

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)	
)	Chapter 11
ATA HOLDINGS CORP., et al. ¹)	Case No. 04-19866-BHL-11
)	(Jointly Administered)
Debtors.)	
_____)	

DEBTORS' MOTION FOR ORDER:
(I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING
PURSUANT TO 11 U.S.C. §§ 105(a) AND 364(c); AND
(II) SCHEDULING INTERIM AND FINAL HEARINGS
ON THE RELIEF REQUESTED

ATA Holdings Corp. and ATA Airlines, Inc. ("ATA"), as debtors and debtors-in-possession (collectively, the "Debtors"), by counsel, hereby request an Order of the Court authorizing the Debtors to obtain postpetition financing from the National City Bank of Indiana (the "Bank") pursuant to 11 U.S.C. §§ 105(a) and 364(c). The Debtors further request that the Court schedule an interim and a final hearing on the relief requested herein pursuant to Fed. R. Bankr. P. 4001(c). In support of their motion, the Debtors state as follows:

I. General Background

A. The Chapter 11 Filings

1. On October 26, 2004 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for reorganization relief under Chapter 11 of Title 11 of the U.S. Code (as amended, the "Bankruptcy Code"). The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107(a)

¹ The Debtors are the following entities: ATA Holdings Corp., ATA Airlines, Inc., Ambassador Travel Club, Inc., ATA Leisure Corp., Amber Travel, Inc., American Trans Air ExecuJet, Inc., ATA Cargo, Inc. and Chicago Express Airlines, Inc.

and 1108 of the Bankruptcy Code. On October 29, 2004, this Court entered an Order for joint administration of these Chapter 11 cases (the “Cases”).

2. An official committee of unsecured creditors (the “Committee”) has been appointed in these Cases. The Committee is represented by the firms Akin Gump Strauss Hauer & Feld LLP and Greenbaum Doll & McDonald PLLC as counsel and Compass Advisers, LLP as financial advisor. Upon information and belief, the Committee does not object to the relief requested in this Motion.

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 matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

4. The statutory predicates for the relief requested herein are §§ 105(a) and 364(c) of the Bankruptcy Code and Rule 4001(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

B. Relationship Between the Debtors and the Bank

5. Prior to the Petition Date, ATA entered into a Credit Agreement on or about December 19, 2002 for the purpose of inducing the Bank to issue letters of credit for the account of ATA (the “Credit Agreement”).² The Credit Agreement has been modified by Amendment No. 1 dated January 9, 2004 and Amendment No. 2 dated October 4, 2004 (all references to the Credit Agreement shall mean the Credit Agreement, as so amended).

² A copy of the Credit Agreement is attached as Exhibit A to the “Motion Of National City Bank Of Indiana For Relief From Stay” filed on November 4, 2004 and appearing on the Court’s CM/ECF system as docket number 260 (the “Bank Motion”).

6. As contemplated by the Credit Agreement, the Bank has issued letters of credit to approximately forty (40) of ATA's vendors and lessors.³

7. To evidence ATA's reimbursement obligations to the Bank, ATA executed and delivered to the Bank a reimbursement note dated December 19, 2002 in the original principal amount of \$40,000,000.00 (the "Reimbursement Note").⁴ The Reimbursement Note has been amended consistent with the modifications to the Credit Agreement (all references to the Reimbursement Note shall mean the Reimbursement Note, as amended).

8. To secure ATA's obligations under the Credit Agreement, including but not limited to the obligation to reimburse the Bank for draws on the letters of credit, costs, charges, credit fees, and attorneys' fees, ATA executed and delivered to the Bank a security agreement dated December 19, 2002 (the "Security Agreement") with respect to the following depository accounts: (a) account number 758138866 with the Bank; and (b) account number 152302005961 U.S. Bank, National Association (subparagraph (a) and (b), collectively, the "Depository Accounts").⁵

9. As further evidence and security of the Bank's security interest in the Depository Accounts, the Debtors and the Bank executed and delivered to the Bank a deposit account control agreement dated December 19, 2002 (the "Deposit Account Control Agreement").⁶

³ A summary of the Bank's letters of credit issued on behalf of the Debtors is attached to the Bank Motion as Exhibit B.

⁴ A copy of the Reimbursement Note is attached to the Bank Motion as Exhibit C.

