

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

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

DEBTORS' OBJECTION TO JOHN HANCOCK CORPORATION'S MOTION FOR AN ORDER (A) COMPELLING DEBTORS TO COMPLY WITH THE ORDER AUTHORIZING DEBTORS TO REJECT CERTAIN AIRCRAFT EQUIPMENT, (B) FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE CLAIMS AND (C) GRANTING CERTAIN OTHER RELIEF

The debtors and debtors-in-possession (collectively, the "Debtors") in the above captioned chapter 11 cases (the "Chapter 11 Cases"), object (the "Objection") to John Hancock Corporation's Motion For An Order (A) Compelling Debtors To Comply With The Order Authorizing Debtors To Reject Certain Aircraft Equipment, (B) For Allowance And Payment Of Administrative Claims And (C) Granting Certain Other Relief filed by John Hancock Corporation ("Hancock") on April 8, 2005 (Docket No. 1886) (the "Motion").

Hancock's claims fail because (i) the Aircraft (as defined herein) provided no benefit to the Debtors during the first 59 days of the Chapter 11 Cases; (ii) the Rejection Effective Date (as defined herein) was January 3, 2005; and (iii) Hancock is impermissibly attempting to convert ordinary rejection damages into priority administrative expense claims.

BACKGROUND

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 these 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. On the Petition Date, the Debtor ATA Airlines, Inc., f/k/a American Trans Air, Inc. ("ATA") was leasing from Hancock (the "Lease") a Boeing 727-290ADV airframe (FAA Registration No. N775AT) (the "Leased Aircraft") and three Pratt & Whitney Model JT8D-17 engines (the "Leased Engines"). Debtors refer to the Leased Engines, the Leased Aircraft and all other property covered by the Lease as the "Aircraft".

3. ATA has not employed the Aircraft for several years, and the Leased Aircraft has been parked in the desert at AAR Aircraft Services in Roswell, New Mexico since October 20, 2001. On December 2, 2004, as part of their ongoing efforts to reduce costs and maximize fleet flexibility, and to relieve their estates of burdensome leases, the Debtors filed their Motion For Entry Of An Order Authorizing The Debtors To Reject Lease Aircraft Equipment (Docket No. 537) (the "Rejection Motion") seeking authority to reject the Lease.

4. On January 3, 2005, the Court entered the Order Authorizing The Debtors To Reject Certain Aircraft Equipment (Docket No. 1049) (the "Rejection Order"). The Rejection Order authorized the Debtors to reject the Lease effective as of the Rejection Effective Date. Paragraph 2 of the Rejection Order defined the Rejection Effective Date as the later of:

- (i) "date of this order"; and
- (ii) "the date of actual surrender and return of the Leased Aircraft, Leased Engines, and other rejected aircraft equipment (including all "equipment" as defined under

section 1110 of the Bankruptcy Code) (expressly including spare parts, if any, and all documents and records relating thereto)."

5. The Debtors surrendered possession of the Aircraft on November 30, 2004 by a letter dated that same day to Mr. David Santom of Hancock.

ARGUMENT

6. Hancock's Motion arises from its claims that the Debtors have failed to comply with the Rejection Order by, among other things, failing to return the Current Manuals (as defined in the Motion) and failing to install the Leased Engines in accordance with applicable regulations. Hancock claims that these facts mean the Rejection Effective Date has not yet occurred.

7. By way of a back door argument of whether the Lease was actually rejected Hancock asserts it is entitled to three distinct administrative expense claims. First, Hancock wants to be paid now for the first 59 days from the Petition date while the Leased Aircraft sat in the desert. Second, it wants to be paid now for all obligations under the Lease (that was rejected) arising on or after the 60th day following the Petition Date. Finally, it wants to be paid now damages stemming from the rejection.

8. Contrary to Hancock's Motion, the Debtors have surrendered possession of all existing leased equipment, thus the rejection of the Aircraft became effective on January 3, 2005 and Hancock is not entitled to the priority claims it asserts.

9. On preliminary investigation, the Debtors are unable to confirm Hancock's recitation of the facts it claims "prove" its assertion that the Rejection Effective date has not occurred.² However, the Debtors believe the Motion can be denied solely on the legal basis set

² For example, it appears that in January, 2005, Hancock's technical advisors expressly requested that the Leased Engines only be "3 pointed," meaning that the Leased Engines only be physically attached to the Leased Aircraft

forth herein. In the event the Court determines a factual determination is necessary, the Debtors request the Court continue these matters to an evidentiary hearing to allow time for appropriate discovery.

