

SO ORDERED: September 18, 2009.



**Basil H. Lorch III**  
**United States Bankruptcy Judge**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

In re:	)	
	)	
ATA Holdings Corp., et al.,	)	Case No. 04-19866-BHL-11
	)	(Jointly Administered )
Debtors	)	

**ORDER**

This matter came before the Court on the **Motion for Order to Show Cause for Violation of Plan Injunction** (the “Motion”) filed November 25, 2008, by ATA Holdings Corp., a/k/a ATA Airlines, Inc. (The “Debtors” or “ATA”<sup>1</sup>). Signature Flight Support Corporation (“Signature”) filed its **Response to ATA Airlines, Inc.’s Motion for Order to Show Cause for Violation of Plan Injunction** (the “Response”) on December 18, 2008. Also on December 18, 2008, this Court held a hearing and heard argument from the parties. On January 16, 2009, ATA filed a **Reply to**

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<sup>1</sup> The Debtors are collectively referred to as “ATA” and consist of the following entities: ATA Holdings Corp., ATA Airlines, Inc., Ambassadair Travel Club, Inc., ATA Leisure Corp., Amber Travel, Inc., American Trans Air Execujet, Inc., ATA Cargo, Inc., and C8 Airlines, Inc. f/k/a Chicago Express Airlines, Inc.

**Signature Flight Support Corporation’s Response to ATA’s Motion for Order to Show Cause for Violation of Plan Injunction** (the “Reply”). Signature filed a **Sur-Response to ATA Airlines, Inc.’s Motion for Order to Show Cause for Violation of Plan Injunction** (the “Sur-Response”) on January 27, 2009. The Court, having reviewed and considered the pleadings herein, and being otherwise fully and sufficiently advised, finds that Signature committed a technical violation of the §524 discharge injunction but, on the facts of this case, concludes that sanctions are not appropriate. Further, this Court modifies the discharge injunction to allow Signature to proceed with its Indemnity Litigation in order to pursue a judgment only to the limits of ATA’s applicable insurance proceeds.

For the reasons set forth in the attached Memorandum, the Court finds that ATA’s **Motion for Order to Show Cause for Violation of Plan Injunction** should be, and hereby is, **DENIED**.

**MEMORANDUM**

**JURISDICTION AND VENUE**

This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. The Motion concerns a core proceeding under 28 U.S.C. § 157(b)(2), and venue is proper under 28 U.S.C. §§ 1408 and 1409.

**FACTUAL BACKGROUND**

1. On February 1, 1996, ATA and Signature entered into a Ground Handling and Into-Plane Fuel Service Agreement (the “Agreement”). The Agreement included an indemnity provision that ATA would indemnify and defend Signature against personal injury lawsuits filed by ATA employees.
2. On January 23, 2003, Willie McCafferty (“McCafferty”), an ATA employee, had

a slip and fall accident while at work.

3. On January 20, 2004, McCafferty filed a lawsuit against Signature based on that slip and fall injury.
4. On October 26, 2004, ATA filed a petition for protection under Chapter 11 of the Bankruptcy Code (the “2004 ATA Bankruptcy Case”).
5. On December 10, 2004, Signature appeared in the 2004 ATA Bankruptcy Case.
6. On April 29, 2005, this Court granted ATA’s Motion to Assume Amended Agreement (the “Amended Agreement”) between ATA and Signature. The Agreement was one of the contracts included in the Amended Agreement.
7. On September 30, 2005, ATA filed its Joint Chapter 11 Plan of Reorganization (the “Plan”).
8. This Court established December, 26, 2005 as the last day to file claims against ATA (the “Claims Bar Date”).
9. On January 31, 2006, this Court entered a Chapter 11 confirmation order in this case for the Reorganizing Debtors<sup>2</sup>.
10. On December 12, 2007, Signature filed suit<sup>3</sup> against ATA in the United States District Court for the Middle District of Florida, Tampa Division alleging a cause of action for indemnity and breach of contract (the “Indemnity Litigation”).
11. On April 2, 2008, ATA Airlines, Inc. filed a voluntary petition for Chapter 11

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<sup>2</sup>The Reorganizing Debtors are: ATA Holdings Corp., ATA Airlines, Inc., ATA Leisure Corp., ATA Cargo, Inc., and American Trans Air Execujet, Inc.

<sup>3</sup>Case No. 8:07-cv-2219-T24-MSS

protection under the Bankruptcy Code<sup>4</sup> (the “2008 ATA Bankruptcy Case”).

