

**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 MOTION TO ESTABLISH
PROCEDURES TO GATHER
SUPPORTING INFORMATION FOR
CUSTOMER CLAIMS PURSUANT TO 11
U.S.C. §§ 105(a) AND 507(a)(7).**

Hearing:	January 28, 2009 1:30 p.m. EST
Location:	110 U.S. Courthouse 121 West Spring Street New Albany, IN 47150
Telephonic Participation	
Dial-In:	1 -877-213-2541
Passcode:	5970866#

ATA Airlines, Inc. (the “Debtor”) files this Motion to Establish Procedures to Gather Supporting Information for Customer Claims Pursuant to 11 U.S.C. §§ 105(a) and 507(a)(7) (the “Motion”). In support of the Motion, the Debtor respectfully represents the following:

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This 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.

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 United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Court"). The Debtor continues to manage its property and assets as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

3. On April 16, 2008 the United States Trustee appointed the Unsecured Creditors' Committee (the "Committee").

4. Prepetition, 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.

5. Shortly after the bankruptcy filing, the Debtor decided to cease its business operations, after analyzing its fleet schedules and aircraft fleet, operating costs, relevant business goals and objectives, as well as available financing sources and business combination possibilities. As a result of the Debtor's ceased operations, customers who had purchased tickets prepetition for flights scheduled postpetition were unable to take their scheduled flights.

6. 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 (the "Bar Date").

7. ATA customers have filed approximately 1,100 proofs of claim that allege a priority and/or secured claim (the “Customer Claims”). The majority of these claims are for amounts paid for or related to flights scheduled with the Debtor that were cancelled as a result of ceased operations.

8. On December 16, 2008, the Debtor filed claim objections encompassing 300 of the Customer Claims on the grounds that they (i) are duplicate claims; (ii) assert an improper priority status or amount; (iii) request payment for amounts that are not entitled to priority; or (iv) have already received payment in the form of a refund from a credit card company or travel agency. These claim objections have been set for an initial pre-trial hearing on January 28, 2008.

9. A majority of the remaining Customer Claims (the “Unsupported Customer Claims”)¹ do not provide sufficient information to determine whether (i) they are entitled to priority payment as claims of individuals arising from the pre-petition deposit of money in connection with the purchase of services for personal, family or household use under section 507(a)(7) of the Bankruptcy Code; (ii) they have been filed in the correct amount, or (iii) they have been reimbursed by a credit card company, travel agency or otherwise.

10. As a part of this Motion, the Debtor requests authority to file an omnibus claim objection to *all* Unsupported Customer Claims (the “Omnibus Objection”). If the Court approves the requested relief, holders of Unsupported Customer Claims (the “Claimants”) will not need to formally respond to the Omnibus Objection to the extent they elect to follow the Customer Claim Procedures set forth in this Motion until further notified by the Debtor or this Court.

¹ Unsupported Customer Claims include any priority or secured claim filed for the refund of amounts paid for services provided by the Debtor which is not subject to an objection on other grounds as of January 1, 2009.

Relief Requested and Applicable Authority

A. The Customer Claim Procedures

11. The Debtor is aware of the burden that would be placed on the Claimants in responding to the Omnibus Objection, given the nature and amount of the Claimants' claims. Accordingly, the Debtor asks the Court to approve the procedures outlined in this Motion in order to establish a fair and efficient process to resolve the Debtor's objections to the Unsupported Customer Claims. These procedures will allow the Claimants to cure defects in their proofs of claim by providing additional information to the Debtor about the basis for the priority claim and amount asserted in order for the Debtor to determine which claims are valid and which claims are subject to continuing objection. In addition, the proposed procedures will allow the Claimants to cure the defects in their claims without being required to hire legal counsel, file responses with this Court to the Omnibus Objection and/or appear before this Court at the initial hearing on the Omnibus Objection.

12. The Debtor requests that the following procedures (the "Customer Claim Procedures") be approved:

- (i) The Debtor shall file and serve upon each Claimant the Omnibus Objection no later than January 16, 2009. In addition, the Debtor shall serve each Claimant with a Notice Setting Forth Customer Claim Procedures (the "Notice") in the form attached hereto as ***Exhibit A***, which describes these procedures and instructs the Claimants on how to respond to the Omnibus Objection. Each holder of an Unsupported Customer Claim will be required to complete the Customer Claim Information Form, in the form attached as Exhibit 1 to the Notice (the "CCI Form").

(ii) The CCI Form must be served on the Debtor (a) by email to ATA@haynesboone.com; (b) by fax to 713-236-5490, Attn: Kourtney Lyda, Esq.; or (c) by mail to 1 Houston Center, 1221 McKinney, Ste 2100, Houston, Texas 77010, Attn: Kourtney Lyda, Esq., so as to be received by the Debtor on or before ***February 13, 2009.***

(iii) The Court will conduct an initial hearing (the “Initial Hearing”) on the Omnibus Objection as soon as the Court’s schedule permits after February 13, 2009.

(iv) By signing a CCI Form, a Claimant affirms under penalty of perjury that the Unsupported Customer Claim is valid to the best of the Claimant’s knowledge and that the Unsupported Customer Claim has not been paid via refund or reimbursement from a travel agency or credit card company or any other source.