A. Hancock Is Not Entitled To An Administrative Expense Claim For The Debtors' "Use" Of The Aircraft During The First Sixty Days Following The Petition Date.

10. Hancock asserts an administrative expense claim "under Section 503(b)(1)(A) of the Bankruptcy Code for the 'fair use' of the Leased Aircraft and Leased Engines by the Debtors for the first 60 days following the Petition Date." Objection at fn6. Even assuming Hancock were entitled to an administrative expense claim for use of the Aircraft during the first 59 days of these Chapter 11 Cases³, in order for Hancock to establish a Section 503(b)(1)(A) administrative expense claim Hancock would have to prove that the Debtors' parking of the Leased Aircraft in the desert and storing the Leased Engines provided a benefit to the Debtors' estates. Hancock cannot prove such non-use of the Aircraft was beneficial to the Debtors' estates.

11. Section 503(b)(1)(A) provides that after notice and a hearing, the Court shall allow, administrative expenses including the actual, necessary costs and expenses of preserving the estate. 11 U.S.C. § 503(b)(1)(A). "It is axiomatic that because grants of administrative expense priority cut against the general goal in bankruptcy to distribute limited debtor assets equally among similarly situated creditors, statutory priorities, such as those resulting from administrative expense treatment, are narrowly construed." In re Adelpia

without all other necessary connections being made.

³ "Courts are divided on the issue of whether 11 U.S.C. §365(d)(10) eliminates a lessor's right to apply for an administrative expense claim for the first 59 days of a case." In re Rebel Rents, Inc., 291 B.R. 520, 533 (Bankr. C.D. Cal. 2003). The court in In re Kyle Trucking, Inc., 239 B.R. 198 (Bankr. N.D. Ind. 1999) held that the plain language of Section 365(d)(10) precludes a lessor from seeking administrative priority status for

Business Solutions, Inc., 296 B.R. 656, 662 (Bankr. S.D.N.Y. 2003). “It is similarly axiomatic that the party seeking administrative expense status bears the burden of establishing its entitlement to that status.” Id. The Court should not afford priority unless its is founded on a clear statutory purpose, and claims not comports with the language and purpose of Section 503 must fail. In re Jartran, Inc., 732 F.2d 584, 586 (7th Cir. 1984). “Any preference for claims not intended by Congress to have priority would dilute the value of the intended priority and thus frustrate the intent of Congress.” Id.

12. Hancock cannot meet the Seventh Circuit's two part test to determine whether a claim should be granted administrative priority. “[A] claim will be afforded priority under § 503 if the debt both (1) ‘arise[s] from a transaction with the debtor-in-possession’ and (2) is ‘beneficial to the debtor-in-possession in the operation of the business.’” Id. at 586-87 (quoting In re Mammoth Mart, Inc., 536 F.2d 950, 954 (1st Cir. 1976)). The Debtors have merely possessed the Aircraft, without using it, for over 3 years. Mere possession of leased equipment is insufficient to establish a benefit to the estate.

With respect to equipment leases, many courts have disallowed a claim for administrative expense status after finding that no actual use of the leased equipment was made by the debtor or trustee, thereby resulting in no benefit to the debtor's estate. *See General American Transp. Corp. v. Martin* (In re Mid Region Petroleum, Inc.), 1 F.3d 1130 (10th Cir.1993) (disallowed administrative expense claim; held that neither potential to benefit Chapter 11 debtor's estate nor mere possession was sufficient to grant administrative expense status for accrued rent under rail car lease agreement); *In re Dixie Fuels, Inc.*, 52 B.R. 26 (Bankr.N.D.Ala.1985) (since Chapter 11 debtor made no actual use of leased rock trucks prior to rejecting leases, payments due were not actual, necessary costs of preserving the estate); *In re Pickens-Bond Constr. Co.*, 83 B.R. 581 (Bankr.E.D.Ark.1988) (valued administrative expense at zero since Chapter 11 debtor did not use leased airplane between filing the petition and rejecting the lease);

obligations arising during the first 59 days following the filing date. Id. at 201.

