

**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.)	
)	

AMENDED CERTIFICATE OF SERVICE

The Undersigned Hereby Certifies that a True and Correct Copy of the 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, Attached Hereto as "Exhibit A," and the Limited Objection of the Official Committee of Unsecured Creditors to the Application 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, Attached Hereto As "Exhibit B," Were Served Upon the Core Group and the 2002 List Via First Class, United States Mail, Postage Prepaid on or Before the 24th Day of November, 2004.

November 29, 2004

Respectfully Submitted,

/s/ C.R. Bowles, Jr.

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EXHIBIT A

**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
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**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.

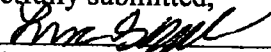
20. The Motion as it is currently drafted is unclear as to how much the Professionals are able to draw against any retainers on a monthly basis, once advised to do so by the Debtors. The Motion should be modified to make clear that this eighty percent (80%) cap on fees and one-hundred percent (100%)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

EXHIBIT B

**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)
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Debtors.)	
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**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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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