

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

IN RE:)	Chapter 11
)	
ATA HOLDINGS CORP., <i>et al.</i> ,)	Case No. 04-19866
)	(Jointly Administered)
)	
Debtors.)	
)	

**LIMITED OBJECTION BY THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO OBJECT TO THE MOTION TO (1) APPROVE PROCEDURES FOR
BILLINGS BY AND PAYMENTS TO PROFESSIONALS RETAINED IN THESE CASES
FOR FEES AND EXPENSES INCURRED AND (2) APPROVE PROCEDURES AND
DEFERRAL OF DRAW DOWN OF RETAINER PAID TO PROFESSIONALS
RETAINED IN THESE CASES UNTIL REQUESTED BY DEBTORS**

The Official Committee of Unsecured Creditors (the “Committee”) of ATA Holdings Corp. and its affiliated debtors and debtors in possession (collectively, the “Debtors”), by and through its undersigned proposed co-counsel, hereby submits this Limited Objection to the Motion to (1) Approve Procedures for Billings by and Payments to Professionals Retained in these Cases for Fees and Expenses Incurred and (2) Approve Procedures and Deferral of Draw Down of Retainer Paid to Professionals Retained in the Cases Until Requested by Debtors (the “Motion”). In support of its Limited Objection, the Committee respectfully states as follows:

I. PRELIMINARY STATEMENT

1. The Motion fails to establish procedures that would effectively apprise the Committee of the services rendered and expenses incurred on a monthly basis by all professionals retained by the Debtors (the “Professionals”).

2. The Committee objects to the Motion because the billing procedures do not require that the Professionals submit monthly bills to the Committee. Additionally, the Motion does not permit the Committee to object to such monthly bills. The Motion also establishes a

prohibitively short time period within which to object to a bill submitted by a Professional. Further, the Motion does not require that certain Professionals draw upon their retainers until the end of the case, despite the significant amount of such retainers.

3. Counsel for the Committee and counsel for the Debtors have had discussions regarding the Motion. Counsel for the Debtors has agreed to modify the procedures set forth in the Motion to provide (i) for reimbursement of Committee member out-of-pocket expenses, which appears to have been omitted from the Motion as an oversight; and (ii) that once the Debtors advise the Professional to commence payment of its bills by drawing against the retainer, draws will be capped at eighty percent (80%) of the Professional's fees and one-hundred percent (100%) of the expenses on a monthly basis.

II. BACKGROUND

4. On October 26, 2004 (the "Petition Date"), each of the Debtors commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

5. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are authorized to operate their businesses and manage their properties as debtors in possession. No trustee or examiner has been appointed in these chapter 11 cases.

6. On November 11, 2004, the Debtors filed the Motion with the Court.

III. LIMITED OBJECTION

7. Section 1103(c)(2) of the Bankruptcy Code specifically authorizes the Committee to investigate the acts, conduct, assets, liabilities and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and

any other matter relevant to the case or to the formulation of a plan. 11 U.S.C. § 1103(a)(2).

The Committee objects to the Motion because the procedures restrict the Committee's ability to monitor the Debtors' expenditures.

A. Professionals Should be Required to Submit a Copy of the Monthly Bill to the Committee and the Committee Should Be Provided an Opportunity to Object to the Bill.

8. The Motion provides that at the end of each billing cycle, each Professional will file with the Clerk, the U.S. Trustee, the Committee and any other party so requesting, a notice of the amount of the bill that the Professional will submit to the Debtors. The Motion further states that each Professional will send a copy of the bill to the Debtors and to the U.S. Trustee, but does not require that the Professional send a copy of the bill to the Committee.

9. The Motion fails to provide for the Committee to receive copies of the monthly bills submitted by Professionals. Further, the Motion fails to provide the Committee with any opportunity to object to the monthly bills submitted by the Professionals.

10. The Committee is requesting that the Professionals be required to submit a copy of the monthly bill to the Committee, and the Committee be provided with adequate opportunity to object to such bill. The Committee is obligated to observe and investigate the Debtors' acts, conduct, financial condition and operation of the Debtors' business throughout these chapter 11 cases for the benefit of all creditors of the estate. Therefore, the Committee should be provided with an opportunity to examine the monthly bills submitted by the Professionals for payment by the Debtors and the ability to object if cause for an objection exists.

11. The Debtors' counsel has suggested that, since the Committee has the right to object to the interim fee applications, which are filed every four months, the Committee does not need to have the right to review and object to the monthly bills. The Debtors' counsel has also asserted that, in this Court, it is not typical for the Committee to receive monthly bills and to

have the right to object to such bills. These chapter 11 cases are on an extremely fast track with a major asset sale scheduled within the first sixty days. These chapter 11 cases may be concluded or nearly concluded before the date that the first interim fee application is heard by this Court. Additionally, the Committee notes that, in many other courts which have adopted interim fee allowance provisions similar to those of this Court, the Committee is provided with copies of the monthly bills and the opportunity to object to such monthly bills.