In re Carmichael, 109 B.R. 849 (Bankr.N.D.Ill.1990) (lessor of irrigation equipment could receive only, as an administrative expense, the amount the Chapter 12 estate actually benefitted [sic] by possession of the equipment; since the equipment was not used, thereby conferring no benefit to the estate, the claim for administrative expense was not allowed); *In re Intran Corp.*, 62 B.R. 435 (Bankr.D.Minn.1986) (Chapter 11 debtor obligated only for actual use made of leased computer equipment and software; since leased property was not used, no administrative expense claim was allowed); *In re Templeton*, 154 B.R. 930 (Bankr.W.D.Tex.1993) (claim for rent by equipment lessor not entitled to administrative expense status where no benefit to Chapter 12 estate shown); *In re Vyvyan*, 55 B.R. 691 (Bankr.E.D.Wisc.1985) (no administrative expense status due to nonuse of leased farm equipment rendering no benefit to Chapter 7 debtor's estate).

In re Bridgeport Plumbing Products, Inc., 178 B.R. 563, 566 (Bankr. M.D. Ga. 1994); See also, *In re Templeton*, 154 B.R. at 933 ("Actual use, not mere possession, is a prerequisite to establishing an administrative priority claim. To hold otherwise ignores the plain meaning of the Bankruptcy Code, the function and purpose of § 503, and the Congressional scheme for distribution to creditors in bankruptcy.").

13. Because mere possession of the Aircraft has provided no benefit to the Debtors' estates, Hancock's claim for the allowance and payment of an administrative expense for the Debtors' "use" of the Aircraft during the first 59 days of these Chapter 11 Cases (assuming that such a claim is even cognizable under the Bankruptcy Code) must fail.

B. The Rejection Was Effective On January 3, 2005

14. Under the Rejection Order, the rejection of the Aircraft became effective on the later of: (i) the date of the Rejection Order; or (ii) the date the Aircraft was surrendered. The Debtors surrendered possession of the Aircraft on November 30, 2004 by a letter dated that same day to Mr. David Santom of Hancock. Thus, rejection of the Aircraft became effective on January 3, 2005, the date of the Rejection Order.

15. Arguing that the Rejection Effective Date has not occurred, Hancock claims it is entitled to an administrative expense claim under Section 365(d)(10) for Lease obligations that Hancock claims have continued to accrue. Section 365(d)(10) only requires the Debtors to timely perform Lease obligations coming due on or after the 60th day following the Petition Date until the Lease is assumed or rejected. 11 U.S.C. §365(d)(10). The Rejection Effective Date was January 3, 2005. Pursuant to the plain language of Section 365(d)(10) the Debtors' obligations thereunder ceased on January 3, 2005. The only Section 365(d)(10) obligations the Debtors may have to Hancock would have been those obligations coming due between December 24, 2004 (the 60th day following the Petition Date) and January 3, 2005, the Rejection Effective Date. No obligations under the Lease came due during this period.

16. The rejection of the Lease has become effective. The Debtors reinstalled the Leased Engines in the best practical way possible under the circumstances. The Leased Aircraft had been parked in the desert for three years. Moreover, the reinstallation of the Leased Engines in accordance with applicable regulations is not a condition precedent to the rejection of the Aircraft. The only condition precedent to rejection, as clearly stated in paragraph 2 of the Rejection Order, is that possession of the Aircraft be surrendered to the lessor. Any dispute over the completeness of the installation of the Leased Engines merely goes to the question of Hancock's general unsecured rejection damages, and such a dispute does not affect the determination of whether the rejection has occurred.

17. Hancock also claims that: "[p]rior to the Rejection Effective Date, the Debtors must therefore surrender and return to Hancock all equipment, parts and supporting documentation (including, without limitation, the Current Manuals) relating to the Leased Aircraft and the Leased Engines." Objection at ¶20. This is incorrect. The only reasonable

interpretation of the Rejection Order is that the Debtors were only required to surrender all equipment, parts and supporting documentation *in their possession* in order to effectuate the rejection of the Aircraft.

