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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	
AIRFASTTICKETS, INC.,	:	Chapter 11
	:	Case No. 15-11951 (SHL)
Debtor.	:	
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ADAM MEISLIK, AS THE RECEIVER OF AIRFASTTICKETS, INC.,	:	
Plaintiff,	:	
v.	:	Adv. Proc. No. 16-1207 (SHL)
FRANK FERRO, NIKOLAOS KOKLONIS, AND ELENI VARELI,	:	
Defendants.	:	
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AIRFASTTICKETS, INC.,	:	
Plaintiff,	:	
v.	:	
CITIBANK, N.A., a federally chartered national banking association of Citigroup, Inc., a Delaware corporation, and NIKOLOAS KOKLONIS, an Individual,	:	Adv. Proc. No. 16-01040 (SHL)
Defendants.	:	
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**LIQUIDATING TRUSTEE’S MOTION FOR APPROVAL OF SETTLEMENT
OF CLAIMS AMONG THE LIQUIDATING TRUST OF AIRFASTTICKETS, INC.,
NIKOLAOS KOKLONIS, FRANK FERRO, ELENI VARELI,
AND NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.**

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Adam Meislik (the “Liquidating Trustee”), as Trustee of the Airfasttickets, Inc. Liquidating Trust, successor in interest to AirFastTickets, Inc. (the “Debtor”), by and through his undersigned counsel, hereby submits this motion (the “Motion”) for entry of an order pursuant to Section 105(a) of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) approving the settlement of all claims and causes of action asserted, and assertible, between the Liquidating Trustee on one hand, and Frank Ferro, Nikolaos Koklonis, Eleni Vareli (collectively, the “Individual Defendants”) and National Union Fire Insurance Company of Pittsburgh, Pa. (“National Union”) on the other hand. The terms of the proposed settlement are set forth in that certain Settlement Agreement and Claim Release attached as **Exhibit 1** (the “Settlement Agreement”). In support of the Motion, the Liquidating Trustee states as follows:

I. JURISDICTION AND STATUTORY PREDICATES FOR RELIEF

This Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409. The predicates for the relief requested herein are Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019

II. BACKGROUND

A. Background Regarding the Debtor and Its Business

The Debtor is a Delaware corporation formed in 2011 with a principal place of business in New York, New York. From early 2014 through mid-2014, the Debtor actively engaged in the business of providing low cost domestic and international airfares to customers through its websites and wholesalers, similar to services provided by Expedia, Orbitz, Travelocity, Priceline, and other similar online travel agencies. Koklonis served as the CEO (and President), Vareli

served as COO, and Ferro served as CFO of the Debtor, respectively.

**B. Mr. Meislik's Appointment as the Receiver of the Debtor and the Debtor's
Bankruptcy Filing**

In April 2015, the Debtor retained GlassRatner Advisory & Capital Group LLC ("GlassRatner") as its restructuring financial advisor. Mr. Meislik – then an employee of GlassRatner – was the individual most involved in this engagement.

In June 2015, a dispute arose between Koklonis and other directors of the Debtor regarding control of the Debtor. As a result, Koklonis filed a complaint against certain other directors of the Debtor and Mr. Meislik in the Delaware Court of Chancery ("Chancery Court"), seeking a judicial determination that he was the sole director, Chairman of the Board of Directors, CEO, President and majority stockholder of the Debtor. On June 19, 2015, the Chancery Court *sua sponte* appointed Mr. Meislik as custodian *pendente lite*. At the same time, the Chancery Court suggested that Mr. Meislik be appointed as the Debtor's receiver. On June 27, 2015, one of the Debtor's other directors filed an action in the Chancery Court to appoint Mr. Meislik as the Debtor's receiver. On July 21, 2015, the Chancery Court appointed Mr. Meislik as the receiver of the Debtor.

On July 27, 2015, certain of the Debtor's creditors commenced an involuntary bankruptcy proceeding against the Debtor. In response, the Debtor – through Mr. Meislik – filed a motion to convert the case to Chapter 11, which was granted by this Court on October 27, 2015 (the "Petition Date").

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C. Confirmation of the Debtor's Plan and Appointment of Mr. Meislik as Liquidating Trustee

On July 11, 2016, the Debtor filed a Chapter 11 plan of liquidation (as subsequently amended, the "Plan"). On October 13, 2016, the Court held a hearing on confirmation of the Plan and confirmed the Plan. Confirmation of the Debtor's Plan resulted in the appointment of Mr. Meislik as the Liquidating Trustee and the absolute and unconditional assignment to the Liquidating Trust of all assets of the Debtor and its estate, including cash and various causes of action.

