

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

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

**MOTION TO APPROVE SETTLEMENT AND REQUEST FOR NEW HEARING**

ATA Airlines, Inc. ("Reorganized ATA"), with the consent of the City of Los Angeles acting by and through its Department of Airports ("Los Angeles"), respectfully submits this Motion to Approve Settlement And Request For Hearing (the "Motion"). Because the Settlement Agreement (as identified below) is contingent upon certain administrative actions being undertaken and completed by Los Angeles, Reorganized ATA, with the consent of Los Angeles, requests that the Court vacate the hearing now set in proceeding for May 14, 2007 and set a new hearing date within thirty days of the filing of this Motion to consider the Motion and that no order be entered on the Motion prior to the conclusion of such hearing. In support thereof, Reorganized ATA, with the consent of Los Angeles, respectfully state the following:

Background

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 (this "Court" or the "Bankruptcy Court"), its respective voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. as amended (the "Bankruptcy Code") commencing these Chapter 11 Cases. This Court entered the Confirmation

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<sup>1</sup> The Debtors are the following entities: ATA Holdings Corp. (04-19866), ATA Airlines, 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 C8 Airlines, Inc. f/k/a Chicago Express Airlines, Inc. (04-19874).

Order confirming the Amended Joint Plan Of Reorganization for the Reorganizing Debtors (as immaterially modified) (the "Plan") on January 31, 2006 (the "Confirmation Date") (Docket No. 3657). The Plan became effective on February 28, 2006.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

3. Venue of these Chapter 11 Cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory basis for the relief requested herein is Section 105 of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

#### The Settlement Agreement

5. As set forth in more detail in the Settlement Agreement, attached as Exhibit 1 to this Motion, prior to the Petition Date, Reorganized ATA and Los Angeles had been parties to certain contracts and leases including the ACOP.<sup>2</sup>

6. A dispute arose between Reorganized ATA and Los Angeles related to the assumption and cure by Reorganized ATA of the ACOP, resulting in Reorganized ATA filing its complaint against Los Angeles on February 20, 2007 (the "Complaint") beginning this adversary proceeding Case Number 07-50097 (the "Adversary Proceeding").<sup>3</sup>

7. On March 26, 2007, Los Angeles answered the Complaint and asserted certain counterclaims against Reorganized ATA ("Answer and Counterclaims").

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<sup>2</sup> Capitalized terms not defined herein have the meanings given them in the Settlement Agreement.

<sup>3</sup> The Adversary Proceeding was preceded by certain motions ("Ex Parte Motion"), responses, and orders related to the dispute over the ACOP that were filed in the Chapter 11 Cases. One of the orders issued was a Temporary Restraining Order ("TRO") against Los Angeles restraining it from drawing against a certain letter of credit. Los Angeles subsequently consented to abide by the TRO during these proceedings and settlement discussions.

8. Following initial discovery, Reorganized ATA and Los Angeles entered into settlement discussions to resolve the disputes between them. During those discussions, Reorganized ATA and Los Angeles consented to multiple continuances of the preliminary hearing in the Adversary Proceeding and extensions of time for Reorganized ATA to answer the counterclaims and a tolling agreement for Reorganized ATA to assert certain related recovery actions against Los Angeles.

9. Reorganized ATA and Los Angeles have communicated and conferred in good faith concerning the disputes between them asserted in or related to the Adversary Proceeding, all as set forth in the Settlement Agreement, and desire to avoid the cost and uncertainty of litigation under the terms of the Settlement Agreement.

#### Request for Relief

10. Subject to this Court's approval and the adoption of that certain Resolution by the Board of Airport Commissioners, Reorganized ATA and Los Angeles have agreed to compromise and settle the claims and counterclaims between them in this Adversary Proceeding.

11. As set forth in more detail in the Settlement Agreement Reorganized ATA and Los Angeles agree as follows (in the event of a discrepancy between descriptions of the Settlement Agreement in this Motion and the Settlement Agreement, the Settlement Agreement shall control):

- a. Reorganized ATA shall pay to Los Angeles the sum of \$228,000 ("Settlement Payment") in full satisfaction of any and all amounts owing, or alleged by the City to be owed, as a Cure Amount under the ACOP,

relating to any default, claim or charge arising or related to any period prior to the Confirmation Date;

b. Los Angeles shall have an allowed general unsecured claim against ATA in the amount of \$370,011.21 to be satisfied consistent with the treatment of general unsecured claims under the Plan;

c. The letter of credit securing Reorganized ATA's performance under the ACOP will remain in force and effect except that Los Angeles may not draw against the letter of credit for charges or fees arising and accruing under Section 5.a of the ACOP prior to the Confirmation Date, nor shall Los Angeles draw against the letter of credit under any "cross-default" provision under the ACOP by reason of any pre-Confirmation Date default;

d. Los Angeles and Reorganized ATA shall engage in good faith negotiations on a new operating permit for the period July 1, 2007 through June 30, 2012;

e. As set forth in the Settlement Agreement, Reorganized ATA and Los Angeles have agreed to certain releases with respect to claims asserted or that could be asserted in the Adversary Proceeding or in the Chapter 11 Cases; and

f. Reorganized ATA shall withdraw the Ex Parte Motion and dismiss the Adversary Proceeding and Los Angeles shall dismiss the Answer and Counterclaims, each with prejudice and with each to bear its own costs.

### Basis for Relief

12. 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 (7<sup>th</sup> Cir. 1994); In re Energy Coop., Inc., 886 F.2d 921, 927 (7<sup>th</sup> 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 (7<sup>th</sup> Cir. 1987)  
(citations omitted).

13. Reorganized ATA believes that the proposed settlement is in the best interest of the bankruptcy estate, as it avoids the costs and uncertainties of further litigation in the Adversary Proceeding.

WHEREFORE, Reorganized ATA, by counsel, with the consent of Los Angeles, pursuant to Bankruptcy Rule 9019, respectfully requests that the Court vacate the hearing now set in this proceeding for May 14, 2007 and set a new hearing within 30 days of the filing of the Motion and at such hearing approve this Motion and the Settlement Agreement as attached.

Respectfully submitted,

BAKER & DANIELS LLP

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served upon the Core Group, 2002 List (post-confirmation), Appearance List (post-confirmation) and the following parties via (i) electronic mail transmission through the Bankruptcy Court's CM/ECF system, (ii) separate electronic mail transmission, (iii) first class United States mail, postage prepaid, or (iv) facsimile transmission this 10<sup>th</sup> day of May, 2007:

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