

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE:	)	
	)	Chapter 11
ATA HOLDINGS CORP., et al., <sup>1</sup>	)	Case No. 04-19866-BHL-11
	)	(Jointly Administered)
Debtors.	)	
_____	)	

**DEBTORS' REPLY TO OMNIBUS OBJECTION OF AMR LEASING CORP.  
REGARDING NOTICES OF REJECTION OF SIX SAAB 340B AIRCRAFT**

ATA Holdings Corp., et al., as debtors and debtors-in-possession (collectively, the “Debtors”), by counsel, hereby offer their reply to the “Omnibus Objection Of AMR Leasing Corporation To Notices Of Debtors’ Rejection Of Leases Pertaining To Tail Numbers: N312CE [Docket No. 1758]; N314CE [Docket No. 1759]; N315CE [Docket No. 1761]; N316CE [Docket No. 1766], N317CE [Docket No. 1767]; and N318CE [Docket No. 1768]” (the “Objection”) filed by AMR Leasing Corporation (“AMR”). By way of their reply, the Debtors state as follows:

**I. General Background**

1. On March 22, 2005 the Debtors filed notices of rejection for the leases pertaining to six (6) Saab 340B aircraft bearing U.S. Registration Numbers N312CE, N314CE, N315CE, N316CE, N317CE and N318CE (collectively, the “Aircraft”).
2. AMR filed the Objection on March 29, 2005. In the Objection, AMR asserts that the Court should condition the Debtors’ rejection of the Aircraft leases and surrender of the Aircraft on the following conditions: (a) the Debtors surrender the Aircraft to AMR in

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<sup>1</sup> 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).

Dallas/Fort Worth, Texas; (b) the Debtors surrender all associated engines, propellers, etc. with the Aircraft and that they be free and clear of all liens, claims, interests and encumbrances; and (c) that the Debtors satisfy all obligations under the Aircraft leases, including the return conditions.

3. As support for its Objection, AMR cites *In re Trans World Airlines, Inc.*, 145 F.3d 125 (3<sup>rd</sup> Cir. 1998) and states that judicial economy and § 1110(a) will be served by imposing such restrictions on rejection.

4. Because the Debtors' rejections of the leases pertaining to the Aircraft are not conditioned on compliance with § 1110(a) or any lease terms, the Debtors respectfully request that the Court deny the Objection and authorize and allow the Debtors' rejection of the leases pertaining to the Aircraft. Such rejection is indisputably a proper exercise of business judgment, which is the applicable standard under § 365 of the Bankruptcy Code.

## **II. Basis For Authorizing The Rejections And Denying The Objection**

5. Since the Objection was filed, the Debtors and AMR have reached an agreement whereby four of the Aircraft have been surrendered in Abilene, Texas. Furthermore, the Debtors have agreed to turn over all engines, spare parts, propellers, etc. to AMR at the time they surrender the Aircraft. Accordingly, major portions of the Objection should be denied as moot.

6. The balance of the Objection should be denied for the reasons stated below.

7. Section 1110(a) of the Bankruptcy Code provides that so long as a debtor cures all existing defaults under a lease and operates pursuant to the terms of the lease, the aircraft creditor is prohibited from repossessing the aircraft. In the event the debtor fails to abide by the terms of the lease, § 1110(c) provides that the debtor shall immediately surrender and return the property subject to the lease to the aircraft creditor.

8. Nothing in the text of § 1110 conditions rejection of a lease upon compliance with all of the terms of a lease. Instead, rejection of a lease remains governed by § 365 (*see In re Western Pacific Airlines, Inc.*, 221 B.R. 1, 10 (D. Colo. 1998) (“Nothing in the making of a § 1110 agreement prevents a trustee from later rejecting a lease, or formally assuming it under the terms of § 365.”)), which provides that rejection of leases is based upon the debtor’s business judgment and the interests of the estate, **not** with compliance with lease terms or the cure of any liens prior to rejection. *See In re G.I. Indus., Inc.*, 204 F.3d 1276, 1282 (9<sup>th</sup> Cir. 2000); and *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n.16 (8<sup>th</sup> Cir. 1997).

9. Applying the Objection’s requirements to the Debtors’ rejection would force the Debtors to undergo significant expense just to free themselves from leases which have become unnecessary and burdensome in light of the Debtors’ reorganization. This position goes against the whole purpose of § 365, which is to allow debtors to assume contracts which benefit the estate and to reject those which are burdensome to the estate.

10. The Third Circuit’s decision in *In re Trans World Airlines, Inc.* also fails to support AMR’s position as the case merely holds that a lessor may be entitled to an administrative claim for return conditions not performed prior to rejection. *In re Trans World Airlines, Inc.*, 145 F.3d at 142. It does not hold that a debtor’s rejection of an aircraft lease may be conditioned upon compliance with a lease’s return conditions.

11. Neither the Bankruptcy Code nor case law support AMR’s argument that the Debtors’ rejection of the Aircraft leases must be conditioned upon the removal of liens or compliance with the leases’ return conditions. At most, AMR might be entitled to an administrative expense in the amount of any unpaid post-petition maintenance charges.

12. Therefore, the Debtors respectfully request that the Court deny the Objection and authorize the Debtors' rejection of the leases pertaining to the Aircraft.

WHEREFORE, the Debtors respectfully request that the Court: (1) deny the Objection; (2) authorize and allow the Debtors' rejection of the leases pertaining to the Aircraft, effective as of March 29, 2005; and (3) grant the Debtors such other and further relief as the Court deems proper.

DATED: April 4, 2005

ATA HOLDINGS CORP., et al.,  
as debtors and debtors-in-possession,

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