D. The Ferro Action

On May 4, 2016, the Trustee filed a complaint commencing a lawsuit entitled *Meislik v. Ferro, et al.* (the "Ferro Action"), before the Supreme Court of New York, Case No. 652392/2016. On August 21, 2016, the Individual Defendants removed the Ferro Action to the U.S. District Court for the Southern District of New York, which referred the Ferro Action to this Court as Adv. No. 16-1207.

On April 24, 2017, the Trustee filed a first amended complaint (the "FAC") alleging claims against the Individual Defendants for breach of fiduciary duty and corporate waste, with damages in excess of \$60 million. On June 6, 2017, the Individual Defendants filed a motion to dismiss the FAC. That motion has been fully briefed by the parties but has not yet been argued before the Court. No discovery has been done in the Ferro Action.

The Individual Defendants have reported the Ferro Action to National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union") pursuant to the Private Edge Plus Policy No. 01-113-05-80 for the Policy Period of May 5, 2014 to May 5, 2015 (the "Policy") issued by National Union to the Debtor. National Union has acknowledged potential coverage under the Policy for the claims asserted in the Ferro Action, subject to a full and complete

reservation of rights.

E. The Citibank Adversary Proceeding

In March 2016, the Debtor (through Mr. Meislik) filed a complaint in this Court against Koklonis and third-party Citibank, N.A. (“Citibank”), seeking turnover of approximately \$120,000 held by Citibank since February 2013 (the “Citibank Adversary Proceeding”). On March 24, 2016, the Court entered an order granting a preliminary injunction (“Preliminary Injunction”) in the Citibank Adversary Proceeding that, inter alia, enjoined and restrained Citibank and Koklonis from transferring any funds then currently on deposit in certain Citibank accounts listed in the Preliminary Injunction.

F. The Koklonis Proof of Claim

On April 6, 2016, Koklonis filed a proof of claim against the Debtor’s estate in the amount of \$45,937,713.30, which is designated as Claim No. 80 on the Court’s claim register (the “Koklonis POC”). Koklonis breaks down the Koklonis POC as follows: \$27 million in “IPO Bonus,” \$18 million based on a “Claim of Rights,” \$20,833.34 in wages for June 2015, and \$13,880.00 for “20 days paid vacation per employment offer agreement.”

On September 9, 2016, the Debtor (through Mr. Meislik) filed an objection to the Koklonis POC, to which Koklonis filed a response. The Court has not conducted on hearing on the objection or response.

G. The Koklonis Administrative Claim

On December 2, 2016, Koklonis filed a *Motion for Payment of Administrative Expense* (the “Koklonis Administrative Claim”). In that motion, Koklonis alleges that he owns certain of the intellectual property assets sold by the Debtor during its bankruptcy case (which Koklonis values (without any support) at \$2,000,000), and that his “interests” in those assets attached to

the sale proceeds. Therefore, his argument goes, he provided a benefit of \$2,000,000 to the Debtor's estate and is entitled to recover that amount from the estate.

On February 8, 2017, the Trustee filed an opposition to the Koklonis Administrative Claim. On February 15, 2017, the Court held a hearing on the Koklonis Administrative Claim. At the conclusion of the hearing, the Court took the matter under submission.

H. Mediation Among the Trustee, the Individual Defendants, and National Union

On August 31, 2017, this Court entered an order referring to mediation the following disputes involving the Trustee and the Individual Defendants: (i) the Ferro Action; (ii) the Citibank Adversary Proceeding; (iii) the Koklonis POC, and (iv) the Koklonis Administrative Claim, and appointing Jed D. Melnick, Esq., of JAMS, as mediator.

On September 28, 2017, the parties, together with National Union, participated in a mediation session conducted by Mr. Melnick. While the parties were unable reach an agreement at that session, they continued to work with Mr. Melnick towards a global settlement.

I. The Settlement Agreement

Although the Trustee believes that he would be successful in a trial on the claims asserted in the Ferro Action and the Citibank Adversary Proceeding, and that he would prevail with respect to the Koklonis POC and the Koklonis Administrative Claim, the Trustee also recognizes that there are substantial risks, uncertainties and costs associated with proceeding with trial. To that end, the Trustee worked the Individual Defendants and National Union to reach a global agreement to settle all claims and causes of action as set forth in the Settlement Agreement.

