

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

|  |   |  |
|--|---|--|
| <b>In re:</b>  | ) | <b>CHAPTER 11</b>                                      |
|  | ) |  |
| <b>TRANS WORLD AIRLINES, INC., et al.,<sup>1</sup></b> | ) | <b>Case No. 01-00056 (PJW)</b>                         |
|  | ) |  |
| <b>Debtors</b>   | ) | <b>(Jointly Administered)</b>                          |
|  | ) |  |
|  | ) | <b>Objection Deadline: January 14, 2002</b>            |
|  | ) | <b>Hearing Date: Only if necessary—negative notice</b> |

**JOINT MOTION OF THE DEBTORS, THE AIR LINE PILOTS  
ASSOCIATION, INTERNATIONAL, AND THE INTERNATIONAL  
ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO  
FOR APPROVAL OF SETTLEMENTS RELATING TO  
DISPUTES ARISING UNDER STIPULATIONS MODIFYING  
CERTAIN COLLECTIVE BARGAINING AGREEMENTS DATED APRIL 6, 2001**

The above-captioned debtors and debtors in possession (collectively, the “Debtors” or “TWA”), the Air Line Pilots Association, International (“ALPA”), and the International Association of Machinists and Aerospace Workers, AFL-CIO (“IAM,” together with ALPA, the “Unions”), by and through their respective counsel, hereby submit this Joint Motion Pursuant to Federal Rule of Bankruptcy Procedure 9019 for an Order Approving Settlements Relating to Disputes Arising Out of Previously Entered Stipulations Modifying Certain Collective Bargaining Agreements Dated April 6, 2001 (the “Motion”). In support of this Motion, the Debtors, ALPA, and the IAM respectfully state as follows.

---

<sup>1</sup> The Debtors are the following entities: Trans World Airlines, Inc., Ambassador Fuel Corporation, LAX Holding Company, Inc., Mega Advertising Inc., Northwest 112<sup>th</sup> Street Corporation, The TWA Ambassador Club, Inc., Trans World Computer Services, Inc., Transcontinental & Western Air, Inc., TWA Aviation, Inc., TWA Group Inc., TWA Standards & Controls, Inc., TWA Stock Holding Company, TWA-D.C. Gate Company, Inc., TWA-LAX Gate Company, Inc., TWA Logan Gate Co., Inc., TWA-NY/NJ Gate Company, Inc., TWA-Omnibus Gate Company, Inc., TWA-San Francisco Gate Company, Inc., TWA-Hangar 12 Holding Company, Inc., Ozark Group, Inc., TWA Nippon, Inc., TWA Employee Services, Inc., TWA Getaway Vacations, Inc., Trans World Express, Inc., International Aviation Security Inc., Getaway Management Services, Inc., The Getaway Group (U.K.) Inc.

## **JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested are 11 U.S.C. § 363 and Federal Rule of Bankruptcy Procedure 9019.

## **BACKGROUND**

3. Prior to the commencement of these cases, the Unions had been involved in negotiations with TWA for nearly a year regarding alternatives to bankruptcy. The Unions and TWA held months of discussions in mid and late 2000 regarding TWA's deteriorating financial condition and a non-bankruptcy "stand alone plan" proposed by TWA. Because of the extensive amount of these prepetition analyses and discussions, the Unions were in a position to respond quickly to TWA's bankruptcy filing and to evaluate the advantages and disadvantages of the American Sale (as defined below) on behalf of the Unions' members, which evaluation, according to the Unions, was key to developing the Unions' support for the American Sale within the required time frame.

4. On January 9, 2001, the Debtors and American (defined below) entered into an Asset Purchase Agreement (as amended and modified, the "APA"), that provided, *inter alia*, for American's purchase of substantially all of the Debtors' assets, the assumption of a significant portion of the Debtors' obligations (including, without limitation, certain retiree medical benefit obligations), and offers to hire the vast majority of the Debtors' 20,000 employees (the "American Sale").

5. The APA provided, among other things, that upon the closing date American would offer to hire the vast majority of the Debtors' union employees if those union employees agreed to be bound

by American's work rules. However, Sections 5.4(o) and 10.2 of the APA required, as a condition to American closing the American Sale, that TWA's collective bargaining agreements with ALPA (the "ALPA CBA") and the IAM (the "IAM CBA") be voluntarily amended by the Unions to waive or modify numerous benefit and job protection provisions. The APA also contemplated that, in accordance with the Railway Labor Act, American would negotiate new collective bargaining agreements with the Unions that included similar waivers and modifications as those contained in the collective bargaining agreements renegotiated with TWA. Finally, the APA provided that the Debtors' employees hired by American would be ineligible to participate in the Debtors' welfare and pension plans on a going forward basis.

