

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re: ATA Holdings Corp. et al, ¹)	Chapter 11
)	
)	Case No. 04-19866
Debtors.)	(Jointly Administered)

**MOTION FOR ORDER UNDER 11 U.S.C. §§ 105(a) AND 363(b)(1)
AUTHORIZING THE DEBTORS TO IMPLEMENT
A KEY EMPLOYEE RETENTION PLAN FOR KEY EMPLOYEES**

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors") hereby file this motion (the "KERP Motion") seeking entry of an order authorizing Debtors to implement a key employee retention plan for certain of its key employees. In support of this KERP Motion, the Debtors rely, respectively, on the Affidavits of J. George Mikelsons and James W. Hlavacek In Support of Chapter 11 Petitions, First Day Application and Motions and Certain Other Motions With Respect to Which Debtors Seek Expedited Relief, the Affidavits of Michael Kennelly and William O'Donnell In Support of Motion for Order Under 11 U.S.C. §§ 105(a) And 363(b)(1) Authorizing the Debtors to Implement a Key Employee Retention Plan for Key Employees, and may present additional evidence at the hearing on the KERP Motion. In further support of the KERP Motion, the Debtors respectfully state as follows:

Jurisdiction

1. On October 26, 2004 (the "Petition Date"), each of the Debtors filed with the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division

¹ The Debtors are the following entities: ATA Holdings Corp. (04-19866), ATA Airlines, Inc. (04-19868), Ambassador Travel Club, Inc. (04-19869), ATA Leisure Corp. (04-19870), Amber Travel, Inc. (04-19871), American Trans Air Execujet, Inc. (04-19872), ATA Cargo, Inc. (04-19873), and Chicago Express Airlines, Inc. (04-19874).

(the "Bankruptcy Court"), its respective voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the "Bankruptcy Code") commencing the above captioned Chapter 11 cases (the "Chapter 11 Cases"). The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. No trustee or examiner has been appointed in these Chapter 11 Cases. On or about November 1, 2004, the United States Trustee ("UST") appointed an official committee of unsecured creditors (the "UCC") pursuant to §1102 (a)(1) of the Bankruptcy Code. An application of the Committee to employ Akin Gump Strauss Hauer & Feld LLP as counsel is pending.

3. This Court has jurisdiction over this KERP Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. The statutory bases for the relief requested herein are Sections 363(b), 1107 and 1108 of the Bankruptcy Code.

Background

5. In 1973, J. George Mikelsons founded the precursor to ATA Airlines, Inc. ("ATA"), in Indianapolis, Indiana. Today, ATA Holdings Corp. ("ATAH") and its wholly-owned direct and indirect subsidiaries operate the tenth largest passenger airline in the United States. Operating a fleet consisting of eighty-four aircraft, ATA is a leading provider of low-cost scheduled airline services, is one of the largest commercial charter airline in the United States and is one of the largest providers of passenger airline charter services to the U.S. military. ATA currently provides scheduled service primarily from its gateway cities of Chicago-Midway and Indianapolis to popular vacation and business destinations such as Phoenix, Las Vegas, Florida,

California, Mexico and the Caribbean, as well as to New York's LaGuardia Airport, Philadelphia, Denver, Dallas-Ft. Worth, Washington, D.C., Boston, Seattle, Minneapolis-St. Paul, Newark, Charlotte and Pittsburgh. ATA also provides transpacific service between the Western United States and Hawaii. ATAH's wholly-owned subsidiary, Chicago Express Airlines, Inc. ("Chicago Express") provides commuter passenger scheduled service between Chicago-Midway and the cities of Indianapolis, Dayton, Des Moines, Flint, Grand Rapids, Madison, Milwaukee, Moline, Toledo, South Bend and Fort Wayne. ATAH's other subsidiaries are Ambassadors Travel Club, Inc., ATA Leisure Corp., Amber Travel, Inc., American Trans Air ExecuJet, Inc. and ATA Cargo, Inc. As of the Petition Date, the Debtors employed a staff of approximately 7,324 full- and part-time personnel, of whom approximately 3,550 were employed under collective bargaining agreements.