The material terms of the Settlement Agreement are:

- The Effective Time of the Settlement Agreement shall occur immediately following the expiration of the 14-day period following the entry of the Approval Order (defined as the order approving the Settlement Agreement), unless a timely appeal of the Approval Order has been filed and a stay of the Approval Order has been sought

and granted. If such appellate review, rehearing or reargument has been timely sought and a stay of the Approval Order has been granted, then the Effective Time shall be the first date on which appellate review of the Approval Order no longer remains pending or such stay has been lifted.

- Within fifteen (15) days after the Effective Time of the Settlement Agreement, National Union, on behalf of the Individual Defendants, will pay to the Trustee for the benefit of the Liquidating Trust a total sum of Four Million Four Hundred Thousand Dollars and No Cents (\$4,400,000.00) (the "Trustee Settlement Amount") in full satisfaction of all obligations, duties, and responsibilities National Union may have relating to the Ferro Action. The Parties acknowledge and agree that the components of the Trustee Settlement Amount were jointly negotiated by the Parties and that none of those components is subject to reduction for any reason whatsoever.
- Within five (5) days of the Trustee's receipt of the Trustee Settlement Amount, the Trustee shall (i) dismiss with prejudice the Ferro Action, (ii) dismiss with prejudice the Citibank Adversary Proceeding, and (iii) shall cause the Liquidating Trust to pay to Koklonis a total sum of One Hundred Thirty Thousand Dollars and No Cents (\$130,000.00) (the "Koklonis Settlement Amount" and together with the Trustee Settlement Amount, the "Settlement Amounts"). The proposed Approval Order shall provide that the Preliminary Injunction issued in the Citibank Adversary Proceeding shall be automatically dissolved upon dismissal of the Citibank Adversary Proceeding. Upon the dismissal of the Citibank Adversary Proceeding, the Trustee shall notify counsel for Citibank of such dismissal and dissolution of the Preliminary Injunction via email and in a separate letter delivered via first-class mail.
- The Parties shall exchange mutual general releases of all claims, the Trustee shall dismiss the Ferro Action and the Citibank Adversary Proceeding, and Koklonis shall withdraw the Koklonis POC and the Koklonis Administrative Claim.
- The Approval Motion shall contain a request that this Court include in the Approval Order a provision pursuant to, inter alia, section 105(a) of the Bankruptcy Code and Bankruptcy Rules 7001 and 7065, permanently enjoining all persons or entities not parties to this Agreement from filing, commencing or prosecuting any claims against any persons or entities (including without limitation the Individual Defendants) that are insured under the Policy or against National Union that are based upon, arise out of, relate to or are in connection with Airfasttickets, the Ferro Action, the Citibank Adversary Proceeding, the Koklonis Claims, or the Airfasttickets Bankruptcy (the "Permanent Injunction.") The Settlement shall be effective and the Settlement Amount paid regardless of the Court's decision as to whether to grant the Parties' request for a Permanent Injunction.¹

¹ While the issuance of a Permanent Injunction is not a condition of the Settlement Agreement, the Trustee believes that it is reasonable, and that the Parties should be afforded the protections of an injunction that shields them from having to litigate the claims of third parties, whether styled derivatively or directly, that were or could have been asserted by or on behalf of the estate and that have been released by the Trustee on behalf of the estate pursuant to the Settlement Agreement. Accordingly, the Trustee supports and, by this Motion, hereby requests that the Court issue the Permanent Injunction described above.

J. The Trustee's Authority to Enter into the Settlement Agreement

Pursuant to the Plan, the Debtor entered into the Liquidating Trust Agreement with the Trustee. The Liquidating Trust Agreement provides that the Trustee may manage the Trust Assets subject only to specific limitations set forth in the Liquidating Trust Agreement or the Plan. The Liquidating Trust Agreement requires that the Trustee obtain the consent of the majority of the Liquidating Trust Advisory Board (which comprises the Trustee, Edgar Park, and Jeff Golden) before taking certain actions, including the settlement of any cause of action or avoidance action in excess of \$75,000. The Trustee advised the Liquidating Trust Advisory Board of the proposed settlement and recommended approval of the Settlement Agreement. The majority of the Liquidating Trust Advisory Board indicated that it supports the Settlement Agreement.

III. BASIS FOR RELIEF REQUESTED

A. Standards for Approving the Settlement Agreement

Federal Rule of Bankruptcy Procedure 9019(a) provides that, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). In ruling on a motion pursuant to Rule 9019(a), the court must find that the proposed settlement is fair and equitable and in the best interests of the estate. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *see also Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *In re Drexel Burnham Lambert Grp.*, 960 F.2d 285, 292-93 (2d Cir. 1992). A finding under Rule 9019(a) is committed to the sound discretion of the Court, which should exercise that discretion in light of the public policy that favors settlement of disputed claims. *See In re Hibbard & Brown Co.*, 217 B.R. 41, 45 (Bankr. S.D.N.Y. 1998); *In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 46,

53 (S.D.N.Y. 1993).

