Shortening Notice Period for Hearing on Debtors' Emergency Motion (I) to Enforce Automatic Stay Against Fundación Rafael Dondé I.A.P., (II) to Hold Fundación Rafael Dondé I.A.P. in Contempt of Court, (III) for an Award of Sanctions Against	May 5, 2019

Docket Number	Document Name	Date Filed
	Fundación Rafael Dondé I.A.P. and (IV) for Related Relief	
ECF No. 1012	Order Granting Ex Parte Motion to Shorten Time of Notice Period for Hearing on Debtors' Emergency Motion (i) to Enforce Automatic Stay against Fundacion Rafael Donde I.A.P., (ii) to Hold Fundacion Rafael Donde I.A.P. in Contempt of Court, (iii) for an Award of Sanctions Against Fundacion Rafael Donde I.A.P. and (iv) For Related Relief	May 6, 2019
ECF No. 1016	Certificate of Service	May 6, 2019
ECF No. 1033	Declaration of Rachel Ehrlich Albanese in Support of Objection of Fundación Rafael Dondé, I.A.P. to Debtors' Emergency Motion (I) to Enforce Automatic Stay Against Fundacion Rafael Donde I.A.P., (II) to Hold Fundacion Rafael Donde I.A.P. in Contempt of Court, (III) for an Award of Sanctions Against Fundacion Rafael Donde I.A.P., and (IV) for Related Relief	May 13, 2019
ECF No. 1034	Declaration of Alejandro Jaimes Gutierrez in Support of Objection of Fundación Rafael Dondé, I.A.P. to Debtors' Emergency Motion (I) to Enforce Automatic Stay Against Fundacion Rafael Donde I.A.P., (II) to Hold Fundacion Rafael Donde I.A.P. in Contempt of Court, (III) for an Award of Sanctions Against Fundacion Rafael Donde I.A.P., and (IV) for Related Relief	May 13, 2019
ECF No. 1035	Objection of Fundación Rafael Dondé, I.A.P. to Debtors' Emergency Motion (I) to Enforce Automatic Stay Against Fundacion Rafael Donde I.A.P., (II) to Hold Fundacion Rafael Donde I.A.P. in Contempt of Court, (III) for an Award of Sanctions Against Fundacion Rafael Donde I.A.P., and (IV) for Related Relief	May 13, 2019
ECF No. 1037	Declaration of Ricardo Morales Paredes in Support of Objection of Fundación Rafael Dondé, I.A.P. to Debtors' Emergency Motion (I) to Enforce Automatic Stay Against Fundacion Rafael	May 13, 2019

Docket Number	Document Name	Date Filed
	Donde I.A.P., (II) to Hold Fundacion Rafael Donde I.A.P. in Contempt of Court, (III) for an Award of Sanctions Against Fundacion Rafael Donde I.A.P., and (IV) for Related Relief	
ECF No. 1072	Declaration of Alejandro Catala Guerrero Pursuant to Federal Rule of Civil Procedure 44.1	May 15, 2019
ECF No. 1073	Reply in Support of Debtors' Emergency Motion (I) to Enforce Automatic Stay Against Fundacion Rafael Donde I.A.P., (II) to Hold Fundacion Rafael Donde I.A.P. in Contempt of Court, (III) for an Award of Sanctions Against Fundacion Rafael Donde I.A.P., and (IV) for Related Relief	May 15, 2019
ECF No. 1082	Ex Parte Motion of Fundación Rafael Dondé, I.A.P. for Entry of an Order Granting Leave to File the Sur-Reply and Supplemental Declaration	May 17, 2019
ECF No. 1085	Debtors' Objection to Ex Parte Motion of Fundación Rafael Dondé, I.A.P. for Entry of an Order Granting Leave to File the Sur-Reply and Supplemental Declaration	May 17, 2019
ECF No. 1110	Transcript regarding Hearing Held on 05/13/2019 at 2:07 pm RE: (Via CourtCall) SCHEDULING CONFERENCE Re: Doc. #1003 Emergency motion to impose automatic stay and to enforce automatic stay and motion to punish for contempt of court and motion for sanctions for violation of automatic stay against Fundacion Rafael Donde I.A.P. and for related relief	May 17, 2019
ECF No. 1114	Certificate of Service	May 21, 2019
ECF No. 1134	Notice of Telephonic Hearing for Ruling on Debtors' Emergency Motion (I) to Enforce Automatic Stay Against Fundacion Rafael Donde I.A.P., (II) to Hold Fundacion Rafael Donde I.A.P. in Contempt of Court, (III) for an Award of Sanctions Against Fundacion Rafael Donde I.A.P., and (IV) for Related Relief and Responses Thereto	May 29, 2019

