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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA

In re:  
  
MATHON FUND, L.L.C., et al,  
  
Debtors.

**Chapter 11 Proceedings**  
  
**Case No: 05-27993 PHX GBN**  
  
**(Jointly Administered with Case Nos.  
05-27994 PHX-SSC and  
05-27995 PHX- JMM)**  
  
**MOTION TO APPROVE  
SETTLEMENT WITH LOBO  
EXCAVATING & UNDERGROUND,  
INC.**

THIS FILING APPLIES TO:  
  
 ALL DEBTORS  
 SPECIFIED DEBTORS

The Debtors, through counsel of record undersigned, hereby submit the following Motion to approve their Settlement of the claims brought by Louis A. Movitz as Trustee for Lobo Excavating & Underground, Inc. (Lobo), in the Adversary Proceeding presently pending in this Court, Case No., 04-831 (the "Adversary Proceeding") on the terms set forth on Exhibit "A" hereto, for the sum of \$25,000.00.

The Motion should be granted because the Settlement is in the best interests of these Debtors' Estates, as more fully explained herein.

///

1 **I. Relevant Factual and Procedural Background.**

2 On or about June 4, 2004, Lobo commenced an Adversary Proceeding against Slade  
3 Williams & Associates, LLC (“Slade Williams”) to recover a transfer in the amount of \$50,000  
4 pursuant to 11 U.S.C. § 547 (the “Transfer”).

5 On or about April 1, 2005, the Arizona Corporation Commission caused to be filed, in the  
6 Superior Court in and for the State of Arizona (the “State Court”) a Verified Complaint against  
7 various Mathon Entities - including Slade Williams - seeking the appointment of a Receiver over  
8 the named Defendants.

9 On April 5, 2005, the State Court issued its Order appointing James C. Sell Receiver for  
10 the approximately 30 entities named in the Receivership complaint.

11 Subsequently, after notice and hearing, on April 14, 2006, the State Court issued its Order  
12 approving the Stipulation Regarding Order Appointing Conservator, in which the title of James C.  
13 Sell was changed from Receiver to Conservator (hereinafter, the “Conservatorship Order”). The  
14 rights and obligations of the Conservator remained identical to those of the Receiver.

15 Pursuant to an Order entered in the State Court proceeding on October 25, 2005, that  
16 Court authorized the filing of Bankruptcy for three Conservatorship Entities: Mathon Fund I,  
17 LLC, Mathon Fund, LLC and W.S.F. – World Sports Fans, LLC.

18 In compliance therewith, these Bankruptcy Cases were commenced on November 13,  
19 2005.

20 On January 12, 2006, this Court entered an Order allowing for the Joint Administration of  
21 the above referenced bankruptcy estates. This Motion is filed in the Mathon Fund LLC jointly  
22 administered case in accordance with the Court’s prior Joint Administration Order.

23 Investigations into the books and records of the Debtors revealed that the Transfer sought  
24 by Lobo, actually related to an obligation of Mathon Fund I - a Debtor in these Bankruptcy Cases.  
25 Moreover, prior to the Receivership and these Bankruptcy Cases, the Debtors and the  
26 Receivership Entities routinely co-mingled funds, and failed to follow corporate formalities  
27 among the various entities. Based in part upon these facts, the Transfer gives rise to a claim by  
28 Lobo against these Debtors’ Estates.

1           Thereafter, through extensive negotiation with Lobo, Lobo has agreed to compromise its  
2 claims against Mathon by 50%, rather than incur the costs and risks of litigating the matter  
3 further.

4       **II.    The Settlement is in the Best Interests of the Debtors' Estates.**

5           The decision whether to approve a compromise or settlement is left to the sound discretion  
6 of the Court. *Woodson v. Fireman's Fund Ins. Co.* 839 F.2d 610, 620 (9th Cir. 1988); *In re A&C*  
7 *Properties*, 784 F.2d 1377, 1380-81 (9th Cir.), *cert. denied sub nom. Martin v. Robinson*, 479  
8 U.S. 854 (1986).

9           Thus, the Court is charged with making an informed, independent determination as to  
10 whether a settlement is fair, equitable and in the best interests of the estate's creditors bearing in  
11 mind that the law favors compromises. *In re Blair*, 538 F.2d 849, 841 (9th Cir. 1976).

12           While the Bankruptcy Court should not rubber stamp a proposed settlement agreement,  
13 the Court need not conduct a trial on the merits and should give considerable weight to the  
14 debtor-in-possession's position that the proposed agreement is fair and equitable. *Protective*  
15 *Committee for Independent Stockholders of TAT Trailer Ferry, Inc. V. Anderson*, 390 U.S. 414,  
16 444 (1968); *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 493, 496 (Bankr. S.D.N.Y.  
17 1991). *See also, In re Carla Leather, Inc.*, 44 B.R. 457, 472 (Bankr. S.D.N.Y.), *aff'd*, 50 B.R. 764  
18 (S.D.N.Y. 1984).