⁵ A copy of the Security Agreement is attached to the Bank Motion as Exhibit D.

⁶ A copy of the Deposit Account Control Agreement is attached to the Bank Motion as Exhibit E.

10. ATA Holdings Corp. is a guarantor of ATA's obligations to the Bank under the Credit Agreement.⁷

11. As of the Petition Date, the aggregate face amount of the Bank's obligation as issuer under letters of credit on behalf of ATA was not less than \$30,830,504.15.

12. Also as of the Petition Date, the aggregate balance of the Depository Accounts was not less than \$30,910,135.34. ATA earns interest on the funds held in the Depository Accounts. Interest earned on the funds in the Depository Accounts is subject to the Bank's security interest.

13. On or about November 10, 2004, a draw of approximately \$6,000,000.00 was made on a letter of credit issued pursuant to the Credit Agreement, so the balance of the Depository Accounts has been reduced by a like sum, together with interest and other obligations owed by ATA under the Credit Agreement.

14. Under the Credit Agreement, if a draw is made under any letter of credit issued by the Bank on behalf of ATA, the Bank is authorized to immediately debit the Depository Accounts to reimburse the Bank for the amount of the draw.

15. On November 12, 2004, the Court approved a stipulation (the "Stipulation," Docket No. 323) between the Bank and the Debtors which, in summary, authorized the Debtors to use a portion of the Bank's cash collateral in the Depository Accounts to the extent that such funds exceed the aggregate face amount of outstanding letters of credit (the "Excess Funds"). As a condition to its consent to the Stipulation, the

⁷ A copy of the Guaranty is attached to the Bank Motion as Exhibit F.

Bank was granted adequate protection, including, but not limited to, a holdback of Excess Funds in the amount of \$150,000.00.⁸

16. Nothing in this Motion is intended to change the terms of the Stipulation. The Stipulation does not address, however, the post petition renewal or extensions of existing letters of credit or issuance of new letters of credit. ATA desires to obtain post petition renewals and extensions of existing letters of credit and issuance of new letters of credit on terms substantially the same as those contained in the Credit Agreement and related agreements, as modified by the Stipulation and any order (preliminary or final) granting this Motion and certain limited modifications to the Credit Agreement related to renewals or extensions of existing letters of credit or issuance of new letters of credit and as further modified by a definitive Amendment No. 3 to the Credit Agreement. Together, all such modifications including those to be negotiated as part of a definitive Amendment No. 3 to the Credit Agreement shall be the "Credit Agreement, as modified."

17. ATA wishes to incur debt under the terms of the Credit Agreement, as modified, and related agreements postpetition because they are beneficial to the estates, crucial to current operations and a successful reorganization, and in the best interests of the Debtors, their estates and their creditors. Moreover, the fees associated with renewal, extension and issuance of new letters of credit are reasonable and consistent with the market.

18. The next two letters of credit issued pursuant to the Credit Agreement require action by ATA and the Bank on or before November 30, 2004 and December 21, 2004, respectively, in order to effect a renewal of such letters of credit. Because ATA

⁸ The stipulation between the Bank and the Debtors and the Order approving the stipulation appear on the Court's CM/ECF system as docket numbers 323 and 381, respectively.

must take action shortly, it is seeking Court authorization to incur secured debt under the terms of the Credit Agreement postpetition with certain modifications in order to renew such letters of credit. Thereafter, ATA will submit to the Court all modifications to the terms of the Credit Agreement that will govern all renewals, extensions and issuances of new letters of credit.

II. Relief Requested

19. Section 364(c) of the Bankruptcy Code provides that if a debtor is unable to obtain unsecured credit, the Court may, after notice and a hearing, authorize the Debtor to obtain credit or incur debt: (1) with priority or any or all administrative expenses of the kind specified in §§ 503(b) or 507(b) of the Bankruptcy Code; (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien.

20. Furthermore, § 105(a) of the Bankruptcy Code provides that the Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code.

21. Letters of credit issued pursuant to the Credit Agreement are about to expire absent renewal or extension by the Bank. In addition, subject to the terms of the Credit Agreement, as the same will be modified, ATA may apply to the Bank for the issuance of new letters of credit in the ordinary course of its business. Renewal or extension of existing letters of credit and issuance of new letters of credit benefit the Debtors' estates and their ability to successfully reorganize.