While the bankruptcy court should apprise itself of “all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated,” in determining whether a settlement is fair and equitable, *see TMT Trailer Ferry*, 390 U.S. at 425, the court need not determine and rule upon disputed facts and questions of law. Rather, the court need only “canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.” *In re Drexel Burnham Lambert Grp.*, 134 B.R. 493, 496-97 (Bankr. S.D.N.Y. 1991) (internal quotations omitted) (quoting *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983)). In evaluating the reasonableness of a settlement, the court should give considerable weight to a trustee’s informed judgment that a compromise is fair and equitable. *TMT Trailer*, 390 U.S. at 444; *In re Carla Leather, Inc.*, 4 B.R. 457, 471 (Bankr. S.D.N.Y. 1984), *aff’d*, 50 B.R. 764 (S.D.N.Y. 1985); *Drexel Burnham*, 134 B.R. at 496. The role of the court is not to substitute its judgment for the trustee’s, but to instead check the reasonableness of the trustee’s decision. *In re Ashford Hotels Ltd.*, 226 B.R. 797, 802 (Bankr. S.D.N.Y. 1998), *aff’d*, 235 B.R. 734 (S.D.N.Y. 1999).

In determining whether a settlement falls within the broad range of reasonableness, courts consider several interrelated factors. As laid out by the Second Circuit, these factors include: (1) the probability of success in the litigation and the benefit of the settlement; (2) the likelihood of complex and protracted litigation, and its related expense, inconvenience, and delay; (3) the interests of the creditors and the extent to which creditors support or do not object to the settlement; (4) whether other parties support the settlement; (5) the “competency and experience of counsel” supporting the settlement and the experience and knowledge of the bankruptcy judge reviewing it; (6) the releases to be issued as a result of the settlement; and (7) the extent to which

the settlement is the product of arm's length bargaining. *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 461-62 (2d Cir. 2007) (citing *In re WorldCom, Inc.*, 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006)). These factors seek to balance the probable benefit and potential cost of pursuing a claim or defense against the costs of the proposed settlement.

B. The Proposed Settlement Agreement Is Fair and Equitable and in the Best Interests of Creditors

An evaluation of the factors outlined by the Second Circuit in *Iridium* supports approval of the Settlement Agreement. While the possibility of a larger recovery in the Ferro Action certainly exists, the case is still in the pleading stage and the Trustee's claims are subject to a pending motion to dismiss. Additionally, the probability of a larger recovery is very difficult to quantify, and any enhancement in the amount recovered through additional litigation could well be offset by the additional cost and delay in payment. Moreover, the possibility of a lower recovery or even no recovery after further litigation cannot be ruled out. The benefit of the Settlement Agreement to creditors is immediate and significant – the \$4.4 million settlement payment from National Union will allow the Liquidating Trust to provide creditors with what he hopes to be a meaningful recovery. With respect to the Koklonis POC and the Koklonis Administrative Claim, the Settlement Agreement eliminates the risk of allowance of a \$2 million administrative claim and a \$45 million unsecured claim in exchange for a relatively modest payment to Koklonis of \$130,000 and dismissal of the Citibank Adversary Proceeding. Accordingly, it is the judgment of the Trustee, based on all the facts available to him and with the advice of experienced and knowledgeable special litigation and bankruptcy counsel, that the proposed settlement is fair and equitable and in the best interests of the creditors.

1. Absent the Settlement, the Amount of Any Recovery in the Ferro Action is Uncertain, and Complex and Protracted Litigation Would Be Required to Obtain a Higher Recovery

Under the Settlement Agreement, the Liquidating Trust receives \$4.4 million and, in exchange for dismissal of the Citibank Adversary Proceeding and payment of \$130,000, eliminates an administrative claim asserted by Koklonis in the amount of \$2 million and an unsecured claim asserted by Koklonis in the amount of \$45 million.

Absent the Settlement Agreement, the Trustee could (i) attempt to obtain a higher recovery in the Ferro Action, (ii) recover the approximate \$120,000 in dispute in the Citibank Adversary Proceeding, and (iii) continue to litigate the objections to the Koklonis POC and the Koklonis Administrative Claim (the latter has been taken under the submission).