6. The geopolitical impact of the conflict in the Middle East and generally weak economic conditions of the past several years have adversely affected the airline industry as a whole, and have caused many airlines, including ATA and Chicago Express, to suffer massive financial losses since 2001. This trend continues in 2004, as the industry and ATA experience a very weak revenue environment and substantially increased fuel costs. These conditions have caused several air carriers, including United Airlines, American Airlines, Delta Airlines, Hawaiian Airlines, and US Airways, to seek bankruptcy protection or warn that bankruptcy may be in the offing.

7. ATA faces a competitive pricing environment that includes extraordinary fare discounting by several airlines in many of the scheduled service markets that ATA serves. At the same time, jet aviation fuel prices have escalated far beyond any price per gallon previously experienced on a sustained basis by the air carrier industry and far beyond the

increases expected by ATA. In addition, the highly destructive hurricanes and tropical storms which hit Florida and the Southern coast of the United States in the third quarter of 2004 had a very severe and continuing impact on ATA's revenues as a significant portion of the scheduled service routes of ATA serve these hard-hit areas of the United States.

8. A significant portion of ATA's current leases of aircraft were negotiated with higher payments in early years in order to reduce total rental costs over the related lease terms. These large cash payments made in 2003 and 2004 resulted in substantial use of ATA's cash.

9. ATA has taken many measures to prevent the filing of the Chapter 11 Cases, including working with its three major lessors to restructure its lease obligations. ATA also has sought to reduce costs through, among other measures, negotiating labor cost reductions under its collective bargaining agreements, implementing pay reductions for its non-union employees and substantially reducing the number of employees. In addition to cutting costs, ATAH has conducted an exhaustive search for buyers for certain of ATAH's significant assets, such as the Chicago Midway operations of ATA and Chicago Express, as well as for ATA as a whole. Despite its cost-cutting efforts, Debtors will realize an overwhelming net loss for the full year of 2004.

10. Coincident with the filing of the Chapter 11 Cases, the Debtors asked the Court to approve a sale of "Midway Assets" to AirTran Airways, Inc. for \$87.5 million or to another buyer making a higher or better offer for such assets (the "AirTran Transaction"). On or around November 17, 2004, the Court entered an interim order approving debtor in possession financing procured by the Debtors in the amount of \$15.5 Million (the "DIP Financing Transaction"). The combination of the AirTran Transaction and the DIP Financing Transaction

provide liquidity and business arrangements that will allow ATA and Chicago Express to continue normal airline operations for the foreseeable future and provide a springboard for a successful reorganization of ATAH and the affiliated Debtors.

Relief Requested

11. By this Motion, Debtors seek entry of an order pursuant to Sections 105(a) and 363(b)(1) of the Bankruptcy Code authorizing Debtors to implement a key employee retention plan ("KERP") for certain of their employees and to pay, in their sole discretion and without further order of the Court, amounts earned and due under the KERP as authorized by this Court. A copy of the form of the KERP agreement is attached hereto as Exhibit A and incorporated herein by reference.²

12. Prior to the Petition Date, due to the uncertainty surrounding the Debtors' restructuring efforts as well as its financial condition and compelling need to assure the retention of key employees, the Debtors decided it must consider implementing a KERP to retain and motivate its key executives and employees. Accordingly, the Debtors and their counsel asked Huron Consulting Group ("Huron") to assist them addressing compensation issues and developing a retention plan for key employees, benchmarked against competitive practices.

13. To determine the overall competitiveness of the proposed KERP, Debtors, with the support of Huron, ascertained, among other things, to what extent and under what circumstances the Debtors' existing compensation structure and terms would need to be supplemented to positively influence certain of its employees to remain employed by Debtors

² By separate motion, Debtors have asked that Exhibit A be filed and maintained under seal with its contents shared only with the United States Trustee, counsels for the UCC, any DIP lender, the ATSB, and the participants in debt Tranches A and B, and will be served on any other party only upon motion and after notice and hearing, after such party demonstrates cause and agrees to keep such information confidential.

through this period of economic adversity. The KERP proposed herein is the result of Debtors' analyses.

Key Employee Retention Plan

14. Debtors propose to implement the KERP with respect to certain of their senior management and executive employees who are key to the operations and reorganizations of Debtors (individually, a "Key Employee" and collectively, the "Key Employees"). The KERP is the aggregation of agreements between the Debtors and each Key Employee respectively, providing generally for retention incentives. The Key Employees are listed by name and title on Exhibit B, which is incorporated herein by this reference.³ The Debtors presently identify 47 individuals whom they view as qualifying as a Key Employee.

