

**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 OF THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS TO THE APPLICATIONS SEEKING AUTHORITY TO EMPLOY  
(I) BAKER & DANIELS, AND (II) THE HURON CONSULTING GROUP, LLC, AS  
FINANCIAL ADVISORS TO THE DEBTORS, PURSUANT TO 11 U.S.C. §§ 105, 327,  
328 AND RULE 2014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

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 Applications seeking order authorizing the Debtors to retain and employ Baker & Daniels, as counsel for the Debtors, and Huron Consulting Group, LLC (“Huron”) as financial advisors to the Debtors (collectively, the “Applications”), pursuant to 11 U.S.C. §§ 105, 327, 328 and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Objection”). In support of its Objection, the Committee respectfully states as follows:

**I. PRELIMINARY STATEMENT**

1. Upon review of the Applications and supporting documentation filed by Baker & Daniels, Sommer Barnard Attorneys PC (“Sommer Barnard”), Ponader & Associates, LLP (“Ponader”), Paul, Hastings, Janofsky & Walker, LLP (“Paul, Hastings”), and Huron (collectively, the “Professionals”), the Committee lacked sufficient information to determine whether payment made by the Debtors to the Professionals prior to the filing of the petition in

bankruptcy resulted in preferential transfers pursuant to 11 U.S.C. § 547(b). The Committee therefore drafted and delivered letters to each of the Professionals, seeking more specific information concerning services rendered and fees and expenses incurred by each of the Professionals on behalf of the Debtor during the one-year period pre-petition (the “Letters”). The Committee received substantive responses to the Letters from Baker & Daniels, Sommer Barnard, Ponader and Paul, Hastings, and upon review, the Committee has determined that it has no objection to the retention of Sommer Barnard, Ponader and Paul, Hastings.

2. Although Baker & Daniels responded to the Letter initially, the Committee requested additional information from Baker & Daniels with respect to invoices submitted by Baker & Daniels to the Debtors and payments made by the Debtors during September and October of 2004, which the Committee has not yet received. Huron has not responded to the Letter, nor provided the Committee with any information regarding a history of payments received from and invoices submitted to the Debtors within the year prior to the filing of the petition in bankruptcy. Without the additional information requested of Baker & Daniels and any of the information requested of Huron, the Committee is unable to determine whether Huron or Baker & Daniels may have received preferential payments from the Debtors.

3. Until such time as the Committee has been provided with sufficient information to determine whether the Debtors made preferential payments to Baker & Daniels or Huron, the Committee seeks to reserve its right to object to the retention and employment of Huron and Baker & Daniels by the Debtors pursuant to 11 U.S.C. § 327(a).

## **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 October 27, 2004, Debtors filed the Applications, seeking authority to employ and retain the Professionals, including the Application to retain and employ Huron, as financial advisors to the Debtors (the “Huron Application”), and Baker & Daniels, as legal counsel to the Debtors (the “Baker & Daniels Application”).

### **III. GROUNDS FOR OBJECTION TO THE APPLICATIONS**

7. Section 327(a) of the Bankruptcy Code sets forth the standards for disqualification of a professional employed by the debtor-in-possession. 11 U.S.C. § 327(a). The professionals selected by the debtor-in-possession “may not be persons who ‘hold or represent an interest adverse to the estate,’ and must be ‘disinterested persons.’” *Staiano v. Pillowtex, Inc. (In re PillowTex, Inc.)*, 304 F.3d 246, 251 (3d Cir. 2002); 11 U.S.C. § 327(a). The Bankruptcy Code includes as a “disinterested person,” someone who “does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor . . . , or for any other reason.” *In re Pillowtex, Inc.*, 304 F.3d at 251; 11 U.S.C. §101(14)(E).

8. The Court may consider an interest adverse to the estate when the professional has “a competing economic interest tending to diminish estate values or to create a potential or actual dispute in which the estate is a rival claimant.” *In re First Jersey Securities*, 180 F.3d 504, 509 (3d Cir. 1999), *citing In re Caldor, Inc.*, 193 B.R. 165, 171 (Bankr. S.D.N.Y. 1996).

