

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

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

**MOTION FOR ORDER UNDER FED. R.
BANKR. P. 9019 APPROVING
SETTLEMENT AGREEMENT BETWEEN
THE DEBTOR AND AIRLIANCE
MATERIALS, LLC**

Hearing:	January 12, 2009 10:00 a.m. EST
Location:	U.S. Courthouse 46 E. Ohio Street, Room 349 Indianapolis, IN 46204
Telephonic Participation	
Dial-In:	1-800-559-0863
Passcode:	5294867#

ATA Airlines, Inc. (the “Debtor”) files this Motion for an order approving the Settlement Agreement between the Debtor and Airliance Materials, LLC (the “Settlement Agreement”), attached hereto as **Exhibit A**, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure. In support thereof, the Debtor respectfully represents as follows:

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. The Bankruptcy Case. On April 2, 2008 (the “Petition Date”), the Debtor filed a voluntary petition 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”).

3. Prior to the Petition Date, 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.

4. On April 16, 2008 the Office of the United States Trustee appointed the Unsecured Creditors’ Committee.

5. The Settlement Agreement. Prior to the Petition Date, Airliance Materials, LLC (“Airliance”) performed certain services and supplied a spare parts inventory for the Debtor. Although the parties began negotiating a contract to govern their business relationship, no contract was ever finalized or signed. As part of the parties’ business relationship, Airliance provided the Debtor with an inventory of DC-10 spare parts (the “Home Base Inventory”). ATA also used Airliance to manage the repair process for the Home Base Inventory and certain of the Debtor’s other spare parts.

6. As of the Petition Date, the Debtor was in possession of most of the Home Base Inventory. However, Airliance was in possession of certain of the Home Base Inventory, which had been sent to Airliance by ATA prepetition for repair. In addition, three items of the Home Base Inventory were located in a warehouse in Leipzig, Germany.¹ Finally, the Debtor believes that certain spare parts that were originally part of the Home Base Inventory were used by the Debtor in operations prior to the Petition Date and were not replaced.

¹ The Debtor, during the bankruptcy case, has formally abandoned any interest in the parts in Leipzig, Germany.

7. Airliance alleges that it owns the Home Base Inventory. In addition, the Debtor identified the Home Base Inventory on its Statement of Financial Affairs as Airliance's inventory that was being held by the Debtor.

8. Airliance is in possession of 139 spare parts (the "ATA Repair Parts") that belong to the Debtor. Airliance asserts a common law possessory mechanic's lien on the ATA Repair Parts.

9. In addition, prior to the Petition Date, Airliance had returned certain repaired spare parts to ATA for which Airliance was never paid. Airliance asserts a statutory lien on these parts pursuant to Illinois law.

10. The Court established October 2, 2008 as the bar date for all non-governmental agencies to file proofs of claim against the Debtor. On September 30, 2008, Airliance filed proof of claim number 3948 in this case. On October 2, 2008, to correct a math error, Airliance filed duplicate proof of claim number 4235. Both claims assert a possessory mechanic's lien claim in the amount of \$97,967.70 (the "Common Law Lien Claim"), a statutory secured claim in the amount of \$84,148.76 (the "Statutory Lien Claim"), a contingent claim for the value of the Home Base Inventory in the estimated amount of \$563,000 (the "Contingent Claim"), and various other general unsecured and priority claims.

11. For various reasons, including the lack of a written contract between the parties, the Debtor raised factual and legal arguments contesting Airliance's alleged ownership of the Home Base Inventory. For various reasons, including the fact that Airliance employees did not perform the repair work on the Debtor's parts, the Debtor raised factual and legal arguments contesting the existence and enforceability of Airliance's lien claims. The Debtor and Airliance have entered into the Settlement Agreement in order to settle these issues, resolve and satisfy

Airliance's secured claims, and provide for a mutual exchange of the ATA Repair Parts and the Home Base Inventory.

Relief Requested and Applicable Authority

12. By this Motion, the Debtor requests that the Court approve the Settlement Agreement. The Debtor's ability to provide the maximum recovery to its creditors rests, at least in part, on its ability to beneficially resolve numerous controversies. The Debtor believes that the Settlement Agreement constitutes a fair and equitable resolution of the claims that may exist between the Debtor and Airliance.