18. The Debtors have surrendered all manuals and documentation in their possession. Because the Aircraft is mothballed, they do not possess the Current Manuals. In addition, the Debtors have surrendered all parts relating to the Leased Aircraft and Leased Engines. Hancock maintains that the Debtors have failed to deliver parts crucial to the operation of the Leased Engines and have surrendered certain Unserviceable Parts, and, as a consequence, the Lease has not been effectively rejected. According to Hancock, the Lease cannot be rejected, and Section 365(d)(10) administrative priority obligations continue to accrue, until the Debtors actually go out on the open market and pay to acquire the Current Manuals and all parts necessary to install the Leased Engines in accordance with current regulations. Hancock's position is untenable and unfair to the Debtors' other creditors.

19. This Court has already rejected a substantially similar argument made by AMR Leasing Corporation ("AMR"). On March 22, 2005, the Debtors filed a number of notices of proposed rejection of leases with AMR for Saab aircraft (the "Saab Rejection Notices") (Docket Nos. 1758, 1759, 1761, 1767, and 1768). On March 29, 2005, AMR filed its omnibus objection to the Saab Rejection Notices (the "AMR Objection") (Docket No. 1821).

20. The Court held a hearing on the Saab Rejection Notices and the AMR Objection on April 4, 2005 (the "Hearing"). A true and accurate copy of the transcript of the Hearing (the "Transcript") is attached hereto as Exhibit A. At the Hearing, AMR argued that the

Rejection Procedures Order⁴ requires the Debtors to return rejected aircraft in good condition.⁵

Transcript at p.19. AMR stated:

The first aircraft has damage near the air cargo door and is grounded; it cannot fly until it is fixed.

It's also undisputed that a second aircraft is grounded at the hangar because one of the engines is sitting on hangar four with a compressor (unclear) problem. The rejection procedures order itself requires the debtor to reinstall original engines⁶, and we think it's a fair interpretation of the Court's order that if we started out with an engine in a functioning condition, that they ought to reinstall not bucket of bolts but a functioning engine. We think that's consistent with the Court's rejection procedures order.

We have already agreed to reinstall the original engine, and we're suggesting that it's a fair interpretation of the order that to reinstall the original engine means to reinstall a functioning engine. It would serve no purpose to reinstall an engine that is not functioning.

Id. at pp. 20-21.

21. Rejecting AMR's argument, the Court found that while the Rejection Procedures Order requires the Debtor to surrender possession of the original engine, it does not require surrender of a functioning engine as a condition precedent to the rejection becoming effective. Id. at p. 25. Instead, the Court noted that any claim for damages stemming from the

⁴ The Rejection Procedures Order is the Amended Order Authorizing And Approving Procedure For Rejection And Surrender Of Aircraft And Aircraft Engines Pursuant To 11 U.S.C. §§ 365 entered by the Court on December 17, 2004. The instant matter is governed by the Rejection Order rather than the Rejection Procedures Order, however, the relevant provisions are nearly identical in both orders.

⁵ AMR also argued that Section 1110(a) requires rejected aircraft in a certain manner. Section 1110(a) is not relevant in the instant matter because the Debtors did not enter into a "Section 1110(a) Agreement" with respect to the Aircraft.

⁶ The Rejection Procedures Order provides" "[t]o the extent the Debtors have (a) removed any of the rejected engines from the rejected aircraft in which they were originally installed; or (b) installed those rejected engines in other aircraft, the Debtors, at their own expense, shall reinstall such rejected engines, prior to the Rejection Effective Date, in the rejected aircraft in which they were installed. Rejection Procedures Order at ¶9. Paragraph 9 of the Rejection Procedures order is substantively identical to paragraph 7 of the Rejection Order.

failure to deliver rejected aircraft in the required condition was a separate issue to be taken up at the appropriate time. Id. at p. 24.

22. Hancock's position that the rejection of the Aircraft is not effective until the Current Manuals have been surrendered and Leased Engines have been installed in accordance with applicable regulations is inconsistent with the Court's determination at the Hearing. And, as discussed below, requiring the Debtors to expend estate resources to acquire parts, manuals or other equipment required to be returned pursuant to the Lease before the Lease can be rejected would convert ordinary rejection damage claims into administrative priority claims. That result would contravene fundamental policies of the Bankruptcy Code and would provide a windfall to Hancock to the detriment of the Debtors' other creditors.

