

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re:)	Chapter 11
)	
ATA Holdings Corp., et al., ¹)	Case No. 04-19866
)	(Jointly Administered)
Debtors.)	

**MOTION FOR AUTHORITY TO ASSUME AMENDED AGREEMENT AND FOR
APPROVAL OF SETTLEMENT AGREEMENT**

The debtors and debtors in possession (collectively, the "Debtors") in the above captioned chapter 11 cases (the "Chapter 11 Cases"), hereby file this motion (the "Motion") for entry of an order, the proposed form of the which is attached hereto as Exhibit A (the "Order"): (i) approving the Settlement Agreement attached hereto as Exhibit B; and (ii) authorizing Debtor ATA Airlines, Inc. ("ATA") to assume that certain Interline Agreement For Employee Reduced Fare Travel, dated as of May 9, 1997, and as previously amended by an amendment dated February 1, 2001(the "Agreement") as the same is amended by the terms and conditions set forth in the Settlement Agreement ("Amended Agreement").

In support of this Motion, the Debtors state as follows:

JURISDICTION

1. On October 26, 2004 (the "Petition Date"), each of the Debtors filed with the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Bankruptcy Court"), its respective voluntary petition for relief under Chapter 11 of Title 11

¹ The Debtors are the following entities: ATA Holdings Corp. (04-19866), ATA Debtors, Inc. (04-19868), Ambassador Travel Club, Inc. (04-19869), ATA Leisure Corp. (04-19870), Amber Travel, Inc. (04-19871), American Trans Air Execujet, Inc. (04-19872), ATA Cargo, Inc. (04-19873), and Chicago Express Debtors, Inc. (04-19874).

of the United States Code, 11 U.S.C. §§ 101 et seq. as amended (the "Bankruptcy Code") commencing these Chapter 11 Cases. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. No trustee or examiner has been appointed. On November 1, 2004, the United States Trustee appointed an official committee of unsecured creditors (the "UCC") pursuant to § 1102(a)(1) of the Bankruptcy Code.

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

4. The statutory basis for the relief sought herein is Section 365(a) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

RELIEF REQUESTED

5. For the reasons stated below, the Debtors request that the Court enter an order: (i) approving the Settlement Agreement; and (ii) authorizing ATA to assume the Amended Agreement pursuant to Section 365 of the Bankruptcy Code.

BASIS FOR RELIEF

6. Pursuant to the Agreement, certain Eligible Persons (as defined in the Agreement), including employees of ATA and Continental, are eligible for reduced fare transportation on each other's airlines.

7. A dispute has arisen between ATA and Continental regarding ATA's performance under the Agreement. ATA and Continental have entered into the Settlement Agreement to fully resolve such dispute.

8. Pursuant to the Settlement Agreement, ATA and Continental are to enter into an Amendment modifying the terms of the Agreement in accordance with the Settlement Agreement, and ATA has agreed to ask this Court for authority to assume the Amended Agreement.

9. ATA has, in its sound business judgment, determined that entering into the Settlement Agreement and assuming the Amended Agreement is in the best interests of its estate and creditors.

APPROVAL OF THE SETTLEMENT AGREEMENT

10. Bankruptcy Rule 9019 provides that the Court, after notice and a hearing, may approve a compromise or settlement. See Fed. R. Bankr. P. 9019(a). Under § 363(b) and Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interest of the estate. See, Depoister v. Mary M. Holloway Found., 36 F.3d 582, 586 (7th Cir. 1994); In re Energy Coop., Inc., 886 F.2d 921, 927 (7th Cir. 1989) (“[t]he benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interest of the estate.”). The Seventh Circuit has offered the following guidance to courts in making such determinations:

Central to the bankruptcy judge's determination is a comparison of the settlement's terms with the litigation's probable costs and probable benefits. Among the factors the bankruptcy judge should consider in his analysis are the litigation's probability of success, the litigation's complexity, and the litigation's attendant expense, inconvenience, and delay.

