UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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| IN RE: | ) | Chapter 11 |
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| ATA HOLDINGS CORP., et al.[1] | ) | Case No.: 04-19866 |
| | ) | |
| Debtors. | ) | |

**THE INDIANAPOLIS AIRPORT AUTHORITY'S (I) MOTION TO COMPEL THE DEBTORS TO SEGREGATE AND REMIT PASSENGER FACILITY CHARGES AND (II) LIMITED OBJECTION TO FIRST DAY CASH COLLATERAL MOTION**

The Indianapolis Airport Authority ("IAA"), by and through counsel, for its *Motion to Compel the Debtors to Segregate and Remit Passenger Facility Charges and Limited Objection to First Day Cash Collateral Motion*, states as follows:

**Procedural History and Factual Background**

1. On October 26, 2004, the Debtors filed their voluntary Petitions for Relief under Chapter 11 of the Bankruptcy Code (the "Petition Date"). The Debtors continue to operate their businesses and manage their assets as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

2. On the Petition Date, the Debtors filed, among other things, their *First Day Cash Collateral Motion* ("Cash Collateral Motion") and their *First Day Motion for Order Authorizing the Debtors to Pay Taxes, Transportation Taxes, Fees and PFCs* ("Taxes Motion").

2. The IAA operates the Indianapolis International Airport and is a creditor and

[1] The Debtors are 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 Chicago Express Airlines, Inc., and, contemporaneously with the filing of their Petitions for Relief, the Debtors filed a *First Day Motion for Joint Administration* pursuant to Fed.R.Bankr.P. 1015(b), in which the Debtors have sought an order directing the joint administration of the Debtors' cases for procedural purposes. The relief requested in this Motion and Limited Objection is sought against each of the Debtors and, pending the resolution of the Debtors' *First Day Motion for Joint Administration* or further request from the Court, in lieu of filing separate requests for relief against each Debtor in each Debtor's respective case, this Motion is being filed only in the case initiated by ATA Holdings Corp.

party-in-interest in this case.

3. The Debtors have used, and continue to use, the IAA's facilities in the operation of their businesses by, among other things, causing passenger aircraft to land at and takeoff from the Airport; using Airport terminal space, including gates, offices, baggage and ramp areas; using non-terminal space, such as cargo areas and aircraft parking spaces; and using Airport equipment, including common use baggage handling equipment and check-in equipment.

**Summary of the Debtors' Obligation to Collect and Remit Passenger Facility Charges**

4. Passenger Facility Charges ("PFCs") were established under 49 U.S.C. § 40117 and are governed by detailed Federal regulations found at 14 C.F.R. § 158. PFCs are trust funds collected by air carriers, or an agent of the carrier, from passengers at the time tickets are purchased and held for the beneficial interest of the eligible agency imposing the fee, in this case the IAA.

5. Under the PFC regulatory scheme, the Debtors and their agents collect PFCs and hold them for the benefit of the IAA. The PFCs are trust funds from the moment of collection from the passenger and the proceeds are used by the IAA for airport development.

6. On a monthly basis, the Debtors accrue an aggregate average of $335,654.08 in PFC's due and payable to IAA.

7. In the past, the Debtors have complied with the accounting and remittance requirement of the PFC regulations, however, the Debtors are currently obligated to pay for PFCs for the month of September, 2004, and will presumably continue to accrue obligations thereafter. Based upon the information currently available, the IAA estimates that the Debtors' unpaid PFC obligation is an aggregate total of approximately $211,000.00.

## **Request for Segregation and Remittance of PFCs**[2]

8. PFC's, like excise taxes, are not property of the estate, but rather property held in trust. See Begier v. United States, 493 U.S. 53, 67 (1990). Congress designed the PFC statute to require air carriers to collect PFCs, hold them in trust, account for them, and remit them, less handling costs, on a timely basis to approved airports. PFCs are trust funds from the moment of collection from the passenger. Air carriers, including the Debtors, have no equitable or legal interest in the PFCs.

9. While the bankruptcy estate includes all property of the Debtors, it only includes such property to the extent of the Debtors' equitable interest in such property. See 11 U.S.C. § 541(d). Generally, if a debtor holds funds in trust, the funds are excluded from the debtor's bankruptcy estate and are immediately payable to the trust beneficiary. See In re Columbia Gas Systems, Inc., 997 F.2d 1039, 1059 (3rd Cir. 1993).

10. As set forth above, the Debtors have no legal or equitable interest in the PFCs, and thus, the PFCs are not property of the estate pursuant to 11 U.S.C. § 541.

11. Pursuant to 49 U.S.C. § 40117(m), air carriers that have filed for protection under the Bankruptcy Code are required to segregate in a separate account PFCs equal to the average monthly liability for PFCs and air carriers are prohibited from granting any security or other interest in the PFCs held or commingling the PFCs with other funds.

12. The IAA is a beneficiary under a statutory trust and is entitled to the Debtors' immediate segregation and remittance of the PFC funds held by the Debtors in trust. Accordingly, the IAA respectfully requests that this Court enter an Order directing the Debtors to immediately segregate and remit all PFCs due to the IAA and, on a going forward basis, take all

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[2] The IAA has reviewed the Debtors' Taxes Motion, as filed on October 26, 2004, but submits that the same does not fully protect the interests of the IAA.

necessary and appropriate steps to ensure that Debtors segregate all PFCs collected postpetition on a daily basis, remit the same to the IAA on a monthly basis, and otherwise fully comply with all accounting and remittance requirements provided by 14 C.F.R. Part 158.

**Objection to Use of Cash Collateral**

13. Pursuant to Section 363(c)(2) of the Bankruptcy Code, the Debtors "may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless – (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of this title." 11 U.S.C. § 541.

14. Because the PFCs held by the Debtors (and to be collected by the Debtors) constitute trust funds held for the IAA, the IAA objects to the Cash Collateral Motion to the extent that such cash collateral includes the IAA's PFC trust funds and to the extent that the relief sought therein alters the IAA's rights with regard to the PFC trust funds as set forth herein.

WHEREFORE**,** IAA respectfully requests that the Court enter an order: (i) granting the IAA's Motion; (ii) directing the Debtors to immediately segregate and remit all PFCs due to IAA and, on a going forward basis, take all necessary and appropriate steps to ensure that Debtors segregate all PFCs collected on a daily basis, remit the same to the IAA on a monthly basis, and otherwise fully comply with all accounting and remittance requirements provided by 14 C.F.R. Part 158; (iii) denying the Debtors' request to use cash collateral to the extent such cash collateral includes PFC trust funds; and (iv) granting all other relief as is appropriate.

Respectfully submitted,

ICE MILLER

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served on the following via electronic mail and/or U.S. mail, first class postage prepaid, on the 27th day of October, 2004, addressed to:

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