B. Parties Must be Provided Sufficient Time to Review the Monthly Bill.

12. The Motion requires that the Debtors object to the Professional's bill within a period of seven (7) days, commencing upon receipt of the bill.

13. The Committee objects to this very short time frame within which to receive each Professional's monthly bill, diligently review each Professional's monthly bill, consult with the Professional if there are any questions or concerns, and, if necessary, draft and file an objection. This period should be extended to permit the parties to object within fifteen (15) days of receipt of the bill.

C. The Retainers Paid to the Huron Group, LLC, Baker & Daniels and Sommer Barnard Attorneys, PC, Were Significant Amounts and Should be Drawn Down Prior to the End of the Bankruptcy Case to Pay Bills During these Chapter 11 Cases.

14. The Debtors paid substantial retainers to Baker & Daniels and Sommer Barnard Attorneys PC ("Sommer Barnard"), as counsel to the Debtors, and to the Huron Group, LLC ("Huron"), as financial advisors to the Debtors.

15. The Committee objects to the billing procedures set forth in the Motion because it believes that a portion of the retainers previously paid to Baker & Daniels, Sommer Barnard and Huron, perhaps one-third (1/3) to one-half (1/2) of such retainers, should be drawn to pay the

monthly bills submitted by Baker & Daniels, Sommer Barnard and Huron, rather than holding such large sums of the Debtors' cash in reserve until the end of these chapter 11 cases.¹

16. Cash flow is important to the operation of the Debtors' business. The retainers paid to Baker & Daniels, Sommer Barnard and Huron aggregate to well in excess of \$2 million. The Motion should establish the billing procedures which draw down against a portion of these retainers in order to pay the monthly bills submitted by these specific professionals.²

IV. RESERVATION OF RIGHTS

17. The Committee has resolved certain issues with respect to the billing procedures set forth in the Motion with the Debtors, and the Debtors have agreed to modify the Motion by submitting a revised proposed order.

18. The Committee, however, has not received the revised proposed order from the Debtors and thus has not had an opportunity to review the modifications sought by the Committee. Therefore, out of an abundance of caution, the Committee reserves its rights with respect to the following objections to the Motion.

19. The billing procedures set forth in the Motion do not provide for the reimbursement of out-of-pocket expenses incurred by the members of the Committee in connection with the performance of their duties. The billing procedures should be modified to provide for monthly reimbursement of such expenses incurred by Committee members during these chapter 11 cases.

¹ Although Ponader & Associates, LLP ("Ponader") and Paul, Hastings, Janofsky & Walker, LLP ("Paul, Hastings") also received retainers, because the retainers were very small amounts, the Committee is not seeking to modify the billing procedures with respect to the retainers paid to Ponader or Paul, Hastings.

² The Committee has been negotiating with ATSB Lenders regarding an appropriate carve-out provision in the cash collateral order. The carve-out provision under discussion would provide for full payment of any professional fees incurred prior to an event of termination of the use of cash collateral.

20. The Motion as it is currently drafted is unclear as to how much the Professionals are able to draw against any retainers on a monthly basis, once advised to do so by the Debtors. The Motion should be modified to make clear that this eighty percent (80%) cap on fees and one-hundred percent (100%) cap as to expenses also applies when the Professional is advised to draw upon the retainer on a monthly basis.

V. CONCLUSION

21. For all of the reasons discussed above, the Committee respectfully requests that (i) the Court not approve the Motion without modifying the billing procedures set forth in the Motion to provide that: (a) all Professionals are required to submit a monthly bill to the Committee in addition to the Debtors and U.S. Trustee; (b) the Committee may object to the monthly bills submitted by the Professionals; (c) the time period within which to object to a bill is extended to fifteen (15) days; and (d) the Debtors shall draw against a portion of the retainers previously paid to Baker & Daniels, Sommer Barnard and Huron in order to pay the monthly bills submitted by those professionals, respectively; (ii) its rights are reserved with respect to the Debtors' revisions to the Motion providing reimbursement for Committee member out-of-pocket expenses on a monthly basis, and that once the Debtors advise the Professional to begin drawing against the retainer in payment of the monthly bill, such payment is capped at eighty (80%) of the Professional's fees and one-hundred percent (100%) of the Professional's expenses; and (iii) grant the Committee such other and further relief as is just and proper.

Dated: November 24, 2004

Respectfully submitted,


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- and -

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent via first-class mail, postage prepaid, to all parties on the attached list, on this 24th day of November, 2004.

/s/ C.R. Bowles, Jr.

Co-Counsel for the Committee