LaSalle Nat'l Bank v. Holland (In re American Reserve Corp.), 841 F.2d 159, 161 (7th Cir. 1987)(citations omitted).

11. ATA believes and represents that the Settlement Agreement is fair and reasonable under the circumstances. Moreover, the resolution of the dispute regarding the Agreement is in the best interest of the ATA's estate. Absent settlement, ATA may be compelled to expend substantial resources and incur unnecessary expenses in defending the dispute under the Agreement. Such expenditures will by their nature reduce monies available for distribution under a plan of reorganization. Also, the diversion of the ATA's limited resources may delay the reorganization process.

12. In addition, ATA has, in its sound business judgment, decided to assume the Amended Agreement. The Settlement Agreement resolves the cure amount ATA will be required to pay under Section 365(b)(1) of the Bankruptcy Code upon the assumption of the Amended Agreement, thus relieving ATA of the expense and burden of litigating the proper cure measure before the Court.

ASSUMPTION OF THE AMENDED AGREEMENT

13. Section 365(a) of the Bankruptcy Code provides that a debtor "subject to the court's approval, may assume or reject any executory contract or an unexpired lease." 11 U.S.C. § 365(a). The assumption or rejection of an unexpired lease or executory contract by a debtor is subject to review under the business judgment standard. See, e.g., Control Data Corp. v. Zelman (In re Minges), 602 F.2d 38, 43 (2d Cir. 1979) (Act case); In re Gucci, 193 B.R. 411, 414-15 (S.D.N.Y. 1996); In re Federated Dept. Stores, Inc., 131 B.R. 808, 811 (S.D. Ohio 1991) ("Courts traditionally have applied the business judgment standard in determining whether to authorize the rejection of executory contracts and unexpired leases"); In re Cutters, Inc., 104 B.R.

886, 889 (Bankr. M.D. Tenn. 1989). This standard is satisfied when a debtor demonstrates that rejection will benefit the estate. See, e.g., In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997); In re Stable Mews Assoc., Inc., 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984).

14. If the debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease or executory contract. See, e.g., Group of Institutional Investors v. Chicago, M., St. P. & P.R.R. Co., 318 U.S. 523, 550-51 (1943); Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp., 872 F.2d 36, 39-40 (3d Cir. 1989); In re Child World, Inc., 142 B.R. 87, 90 (Bankr. S.D.N.Y. 1992); see also Allied Tech., Inc. v. R.B. Brunemann & Sons, Inc. (In re Allied Tech., Inc.), 25 B.R. 484, 495 (Bankr. S.D. Ohio 1982) ("Court approval of a debtor in possession's decision to assume the lease should only be withheld if the debtor's judgment is clearly erroneous, too speculative or contrary to the provisions of the Bankruptcy Code").

15. The business judgment rule has vitality in chapter 11 cases and shields a debtor's management from judicial second-guessing. See, e.g., Official Comm. Of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992); see also Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp (In re Johns-Manville Corp.), 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.").

16. The Amended Agreement will provide important benefits to ATA. The Amended Agreement allows ATA to move and position its flight crews and other employees where they are needed at substantially reduced costs. Pursuant to the Settlement Agreement,

Continental has agreed to accept the sum of \$30,759.46 as full and complete cure of any defaults under the Agreement.

17. In light of the foregoing, assumption of the Amended Agreement is in the best interests of ATA's estate and creditors and constitutes a proper exercise of ATA's sound business judgment.

NO PRIOR REQUEST

18. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors request that the Court enter an order, substantially in the form attached hereto as Exhibit A: (i) approving the Settlement Agreement; and (ii) authorizing ATA to assume the Amended Agreement pursuant to Section 365 of the Bankruptcy Code.

Respectfully submitted,

BAKER & DANIELS

By: /s/ Jeffrey C. Nelson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 27th day of April, 2005, by electronic mail on the Core Group, 2002 List, Appearance List, and Continental.

/s/ Jeffrey C. Nelson