22. Furthermore, it would be extremely difficult for the Debtors to obtain terms similar to those in the Credit Agreement given the Debtors' current financial

position, making the incurring of debt under the Credit Agreement, as modified, the only realistic financing option currently available in respect of necessary letters of credit.

23. Incurring debt under the Credit Agreement, as modified, postpetition (including the renewal or extension of existing letters of credit) may be deemed an extension of credit by the Bank to the Debtors; accordingly, the relief requested herein is permitted under § 364(c) of the Bankruptcy Code. The extension or renewal of existing letters of credit and the issuance of new letters of credit would be secured by the existing first priority security interest against funds in the Depository Accounts and the funds held therein and a post petition first priority security interest in the Depository Accounts and any funds deposited therein in the future to satisfy the requirements of the Credit Agreement, as modified.

24. Furthermore, because incurring secured debt under the Credit Agreement, as modified, postpetition is crucial to the Debtor's current operations and successful reorganization, the borrowing contemplated hereunder is authorized by § 105(a) of the Bankruptcy Code.

25. Based upon the foregoing, the Debtors respectfully request that the Court enter an Order pursuant to §§ 105(a) and 364(c) of the Bankruptcy Code authorizing the Debtors to obtain postpetition financing from the Bank so as to allow the incurring of secured debt under the Credit Agreement, as modified, postpetition.

III. Request For Hearing On The Relief Requested

26. Federal Rule of Bankruptcy Procedure 4001(c)(2) provides that a final hearing on a motion seeking relief under § 364 of the Bankruptcy Code may not be commenced earlier than fifteen (15) days after service of such motion.

27. However, Fed. R. Bankr. P. 4001(c)(2) also authorizes the Court to conduct a preliminary expedited hearing on the § 364 motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to the Debtors' estate.

28. ATA must take action on one letter of credit on or before November 30, 2004.

29. As such, ATA respectfully requests that the Court conduct an interim hearing on the relief requested herein on November 30, 2004, limited to approval of the renewal or extension of such letters of credit that would otherwise expire or would require or permit notice of non-renewal before a final hearing may be held, and a final hearing on the relief requested at the December 16, 2004 Omnibus Hearing/sale hearing to approve the Credit Agreement, as modified. The Bank and ATA shall use their best efforts to finalize the terms of the Credit Agreement, as modified, at least two (2) business days before the final hearing.

IV. Prior Requests

30. The Debtors have filed one previous motion for postpetition financing, namely, their "Emergency Motion For Order (I) Authorizing Debtors To Obtain Postpetition Financing Pursuant To 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(c)(3) And 507; And To Sell, Lease, And Purchase Assets Pursuant To 11 U.S.C. §§ 105 and 363; And (II) Scheduling Interim And Final Hearings Pursuant To Fed. R. Bankr. P. 4001(c) and (d) and 6004(a)(2)" on November 9, 2004. This motion is separate from and has no relation to that November 9, 2004 motion.

WHEREFORE, ATA respectfully requests that the Court enter an Order or Orders: (1) authorizing the Debtors to obtain secured postpetition financing from the Bank in the form of the postpetition renewal or extension of continuation of letters of credit with such financing to be governed by the terms of the existing Credit Agreement, all related loan documents and the Stipulation and to pay any requisite fees to the Bank for renewal, extension or creation of letters of credit; (2) scheduling an interim hearing on the motion prior to November 30, 2004 and a final hearing thereafter; and (3) approving the Credit Agreement and related agreements, as modified with respect to all extension of credit made by the Bank postpetition and the security therefore and granting ATA such other and further relief as the Court deems proper.

DATED: 11/24/04

ATA HOLDINGS CORP., ET AL.,
as debtors and debtors-in-possession,

By: /s/ Michael P. O'Neil
Michael P. O'Neil,
Co-counsel for the Debtors

Sommer Barnard Attorneys, PC
One Indiana Square, Suite 3500
Indianapolis, Indiana 46204
Telephone: (317) 713-3500
Facsimile: (317) 713-3699

Certificate Of Service

The undersigned hereby certifies that a true and accurate copy of the foregoing was caused to be served this 24th day of November, 2004 via electronic mail on the 2002 Service List.

/s/ Michael P. O'Neil

182458