15. The principal purpose of KERP incentives is the preservation of enterprise value. Debtors consider the Key Employees to be among their most valuable assets. The Key Employees possess unique skills, knowledge and experience that are vital to the business enterprise and, in many cases, impracticable to replicate given their intimate familiarity with Debtors' operations and the difficult circumstances under which Debtors currently are operating. The continued employment, dedication and motivation of the Key Employees are essential to preserving the value of Debtors' estates and their non-debtor subsidiaries, by ensuring the continued prosperity of the various ongoing businesses. The Key Employees are also vital to the success of the entire reorganization effort. The KERP provides the Key Employees with the necessary assurance that they will be rewarded for their continued, dedicated service during Debtors' reorganization.

³ Exhibit B is also subject to the "seal" motion described in footnote 1 above. The Debtors, however, have identified the Tier I Key Employees in a Form 8K filing, and, accordingly disclose the current Tier I Key Employees to be James Hlavacek, Gilbert Viets, William Beal, and John Happ; J. George Mikelsons also was among the Tier I Key Employees as identified in the Form 8K, however, Mr. Mikelsons has declined to participate in the KERP as set forth in further detail in paragraph 16 hereof.

16. The Key Employees as originally identified and approved by the Debtors' Executive Committee included J. George Mikelsons, the Debtors' founder, Chairman, President and CEO, as one of the "Tier I" Key Employees, as described in paragraph 18(c) below. While Mr. Mikelsons believes approval and implementation of the KERP is vital to the success of Debtors' ongoing operations and reorganization efforts and that the Key Employees are deserving of participation in the KERP, Mr. Mikelsons has advised the Debtors and their counsel that he declines to participate in the KERP. Mr. Mikelsons' position on this matter is highly personal; he has refused numerous raises and bonuses since 1992 and believes that now is not the time for him to accept retention incentives.

17. Debtors would also advise the Court that originally 51 employees were identified as Tier I through III Key Employees. Only 47 such employees are the subject of this KERP Motion as, in addition to Mr. Mikelsons' decision not to accept the Incentives, since the Petition Date, two senior executives originally identified as Tier I participants have submitted their resignations and one Tier III Director has already resigned to pursue other opportunities.

18. The terms and conditions of the KERP as they apply to the individual Key Employees are more fully set forth on Exhibit A. The following are among the general terms and conditions:

a. The KERP incentives for the Key Employees respectively shall be retention incentives in an amount equal to the Key Employee's 2004 annual salary in effect on October 1, 2004 (hereafter, the "Annual Salary"), multiplied by a factor up to 100%, dependent on the Key Employee's position (respectively, the "KERP Amount"). The approximate total cost of the KERP is \$4.5 million. Such approximate total cost is 0.29% of Debtors' 2003 total revenue, which is in line with comparable companies under comparable conditions.

b. The Retention Incentives, as defined below, to the Key Employees will be earned as follows: (i) the right to receive the first retention incentive will be earned upon the earliest of (i) February 28, 2005, (ii) the date of termination of the Key Employee's employment by the Company for any reason, including death or permanent disability, or the termination of the Key Employee for "Good Reason,"⁴ but not including a termination of the Key Employee's employment by the Company by reason of "Cause," as defined in Exhibit A (the date of any such termination being herein called the "Termination Date"), and (iii) the confirmation of a plan of reorganization for the Company in the Chapter 11 Cases, in the amount of 50% of the Key Employee's KERP Amount (the "First Retention Incentive"); and (ii) the right to receive the second retention incentive will be earned upon the earliest of (i) confirmation of a plan of reorganization for the Company in the Chapter 11 Cases, (ii) October 15, 2005, and (iii) the Termination Date in the amount of 50% of the Key Employee's KERP Amount (the "Second Retention Incentive"). (The First Retention Incentive and the Second Retention Incentive are collectively referred to as the "Retention Incentives" and singly as a "Retention Incentive").

c. The KERP provides for a four tier structure with each tier identifying the present position level of the identified Key Employees within that tier and the attendant multiple by which the Retention Incentives for each such Key Employee within that tier will be calculated. (Hereafter, the Tiers will be identified as "Tier I," "Tier II," "Tier III" and "Tier IV"). The Key Employees in Tier I ("Tier I Employees") will earn the right to receive Retention Incentives aggregating 100% of participants' Annual Salary respectively. The Key Employees in Tier II ("Tier II Employees") will earn the right to receive Retention Incentives aggregating 75% of participants' Annual Salary respectively. The Key Employees in Tier III ("Tier III

⁴ "Good Reason" is defined in the KERP agreement generally as events signifying a demotion or material reduction in responsibilities or a reduction in compensation (by more than 5%) or employment benefits.