As to the possibility of a higher recovery in the Ferro Action, because the ability to collect any judgment from the Individual Defendants would be questionable, the Trustee likely would be limited to collecting on the Policy, which is capped at \$10 million (minus defense costs). (National Union also could argue that the Policy should be rescinded based on the representations made by the Debtor prior to its issuance, which would further limit the Trustee's ability to collect any judgment.) Additionally, if the Trustee were to take the Ferro Action to trial, then the Liquidating Trust would be forced to expend hundreds of thousands of dollars to prepare that case for trial, and the contingency fee of the Trustee's special litigation counsel would increase. As such, any greater recovery at trial would be significantly reduced by such fees and expenses. Finally, while the Trustee is confident that he would ultimately prevail in the Ferro Action, there are factual and legal issues that create some risk – however small – that the Trustee might not prevail.

As to the Koklonis POC and the Koklonis Administrative Claim, the high likelihood that the Trustee would prevail in his objections to both claims is counterbalanced by the risk

(however small) of those objections being overruled by the Court. If the Court allows the Koklonis Administrative Claim, then the Liquidating Trust would be burdened by a \$2 million administrative expense, which would, in turn, render the estate administratively insolvent. Additionally, an allowance of the Koklonis POC (even assuming the Koklonis Administrative Claim is denied) would significantly dilute the expected recovery to unsecured creditors. With the Settlement Agreement, the Trustee is eliminating these risks entirely in exchange for dismissal of the Citibank Adversary Proceeding and a payment of \$130,000 to Koklonis.

2. The Trustee’s Professionals and the Court are Experienced and Knowledgeable About the Issues Relating to the Claims

In making the judgment that entering into the Settlement Agreement rather than continuing to litigate the Ferro Action, the Citibank Adversary Proceeding, the Koklonis POC, and the Koklonis Administrative Claim is in the best interests of creditors, the Trustee has the benefit of experienced special litigation counsel and financial advisors familiar with the Debtor’s books and records, all of whom have had ample opportunity to understand the issues and develop the facts at issue in the Ferro Action, the Citibank Adversary Proceeding, the Koklonis POC, and the Koklonis Administrative Claim. In addition, the Court, having presided over the Debtor’s bankruptcy case for over two years and familiarized itself with the facts at issue in these proceedings, is well situated to “test [the Trustee’s] choice for reasonableness.” *Ashford Hotels*, 226 B.R. at 802. Like the Trustee’s professionals, the Court is now very familiar with the factual disputes and the legal issues raised by the Trustee’s claims. Accordingly, this factor weighs in favor of approval of the proposed Settlement Agreement.

3. The Proposed Releases in the Settlement Agreement Are Reasonable

Pursuant to the terms of the Settlement Agreement, the parties have agreed to mutual global releases of all claims between the Trustee, the Liquidating Trust, and the Debtor on one

hand, and the Individual Defendants and National Union on the other hand. While the releases given to the Individual Defendants are broad, as part of the overall resolution of claims they are reasonable because they are mutual and the Individual Defendants are granting the Trustee, the Liquidating Trust, and the Debtor equally broad releases. The reciprocal release given to the Liquidating Trust by the Individual Defendants will result in the elimination of potentially millions of dollars in claims (unliquidated) filed by Koklonis in this bankruptcy case.

4. The Settlement is the Product of Arm's Length Bargaining

Finally, there is no question that the Settlement Agreement is the product of arm's length bargaining. The Settlement Agreement resulted from a mediation conducted by an experienced and respected mediator and attended by the Trustee, the Individual Defendants, and National Union. All parties were represented by sophisticated counsel and there is – and can be – no suggestion that any party had an unfair advantage or had reason to not vigorously negotiate the best deal it could obtain. Accordingly, this factor weighs heavily in favor of approval of the proposed Settlement Agreement.

IV. NO PRIOR REQUEST

No prior request for the relief requested herein has been made to this or any other court.

V. NOTICE

Notice of this Motion will be served on (a) all counsel of record for National Union and the Individual Defendants, (b) all creditors with an interest in the Liquidating Trust; (c) the U.S. Trustee; and (d) all parties who filed a notice of appearance and request for documents in the case.

VI. CONCLUSION

Wherefore, for the reasons set forth above, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement substantially in the form attached as

Exhibit 1, issue a Permanent Injunction in the form described in Paragraph 11 of the Settlement Agreement, and grant the Liquidating Trust such other and further relief as is just.

Dated: December 1, 2017

By: /s/ Roye Zur
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