9. The Third Circuit has held that a “preferential transfer to [debtor’s professional] would constitute an actual conflict of interest between counsel and the debtor, and would require the firm’s disqualification.” *In re First Jersey Securities*, 180 F.3d 504, 509 (3d Cir. 1999). Where there is an “actual conflict of interest . . . disqualification is mandatory.” *In re First Jersey Securities*, 180 F.3d at 509 (Third Circuit held that counsel was disqualified because within 90 days of the petition date it had received payment from the debtor for antecedent legal services and out of the ordinary course). *See also, In re BH&P*, 949 F.2d 1300, 1316-17 (3d Cir. 1991)(“preferential transfer to [the firm that the debtor-in-possession sought to employ in the bankruptcy proceeding] would constitute an actual conflict of interest between counsel and the debtor, and would require the firm’s disqualification”).

10. Each of the Letters requested information with respect to services rendered and fees and expenses incurred by the Professionals on behalf of the Debtors during the one-year period prior to the Petition Date. Additionally, the letters sought further information about billing by each Professional for those fees and expenses incurred during the one year pre-petition. The Letters requested that the Professional provide the Committee with a schedule demonstrating the dates and amounts of each payment made by the Debtors as it related to invoices submitted to the Debtors by the Professionals for work performed and expenses incurred during the one-year period prior to the Petition Date. Finally, the Letters sought to confirm the amount of the retainer, if any, paid to the Professional by the Debtors prior to Petition Date and the balance of that retainer remaining on the Petition Date.

11. The Committee drafted and delivered the Letters to the Professionals immediately upon discovering that the Applications and supporting documents filed by the Debtors seeking authority to employ and retain the Professionals lacked sufficient information for the Committee

to discern whether payments made by the Debtors to the Professionals pre-petition resulted in preferential payments, thereby demanding that the Committee object to the retention of such transferee by the Debtors.

12. Although Baker & Daniels provided the Committee with information in response to the Letter, the Committee lacks sufficient information that would allow the Committee to determine whether a preferential payment was made to Baker & Daniels by the Debtors during September and October 2004. The Committee also lacks information to determine whether Baker & Daniels is entitled to affirmative defenses pursuant to sections 547(c)(1)-(3) of the Bankruptcy Code, which would protect payments made as part of a contemporaneous exchange, in the ordinary course of business or for subsequent new value.

13. Huron has represented that it billed and collected \$1,033,982.47 prior to the Petition Date and is currently holding a retainer in the amount of \$617,704. Huron has not, however, provided the Committee with sufficient information that would allow the Committee to determine whether a preferential payment was made to Huron by the Debtors pre-petition pursuant to a preference analysis under section 547(b) of the Bankruptcy Code or determine whether Huron is entitled to an affirmative defenses pursuant to sections 547(c)(1)-(3) of the Bankruptcy Code.

14. The information requested of Baker & Daniels and Huron is critical to the Committee's decision to object to their retention by the Debtors based upon a preferential payment from the Debtors to that Professional pursuant to section 547(b) of the Bankruptcy Code, constituting an interest adverse to the estate.

15. Therefore, until such time as Baker & Daniels and Huron provide the Committee with all of the information requested by the Letters, and the Committee and its counsel have had

an opportunity to adequately review such information, the Committee reserves its right to raise objections with respect to the retention and employment of Baker & Daniels and Huron based upon the determination of an actual conflict of interest due to a preferential payment.

#### IV. CONCLUSION

16. For all of the reasons discussed above, the Committee respectfully requests that (i) the Court not approve the Huron Application and Baker & Daniels Application without modifications that may be appropriate after the Committee has had an opportunity to review the information provided to the Committee in response to the Letters, and (ii) grant the Committee such other and further relief as is just and proper.

Dated: November 24, 2004

Respectfully submitted,



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*Co-Counsel to the Official Committee  
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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*