12. On October 27, 2008, this Court entered an order in the 2008 ATA Bankruptcy Case lifting the automatic stay in that case to allow Signature to resume its Indemnity Litigation only as to the limits of ATA’s applicable insurance proceeds (the “2008 Order to Lift the Automatic Stay”).

### ANALYSIS

#### I. Signature’s contractual right to indemnification is a “claim” under Bankruptcy law.

The Bankruptcy Code definition of a claim includes a contingent right to payment. 11 U.S.C. § 101(5)(A). The definition of claim is intended to be as broad as possible so that all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case, in order to permit the broadest possible relief. House Report No. 95-595, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 309 (1977). While the Bankruptcy Code does not specifically define a “contingent claim,” case law has established that “[a] contingent claim has been defined as a claim which has not yet accrued and which is dependent upon some future event that may never happen.” *In re Alzheimer & Gray*, 393 B.R. 603, 610 (N.D. Ill. 2008) citing *In re Bonnett*, 158 B.R. 125, 127 (Bankr. C.D. Ill. 1993). When parties agree in advance that one party will indemnify the other party in the event of a certain occurrence, there exists a right to payment, albeit contingent, upon the signing of the agreement. *In re Kewanee Boiler Corp.*, 297 B.R. 720, 734 (Bankr. N.D. Ill. 2003).

The original 1996 Agreement between ATA and Signature contained a contractual indemnification provision which included personal injury lawsuits by ATA employees. ATA and

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<sup>4</sup>Case No. 08-03675-BHL-11

Signature contemplated that an ATA employee might have a personal injury accident while working and that ATA would be obligated to indemnify Signature if such an accident occurred. Through the Agreement, ATA contracted that Signature would have a claim against ATA for indemnification against any legal liability for, among other things, claims and suits by ATA employees for personal injury. Upon the signing of the Agreement, Signature acquired a contingent right to payment on any future indemnification claims.

II. Under Illinois law, Signature's claim for indemnification arose pre-petition.

The time when a claim arises is determined by relevant non-bankruptcy law. A claim will be deemed to have arisen pre-petition if “the relationship between the debtor and the creditor contained all of the elements necessary to give rise to a legal obligation - ‘a right to payment’ - under the relevant non-bankruptcy law. *In re Manville Forest Prods. Corp.*, 209 F.3d 125, 129 (2d Cir. 2000) (quoting *In re Nat'l Gypsum Co.*, 139 B.R. 397, 405 (N.D. Tex 1992)). Forum selection clauses are generally valid and enforceable. *Muzamdar v. Wellness Int'l Network, Ltd.*, 438 F.3d 759, 761 (7<sup>th</sup> Cir. 2006). As such, the relevant non-bankruptcy law governing the time when Signature's claim for indemnification arose is, under the Agreement, Illinois law. The IATA Standard Ground Handling Agreement Annex B.1.0 Paragraph 10 reads “Notwithstanding the provisions of Article 9 of the Main Agreement, this Annex B.1.0 shall be construed, interpreted, and enforced in accordance with the laws of the State of Illinois.”<sup>5</sup>

Under Illinois law, [t]he right to indemnity set forth in a contractual provision is an express indemnity. *Dixon v. Chicago and North Western Transp. Co.*, 601 N.E.2d 704, 709 (Ill. 1992). In accordance with the principles governing contract construction and interpretation, an

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<sup>5</sup>Article 9 of the Main Agreement was deleted in total by Annex B.1.0 Paragraph 14.

indemnity contract with unambiguous language is interpreted by the plain language of the contract. *Higgins v. Kleronomos*, 459 N.E.2d 1048, 1051 (Ill. App. Ct. 1984). According to the Agreement, Signature contracted that “[ATA] shall not make any claim against [Signature] and shall indemnify [Signature] (subject as hereinafter provided) against any legal liability for claims or suits, including costs and expenses incidental thereto, in respect of ... injury or death of any employee of [ATA].” Standard Ground Handling Agreement 1998 Paragraph 8.1. Signature and ATA had an express contract for indemnity against liability for personal injury lawsuits by ATA employees.

