

IN THE 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  
) (Jointly Administered)  
Debtors. )

**MOTION ON SHORTENED NOTICE FOR ENTRY OF AN ORDER AUTHORIZING  
CHICAGO EXPRESS AIRLINES, INC. TO REJECT EXECUTORY CONTRACTS  
EFFECTIVE AS OF THE EFFECTIVE DATE**

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Chicago Express Airlines, Inc. (“Chicago Express”) one of the debtors and debtors in possession (collectively, the “Debtors”) in the above captioned chapter 11 cases (the “Chapter 11 Cases”), hereby files this motion (the “Motion”) for entry of an order authorizing Chicago Express to reject certain executory contracts pursuant to 11 U.S.C. § 365 effective as of the Effective Date (as defined herein). The proposed form of the order (“Order”) is attached hereto as Exhibit A.

In support of this Motion, Chicago Express states as follows:

**JURISDICTION**

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 (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

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<sup>1</sup> The Debtors are the following entities: ATA Holdings Corp. (04-19866), ATA Airlines, Inc. (04-19868), Ambassadair 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).

manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. No trustee has been appointed. On November 1, 2004, the United States Trustee appointed an official committee of unsecured creditors (the "Committee") pursuant to § 1102(a)(1) of the Bankruptcy Code.

3. On March 7, 2005, the Court approved the appointment of an examiner for Chicago Express with an explicit circumscribed scope pursuant to a consent agreement filed among the Debtors, the Committee and NatTel, LLC ("NatTel"). The examiner filed his report with the Court on March 31, 2005 (Docket No. 1752).

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

5. The statutory basis for the relief sought herein is Section 365(a) of the Bankruptcy Code.

### **BACKGROUND**

6. Pan Am International Flight Academy ("Pan Am") and Chicago Express are parties to that certain Exclusive Training Services Agreement dated May 1, 2003 (the "Pan Am Agreement"). Exhibit B to this Motion is a true and accurate copy of the Pan Am Agreement. The Pan Am Agreement provides that Chicago Express will exclusively use Pan Am for outside pilot training. The specific services, fees and terms and conditions of flight training are provided in Exhibits A, B and C to the Pan Am Agreement.

7. Chicago Express and the Bank of Blue Valley are parties to that certain Plain Language Equipment Lease (the "Bank Lease"), whereby Chicago Express leases deicing equipment from the Bank. Exhibit C to the Motion is a true and accurate copy of the Bank Lease.

8. Chicago Express and Aeronautical Radio, Inc. ("ARINC") are parties to that certain GLOBALink/VHF Aeronautical Data Communications Service agreement (the "Communications Service Agreement") and that certain Aeronautical Mobile (Air-Ground-Air) Ground Station Administration agreement (the "Air-Ground-Air Agreement"). The Communications Service Agreement and the Air-Ground-Air Agreement, along with all addendums, supplements or service orders related thereto are collectively referred to as the "ARINC Agreement." The Pan Am Agreement, the Bank Lease and the ARINC Agreement may be collectively referred to as the "Agreements." Exhibit D to the Motion is a true and accurate copy of the ARINC Agreement. Pursuant to the ARINC Agreement, ARINC provides Chicago Express with various radio communications services.

9. The Debtors have undertaken efforts to sell the assets and/or stock of Chicago Express. In connection with those efforts, on March 8, 2005 (Docket No. 1650), the Court approved the Debtors' retention of Compass Advisors, LLC ("Compass") *nunc pro tunc* to February 14, 2005 to market the assets of Chicago Express.

10. On March 14, 2005, Debtors filed their Emergency Motion To Establish Sale Procedures And For Approval Of Transaction(s) Concerning Chicago Express Airlines, Inc. (Docket No. 1718). The Debtors subsequently filed their Amendment To Emergency Motion To Establish Sale Procedures And For Approval Of Transaction(s) Concerning Chicago Express Airlines, Inc. on March 17, 2005 (Docket No. 1736) (collectively with Docket No. 1718, the "Chicago Express Transaction Motion"). The Chicago Express Transaction Motion was approved by the Court on March 21, 2005. The Chicago Express Transaction Motion established the Sale Procedures (as defined in the Chicago Express Transaction Motion).

11. Pursuant to the Sale Procedures, an auction was held on March 31, 2005. Following the Auction, the Debtors determined that the bid submitted by Okun Enterprises, Inc. ("Okun") was the highest and best bid. On April 5, 2005, the Court entered an order (the "Sale Order") authorizing the Debtors to transfer the Transferred Assets (as defined in the Sale Order) to Okun. The Order also authorized the Debtors to assume the Agreements and assign the same to Okun.

12. Okun has refused to close the transaction authorized by the Sale Order, therefore Chicago Express will not exercise its authority to assume the Agreements and assign the same to Okun. Chicago Express ceased flight operations on March 28, 2005, and as a result, Chicago Express has neither a use for the goods, services and/or equipment provided by the Agreements, nor has Chicago Express used any goods, services and/or equipment provided under the Agreements from and after March 28, 2005. However, the Debtors continue to investigate a possible sale of the assets and/or stock of Chicago Express. A purchaser of Chicago Express may be interested in Chicago Express' rights under some or all of the Agreements, as a result, Chicago Express is only seeking authority to reject the Agreements. In the event a potential purchaser does not wish to acquire Chicago Express' rights under some or all of the Agreements, Chicago Express needs the flexibility requested in this Motion to quickly relieve its creditors and its estate of burdensome executory contracts and leases.

