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

In re:	)	Chapter 11
	)	
ATA Holdings Corp., et al.,[1]	)	Case No. 04-19866
	)	(Jointly Administered)
Debtors.	)	

DEBTORS' OBJECTION TO MOTION FOR PAYMENT OF ADMINISTRATIVE CLAIM

The debtors and debtors-in-possession (collectively, the "Debtors") in the above captioned chapter 11 cases (the "Chapter 11 Cases"), hereby file their objection (the "Objection") to the Motion For Payment Of Administrative Expense Claim (the "Motion") filed by Evansville-Vanderburgh Airport Authority District ("EVAAD") on April 1, 2005 (Docket No. 1838).

In support of this Objection, Debtors respectfully state as follows:

BACKGROUND

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 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.

[1] The Debtors are the following entities: ATA Holdings Corp. (04-19866), ATA Airlines, Inc. (04-19868), Ambassadair 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. Chicago Express Airlines, Inc. ("Chicago Express"), EVAAD, and the St. Joseph Airport Authority District ("SJAAD") are parties to that certain Air Transportation Services Agreement dated as of January 10, 2005 (the "Agreement").

3. The Agreement is a fixed fee-per-departure agreement for the purposes of providing intrastate airline service between Evansville and Indianapolis and South Bend and Indianapolis.

ARGUMENT

4. EVAAD asserts an administrative expense claim of $50,000 (the "Penalty") based upon paragraph 28 of the Agreement. Paragraph 28, entitled "Early Termination Penalty - Chicago Express," provides: "If Agreement is terminated by Chicago Express within three (3) months after the initial start of turboprop service without good cause, Chicago Express agrees to pay an Early Termination Fee *not to exceed $50,000* to EVAAD...." (emphasis added).

5. Indiana courts will not enforce penalty clauses such as paragraph 28 of the Agreement.[2] E.g., Rogers v. Lockard, 767 N.E.2d 982, 991 (Ind. App. 2002). The Agreement itself uses the word "penalty," and the use of the word "penalty" should be considered in determining whether a provision is an unenforceable penalty or a legitimate liquidated damages clause. Id. "[I]f the sum sought to be fixed is grossly disproportionate to the loss which may result from breach, [courts] should treat the sum as a penalty rather than liquidated damages." Id. The Debtors are unable to determine the loss, if any, suffered by EVAAD because EVAAD has not produced any evidence of its damages.

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[2] Paragraph 36 of the Agreement provides that the Agreement is to be construed and enforced in accordance with the laws of the State of Indiana.

6. Even if the penalty provision is enforceable under Indiana law, EVAAD cannot establish an entitlement to administrative priority under the Bankruptcy Code. Section 503(b)(1)(A) provides that after notice and a hearing, there shall be allowed, administrative expenses including the actual, necessary costs and expenses of preserving the estate. 11 U.S.C. § 503(b)(1)(A). "It is axiomatic that because grants of administrative expense priority cut against the general goal in bankruptcy to distribute limited debtor assets equally among similarly situated creditors, statutory priorities, such as those resulting from administrative expense treatment, are narrowly construed." In re Adelphia Business Solutions, Inc., 296 B.R. 656, 662 (Bankr. S.D.N.Y. 2003). "It is similarly axiomatic that the party seeking administrative expense status bears the burden of establishing its entitlement to that status." Id. Priority should not be afforded unless its is founded on a clear statutory purpose, and claims not comporting with the language and purpose of section 503 must fail. In re Jartran, Inc., 732 F.2d 584, 586 (7th Cir. 1984). The Seventh Circuit has adopted a two part test to determine whether a claim should be granted priority. "[A] claim will be afforded priority under § 503 if the debt both (1) 'arise[s] from a transaction with the debtor-in-possession' and (2) is 'beneficial to the debtor-in-possession in the operation of the business.'" Id. at 586-87 (quoting In re Mammoth Mart, Inc., 536 F.2d 950, 954 (1st Cir. 1976)). The Penalty does not provide any benefit to Chicago Express' estate, thus the Penalty is not entitled to treatment as a priority administrative expense.

7. Even assuming the Penalty sought by EVAAD is enforceable under Indiana law and can be classified as an administrative expense, the Agreement does not automatically entitle EVAAD to the $50,000 Penalty it seeks. The language of the Agreement is clear, the *maximum* penalty is $50,000. EVAAD has produced no evidence regarding its damages supporting its claim for the maximum Penalty allowable under the Agreement.

EVAAD should not be allowed the maximum Penalty based upon its naked assertions, it should be required to put forth evidence regarding its damages justifying the Penalty it seeks.

8. In light of the plain language of the Agreement capping the Penalty, the fundamental bankruptcy policy that administrative expenses be narrowly construed and the complete lack of evidence produced by EVAAD concerning its damages, EVAAD's claim for the maximum Penalty should be denied.

9. Regardless of the enforceability or the amount of the Penalty, EVAAD is indebted to Chicago Express in an amount not less than $421,414.40[3] for intrastate airline service provided by Chicago Express pursuant to the Agreement. True and accurate copies of invoices for services provided by Chicago Express are attached hereto at Exhibit A. EVAAD's indebtedness to Chicago Express is clearly in excess of even the maximum Penalty.

10. Chicago Express has the right to setoff obligations, if any, it owes to EVAAD against the more substantial obligations owed to it by EVAAD. See e.g., Old First Nat'l Bank & Trust Co. of Fort Wayne v. Snouffer, 192 N.E. 369, 371 (Ind. App. 1934) (the right of setoff is recognized under Indiana law when obligations exist between the same parties and are due in the same capacity or right). After Chicago Express effects the setoff, EVAAD's claim for the Penalty will be extinguished and EVAAD will remain indebted to Chicago Express.

[3] Chicago Express has not yet calculated the fuel charge owed to it for March, 2005.

WHEREFORE, the Debtors respectfully request that the Court deny the Motion.

Respectfully submitted,

BAKER & DANIELS

By: /s/ Jeffrey C. Nelson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 26th day of April, 2005, by electronic mail or overnight mail on the Core Group, 2002 List, Appearance List, and EVAAD.

/s/ Jeffrey C. Nelson