Illinois follows the general rule that a cause of action for contractual indemnification accrues when the covenant of indemnity is breached by the indemnitor. *Carroll v. Acme-Cleveland Corp.*, 955 F.2d 1107, 1113 (7<sup>th</sup> Cir. 1992). Where the contract is one of indemnity against liability, an action may be brought as soon as the liability is incurred. *In re Marriage of Hopwood*, 882 N.E. 2d 205 (Ill. App. Ct. 2008)(quoting 41 Am.Jur.2d *Indemnity* §24, at 443 (2005)). McCafferty filed his personal injury lawsuit against Signature on January 20, 2004. ATA filed for bankruptcy protection on October 24, 2004. Therefore, under Illinois law, Signature’s indemnity claim against ATA accrued pre-petition.

III. Signature committed a technical violation of the discharge injunction.

On January 31, 2006 this Court entered the Plan Confirmation Order. Pursuant to plan confirmation, 11 U.S.C. §1141 discharged ATA from any debt that arose before the date of confirmation whether or not a proof of claim based on such a debt is filed or deemed filed under section 501 of the Bankruptcy Code. ATA’s discharge included a discharge of Signature’s claim for indemnity based on McCafferty’s lawsuit. Section 524(a)(2) of the Bankruptcy Code provides

that “[a] discharge in a case under this title - operates as an injunction against commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived.” In the Plan Confirmation Order this Court issued an injunction which enjoined all persons who held claims from commencing or continuing in any manner any claim, action or other proceeding of any kind with respect to any claim against ATA. Plan Confirmation Order, p.22, ¶ 9.

Although Signature appeared and moved this Court to lift the automatic stay in the 2008 ATA Bankruptcy Case, the 2008 Order to Lift the Automatic Stay specifically noted that “[t]his Court makes no determination at this time as to whether any claim brought by [Signature] survives the injunction imposed by ATA’s Chapter 11 Plan for Reorganization entered on January 31, 2006 and entry of this order is without prejudice to any request by the parties for the Court to make any such determination.” Absent a court determination that Signature’s claim for indemnity against ATA could survive the injunction, Signature’s commencement of the Indemnity Litigation was a violation of the §524(a)(2) discharge injunction.

IV. This Court declines to impose sanctions for Signature’s technical violation of §524 and grants Signature relief to pursue the Indemnity Litigation to collect insurance proceeds.

Awarding sanctions under §524 is discretionary by the court. *In re Zabel*, 249 B.R. 764, 770 (Bankr. E.D. Wis. 2000). Although Signature knew of the discharge granted ATA when it filed the Indemnity Litigation, this Court does not believe Signature’s actions were done in bad faith. Signature’s violation stems from its failure to seek leave from this Court in the 2004 ATA Bankruptcy Case to pursue its Indemnity Litigation. Signature commenced the Indemnity Litigation to establish ATA’s liability as a precondition to collect money only as to the limits of

ATA's applicable insurance proceeds. The §524 discharge injunction does not preclude a determination of the debtor's liability on the basis of which indemnification would be owed by another party. *Matter of Shondel*, 950 F.2d 1301, 1306 (7<sup>th</sup> Cir. 1991). Section 524(e) explicitly provides that a debtor's discharge "does not affect the liability of any other entity on, or the property of any other entity for, such debt". *Id.* Section 524(e) was intended for the benefit of the debtor but was not meant to affect the liability of third parties or to prevent establishing such liability through whatever means required. *Id.* at 1307.

Signature's litigation to collect insurance proceeds is allowable as a determination of ATA's liability for the purpose of recovery from an insurer. *Id.* (citing *In re Jet Florida Systems, Inc.*, 883 F.2d 970 (11<sup>th</sup> Cir. 1989)). There is no harm to the debtor by allowing the Signature Indemnity Litigation to go forward. The determination [of liability] will not deplete the debtor's assets, interfere with the administration of the bankruptcy proceeding, or hinder the debtor's fresh start at the close of the proceeding. Rather it will operate only as a 'prerequisite to recovery against another entity.' *Shondel* at 1307 (quoting *In re Fernstrom Storage & Van Co.*, 938 F.2d 731 (7<sup>th</sup> Cir. 1991)).

#### CONCLUSION

Signature's indemnity action against ATA was a pre-petition claim. Signature was barred by the §524 discharge injunction from commencing suit against ATA on account of its indemnity claim. The Indemnity Litigation Signature filed in Florida was a technical violation of the discharge injunction, however, because Signature only seeks to recover from ATA's insurer, the discharge injunction should not prevent it from proceeding with the litigation. Accordingly, the Motion for Order to Show Cause for Violation of Plan Injunction is DENIED and Signature is



granted relief to pursue the Indemnity Litigation.

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