Employees") will earn the right to receive Retention Incentives aggregating between 40% and 75% of participants' Annual Salary respectively. Finally, Tier IV is designed to cover employees not initially named in the KERP, but subsequently deemed by the Debtors' Executive Committee as critical at any point during the Chapter 11 Cases (the "Tier IV Discretionary Employees"); Tier IV Discretionary Employees, upon being designated, earn the right to receive Retention Incentives up to 50% of participants' Annual Salary respectively; the total dollars available for distribution in Tier IV will be \$500,000.

d. Each of the Retention Incentives shall be paid to Employee by the Company in accordance with its normal payroll practices within three (3) days following the date each such Retention Incentive is earned. In addition, Retention Incentives shall be subject to all required payroll withholdings and deductions, including, but not limited to, federal, state and local taxes.

e. Notwithstanding anything in this Agreement to the contrary, if a Key Employee voluntarily terminates such employee's employment with the Company, except for Good Reason, or such employee's employment with the Company is terminated by the Company based on "Cause," the Key Employee shall not be entitled to earn the right to receive any Retention Incentives which have not yet become payable to the Key Employee. Thus, if a Key Employee remains an employee of the Company until March 1, 2005, and then voluntarily resigns on that date (except for Good Reason), such employee shall be entitled to receive the First Retention Incentive but not the Second Retention Incentive.

f. The failure of the Debtors to achieve confirmation of a plan of reorganization, though not anticipated, or other disposition, including liquidation, will not relieve the Debtors of their obligations under the KERP. Debtors have advised the Key Employees that

implementation of the KERP requires the approval of the Court.

19. The following table summarizes the current number of the KERP participants, their Retention Incentives and the estimated total cost of the KERP, Tier by Tier:

Employee Group	Tier	Number of Participants	Retention Incentive %	Retention Cost
CRO, Vice Chairman, Sr. VPs	I	4	100%	\$1,116,500
VPs	II	12	75%	\$1,537,242
Directors	III	31	40-75%	\$1,363,839
(Discretionary)	IV		up to 50%	\$500,000
TOTAL		>47		\$4,517,581

Basis for Relief

20. Debtors seek authority pursuant to Section 363(b)(1) of the Bankruptcy Code to implement the KERP. The KERP provides incentives to the Key Employees to remain with Debtors or their non-debtor subsidiaries, as the case may be, during the course of these Chapter 11 Cases and to contribute to Debtors' efforts to reorganize successfully.

21. The legal standard for approving key employee retention plans such as the KERP is clear and well established: "Bankruptcy courts will approve key employee retention plans if the debtor has used proper business judgment in formulating the plan and the court finds the plan to be fair and reasonable." In re Aerovox, Inc., 269 B.R. 74, 80 (Bankr. D. Mass. 2001). See also In re America West Airlines, Inc., 171 B.R. 674, 678 (Bankr. D. Ariz. 1994); In re Interco Inc., 128 B.R. 229, 234 (Bankr. E.D. Mo. 1991). Here, both of these requirements are satisfied, and the Court should approve the KERP.

22. Section 363(b) of the Bankruptcy Code provides in relevant part that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." A court can authorize a debtor to use property of the estate pursuant to section 363(b)(1) of the Bankruptcy Code when such use is an exercise of the debtor's sound business judgment and when the use of the property is proposed in good faith. See e.g., In re Delaware & Hudson R.R. Co., 124 BR. 169, 176 (D. Del. 1991) (adopting the "sound business purpose" test to evaluate motions brought pursuant to section 363(b)); see also Stephen Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986) (adopting the "sound business purpose" standard for sales proposed pursuant to section 363(b)); In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986).

