

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:) Chapter 11
ATA HOLDINGS CORP., et al.¹)
) Case No. 04-19866

Debtors.)

**PRELIMINARY RESPONSE OF UNION PLANTERS BANK, N.A.
TO (1) DEBTOR'S THIRD MOTION FOR EXTENSION OF TIME TO
ASSUME OR REJECT UNEXPIRED LEASES OF NON-RESIDENTIAL REAL
PROPERTY, (2) OBJECTION THERETO FILED BY INDIANAPOLIS AIRPORT
AUTHORITY ("IAA") AND (3) MOTION TO COMPEL ASSUMPTION OR EJECTION
OF UNEXPIRED LEASE OF NON-RESIDENTIAL REAL PROPERTY FILED BY IAA**

Union Planters Bank, N.A. ("Bank"), by and through counsel, for its preliminary response states as follows:

1. The Bank supports the Debtors' Third Motion for Extension of Time to Assume or Reject Unexpired Leases of Non-Residential Real Estate filed on April 21, 2005 ("Third Motion"). The Bank's large financial interest in the Maintenance Facility Lease makes it an indispensable party in any transaction involving the Maintenance Facility Lease, but so far there has been a total absence of communication between the parties. Granting the Third Motion extending the time to assume or reject will facilitate communication and will enable the Bank to participate with the Debtor and IAA in determining the disposition of the Maintenance Facility Lease.

2. The Bank's preliminary response is addressed to issues relating to the Maintenance Facility Lease Agreement by and between the Debtor and IAA dated December 29, 1995 (as amended and supplemented the "Maintenance Facility Lease").

¹ The Debtors are the following entities: ATA Holdings Corp., ATA Airlines, Inc, Ambassadair Travel Club, Inc., ATA Leisure Corp., Amber Travel, Inc., American Trans Air Execujet, Inc., ATA Cargo, Inc., and Chicago Express Airlines, Inc.

3. The Maintenance Facility Lease secures the Debtor's obligations to the Bank in the approximate principal amount of \$10,889,454.55 pursuant to inter alia the following Loan Documents²:

(a) Leasehold Mortgage Security Agreement and Fixture Filing dated June 30, 1999 recorded July 7, 1999 in the Office of the Marion County Recorder as Instrument No. 1999-0128578;

(b) Assignment of Leases and Rents dated June 30, 1999 recorded July 7, 1999 in the office of the Marion County Recorder as Instrument No. 1999-0128579; and

(c) First Modification of Security Documents dated September 29, 2000 recorded October 3, 2000 in the Office of the Marion County Recorder as Instrument No. 2000-0155912.

4. The Bank has a properly perfected senior security interest in all of the Debtor's rights, title, and interests in and under the Maintenance Facility Lease ("Collateral").

5. On or about April 22, 2005, IAA filed pleadings in this Court alleging that an unidentified party had expressed an interest in the maintenance facility (but apparently not the office building which is also subject to the Maintenance Facility Lease) on terms generally equivalent to present payments under the Maintenance Facility Lease.

6. Under the Maintenance Facility Lease, the Debtor pays approximately \$6,779.00 per month for ground rent for the maintenance facility and the office building. On September 29, 2000, from loan proceeds advanced by the Bank, the Debtor paid \$10,000,000.00 to IAA thereby eliminating its obligation to pay any rent for the maintenance facility other than ground rent until termination of the Maintenance Facility Lease in 2035.

² Copies of the Loan Documents are attached to the Proof of Claim filed by the Bank on January 19, 2005.

7. Based upon the present terms of the Maintenance Facility Lease, the Bank believes that it is an extremely valuable asset with total rent of \$6,779.00 per month (less than .60¢ per square foot) being substantially under market for a 150,000 square foot maintenance facility.

8. The Bank has significant economic interests in the Collateral. The Debtor and IAA have recognized and acknowledged the rights of a Leasehold Mortgagee such as the Bank in Section 3.02 of the Maintenance Facility Lease, a copy of which is attached hereto and made a part hereof as Exhibit "A". Among other things, Section 3.02 grants to the Bank the right to assume the rights and obligations of the Debtor and to assign the Debtor's interest to a third party subject to the approval of IAA.

9. As previously stated, the Bank supports the Debtor's Third Motion whereby the time to assume or reject the Maintenance Facility Lease would be extended to no later than July 5, 2005, but would oppose further extensions. The disposition of the Maintenance Facility Lease is extremely complicated as evidenced by the fact that IAA's prospective tenant apparently intends to pay rent at the existing rate without taking into account the Debtor's \$10,000,000.00 payment to IAA financed by the Bank. This important and complex decision cannot and should not be made on ten (10) days' notice.

10. Furthermore, the Bank is an indispensable participant in that decision making process. Despite the fact that the Bank has a large financial interest in the Maintenance Facility Lease and despite the Bank being an indispensable party in any transaction involving the Maintenance Facility Lease, neither IAA nor the Debtors have engaged in any discussions with the Bank as to the disposition of the Collateral. Between now and July 5, 2005, the Bank, the Debtors, the IAA and the unnamed prospective tenant will have the opportunity to meaningfully address the issues raised by the disposition of the Maintenance Facility Lease. Since the Bank

has not been afforded the opportunity to participate in the process as it has the right to do, a decision other than to grant the Third Motion would be unfair and unduly prejudicial to the Bank.

11. The Bank reserves all of its rights and remedies, including but not limited to the right to supplement or amend this response as facts and circumstances are developed.

WHEREFORE, the Bank prays that the Debtor's Third Motion be granted on the terms and conditions set forth herein, and for such other relief as is just and proper.

Respectfully submitted,

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Professional Corporation

By: /s/ Jon B. Abels
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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2005, a true and correct copy of the foregoing was served upon the following parties via electronic means via the digital document delivery system established by this Court, via hand delivery, and/or U.S. First-Class United States Mail.

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