

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

In re:	)	Chapter 11
	)	
ATA AIRLINES, INC.,	)	Case No. 08-03675-BHL-11
	)	
Debtor.	)	

**DEBTOR'S (A) MOTION UNDER  
BANKRUPTCY CODE SECTIONS 105  
AND 1129 TO DESIGNATE AMERICAN  
AVIATION INVESTMENTS AS THE  
PARTY SUBMITTING THE HIGHEST  
AND BEST OFFER FOR THE DEBTOR'S  
BUSINESS AND RELATED  
AUTHORITIES AND ASSETS AND (B)  
NOTICE OF ABILITY TO SUBMIT  
COMPETING OFFERS**

Hearing:	October 7, 2008 10:00 a.m. EDT
Location:	U.S. Courthouse 46 E. Ohio Street, Room 310 Indianapolis, IN 46204
Telephonic Participation	
Dial-In:	1-877-213-2541
Passcode:	7782723#

ATA Airlines, Inc. (the “Debtor”) files this Debtor's (A) Motion Under Bankruptcy Code Sections 105, 363, and 1129 to Designate American Aviation Investments as the Party Submitting the Highest and Best Offer for the Debtor's Business and Related Authorities and Assets and (B) Notice of Ability to Submit Competing Offers (the “Motion”).

**Jurisdiction**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

**Background**

2. On April 2, 2008 (the “Petition Date”), the Debtor filed a voluntary petition (the “Bankruptcy Case”) for relief under chapter 11 of title 11 of the Bankruptcy Code in the United

States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the “Court”). The Debtor continues to manage its property and assets as debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

3. On April 16, 2008 the United States Trustee appointed the Unsecured Creditors’ Committee (the “Committee”).

4. Prepetition, the Debtor operated a diversified international passenger airline that operated in two principal business segments: (a) a low cost carrier operation that provided scheduled passenger service that leveraged a code share agreement with Southwest Airlines and (b) a charter operation focusing primarily on providing charter service to the United States government/military.

5. Shortly after the bankruptcy filing, the Debtor decided to cease its business operations, after analyzing its fleet schedules and aircraft fleet, operating costs, relevant business goals and objectives, as well as available financing sources and business combination possibilities. The Debtor is therefore in the process of winding down its business operations and liquidating its assets in an orderly fashion. In furtherance of the orderly liquidation, the Debtor has undertaken steps to maintain its authorities (including its airline operating certificate) despite the business shutdown in an effort to maximize the value of the company for the benefit of the bankruptcy estate and its creditors.

**Debtor's Marketing Efforts and Discussions  
with the Federal Aviation Administration**

6. In May 2008, the Federal Aviation Administration approached the Debtor concerning the Debtor's intentions with respect to continuing or restarting its business operations. The Debtor informed the FAA that it had ceased operations, but was interested in maintaining its operating certificate with any eye toward marketing it to third parties for a potential sale. The

FAA at that time expressed a reluctance regarding the contemplation of selling the operating certificate as a stand-alone asset.

7. The Debtor subsequently engaged in protracted discussions (on a weekly basis) with the FAA in an effort to convince the FAA to allow the Debtor to maintain the operating certificate and to discuss the contours of a potential sale of the operating certificate. The FAA indicated during those discussions that the operating certificate is not a stand-alone tangible asset; instead, it is a set of attributes permitting an individual or company to provide a controlled type of flight service. As such, the FAA will only recognize the continuation of the operating authority through a the sale of the company. The discussions with the FAA have shaped the Debtor's efforts to maintain its operating authority and its related marketing efforts (which are discussed below).

8. After the bankruptcy filing, the Debtor began receiving expressions of interest from various parties regarding an acquisition of the Debtor's business and its operating certificate. In all, twelve parties (or their agents) contacted the Debtor inquiring about a sale of the operating certificate. In addition, the Debtor also solicited input from its secured lender JPMorgan Chase Bank, N.A. and the Committee concerning the sale process and the identification of possible buyers. The Debtor is not aware of any additional parties who might be interested in purchasing its business.

9. The Debtor had discussions and/or negotiations with each of the interested parties, and informed each of the parties during course of the discussions of the FAA's views concerning the operating certificate and its ability to be transferred. The Debtor ultimately identified several parties with a legitimate interest in purchasing the company as a means of continuing or restarting the airline. The Debtor entered into non-disclosure agreements with these parties, and

exchanged relevant business and financial information with them in furtherance of a potential sale transaction.

10. As a result of the information exchange, the Debtor solicited, received, and negotiated letters of intent for the sale of the company with three of the interested parties. Parallel with these negotiations, the Debtor briefed the FAA on the potential transactions and sought the FAA's input on each transaction. The Debtor has determined that the offer submitted by American Aviation Investments ("AAI") is the highest and best offer for the Company (as defined below).

11. The Debtor, as seller, and AAI, as purchaser, have entered into a binding letter of intent dated September 5, 2008 (the "Letter of Intent"). The Letter of Intent contemplates the sale of the Debtor's business and related authorities and assets to AAI through a stock transaction. A copy of the Letter of Intent is attached to this Motion as Exhibit A.