### **RELIEF REQUESTED**

13. For the reasons stated below, Chicago Express requests that the Court enter an order pursuant to Section 365 of the Bankruptcy Code authorizing Chicago Express to reject the Agreements effective as of the Effective Date.

## **BASIS FOR RELIEF**

14. Okun's refusal to close the transaction authorized by the Sale Order has removed the need for Chicago Express to exercise its authority to assume and assign any of the Agreements to Okun.

15. The Agreements provided Chicago Express with various goods, services and/or equipment necessary to support its flight operations. Following the shut down of Chicago Express' flight operations, Chicago Express no longer has a need for the goods and/or services provided it by the Agreements. The Agreements represent a substantial obligation of Chicago Express, but do not currently provide any benefit in return.

16. Section 365(a) of the Bankruptcy Code provides that a debtor “subject to the court’s approval, may assume or reject any executory contract or an unexpired lease.” 11 U.S.C. § 365(a). The assumption or rejection of an unexpired lease or executory contract by a debtor is subject to review under the business judgment standard. See, e.g., Control Data Corp. v. Zelman (In re Minges), 602 F.2d 38, 43 (2d Cir. 1979) (Act case); In re Gucci, 193 B.R. 411, 414-15 (S.D.N.Y. 1996); In re Federated Dept. Stores, Inc., 131 B.R. 808, 811 (S.D. Ohio 1991) (“Courts traditionally have applied the business judgment standard in determining whether to authorize the rejection of executory contracts and unexpired leases”); In re Cutters, Inc., 104 B.R. 886, 889 (Bankr. M.D. Tenn. 1989). This standard is satisfied when a debtor demonstrates that rejection will benefit the estate. See, e.g., In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997); In re Stable Mews Assoc., Inc., 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984).

17. If the debtor’s business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease or executory contract. See, e.g., Group of Institutional Investors v. Chicago, M., St. P. & P.R.R. Co., 318 U.S. 523, 550-51 (1943); Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp., 872 F.2d 36, 39-40 (3d Cir. 1989);

In re Child World, Inc., 142 B.R. 87, 90 (Bankr. S.D.N.Y. 1992); see also Allied Tech., Inc. v. R.B. Brunemann & Sons, Inc. (In re Allied Tech., Inc.), 25 B.R. 484, 495 (Bankr. S.D. Ohio 1982) (“Court approval of a debtor in possession’s decision to assume the lease should only be withheld if the debtor’s judgment is clearly erroneous, too speculative or contrary to the provisions of the Bankruptcy Code”).

18. The business judgment rule has vitality in chapter 11 cases and shields a debtor’s management from judicial second-guessing. See, e.g., Official Comm. Of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992); see also Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp (In re Johns-Manville Corp.), 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”).

#### **EFFECTIVE DATE OF REJECTION**

19. Chicago Express requests that rejection of the Agreements be effective as of the Effective Date. The "Effective Date" for each Agreement that is an executory contract means the date on which Chicago Express tenders notice to the affected counterparty that it is rejecting the Agreement. The "Effective Date" for each Agreement that is a personal or real property lease means the date on which Chicago Express surrenders possession of the personal or real property subject to the Agreement. Chicago Express requests that the order provide that Chicago Express surrenders possession of leased property when it notifies the affected lessor in writing that it is relinquishing its possessory rights to the property and identifies the location of the property to the lessor.

20. The authority to reject the Agreements as of the Effective Date will allow Chicago Express to preserve its rights under the Agreements while it continues to investigate a

sale of its assets and/or stock, rights which may be valuable to a potential purchaser, yet Chicago Express will be able to quickly rid itself of burdensome contracts and leases if no purchaser wishes to acquire Chicago Express' rights under the Agreements. Should a potential purchaser want to have any of the Agreements assigned to it, Chicago Express will file a motion for the same and provide an opportunity for the affected counterparty to respond.

**NO PRIOR REQUEST**

21. No prior motion for the relief requested herein for the Agreements has been made to this or any other Court.

WHEREFORE, Chicago Express requests that the Court enter an order, substantially in the form attached hereto as Exhibit A, authorizing Chicago Express to reject the Agreements effective as of the Effective Date.

Respectfully submitted,

BAKER & DANIELS

By: /s/ Jeffrey C. Nelson

Attorneys for the Debtors and Debtors-in-Possession

James M. Carr (#3128-49)  
Terry E. Hall (#22041-49)  
Stephen A. Claffey (#3233-98)  
Melissa M. Hinds (#24230-49)  
Jeffrey C. Nelson (#25173-49)  
300 North Meridian Street, Suite 2700  
Indianapolis, Indiana 46204  
Telephone: (317) 237-0300  
Facsimile: (317) 237-1000  
jim.carr@bakerd.com  
terry.hall@bakerd.com  
steve.claffey@bakerd.com  
melissa.hinds@bakerd.com  
jeffrey.nelson@bakerd.com

Wendy W. Ponader (#14633-49)  
Ponader & Associates, LLP  
5241 North Meridian Street  
Indianapolis, Indiana 46208  
Telephone: (317) 496-3072  
Facsimile: (317) 257-5776  
wponader@ponaderlaw.com

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served this 9th day of May, 2005, by electronic mail, facsimile, hand delivery or overnight mail on the Core Group, 2002 List, Appearance List, and affected counterparties.

/s/ Jeffrey C. Nelson \_\_\_\_\_