19           Controlling case law identifies a number of factors for the Court to examine in evaluating  
20 the Settlement Agreement. These factors are as follows:

- 21           (a)    The probability of success in litigation;
- 22           (b)    Difficulties in collection activities if successful results were obtained through  
23 litigation;
- 24           (c)    The complexity of the litigation involved, and the attendant expense,  
25 inconvenience, and delay; and
- 26           (d)    The paramount interest and reasonable view of the creditors.

27       *See, Woodson, supra.*

28

1 Here, a consideration of the foregoing factors weighs heavily in favor of approving the  
2 Settlement Agreement. Indeed, if the parties were to litigate the many various disputes that are  
3 being resolved pursuant to the Settlement Agreement, it is possible that the Debtors would not  
4 obtain as good a result as is set forth in the Settlement Agreement.

5 However, one thing is very clear - the litigation would incur significant legal costs for the  
6 Debtors' Estates.

7 Consequently, the Settlement is in the best interests of these Debtors' Estates.

8 **III. CONCLUSION**

9 Based on the foregoing, the Debtors respectfully request that the Court enter an Order  
10 approving the Settlement Agreement.

11 DATED this 7<sup>th</sup> day of July, 2006.

**JABURG & WILK, P.C.**

/s/ 006510

\_\_\_\_\_  
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Jonathan P. Ibsen  
*Special Counsel for Debtor in Possession*

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15 COPY of the foregoing mailed  
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*/s/Janet Forster*

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Exhibit "A"

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5 Terry A. Dake - 009656  
6 Attorney for Trustee

7 **IN THE UNITED STATES BANKRUPTCY COURT**  
8 **FOR THE DISTRICT OF ARIZONA**

9 In re: ) In Chapter 7 Proceedings  
10 LOBO EXCAVATING & )  
UNDERGROUND, INC.; ) Case No. 2-03-17048-SSC  
11 Debtor. )  
12 \_\_\_\_\_ )  
13 LOUIS A. MOVITZ, Trustee ) Adversary No. 04-831  
14 Plaintiff, )  
15 v. )  
16 SLADE WILLIAMS )  
& ASSOCIATES, LLC )  
17 aka Slade Williams )  
And Associates, Inc. )  
18 Defendant. )  
19 \_\_\_\_\_ )

20 **MOTION TO APPROVE COMPROMISE**  
**AND NOTICE OF BAR DATE FOR OBJECTIONS**

21 The trustee moves this Court for the entry of an order  
22 approving a compromise of this adversary proceeding. The trustee's  
23 motion is more fully set forth in and is supported by the following  
24 Memorandum Of Points and Authorities.  
25  
26  
27  
28

1 DATED June 5, 2006.

2 TERRY A. DAKE, LTD.

3 By /s/ TD009656

4 Terry A. Dake - 009656  
5 11811 North Tatum Boulevard  
6 Suite 3031  
7 Phoenix, Arizona 85028-1621

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 Prior to the bankruptcy filing, the debtor paid to the  
10 defendant the sum of \$50,000.00. The trustee contends that the payment  
11 made by the debtor is avoidable under 11 U.S.C. §547 and/or §548. The  
12 defendant disputes the trustee's allegations contending, among other  
13 things, that the payment was made for valuable consideration in the  
14 ordinary course of business and that new value was provided.

15 In order to resolve this litigation, but without admitting the  
16 trustee's allegations or that any claims against the defendant exist,  
17 the defendant has agreed to pay to the trustee the sum of \$25,000.00 in  
18 full satisfaction of the trustee's claims.

19 In light of the amounts at issue, and the costs and  
20 uncertainties of additional litigation, the trustee believes that the  
21 proposed compromise is reasonable and in the best interest of the  
22 estate. The proposed compromise avoids the delay, expense and  
23 uncertainty of additional litigation and provides a return to the  
24 estate.

25 The agreed upon amount of \$25,000.00 will be paid by the  
26 defendant to the trustee not later than ten (10) days after the later of  
27 the entry of an order approving this compromise, and after approval of  
28 this compromise by the courts currently holding jurisdiction over the


1 affairs of the defendant. Upon payment, the trustee will lodge an order  
2 providing for the dismissal of this adversary proceeding with prejudice,  
3 with each party to bear their own attorneys' fees and costs.

4  
5 DATED June 5, 2006.

6 TERRY A. DAKE, LTD.

7  
8 By /s/ TD009656  
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13 APPROVED AND AGREED:

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16 JABURG & WILLI, P.C.  
17 Attorneys for Defendant  
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Label Matrix for local noticing  
0970-2  
Case 2:03-bk-17048-SSC  
District of Arizona  
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Wed Jun 7 16:34:39 MST 2006

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Total addresses 103