

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 PURSUANT TO §  
363(b)(1) AUTHORIZING ATA AIRLINES, INC. TO ENTER INTO AIRCRAFT LEASE  
WITH AAR-GS CLASSICS LEASING LLC**

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ATA Airlines, Inc. ("ATA"), 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 pursuant to Section 363(b)(1) authorizing ATA to enter into an aircraft lease transaction with AAR-GS 737 Classics Leasing LLC ("AAR").

In support of this Motion, ATA 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 Debtors, Inc. (04-19868), Ambassadors 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 Debtors, 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 Section 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 363 of the Bankruptcy Code.

#### **RELIEF REQUESTED**

6. For the reasons stated below, ATA requests that the Court enter an order pursuant to Section 363(b)(1) authorizing ATA to enter into the Lease (as defined herein).

#### **BASIS FOR RELIEF**

7. As part of its ongoing restructuring efforts, ATA is analyzing its flight schedules, aircraft and engine types and costs, projected demand for air travel, labor costs and other business factors in conjunction with the use of its entire fleet of aircraft and engines. Through this analysis, ATA intend to maximize the fleet’s utility at the lowest possible cost.

8. As a part of the restructuring process ATA has rejected leases of a number of aircraft (the "Rejected Aircraft"). Although ATA is still in the process of developing its fleet plan, it is essential to ATA's continued operations that ATA replace a portion of the Rejected Aircraft.

9. ATA has been in contact with a number of potential aircraft lessors in an effort to negotiate leases for aircraft to replace the Rejected Aircraft. As a result of those negotiations, ATA and AAR have entered into that certain Joint Statement Of Intent And Agreement dated April 29, 2005 (the "LOI"), whereby ATA and AAR have agreed to enter into negotiations toward reaching agreement on mutually acceptable definitive written agreements (collectively, the "Lease") for the lease by AAR to ATA of a Boeing Model B737-322 aircraft and two CFM56-3C1 engines. Exhibit A to this Motion is a true and accurate copy of the LOI (requested to be filed under seal).

**COURT APPROVAL OF THE LEASE PURSUANT TO SECTION 363(b)(1)**

10. ATA asks that the Court enter an order approving the Lease pursuant to Section 363(b)(1). Section 363(b)(1) provides that a debtor, "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). The standard for approving a transaction outside the ordinary course of business is whether the debtor has some articulated business justification for the transaction. In re Schipper, 933 F.2d 513, 515 (7th Cir. 1991).

[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business. [*In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)]; *See also Matter of Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984) (The debtor-in-possession "is required to justify the proposed

[transaction] with sound business reasons."); *Matter of St. Petersburg Hotel Assoc., Ltd.*, 37 B.R. 341, 343 (Bankr. M.D. Fla. 1983) (Section 363 "also impliedly requires the Court to find that it is good business judgment for the Debtor to enter into" the transaction.).

In re Continental Airlines, Inc., 780 F.2d 1223, 1226 (5th Cir. 1986).

11. ATA is still analyzing and developing its fleet plan, but it is clear a portion of the Rejected Aircraft must be replaced. Acquiring new aircraft is essential to ATA's continued operations and reorganization efforts. The economic terms of the Lease are fair and reasonable and consistent with current market rates and terms, and entry into the Lease is within the ATA's sound business judgment.

**NO PRIOR REQUEST**

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

WHEREFORE, ATA request that the Court enter an order pursuant to Section 363(b)(1) authorizing ATA to enter into the Lease.

Respectfully submitted,

BAKER & DANIELS

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served this 10th day of May, 2005, by electronic mail, facsimile, hand delivery or overnight mail on the Core Group, 2002 List, Appearance List and AAR.

/s/ Jeffrey C. Nelson