Docket Number	Document Name	Date Filed
ECF No. 1146	Transcript regarding Hearing Held on 05/30/2019 at 1:38 pm RE: BENCH DECISION: Doc #1003 Emergency Motion to Impose Automatic Stay and to Enforce Automatic Stay, and Motion to Punish for Contempt of Court, and Motion for Sanctions for Violations of Automatic Stay Against Fundacion Rafael Donde I.A.P. and for Related Relief (CourtCall Approved)	May 30, 2019
ECF No. 1196	Second Amended Order Approving Uniform Procedures for Resolution of Ownership Disputes	June 14, 2019
ECF No. 1217	Order Granting Debtors' Emergency Motion (I) to Enforce Automatic Stay Against Fundacion Rafael Donde I.A.P., (II) to Hold Fundacion Rafael Donde I.A.P. in Contempt of Court, (III) for an Award of Sanctions Against Fundacion Rafael Donde I.A.P., and (IV) for Related Relief	June 28, 2019
ECF No. 1223	Notice of Appeal	June 28, 2019

STATEMENT OF ISSUES ON APPEAL⁴

1. Whether the bankruptcy court committed reversible error or abused its discretion in granting the above-captioned debtors' (the "Debtors") motion for sanctions⁵ against the Foundation.

2. Whether the bankruptcy court committed reversible error or abused its discretion in finding that the Foundation violated the Uniform Procedures Order.

3. Whether the bankruptcy court erred in finding that the Foundation's commencement of a criminal action under Mexican law was an effort to collect on a debt or to

⁴ The Foundation reserves the right to amend this statement of issues to the extent permitted by applicable law.

⁵ Debtors' Emergency Motion (I) to Enforce Automatic Stay Against Fundacion Rafael Donde I.A.P., (II) to Hold Fundacion Rafael Donde I.A.P. in Contempt of Court, (III) for an Award of Sanctions Against Fundacion Rafael Donde I.A.P., and (IV) for Related Relief [ECF No. 1003].

determine ownership of certain assets rather than the enforcement of fundamental rights under Mexican law.

4. Whether the bankruptcy court erred in finding that Mexican law was not relevant in determining the nature of the Foundation's commencement and perfection of the criminal action under Mexican law.

5. Whether the bankruptcy court committed reversible error or abused its discretion in finding that the Uniform Procedures Order took precedence over Mexican criminal law.

6. Whether the bankruptcy court committed reversible error or abused its discretion in finding that the Debtors satisfied their burden of proof in support of the motion for sanctions, even though the Debtors submitted only a single letter in support of the motion for sanctions.

7. Whether the bankruptcy court committed reversible error or abused its discretion in not considering the criminal law exception to the automatic stay set forth in section 362(b)(1) of the Bankruptcy Code.

8. Whether the Foundation's commencement and perfection of a criminal complaint in accordance with Mexican law was (a) permissible within the criminal law exception to the automatic stay in section 362(b)(1) of the Bankruptcy Code, and (b) if so, whether the bankruptcy court erred in finding that the Foundation violated the automatic stay.

9. Whether the bankruptcy court erred in failing to grant the Foundation's request for relief from the automatic stay and/or annulment of any violations of the automatic stay to the extent it applied.

10. Whether the bankruptcy court erred in *sua sponte* extending the Order's applicability to non-Debtors Jason Rubin and Joseph Liberman.

11. Whether the bankruptcy court erred in denying the Foundation leave to file a sur-reply after the Debtors submitted new evidence with their reply.

12. Whether the bankruptcy court's findings of facts in relation to the Order were clearly erroneous.

Dated: New York, New York
July 11, 2019

DLA PIPER LLP (US)

/s/ Richard F. Hans

Richard F. Hans

Richard A. Chesley

Rachel Ehrlich Albanese

1251 Avenue of the Americas

New York, New York 10020-1104

Tel.: (212) 335-4500

Fax: (212) 335-4501

Richard.Hans@dlapiper.com

Richard.Chesley@dlapiper.com

Rachel.Albanese@dlapiper.com

Counsel to Fundación Rafael Dondé, I.A.P