6. After entering into the APA, TWA filed for Chapter 11 protection and informed the Unions that the American Sale needed to be closed quickly, because in the interim TWA was losing significant amounts of cash. In order to expedite their negotiations to modify the collective bargaining agreements and to be properly represented in the Debtors' bankruptcy cases, the Unions retained bankruptcy counsel, outside labor counsel and financial advisors, among others, to advise them on the waivers of and modifications to certain provisions in the collective bargaining agreements proposed by TWA, and to assist TWA and the Unions in negotiating and documenting any such waivers and amendments.

7. On January 10, 2001 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code"), thereby becoming debtors and debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. The Debtors' cases are being jointly administered pursuant to an order of the Court.

8. On March 12, 2001, the Court authorized the Debtors to sell substantially all of their assets, free and clear of liens, claims, and encumbrances, to TWA Airlines LLC, a wholly-owned subsidiary of American Airlines, Inc. (together with TWA Airlines LLC, “American”), pursuant to the APA.

9. The Court entered an order approving the American Sale on March 12, 2001 (the “American Sale Order”), and the American Sale closed on April 9, 2001.

10. In the American Sale Order, the Court found that the American Sale was “in the best interests of the Debtors, their estates, and creditors.” American Sale Order at ¶ F. The Court further found that the American Sale was preferable to the alternative of liquidation that “would be of substantially less benefit to the estates of the [Debtors].” American Sale Order at ¶ J. The Court also stated in its oral ruling that the failure of the American Sale to close “would result in a collapse of TWA with the consequent dramatic loss in value for most all creditor constituencies in this case.” Transcript of March 12, 2001 Hearing at p. 809.

11. As stated above, the APA required the Debtors to obtain modifications to certain portions of their collective bargaining agreements with the Unions. The IAM and ALPA represented the bulk of TWA’s employees, including pilots, flight attendants, passenger service employees and mechanics. Specifically, the Debtors were required to modify those portions of their collective bargaining agreements concerning scope, successorship, pay increases, work rules and employee benefits. To that end, as stated above, the Debtors had engaged in good faith negotiations with the Unions throughout the winter and spring of 2001, in the hopes of entering into consensual agreements modifying the applicable provisions of the Unions’ collective bargaining agreements. However, by mid-March, 2001 the Debtors and the Unions were unable to reach an agreement on the modification of these collective bargaining agreements.

12. While postpetition negotiations with the Unions were ongoing, as a protective measure, on March 15, 2001, the Debtors filed their Motion for an Order Authorizing Rejection of Certain of Its Collective Bargaining Agreements Pursuant to 11 U.S.C. § 1113 (the “Section 1113 Motion”). The Unions contend that such rejection: (a) would have required American to either terminate the APA or waive the Debtors’ failure to comply with the APA; (b) could have resulted in significant labor unrest, including a strike; (c) would have resulted in substantial rejection claims; and (d) would not have resolved the need for American and the Unions to enter into new collective bargaining agreements. In sum, the Unions contend that their voluntary waivers were essential to the integration of the two airlines.

13. On March 30, 2001, the IAM and ALPA filed separate objections to the Section 1113 Motion. During this time, the Debtors and American continued negotiations with both Unions, as required under Section 1113 of the Bankruptcy Code, including the production of relevant information to enable the Unions to fully evaluate the Debtors’ proposals.

14. On April 6, 2001, the Debtors, the IAM, and ALPA entered into separate consensual stipulation agreements disposing of the Section 1113 Motion. Copies of the stipulation with the IAM (the “IAM Stipulation”) and the stipulation with ALPA (the “ALPA Stipulation”, the IAM and ALPA stipulations collectively, the “Stipulations”) are attached hereto as Exhibit A & B, respectively. Pursuant to these Stipulations, the necessary provisions of the collective bargaining agreements were deleted and/or modified in order to comply with the requirements of the APA in exchange for Debtors’ agreement to: (a) make certain changes to the collective bargaining agreements requested by the Unions; (b) resolve certain outstanding grievance issues; and (c) pay the Unions’ postpetition professional fees.

15. The Unions contend that the Stipulations became modifications to the collective bargaining agreements, and the negotiations and correspondence preceding the execution of the Stipulations

are evidence of the meaning of the Stipulations. The IAM and ALPA Stipulations each provide that in consideration for the Unions' agreement to modify the respective collective bargaining agreements, "TWA will file an appropriate motion, upon notice, for bankruptcy court approval of payment of reasonable post-petition fees and expenses of [Unions'] advisors." IAM Stipulation at ¶ 5, ALPA Stipulation at ¶ 4.

