

**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 THE GOODYEAR  
TIRE & RUBBER COMPANY**

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:	800-559-0863
Passcode:	5294867#

ATA Airlines, Inc. (the “Debtor”) files this Motion (the “Motion”) for an order approving the Settlement Agreement between the Debtor and The Goodyear Tire & Rubber Company. 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**

### **A. The Bankruptcy Case.**

2. 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 United States Trustee appointed the Unsecured Creditors’ Committee (the “Committee”).

### **B. The Starman Auctions**

5. As part of its efforts to liquidate its assets in an orderly fashion, the Debtor vacated its real property leases at various airports around the world and shipped, to the extent economically practicable, the personal property located at those facilities to Dallas and Indianapolis. The personal property was centralized in order to facilitate its sale at auction.

6. On July 10, 2008, the Debtor filed its Application for Authority to Employ Starman Bros. Auctions, Inc. as Auctioneer (the “Starman Application”). Contemporaneously, the Debtor also filed its Motion for Entry of an Order (1) Authorizing the Debtor to Sell Assets, including Aircraft Parts and Related Assets, Free and Clear of Liens and Encumbrances Pursuant to 11 U.S.C § 363 and Fed. R. Bankr. P. 2002(c) and 6004; (2) Scheduling Auction Date, Time

and Place and Approving Auction Procedures; and (3) Granting Other Related Relief (the “Starman Auction Motion” and, collectively with the Starman Application, the “Starman Pleadings”). Pursuant to the Starman Pleadings, the Debtors requested authority to retain Starman Bros. Auctions, Inc. (“Starman”) as auctioneer to sell, via public or private sale, the Debtor’s spare parts inventory and certain other miscellaneous assets (with certain exceptions as set forth in the Starman Pleadings).

7. On July 21, 2008, the Court granted the Starman Pleadings and approved, among other things, various auction dates (the “Starman Auctions”).

8. The Starman Auctions were conducted on September 25 and 26, 2008 in Dallas and September 30, October 1, and 2, 2008 in Indianapolis.

C. The Goodyear Cost Per Landing Agreement

9. Prior to the Petition Date, the Debtor and The Goodyear Tire & Rubber Company (“Goodyear”) were parties to a Cost Per Landing Agreement (the “CPL Agreement”) dated January 1, 2001. Pursuant to the CPL Agreement, Goodyear supplied tires to the Debtor for use on the Debtors aircraft. The Debtor paid Goodyear based on the number of landings made by an aircraft equipped with the tires. The CPL Agreement further provided that Goodyear retained title to tires in the Debtor’s possession that were not installed on aircraft, but that the Debtor took title to tires that were installed on aircraft. Upon termination of the CPL Agreement, the terms of the CPL Agreement required the Debtor to purchase certain tires (the “Tire Pool” tires) that were not installed on the Debtor’s aircraft.

10. On May 16, 2008, the Debtor filed its Motion Under Bankruptcy Code Section 365 for Authority to Reject Executory Contracts or Unexpired Leases (the “Motion to Reject”). The Motion to Reject sought to reject, among other agreements, the CPL Agreement. Goodyear

did not object to the Motion to Reject and the Court entered an order approving the Motion to Reject on June 3, 2008.

11. After the rejection of the CPL Agreement and prior to the Starman Auctions, the Debtor and Goodyear entered into discussions on the disposition of the Tire Pool tires, which were all installed on aircraft wheel assemblies. The Debtor informed Goodyear that the terms of the CPL Agreement contained certain ambiguities as to whether Goodyear was in fact the legal owner of the Tire Pool. Goodyear disputed that the CPL Agreement was ambiguous on this issue. The parties agreed to allow the Debtor to sell the wheel assemblies (which included the Tire Pool tires) and to segregate the proceeds of the sales, pending resolution of legal title to the Tire Pool and valuation issues.

12. The majority of the wheel assemblies were subsequently sold at the Starman Auctions.<sup>1</sup> The \$1.5 million in proceeds for the sale of the wheel assemblies (the “Segregated Auction Proceeds”) was segregated by the Debtor from the other proceeds realized at the Starman Auctions.

13. Goodyear took the position that the Tire Pool tires were Goodyear’s property and that, pursuant to the termination clause of the CPL Agreement, Goodyear was entitled to a payment of \$412,977.26 for the value of the Tire Pool tires. The Debtor took the position that, if the Tire Pool was the property of Goodyear, Goodyear was only entitled to the actual proceeds received by the Debtor from the sale of the Tire Pool tires. The Debtor, based on the relative value of the Tire Pool tires and the wheels on which they were mounted, calculated that the Debtor received approximately \$270,000 as a result of the sale and auction of the Tire Pool tires.

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<sup>1</sup> A minority of the wheel assemblies with attached Tire Pool tires were included in the sale of assets to Flight Support pursuant to the order granting the Debtor’s Motion for Authority Under 11 U.S.C. § 363 to Sell Certain L1011 Aircraft and Related Assets Free and Clear of Liens, Claims, Encumbrances, and Interest, Subject to Higher and Better Offers (entered October 15, 2008, docket number 896).

14. The Debtor and Goodyear entered into negotiations on these issues and have reached a settlement (the “Settlement Agreement”). Specifically, Goodyear will agree to accept a payment of \$340,000 in full satisfaction of any claim Goodyear has against the Debtor for the sale of the Tire Pool tires. The payment of \$340,000 will be made from the Segregated Auction Proceeds and any funds remaining in the Segregated Auction Proceeds will thereafter be transferred to the Debtor’s general operating fund.

**Relief Requested and Applicable Authority**

15. By this Motion, the Debtor requests that the Court approve the Settlement Agreement, pursuant to Bankruptcy Rule 9019.

16. 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 dispute existing between the Debtor and Goodyear. Specifically, the Settlement Agreement will allow the Debtor to reach a settlement of all issues related to the sale of the Tire Pool tires without incurring the costs associated with litigating complicated legal and factual issues, including ownership of the Tire Pool tires and the allocation of the sale proceeds between tires and wheel assemblies.

17. The Debtor believes that the resolution as set forth in the Settlement Agreement is fair and equitable and is in the best interest of the Debtor and its bankruptcy estate.

18. 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).

19. It is well settled that, to maximize recovery and expedite the administration of a bankruptcy estate, “compromises are favored in bankruptcy.” *In re Mirant Corp.*, 334 B.R. 800, 812 (Bankr. N.D. Tex. 2005) (quoting *Marandas v. Bishop (In re Sassaios)*, 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).

20. 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).

21. In determining whether a proposed settlement is fair and equitable, the Court should “appraise [itself] ‘of all facts necessary for an intelligent and objective opinion of the probabilities of success should the claim be litigated.’” *Id.* (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)).

22. 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 to perform all obligations undertaken thereunder; and (iii) granting the Debtor such other legal and equitable relief to which it is justly entitled.

Dated: December 31, 2008

BAKER & DANIELS LLP

/s/ Terry E. Hall

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