IN RE:
AIR SAFETY INTERNATIONAL, L.C.
and CAMBER FLIGHT SIMULATION, L.C.

Case No.: 99-36290-BKC-SHF
Case No.: 00-30087-BKC-SHF

Chapter 7 proceeding

In July 2002, a Stipulation for Settlement was entered into in the above styled case. Pursuant to the Stipulation, the Parties settled all administrative claims, secured claims and unsecured claims. Further, the Stipulation established the disbursement of any remaining funds to the equity holders after payment of all other allowed claims against the estate. The Stipulation for Settlement specified certain equity claims that could not be settled until pending litigation with one particular individual was resolved. The Court approved the Stipulation for Settlement with the exception of the one paragraph pertaining to equity holders which the parties requested that approval be suspended until the pending litigation with the one individual was resolved. The pending litigation was eventually resolved in late 2004. Is the argument of the majority equity holder that 11 U.S.C. § 726(a)(6) of the Bankruptcy Code controls who is to receive the distribution of surplus assets to the equity holders, not the Stipulation for Settlement as previously agreed to by the parties, including the majority equity holder. The court determined that the corporation did not remain in good standing throughout the bankruptcy, therefore the plain language of 11 U.S.C. § 726(a)(6) did not apply. *In re The Georgian Villa, Inc.,* 55 F.3d 1561, 1563 (11th Cir. 1995)

A settlement agreement is a contract and, as such, its construction and enforcement are governed by principles of Florida's general contract law. *Schwartz v. Florida Board of Regents*, 807 F. 2d 901, 905 (11th Cir. 1987). As long as an intent to settle the essential elements of the cause can be established, it does not matter that the agreement is not fully executed, as even oral settlements have been fully recognized and approved by the courts of Florida. *Dania Jai-Alai Palace, Inc. v. Sykes,* 495 So.2d 859 (Fla. 4th D.C.A. 1986). It is the argument of the majority equity holder that the Stipulation was breached because the Trustee was not able to disburse for three years due to the pending claims. The Court finds no language in the Stipulation for Settlement to indicate a time frame in which the Trustee was required to make distributions. To the contrary, the Stipulation for Settlement clearly states that pending claims exist that must be settled before the agreement can be approved by the court. Those claims are now settled and the Stipulation can be approved in its entirety.