C. Hancock Is Attempting To Convert Ordinary Unsecured Rejection Damages Into Priority Administrative Expense Claims.

23. Adopting Hancock's two contentions: (1) that the Rejection Effective Date cannot occur until the Debtors have both surrendered all equipment, including equipment that the Debtors do not even have, and reinstalled the Leased Engines in a certain manner; and (2) that Hancock is entitled to an administrative expense claim as a result of the installation of allegedly Unserviceable Parts, would have the effect of impermissibly converting ordinary rejection damages into administrative expense claims.

24. The Lease requires ATA to return the Aircraft (including certain documentation) in a specified condition. These Aircraft return conditions are found in both Section 16 and Exhibit D to the Lease. As noted by Hancock in the Motion, Section 16(c) of the Lease provides "Upon the return of the Aircraft, ... (ii) Lessee shall deliver to Lessor all logs, manuals, certificates and inspection, modification and overhaul records which are required to be

maintained with respect thereto under applicable rules and regulations of the FAA and Department of Transportation." Lease at §16(c). Section 16(a) of the Lease provides that the Leased Aircraft is to be returned "fully equipped with three Engines" meeting certain standards and specifications. Section 16(d) of the Lease states:

The Aircraft when returned to Lessor shall be in good operating condition and appearance, ordinary wear and tear excepted, shall have a valid FAA certificate of airworthiness for operations under Part 121 of the Federal Aviation Regulations, and shall be in compliance with Lessee's FAA-approved maintenance program and all Applicable Laws governing the possession and the use of the Aircraft in commercial air transport operations.

Lease at 16(d).

25. By their express terms, the cited obligations contained in Section 16 and Exhibit D to the Lease only arise upon return of the Aircraft. Therefore, even assuming that the Debtors have breached the provisions of Section 16 or Exhibit D, such a breach would only give rise to general unsecured rejection damages. It is well settled by many courts, including this Court, that a debtor's breach of return conditions contained in a rejected lease does not give rise to an administrative expense claim, but rather merely entitles the lessor to general unsecured rejection damages.

26. As noted above, as a general rule of bankruptcy policy, "[a]dministrative expense claims should be narrowly construed." In re Litho Specialties, Inc., 154 B.R. 733, 736 (Bankr. D. Minn. 1993). By contrast, a debtor has broad powers to relieve itself of burdensome executory contracts and unexpired leases. "[T]he authority to reject an executory contract is vital to the basic purpose of a Chapter 11 reorganization, because rejection can release the debtor's estate from burdensome obligations that can impede a successful reorganization." NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984), see also, Precision Indus. Inc. v. Qualitech Steel

SBQ, LLC, 327 F.3d 537, 545 (7th Cir. 2003); In re Chateaugay Corp., 10 F.3d 944, 954-55 (2d Cir. 1993). As Bildisco discusses, the central purpose of the rejection provisions of § 365 is to relieve a debtor from the burden of a disadvantageous executory contract or lease in aid of the debtor's effort to reorganize.

27. Section 365(g) states that "the rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease . . . immediately before the date of the filing of the petition."

The purpose of section 365(g) is to make clear that, under the doctrine of relation back, the other party to a contract that has not been assumed is simply a general unsecured creditor. The effect of the breach is to permit the creditor to seek allowance of its claim under section 502. . . . Thus, the effect of a rejection is that a breach is deemed to exist which in the ordinary case will give rise to a claim for damages. Rejection does not, however, affect the parties' substantive rights under the contract or lease, such as the amount owing or a measure of damages for the breach.

See 3 Collier on Bankruptcy (15th rev. ed. 1997) ¶365.09[1]; see also, In re Palace Quality Serv. Indus. Inc., 283 B.R. 868, 886 (Bankr. E.D. Mich. 2002).

28. Because the rejection is deemed a pre-petition breach, any damages resulting from the rejection of the lease should also be classified as pre-petition claims:

If the trustee elects to reject rather than assume an executory contract or unexpired lease, rejection will operate as a breach of the contract or lease *as of the date of the filing of the petition*. The other party to the contract or lease will typically have a prepetition general unsecured claim for its damages attributable to the breach.

4 Collier on Bankruptcy (15th rev. ed. 1997.) ¶ 503.06[6][c]m.

29. The Code is clear on this issue. Once rejected, any damages arising from the rejection are treated as *prepetition damages* and are not entitled to administrative priority.

