

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

|                     |   |                          |
|---------------------|---|--------------------------|
| In re:              | ) | Chapter 11               |
|                     | ) |                          |
| ATA AIRLINES, INC., | ) | Case No. 08-03675-BHL-11 |
|                     | ) |                          |
| Debtor.             | ) |                          |

**DEBTOR'S AMENDED OBJECTION TO  
PROOF OF CLAIM NUMBER 3841  
FILED BY AIRCRAFT SERVICE  
INTERNATIONAL**

|                             |  |
|-----------------------------|--|
| Hearing:                    | January 12, 2009<br>10:00 a.m. EST                                       |
| Location:                   | U.S. Courthouse<br>46 E. Ohio Street, Room 349<br>Indianapolis, IN 46204 |
| Telephonic<br>Participation |  |
| Dial-In:                    | 1-800-559-0863   |
| Passcode:                   | 5294867#   |

**THIS IS AN OBJECTION TO YOUR CLAIM. YOU SHOULD IMMEDIATELY CONTACT THE OBJECTING PARTY TO RESOLVE THE DISPUTE. IF YOU DO NOT REACH AN AGREEMENT, YOU MUST FILE A RESPONSE TO THIS OBJECTION AND SEND A COPY OF YOUR RESPONSE TO THE OBJECTING PARTY NO LATER THAN 3 DAYS PRIOR TO THE HEARING. YOUR RESPONSE MUST STATE WHY THE OBJECTION IS NOT VALID. IF YOU DO NOT FILE A TIMELY RESPONSE, YOUR CLAIM MAY BE DISALLOWED WITHOUT FURTHER NOTICE OR HEARING. IF YOU FILE A TIMELY RESPONSE, THE HEARING WILL BE A PRE-TRIAL CONFERENCE FOR THE PURPOSE OF SETTING DISCOVERY AND TRIAL DATES AND DEADLINES.**

Pursuant to Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), ATA Airlines, Inc. (the "Debtor") files its Amended Objection to Proof of Claim Number 3841 Filed by Aircraft Service International (the "Objection"). In support thereof, the Debtor respectfully represents as follows:

## **I. Jurisdiction**

1. This Court has jurisdiction to consider the Objection pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

## **II. Background**

2. On April 2, 2008 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the “Court”).

3. Prior to the Petition Date, the Debtor operated a diversified international passenger airline that operated in two principal business segments: (a) a low cost carrier operation that provided scheduled passenger service that leveraged a code share agreement with Southwest Airlines and (b) a charter operation focusing primarily on providing charter service to the United States government/military.

4. On August 7, 2008, the Court entered an Order Granting Motion to Establish a Bar Date for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof (the “Bar Date Order”). Pursuant to the Bar Date Order, the deadline for filing a proof of claim was established as October 2, 2008 at 5:00 p.m. prevailing Eastern Time.

5. On September 26, 2008, Aircraft Service International (“ASI”) filed a proof of claim, claim number 3841, against the Debtor’s bankruptcy estate (the “Claim”) asserting the following: (a) an administrative claim pursuant to Section 503(b)(9) in an amount of \$52,096.21 (the “503(b)(9) Claim”), (b) a secured claim in the amount of \$72,438.89 (the “Secured Claim”), and (c) a general unsecured claim of \$337,358.41.

### **III. Relief Requested and Applicable Authority**

6. The Debtor objects to the 503(b)(9) Claim because it is for deicing services, and to a much smaller extent fueling services for ground service equipment, provided by ASI to the Debtor. The deicing and fueling services rendered by ASI are properly characterized as a service rather than for goods sold to the Debtor. In fact, ASI's invoices themselves state they are for "Services provided" to the Debtor. The Debtor's transactions with ASI were not for the goods used in performing the deicing and fueling service, but rather for the deicing and fueling service itself. Section 503(b)(9) of the Bankruptcy Code provides that an administrative expense claim shall be allowed for "the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(9). ASI did not sell goods to the Debtor, but rather provided a service that is not entitled to administrative expense treatment pursuant to Section 503(b)(9).

7. The Debtor objects to the Secured Claim because there is no supporting documentation attached to the Claim. Upon information and belief, the Debtor is not aware of any statutory or contractual basis for ASI to have a valid and enforceable security interest in any property of the Debtor.

8. Accordingly, the Debtor seeks entry of an order reclassifying the amounts asserted in the 503(b)(9) Claim and the Secured Claim as general unsecured claims.

### **Reservation of Rights**

9. The requested relief is without prejudice to any claims or causes of action belonging to the bankruptcy estate, nor does it constitute any waiver of claims or causes of action belonging to the bankruptcy estate. The requested relief, including any recharacterization of the Claim,

does not constitute allowance of the Claim, and the Debtor expressly reserves the right to object to the allowance of the Claim. Additionally, the Debtor expressly reserves the right to amend, modify or supplement the Objection, and to file additional objections, both technical and substantive, to the Claim.

**No Prior Request**

10. No prior request for the relief set forth herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order granting the relief requested in this Objection and such other and further relief as may be just and proper.

Dated: December 3, 2008

BAKER & DANIELS LLP

/s/ Terry Hall

Terry E. Hall (#220421-49)  
300 N. Meridian Street, Suite 2700  
Indianapolis, Indiana 46204  
Tele: (317) 237-0300  
Fax: (317) 237-1000  
Email: terry.hall@bakerd.com

- and -

HAYNES AND BOONE, LLP

Kenric D. Kattner  
Texas Bar No. 11108400  
Blaine F. Bates  
Texas Bar No. 24029979  
Peter C. Ruggero  
Texas Bar No. 24044376  
1221 McKinney Street, Suite 2100  
Houston, Texas 77010  
Tele: (713) 547-2000  
Fax: (713) 547-2600  
Email: ATA@haynesboone.com

Judith Elkin  
Texas Bar No. 06522200  
Haynes and Boone, LLP  
153 East 53rd Street  
Suite 4900  
New York, New York 10022  
Tele: (212) 659-7300  
Fax: (212) 918-8989

*Counsel for ATA Airlines, Inc.*