16. The Debtors and the Unions agree that it was the understanding of the parties in entering into the Stipulations that the Debtors would pay reasonable postpetition professional fees. According to the Unions, the Debtors' agreement in the IAM and ALPA Stipulations to support the payment of the Unions' professional fees was a critical element of the Unions' agreement to enter into expeditious negotiations to modify the collective bargaining agreements, therefore enabling the Debtors to comply with their obligations under the APA.

17. Since the closing of the American Sale transaction, the Debtors and the Unions heavily negotiated the issue of postpetition professional fees and expenses. However, to date the Debtors have not paid the monetary consideration required pursuant to the Stipulations. The Unions have taken the position that this failure to pay the agreed upon dollar amount under the Stipulations results in a breach of such Stipulations which could give rise to significant postpetition administrative claims by the Unions against the Debtors and their estates.

### RELIEF REQUESTED

18. The Debtors and ALPA hereby request, pursuant to the terms of the amendments to the ALPA CBA, the ALPA Stipulation, and Federal Rule of Bankruptcy Procedure 9019, that the Court authorize the Debtors to reimburse ALPA the fixed sum of \$ 985,000.

19. The Debtors and the IAM hereby request, pursuant to the terms of the amendments to the IAM CBA, the IAM Stipulation, and Federal Rule of Bankruptcy Procedure 9019, that the Court authorize the Debtors to reimburse the IAM the fixed sum of \$620,000.

20. The Debtors and the Unions agree that these sums will be paid instead of the monetary consideration previously required by the Stipulations and that the Stipulations shall be modified to reflect this further negotiation and settlement. The Debtors further agree that this settlement shall be funded from the professional fee escrow, and, as a result of this settlement, the Unions agree not to seek additional reimbursement of postpetition fees as provided by the Stipulations.

21. The Debtors and the Unions submit that these modifications to the Stipulations are in the best interest of the estates as they protect the integrity of the American Sale transaction and avoid any claims of a breach of the Stipulations, which Stipulations: (a) permitted the sale of the Debtors' assets to American; (b) avoided a strike by the one or both of the Unions; (c) eliminated substantial pay raises and other monetary obligations to the Union members during 2001; (d) compromised large administrative expense and rejection damage claims ; and (e) facilitated a global settlement with the Official Committee of Unsecured Creditors, thereby permitting the Debtors and the Official Committee of Unsecured Creditors to file a joint plan of reorganization.

## ARGUMENT

22. Federal Bankruptcy Rule 9019 authorizes this Court to approve a compromise settlement entered into by a debtor. The decision whether to accept or reject a compromise lies within the sound discretion of the Bankruptcy Court. In re Neshaminy Office Bldg. Assoc., 62 B.R. 798, 803 (E.D. Pa. 1986). Approval of a compromise settlement is appropriate if it is in the “best interests of the estate.” Id.

23. In reviewing a motion for approval of a settlement, bankruptcy courts must “assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal.” In re Martin, 91 F.3d 389, 393 (3d Cir. 1996). In other words, in determining whether to approve a compromise, 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. Further, the judge should form an educated estimate about the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting of any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to the process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.

Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25, 88 S.Ct. 1157, 1163-64, 20 L.Ed.2d. 1 (1986); see also In re Pennsylvania Truck Lines, Inc., 150 B.R. 595, 598 (E.D. Pa. 1992) aff’d, 8 F.3d 812 (3d Cir. 1993); In re Grant Broadcasting of Philadelphia, Inc., 71 B.R. 390, 395 (Bankr. E.D. Pa. 1987).

24. The settlement need not be the best that the debtor could have achieved, but only must fall “within the reasonable range of litigation possibilities.” In re Penn Central Transp. Co., 596 F.2d 1102, 1114 (3d Cir. 1979). In making its determination, a court should not substitute its own judgment for



that of the debtor. Neshaminy Office, 62 B.R. at 803. Moreover, it is not necessary for the court to conduct a “mini trial” of the facts or the merits of the underlying dispute. Grant Broadcasting, 71 B.R. at 396. See also In re A&C Properties, 784 F.2d 1377, 1384 (9<sup>th</sup> Cir.), cert. denied, 479 U.S. 854 (1986). Rather, the court need only consider those facts that are necessary to enable it to evaluate the settlement and to make an informed and independent judgment about the settlement. Penn Central, 596 F.2d at 1114; In re Energy Cooperative, Inc., 886 F.2d 921, 924-25 (7<sup>th</sup> Cir. 1989).