Any damages Hancock may have resulting from the failure of the Debtors to return the Current

Manual, for alleged faulty installation of the Leased Engine, for the alleged installation or return of Unserviceable Parts, or the failure to return parts necessary to the operation of the Leased Engines only arise upon the Debtor's rejection of the Lease, and are therefore not entitled to administrative priority. A finding that the Rejection Effective Date cannot occur until the Leased Engines are in a certain condition and the Current Manuals have been returned would convert Hancock's ordinary rejection damages arising from the return condition of the Aircraft into priority claims.

30. The Court has recently held that a breach of lease return condition provisions does not give rise to an administrative expense claim. In In re American Commercial Lines, et al., (BHL) (Bankr. S.D. Ind.) Case No. 03-90305, the debtors leased ("chartered") a number of barges. The Debtors rejected the charters and the lessors made administrative expense claims under Section 365(d)(10), for among other things, the costs of off-charter surveys and for the costs of repairs to the barges. Id., *Findings Of Fact, Conclusions of Law And Order* (Docket No. 1593).

31. The Court found that the charters imposed lease-termination repair costs "only 'upon redelivery' and 'upon the expiration' of the Charters." Id. at ¶ F. Citing In re Muma Serv. Inc., 279 B.R. 478 (Bankr. D. Del. 2002), the Court found that claims for off-charter survey and repair expenses were not entitled to administrative priority because redelivery and expiration of the charters only occurred upon the debtors' rejection of the charters, thus, the off-charter survey and repair obligations did not arise on a current basis under the charters.⁷ The District Court affirmed in a detailed opinion. J. Russel Flowers, Inc. v. American Commercial

⁷ Other courts have found that damages arising as a result of a rejection are not administrative expense. E.g., In re Treasource Indus. Inc., 363 F.3d 994, 997 (9th Cir. 2004) (lessor not entitled to administrative expense claim for lessee's failure to remove personal property from leased premises because the removal obligations only arose upon termination or expiration of the lease).

Lines, LLC, (WGH) (S.D. Ind.) Case No. 4:04CV-0096, *Order Affirming In Part and Reversing/Modifying In Part The Bankruptcy Court's Grant Of Summary Judgment*.

32. ATA's obligations under the Lease to return all documentation relating to the Aircraft and to return the Aircraft in a certain condition only arise upon return of the Aircraft, which in this case is triggered by rejection. Such obligations do not arise in the postpetition pre-rejection period. As a result, any damages suffered by Hancock as a result of the allegedly defective condition of the Leased Aircraft, Leased Engines or any parts relating thereto or the failure of the Debtors to surrender the Current Manuals arise only as a result of the rejection. Such damages are not entitled to administrative priority, they are merely part of Hancock's rejection damages.

33. Hancock is not directly asking for the allowance of an administrative expense claim under Section 365(d)(10) for ATA's alleged failure to comply with the Lease's return condition requirements. Hancock's position is more subtle, but the effect is the same. Hancock's position requires the Debtors to expend estate resources in procuring the Current Manuals and all necessary parts and equipment to install the Leased Engines in accordance with applicable regulations before the rejection of the Lease is effective. Hancock is in essence asking for an administrative expense claim for damages arising from deficiencies in the return condition of the Aircraft. Damages for such deficiencies, if any, are properly characterized as ordinary unsecured rejection damages.

34. Hancock's position would undermine the important bankruptcy policy of distributing limited assets equally to similarly situated creditors. Hancock cannot establish any benefit to the Debtors estates for the Debtors' postpetition non-use of the Aircraft for the first 59 days of these Chapter 11 Cases, and is therefore not entitled to a Section 503(b)(1)(A)

administrative expense claim. The Rejection Effective Date has occurred pursuant to the plain language of the Rejection Order, and the effectiveness of the rejection is supported by a recent decision by the Court in these Chapter 11 Cases. Finally, Hancock's contention that the Rejection Effective Date has not occurred and that it is entitled to an administrative priority claim for the installation of allegedly Unserviceable Parts impermissibly characterizes ordinary unsecured rejection damages as priority claims.

WHEREFORE, the Debtors respectfully request that the Court deny the Motion.

Respectfully submitted,

BAKER & DANIELS

By: /s/ Jeffrey C. Nelson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 26th day of April, 2005, by electronic mail or overnight mail on the Core Group, 2002 List, Appearance List, and Hancock.

/s/ Jeffrey C. Nelson _____