#### **Summary of Terms and Conditions of the Letter of Intent<sup>1</sup>**

12. The transactions effectuating, and the terms and conditions governing, the sale of the Assets to AAI are embodied in the Letter of Intent. The Letter of Intent provides that, subject to the terms and conditions therein and in the definitive documents to be negotiated by the parties, AAI shall purchase the Debtor through a stock transaction, which would include the following authorities and assets (collectively, the "Company"): (a) the Air Carrier Operating Certificate No. AMTA029A; (b) the Department of Transportation Certificate of Public Commerce and Necessity, if any; (c) to the extent not expired, terminated, rejected, or otherwise sold or disposed of on or before confirmation of a chapter 11 plan in the Bankruptcy Case, all

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<sup>1</sup> The description of the transactions contemplated in the Letter of Intent is for summary purposes only. The Letter of Intent is the controlling document in the event of any conflict between this Motion and the Letter of Intent. Interested parties should read the Letter of Intent to get a complete and accurate description of the contemplated transactions. The Letter of Intent contemplates that the parties will negotiate and enter into definitive documents regarding the sale transaction.

licenses, franchises, patents, trade names/trademarks, copyrights, contracts, as are necessary to normal operations and any client database, computer software, the goodwill, and all intangibles owned by or licensed to and constituting the intellectual property of the Debtor; (d) all outstanding stock of the Debtor; and (e) the rights to such airport slots that are non-transferable, adhere to, and are inseparable from the Debtor, which would consist of the Debtor's slots at LaGuardia Airport in New York. The purchase price for the Company shall be \$3.8 million (the "Purchase Price").

13. The sale of the Company will be implemented through a stock transaction in a chapter 11 plan in the Debtor's bankruptcy, and would therefore be subject to the plan confirmation requirements. The sale would be effectuated through the sale of either new ATA stock issued pursuant to the confirmed plan or the stock of an ATA subsidiary formed under the confirmed plan. The sale of the Company shall be free and clear of all liens, claims, interests, and other encumbrances (within the meaning of Bankruptcy Code section 363(f)), with the liens attaching to the sale proceeds with the same validity and priority as they had against the assets comprising the Company.

14. Under the Letter of Intent, AAI is required to deliver to the Debtor by wire transfer of immediately available funds an \$850,000 deposit (the "Deposit") within one business day after the Court's approval of AAI as the purchaser of the Company. The Deposit will be credited against the amounts payable to the Debtor at the closing. The Deposit will be refundable only in the event that (a) a chapter 11 plan effectuating the transactions contemplated in the Letter of Intent is not confirmed by January 31, 2009 (or such later date the parties may agree to) or (b) the FAA revokes or invalidates the Debtor's operating certificate before the

closing of the transaction for a reason(s) other than domestic ownership requirements or a breach of AAI's obligations under the Letter of Intent.

**Notice of Ability to Submit Competing Offers**

15. The transaction described in the Letter of Intent is subject to higher and better offers. In order to maximize the sale price for the Company, interested parties may submit competing bids to the Debtor before the hearing on this Motion, which is scheduled for October 7, 2008 at 10:00 a.m. prevailing eastern time. If the Debtor receives any competing bids, an auction shall be conducted before the Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Court") at the hearing on this Motion.

**Relief Requested and Applicable Authorities**

16. The Debtor seeks an order, pursuant to Bankruptcy Code sections 105 and 1129, (a) designating AAI as the party submitting the highest and best offer for the purchase of the Company and (b) authorizing the Debtor to enter into the Letter of Intent. Because the sale of the Company will be accomplished through a stock transaction, the sale will be implemented in a chapter 11 plan to be filed in the Debtor's bankruptcy. Therefore, the Debtor is not seeking approval of the sale transaction described in the Letter of Intent through this Motion.

17. The Purchase Price is the highest and best offer received by the Debtor for the purchase of the Company. In the Debtor's business judgment, consummation of the proposed sale is in the best interests of its bankruptcy estate and creditors.

A. The Selection of AAI as the Highest and Best Offerer is Consistent with the Debtor's Business Judgment and is in the Best Interest of the Bankruptcy Estate

18. Bankruptcy Code section 105(a) provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11

U.S.C. § 105(a). Additionally, the Bankruptcy Code expressly authorizes the sale of estate property as part of a chapter 11 plan. 11 U.S.C. § 1123(a).

19. The Debtor has ceased operations, is winding down its business and no longer has a need for the property and assets comprising the Company. The sale of the Company will allow the Debtor to maximize the value to the estate and thus distributions to creditors. The transaction embodied in the Letter of Intent is the highest and best offer the Debtor received for the Company before the filing of this Motion. The proposed sale to AAI is the result of extended arm's-length, good-faith negotiations. If other parties submit bids for the Company, the Court could conduct an auction at the hearing, which will ensure the Company will be sold for the highest price possible, taking into account relevant contingencies, including likelihood of obtaining FAA approval and ability to close.

20. Approval of AAI as the party submitting the highest and best offer for the Company will trigger AAI's obligation under the Letter of Intent to post the Deposit with the Debtor. The Deposit is refundable only in the limited instances outlined in the Letter of Intent, which are discussed above. Payment of the Deposit would provide AAI with an incentive to close the transaction (if approved as part of the plan confirmation process), and would provide an appropriate level of protection to the Debtor and its bankruptcy estate if AAI breaches its obligations under the Letter of Intent.

21. Accordingly, the designation of AAI as the party submitting the highest and best offer for the Company is consistent with the Debtor's business judgment, and is in the best interest of the bankruptcy estate and its creditors.

**Notice of Sale**

22. In accordance with the case management procedures established by the Court, notice of this Motion will be served on the parties identified on the Master Service List maintained in this bankruptcy. In addition, notice of this Motion will be served on the known parties who have expressed an interest in acquiring the Company (or any subportion thereof).

WHEREFORE, the Debtor respectfully requests that the Court enter on order (i) granting the Motion (ii) designating AAI as the purchaser of the Company; (iii) authorizing the Debtor to enter into the Letter of Intent; and (iv) granting the Debtor such other legal and equitable relief to which it is entitled.

Dated: September 23, 2008

BAKER & DANIELS LLP

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