13. In summary,² under the Settlement Agreement, the Debtor will pay Airliance \$65,000, in full satisfaction of the Common Law Lien, within three (3) business days after an order approving the Settlement Agreement becomes final. The Debtor will deliver the Home Base Inventory in its possession to Airliance at Airliance's expense. Airliance will be entitled to retain any Home Base Inventory already in its possession, and the Home Base Inventory will be free and clear of any claim, lien, or interest of the Debtor or the Debtor's estate.

14. Airliance, in turn, will deliver the ATA Repair Parts to the Debtor at the Debtor's expense. Upon payment of the \$65,000, the ATA Repair Parts will be free and clear of any claim, lien, or interest of Airliance. Upon the satisfaction of certain obligations of the Debtor under the Settlement Agreement (as set forth in more detail in the Settlement Agreement), Airliance will also waive the Contingent Claim and any claim it has for the twelve Home Base Inventory parts set forth on Exhibit D to the Settlement Agreement that the Debtor is unable to return and the three Home Base Inventory Parts set forth on Exhibit C to the Settlement

² The complete terms of the proposed settlement are contained in the Settlement Agreement, attached hereto as Exhibit A.

Agreement that the Debtor has already abandoned in Leipzig. In addition, Airliance will agree to recharacterize the Statutory Lien Claim from a secured claim to a general unsecured claim.

15. If the Settlement Agreement is approved, Airliance's proof of claim 3948 will be expunged from the claims register as duplicative of Airliance's proof of claim 4235, which claim shall remain on the claims register.

16. The Debtor believes that the Settlement Agreement is fair and equitable and is in the best interest of the Debtor and its bankruptcy estate. Approval of the Settlement Agreement is appropriate under Bankruptcy Rule 9019. Bankruptcy Rule 9019 provides, in part, that "[o]n motion by the [debtor-in-possession] and after notice and a hearing, the court may approve a compromise and settlement." FED. R. BANKR. P. 9019(a).

17. It is well settled that "compromises are favored in bankruptcy." *John S. Marandas, P.C. v. Bishop (In re Sassalos)*, 160 B.R. 646, 653 (D. Or. 1993)). Moreover, the judge is not to substitute his or her judgment for that of the debtor. *In re Edwards*, 228 B.R. 552, 569 (Bankr. E.D. Pa. 1998).

18. In addition, the decision whether to approve a compromise under Rule 9019 is committed to the sound discretion of the Court, which must determine if the compromise is fair, reasonable, and in the interest of the estate. *Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 585-86 (7th Cir. 1994). The "best interest" test requires a debtor to show that the settlement is "fair and equitable." *Id.* at 586; *see also Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968).

19. In determining whether a proposed settlement is fair and equitable, the Court should "apprise [itself] 'of all facts necessary for an intelligent and objective opinion of the

probabilities of success should the claim be litigated.’’ *Depoister*, 36 F. 3d at 586 (quoting *TMT Trailer Ferry*, 390 U.S. at 424).

20. While the Debtor disputes the validity of Airliance’s claims, the Debtor acknowledges that factual and legal arguments exist supporting both parties’ positions. By entering into the Settlement Agreement, the Debtor will avoid costly, drawn-out litigation over the ownership of the Home Base Inventory and the enforceability of Airliance’s alleged liens, thereby preserving the value of the estate for creditors. The ATA Repair Parts, which have a book value in excess of \$500,000, will also be returned to the Debtor, allowing the Debtor to sell these parts.

21. As set forth herein, there is more than sufficient business justification for the Debtor to enter into the Settlement Agreement. The Debtor therefore respectfully requests that the Court approve the Settlement Agreement.

WHEREFORE, the Debtor respectfully requests that the Court enter on order (i) granting the Motion; (ii) authorizing the Debtor to enter into the Settlement Agreement and for the Debtor and Airliance to perform all obligations undertaken thereunder; (iii) expunging proof of claim 3948 from the claims register; and (iv) granting the Debtor such other legal and equitable relief to which it is justly entitled.

Dated: December 19, 2008

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