

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

In re: ) Chapter 11  
)  
ATA Holdings Corp., et al.,<sup>1</sup> ) Case No. 04-19866  
) (Jointly Administered)  
Debtors. )

**DEBTORS' MOTION FOR RELIEF FROM STAY**  
**(Gerald Sapp Litigation)**

ATA Airlines, Inc. ("ATA") one of the above captioned debtors and debtors-in-possession, by counsel, respectfully moves this Court (the "Motion") for an order granting relief from the automatic stay so that it may continue to defend the civil case, Gerald Sapp vs. ATA Airlines, Inc., Case No. 49D12-0408-CT-001619, currently pending in the Marion County Superior Court 12 (the "Sapp Lawsuit").

In support of this Motion, ATA states as follows:

**JURISDICTION**

1. On October 26, 2004 (the "Petition Date"), each of the Debtors filed with the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Bankruptcy Court"), its respective voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. as amended (the "Bankruptcy Code") commencing these chapter 11 cases (the "Chapter 11 Cases"). The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

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<sup>1</sup> The Debtors are the following entities: ATA Holdings Corp. (04-19866), ATA Airlines, Inc. (04-19868), Ambassadors Travel Club, Inc. (04-19869), ATA Leisure Corp. (04-19870), Amber Travel, Inc. (04-19871), American Trans Air Execujet, Inc. (04-19872), ATA Cargo, Inc. (04-19873), and Chicago Express Airlines, Inc. (04-19874).

2. No trustee has been appointed. On November 1, 2004, the United States Trustee appointed an official committee of unsecured creditors (the "Committee") pursuant to § 1102(a)(1) of the Bankruptcy Code.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicate for the relief requested herein is Section 362(d) of the Code, and Rules 4001(d) and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

### **THE SAPP LAWSUIT**

4. On May 18, 2004, Gerald Sapp ("Plaintiff") filed a complaint (the "Complaint") in the Tippecanoe County Superior Court No. 2 (the "State Court"), naming ATA as the sole defendant. Venue was later transferred to Marion County, Indiana. Sapp alleged that he sustained personal injury as he was ascending the stairs to a Chicago Express plane. Sapp's claim is based upon a theory of negligence.

5. ATA's insurer, United States Aviation Underwriters ("USAU") retained the law firm of Locke Reynolds LLP to defend ATA in the Sapp Lawsuit. Prior to the Petition Date, significant discovery and some motion practice had taken place in the Sapp Lawsuit.

6. While plaintiff has not yet made a settlement demand, USAU has informed Locke Reynolds LLP that it has provided ATA with adequate liability insurance to cover such damages, including all costs of defense.

7. Plaintiff has agreed that his recovery, if any, will be sought solely from the insurance policy issued by USAU and not from ATA, and plaintiff will not seek to recover punitive damages from ATA.

### **RELIEF REQUESTED**

8. By this Motion, ATA seeks an order from this Court granting relief from the automatic stay to permit the Sapp Lawsuit to proceed and, should Plaintiff be successful, to allow him to recover from applicable insurance coverage, foregoing recovery, if any, from the estate. The circumstances of this case and the provisions and policies of the Bankruptcy Code allow for such relief.

9. Pursuant to Section 362(d) of the Bankruptcy Code, the Court shall grant relief from the automatic stay for "cause." Cause for the granting of relief of the automatic stay exists for the following reasons: (1) the Sapp Lawsuit does not involve issues particular to the Chapter 11 Cases and will not affect the progress of the Debtors' reorganization; (2) if successful, Plaintiff's damages will be paid by USAU, not from the Debtors' estates, as well as covering all costs of defense; and (3) it is in the Debtors' best interests to allow the State Court to resolve the Sapp Lawsuit.

### **NO PRIOR REQUEST**

10. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtor requests that the Court enter an order lifting the automatic stay as it applies to the Sapp Lawsuit.

Respectfully submitted,

BAKER & DANIELS

By: /s/ Terry E. Hall

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served this 19<sup>th</sup> day of April 2005, by electronic mail on the Core Group, 2002 List, Appearance List and counsel for Gerald Sapp.

/s/ Terry E. Hall