25. The payment of a fixed settlement amount to the Unions, as described above, is in the best interest of the Debtors’ estates and creditors. Further, applying “all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise,” see Protective Committee, 390 U.S. at 424-25, including the complexity, expense, and likely duration of litigation, such fixed payment is appropriate pursuant to Rule 9019. The Debtors’ assurances to provide such payments were part of the consideration for the Unions’ agreements to modify the respective collective bargaining agreements, thereby resolving the disputes over the collective bargaining agreements and allowing the Debtors to withdraw their Section 1113 Motion. As noted above, the Unions contend that had the 1113 Motion gone forward, the rejection of the ALPA CBA and the IAM CBA as contemplated therein: (a) would have required American to either terminate the APA or waive the Debtors’ failure to comply with the APA; (b) could have resulted in significant labor unrest, including a strike; and (c) would not have resolved the issue of a new collective bargaining agreement with American. In sum, the Unions contend that their voluntary waivers were essential to the integration of the two airlines, which waivers were contingent upon the Debtors’ promised payments of professional fees as consideration for the needed accommodations and waivers of rights.

26. Pursuant to this Motion, the parties seek to modify the Stipulations to set a fixed dollar amounts for requested monetary consideration, which will not only resolve the current disputes under

the Stipulations but will cap payments to the Unions for professional fees and will substantially simplify procedural issues with respect to the Unions going forward.

WHEREFORE, the Debtors, ALPA, and the IAM respectfully request that this Court enter an Order, substantially in the form attached hereto: (a) authorizing the Debtors to pay ALPA and the IAM the sums as set forth above; and (b) granting such other relief as this Court deems just and proper.

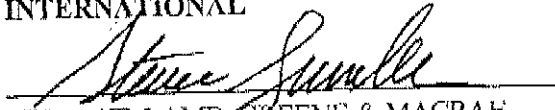
Dated: December 21, 2001

Respectfully submitted,

**TRANS WORLD AIRLINES, INC.**

**THE AIR LINE PILOTS ASSOCIATION,  
INTERNATIONAL**

KIRKLAND & ELLIS  
James H. M. Sprayregen  
Marc Kieselstein  
David R. Seligman  
Marc J. Carmel  
200 East Randolph Drive  
Chicago, Illinois 60601  
Telephone: (312) 861-2000

  
LEBOEUF, LAMB, GREENE & MACRAE,  
L.L.P.  
Ralph R. Mabey  
Stephen M. Tumblin  
1000 Kearns Building  
136 South Main Street  
Salt Lake City, Utah 84101  
Telephone: (801) 320-6700

and

**THE INTERNATIONAL ASSOCIATION  
OF MACHINISTS AND AEROSPACE  
WORKERS, AFL-CIO**



**PACHULSKI, STANG, ZIEHL, YOUNG &  
JONES, P.C.**  
Laura Davis Jones (Bar No. 2486)  
Bruce Grohsgal (Bar No. 3583)  
919 North Market Street, 16<sup>th</sup> Floor  
P.O. Box 8705  
Wilmington, Delaware 19899-8705  
(Courier 19801)  
Telephone: (302) 652-4100

**LOWENSTEIN SANDLER P.C.**  
Sharon Levine  
65 Livingston Avenue  
Roseland, New Jersey 07068-1791  
Telephone: (973) 597-2374

Co-Counsel for the Debtors and Debtors in  
Possession

WHEREFORE, the Debtors, ALPA, and the IAM respectfully request that this Court enter an Order, substantially in the form attached hereto: (a) authorizing the Debtors to pay ALPA and the IAM the sums as set forth above; and (b) granting such other relief as this Court deems just and proper.

Dated: \_\_\_\_\_

Respectfully submitted,

**TRANS WORLD AIRLINES, INC.**

**THE AIR LINE PILOTS ASSOCIATION,  
INTERNATIONAL**


KIRKLAND & ELLIS  
James H. M. Sprayregen  
Marc Kieselstein  
David R. Seligman  
Marc J. Carmel  
200 East Randolph Drive  
Chicago, Illinois 60601  
Telephone: (312) 861-2000

LEBOEUF, LAMB, GREENE & MACRAE,  
L.L.P.  
Ralph R. Mabey  
Stephen M. Tumblin  
1000 Keams Building  
136 South Main Street  
Salt Lake City, Utah 84101  
Telephone: (801) 320-6700

and

**THE INTERNATIONAL ASSOCIATION  
OF MACHINISTS AND AEROSPACE  
WORKERS, AFL-CIO**

\_\_\_\_\_  
PACHULSKI, STANG, ZIEHL, YOUNG &  
JONES, P.C.  
Laura Davis Jones (Bar No. 2486)  
Bruce Grohsgal (Bar No. 3583)  
919 North Market Street, 16<sup>th</sup> Floor  
P.O. Box 8705  
Wilmington, Delaware 19899-8705  
(Courier 19801)  
Telephone: (302) 652-4100

  
\_\_\_\_\_  
LOWENSTEIN SANDLER P.C.  
Sharon Levine  
65 Livingston Avenue  
Roseland, New Jersey 07068-1791  
Telephone: (973) 597-2374

Co-Counsel for the Debtors and Debtors in  
Possession