

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

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

**UNITED STATES TRUSTEE'S OBJECTION TO  
COMPASS ADVISERS, LLP'S REQUEST FOR ADDITIONAL SERVICE FEE**

Nancy J. Gargula, United States Trustee, by Joseph F. McGonigal, Trial Attorney, respectfully objects to the request of Compass Advisers, LLP for a \$1,000,000 additional services fee as part of their First and Final Application for Allowance of Compensation for Services Rendered and Reimbursement of Expenses. In support of such objection, the United States Trustee states:

1. On May 4, 2006, Compass Advisers, LLP ("Compass") filed its First and Final Application of Compass Advisers, LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Investment Banker and Financial Advisor to the Official Committee of Unsecured Creditors of ATA Holdings Corp., et al, for the Period from November 4, 2004 through February 28, 2006 and for Other Relief ("Final Application").

2. Compass' Final Application requests payment for services rendered which totaled \$3 million. This amount is comprised of \$2 million of "monthly financial advisory fees", and \$1 million for an "Additional Services Fee." The Trustee objects to any nunc

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<sup>1</sup>The Debtors are the following entities: ATA Holdings Corp., ATA Airlines, Inc., Ambassadors Travel Club, Inc., ATA Leisure Corp., Amber Travel, Inc., American Trans Air Execujet, Inc., ATA Cargo, Inc., and Chicago Express Airlines, Inc.

pro tunc approval of this Additional Services Fee.

3. Although the Unsecured Creditors' Committee ("Committee") selected Compass as its investment banker on November 4, 2004, the Committee did not file the motion to employ them until December 23, 2004. While their Final Application states that no objection to this nunc pro tunc application was filed with the Court, all parties, including Compass, were aware of the Trustee's displeasure, given the sophistication of all parties, to nunc pro tunc approval of any application to employ.

4. Attached to the Committee's application to employ Compass was an engagement letter signed by Harvey L. Tepner, a partner at Compass. This letter described in very general terms the various financial advisory and investment banking services that Compass was to provide for the Committee. In addition to these general duties described in Paragraph 1 of the Engagement Letter, Paragraph 5 reads as follows:

The Committee and Compass understand and agree that the services covered by this Agreement do not currently include transactions such as business acquisitions, divestitures, private debt or equity placements, public debt or equity financings, or other corporate transactions for which it is customary to pay a transaction, success or incentive fee to financial advisors and/or investment bankers, nor do they include the rendering of "fairness opinions." The Committee may request that Compass undertake such additional financial advisory and/or investment banking services which **shall be governed by a modification of this Agreement or a separate agreement or agreements between the Committee and Compass** and shall provide for additional compensation to compass as otherwise agreed between Compass and the Committee, **all of which shall be subject to approval of the Bankruptcy Court** (Emphasis added).

Despite this language, and the acknowledgment that any expansion in duties required court approval, no request for approval of any modification of the agreement was ever filed.

5. Paragraph 13 of Compass' Final Application describes the many duties that Compass performed for the Committee. Paragraph 28, which attempts to justify its Additional Services Fee, describes additional services rendered by Compass on behalf of the Committee which appear to mirror some of the services described in Paragraph 13. For example, Subparagraphs b and c of Paragraph 13 describe Compass' role in the auction process involving Midway Airport. Subparagraph a of Paragraph 28 describes similar duties. Also, Subparagraph h of Paragraph 13 described Compass' instrumental role in recruiting John Denison. Subparagraph b of Paragraph 28 also described their involvement. Given the general nature of the Engagement Letter, it seems unreasonable to compensate Compass for additional services that appear very similar to and within the scope of their initial duties.

6. Paragraphs 92 through 98 of Compass' Final Application request retroactive approval of its additional services using the "excusable neglect" standard. Compass wants this court to believe that the fact the additional services were not included in the initial scope of the general terms of the engagement letter was a result of unforeseen circumstances and was at most an inadvertent omission. Paragraph 96 reflects Compass' self serving conclusion that "the ultimate result achieved make it clear that Compass' additional services lead to a greatly enhanced recovery for unsecured creditors." The Trustee does not agree. It is virtually impossible, given the number of professionals employed by ATA, the Committee and the lending institutions, to state with any certainty that Compass alone was responsible for certain results. Furthermore, Compass' conclusion that its failure to file any supplemental application for over a year since its initial nunc pro tunc employment application was at most an inadvertent

omission is not persuasive and is contradicted by its own application. Paragraph 29 of its Final Application reveals a conscious decision to ignore the terms of its Engagement Letter. In this paragraph, Compass reveals that it knew the work exceeded the scope of their employment, as Compass perceived it, but Compass specifically elected not to request Court approval because to do so would be “improvident.”

7. Experienced professionals know that they may not be paid for any services provided beyond the scope of that approved by the Court. Permitting Compass to receive compensation for services it believed to be beyond the scope for which it was approved would only invite other professionals to ignore the Code’s requirement that services be approved before they are rendered.

8. The Trustee recognizes Compass’ important contributions to the successful reorganization of ATA. The Trustee also recognizes the contributions of all professionals employed in this case. However, the Trustee believes that Compass’ request for an additional \$1,000,000, representing a 50% increase in its final fee request of \$2,000,000, is unjustified. Compass cannot boast of its “extensive experience and expertise in bankruptcy and reorganization proceedings,” (Final Application Paragraph 19) then fail to obtain necessary court approval, especially in light of their knowledge of the Trustee’s displeasure with nunc pro tunc approval.

9. Compass should not be rewarded for waiting until a case reorganizes, examining the results of this reorganization, then requesting additional compensation for what it terms “additional services.” Such an award gives the appearance of a disguised “success fee.”

WHEREFORE, the United States Trustee respectfully requests that this court

deny Compass' Final Application to the extent it requests any compensation for additional services, and that this Court grant such other relief as is just and proper.

Respectfully submitted,

NANCY J. GARGULA  
UNITED STATES TRUSTEE

By /s/ Joseph F. McGonigal  
Joseph F. McGonigal  
Trial Attorney

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon those on the service list via the Bankruptcy Clerk's Electronic Case Filing System, this 26th day of May, 2006.

/s/ Joseph F. McGonigal  
Joseph F. McGonigal  
Trial Attorney

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