23. The debtor has the burden to establish that a valid business purpose exists using estate property outside the ordinary course of business. See In re Lionel Corp., 722 F.2d 1063, 1070-71 (2d Cir. 1983). Once the debtor has articulated such a valid business purpose, however, a presumption arises that the debtor's decision was made on an informed basis, in good faith and in the honest belief the action was in the best interest of the company. See In re Integrated Resources, Inc., 147 BR. 650, 656 (S.D.N.Y. 1992).

24. Generally, courts authorize debtors to implement key employee retention plans because key employees are an essential component of a debtor's continued operations and successful reorganization. See In re America West Airlines, Inc., 171 BR. 674, 678 (Bankr. D. Ariz. 1994) (approving success bonuses to certain officers and employees as within debtor's sound business judgment); In re Interco Inc., 128 BR. 229, 234 (Bankr. E.D. Mo. 1991) (authorizing debtor to assume prepetition severance contracts and approving performance based retention plan to ensure critical employees remained with the debtor). Debtors believe in good

faith that the absence of a KERP would likely result in significant cost to the Debtors at this critical time in their reorganization process.

25. To maintain cohesive and motivated management teams during the reorganization process – particularly in large chapter 11 cases – debtors frequently implement various combinations of incentive compensation and/or retention plans. Without such plans, essential key employees will leave a debtor's employ as a result of other employment opportunities offering greater financial rewards and the uncertainties inherent in debtors' reorganization process. Recognizing these risks, employment and incentive plans have been authorized recently by other courts. See In re American Commercial Lines LLC, et al., Case No. 03-90305 (Lorch) (Bankr. S.D. IN 03-90305, 2003); In re Kmart Corporation, Case No. 02 B 02474 (Sonderby) (Bankr. N.D. Ill. January 22, 2002); In re Comdisco, Inc., Case No. 01 B 24795 (Barliant) (Bankr. N.D. Ill. July 17, 2001); In re Humphreys, Inc., Case No. 01 B 13742 (Ginsburg) (Bankr. N.D. Ill. April 18, 2001); In re LINC Capital, Inc., Case No. 01 B 03320 (Schmetterer) (Bankr. N.D. Ill., March 2, 2001); In re Enron Corp., Case No. 01-16034 (AJG) (Bankr. S.D.N.Y., May 8, 2002); In re WorldCom, Inc., et al., Case No. 02-13533 (Gonzalez) (Bankr. S.D.N.Y. Oct. 29, 2002).

26. Implementing the KERP has a sound business purpose: maximizing the value of the Debtors' estates and furthering their efforts to reorganize successfully. The Key Employees are experienced and talented business people who are intimately familiar with Debtors' businesses and can obtain employment elsewhere. Furthermore, it would be difficult – and expensive – without the KERP for Debtors to attract and hire qualified replacements if any of the Key Employees were to leave.

27. Moreover, such attrition would likely adversely affect Debtors' business operations. Such attrition also may lead to more losses, either as a result of employees who follow the employee to a new employer, or because of the resultant instability.

28. The KERP is designed to provide incentives sufficient to (a) retain the Key Employees and (b) to maximize the value of Debtors' estates. At the same time, keeping in mind the financial constraints under which Debtors operate, the KERP has been carefully structured to avoid unnecessary or excessive incentives. Thus, it is in the best interests of Debtors' estates and their creditors to implement the KERP.

29. In light of the foregoing, Debtors believe that the incentives provided under the KERP are reasonable and appropriate and enhance the prospect of retaining Key Employees and, ultimately, a successful result in these Chapter 11 Cases. For all of the foregoing reasons, the KERP should be approved.

Notice

30. The Debtors will provide notice of this KERP Motion by telecopy, electronic mail, overnight delivery service, or hand delivery, to the Core Group and the 2002 List.

No Prior Request

31. No previous request for the relief requested herein has been made to this Court in these Chapter 11 Cases.

WHEREFORE, the Debtors respectfully request that the Court grant the KERP Motion, enter an Order authorizing Debtors to implement the KERP for the Key Employees, and grant the Debtors all other just and proper relief.

Respectfully Submitted,

BAKER & DANIELS

By: /s/Terry E. Hall

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served this 9th day of December, 2004, by expedited service (facsimile, e-mail, and/or hand or overnight delivery) on the Core Group and the 2002 List that are the subject of the foregoing.

/s/Terry E. Hall