(v) The failure to properly complete and serve a CCI Form by the February 13, 2009, deadline will result in the disallowance of the applicable proof of claim.

(vi) Upon review of the CCI Form, the Debtor shall determine whether the information provided is adequate. At the Initial Hearing, the Debtor shall advise the Court (a) which Claimants failed to complete and serve a CCI Form; (b) which Claimants completed and served a CCI Form, but failed to provide sufficient information or documentation to support an allowable section 507(a)(7) claim; and (c) which Claimants completed and served a CCI Form with adequate information and documentation to support an allowable section 507(a)(7) claim.

(vii) At the Initial Hearing, the Debtor will seek entry of an order disallowing and expunging the claims of those Claimants who failed to complete and serve a

CCI Form. In addition, the Debtors will inform the Court of the status of all Claimants who filed and served a CCI Form, and ask the Court to set further hearings as appropriate.

13. Section 507(a)(7) of the Bankruptcy Code provides that seventh priority of payment should be given to:

[A]llowed unsecured claims of individuals, to the extent of \$2,425 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with . . . the purchase of services, for the personal, family or household use of such individuals, that were not delivered or provided.

11 U.S.C. § 507(a)(7).

14. Section 105(a) of the Bankruptcy Code authorizes the court to fashion orders and take actions that are necessary to further the substantive provisions of the Bankruptcy Code, like § 507(a)(7). *Placid Ref. Co. v. Terrebonne Fuel & Lube, Inc. (In re Terrebonne Fuel & Lube, Inc.)*, 108 F.3d 609, 613 (5th Cir. 1997) (“The language of this provision is unambiguous. Reading it under its plain meaning, we conclude that a bankruptcy court can issue any order . . . necessary or appropriate to carry out the provisions of the bankruptcy code.”); *U.S. v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986). Bankruptcy courts have the inherent power to take a multitude of actions to enforce the policies of the Bankruptcy Code under section 105(a). *See e.g., Davis v. Davis (In re Davis)*, 170 F.3d 475, 492, 492 n.6 (5th Cir. 1999) (explaining that a bankruptcy court has the inherent powers to enforce settlement agreements and void a debtor’s exemption to compensate the estate for the debtor’s contempt); *Smith v. Moody (In re Moody)*, 837 F.2d 719, 723-24 (5th Cir. 1988); *In re Davis*, 730 F.2d 176, 184 (5th Cir. 1984). Section 105(a) gives bankruptcy courts “broad powers, analogous to those of a court of equity, to protect the estate.” *In re Davis*, 730 F.2d at 183.

15. Approval of the Customer Claim Procedures is an appropriate exercise of the Court's inherent power under section 105(a) of the Bankruptcy Code. The Customer Claim Procedures will allow the Debtor to comply with section 507(a)(7) of the Bankruptcy Code and to ensure the payment of valid Customer Claims without placing an undue burden on the holders of such claims in responding to the Omnibus Objection.

16. The use of section 105(a) to approve the Customer Claim Procedures will give the Debtor the information it needs to answer all of the questions raised by section 507(a)(7) and to protect the estate from overpayment by ensuring that each holder of an Unsupported Customer Claim falls within the parameters of section 507(a)(7) and has not already received payment from a non-debtor source.

B. Authority to File the Omnibus Objection

17. Further, the Debtor requests authority to include its objection to all Unsupported Customer Claims in the Omnibus Objection.

18. Federal Rule of Bankruptcy Procedure 3007(e)(6) places a limit of 100 on the number of claims that can be included in an Omnibus Objection. If the Debtor is required to comply with this 100 claim limit, the Debtor would be required to draft eight (8) or more consecutively numbered omnibus objections to the Unsupported Customer Claims, even though the basis for the objections will be identical.

19. As a result, the Court will have to track and schedule hearings on at least eight (8) different omnibus objections as opposed to one. Any benefit to complying with Federal Rule of Bankruptcy Procedure 3007(e)(6) is outweighed by the burden placed on the Court, the Debtor, and Claimants by filing separate omnibus objections under these circumstances.

20. The Debtor requests that the Court order that the Omnibus Objection need not comply with the 100 claim limitation of Federal Rule of Bankruptcy Procedure 3007(e)(6).

Notice of the Motion

21. In accordance with the case management procedures established by the Court, notice of the Motion will be served on the parties identified on the Master Service List maintained in this bankruptcy case. Notice of this Motion will also be served on all Claimants.

WHEREFORE, the Debtor requests that the Court enter an order (a) approving and establishing the Customer Claim Procedures described in the Motion; (b) granting the Debtor authority to file the Omnibus Objection without complying with Federal Rule of Bankruptcy Procedure 3007(e)(6); and (c) granting such other legal and equitable relief to which the Debtor is justly entitled.

Dated: December 18, 2008

BAKER & DANIELS LLP

/s/ Terry E. 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
Doug H. Edwards
Texas Bar No. 24039307
1221 McKinney Street, Suite 2100
Houston, Texas 77010
Tele: (713) 547-2000
Fax: (713) 547-2600
Email: ATA@haynesboone.com

Counsel for ATA Airlines, Inc.