



SO ORDERED: May 06, 2005.

**Basil H. Lorch III**  
**United States Bankruptcy Judge**

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.	)	
_____	)	

**ORDER AUTHORIZING DEBTORS TO ENTER INTO NEW LEASES  
FOR UP TO TWELVE (12) BOEING 737 AIRCRAFT**

This cause comes before the Court on the “Debtors’ Motion For Authority To Enter Into New Leases For Up To Twelve (12) Boeing 737 Aircraft” (the “Motion”) filed by ATA Airlines, Inc. and the other debtors-in-possession in these jointly administered cases (the “Debtors”). In the Motion, the Debtors state that, pursuant to their § 1110 negotiations, the Debtors turned over several late-model Boeing 737-800 aircraft. Shortly thereafter, the Debtors began negotiations to replace some of these returned aircraft with older Boeing 737 “classic” aircraft. As a result of

<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).

these efforts, the Debtors determined to pursue new leases with Q Aviation, LLC and its affiliates (collectively, “Q”) for up to twelve (12) Boeing 737-300 and -500 aircraft (the “Aircraft”), and have entered into a letter of intent (the “LOI”) with Q with respect to the Aircraft, subject among other things, to approval by this Court. The Debtors argue that the use of these aircraft is necessary for the Debtors’ ongoing reorganization and future operations.

The Court, having considered the relief requested in the Motion and being duly advised of the premises, finds that

- (a) entering into the new leases with Q for the Aircraft, on the terms and subject to the conditions set forth in the LOI, constitutes sound business judgment and is in the best interests of the Debtors, their estates and their creditors;
- (b) the Aircraft constitutes “equipment” within the meaning of Section 1110(a)(3)(A)(i) of the Bankruptcy Code;
- (c) ATA Airlines holds an air carrier operating certificate issued by the Secretary of Transportation pursuant to chapter 447 of title 49, U.S. Code, for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo, and is engaged in charter commercial airline and passenger scheduled airline services in the United States;
- (d) ATA Airlines further represents and warrants that the Aircraft will be used in the operation of its business;
- (e) the LOI, including the transactions contemplated therein, were negotiated, proposed and entered into by the parties in good faith, from arm's length bargaining positions, and without collusion, and neither the Debtors nor Q

have engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or cause the application of section 363(n) of the Bankruptcy Code to these transactions; and

- (f) proper, timely, adequate and sufficient notice of the Motion, the entry into the LOI, and the hearing on the foregoing has been provided in accordance with section 102(1) of the Bankruptcy Code and Rule 2002 of the Bankruptcy Rules, and no other or further notice is required of the Motion or of the transactions contemplated by the LOI.

Accordingly, the relief requested in the Motion should be granted.

IT IS THEREFORE CONSIDERED AND ORDERED that the Motion is hereby granted, and, pursuant to section 363(b) of the Bankruptcy Code, the Debtors hereby are and shall be authorized (a) to perform under the terms of the LOI, including to make the deposits and other payments at the times, in the amounts, and in accordance with the terms provided for in the LOI and, as applicable, the new leases, and (b) to enter into the new leases with Q for the Aircraft, substantially consistent with the terms, and subject to the conditions, of the LOI submitted under seal, and to execute any and all additional documents and agreements, and to take all further actions as may be necessary or appropriate for the purposes of performing its obligations under the new leases.

IT IS FURTHER CONSIDERED AND ORDERED that in connection with the new leases, the applicable lessor for each new lease shall be entitled to all of the benefits and protections provided to a good faith lease party under section 363(m) of the Bankruptcy Code in the event of a reversal or modification on appeal of this Order.

IT IS THEREFORE FURTHER CONSIDERED AND ORDERED that the automatic stay pursuant to § 362(a) of the Bankruptcy Code is hereby lifted as to Q so as to allow Q to exercise its rights and remedies under the LOI and the new leases in accordance with the terms thereof, including to permit the application of any deposit held pursuant to the LOI or the new leases, as applicable, which application of deposit, when made, shall be final and non-refundable, without offset (except as provided in the LOI or applicable new lease), defense or counterclaim or disgorgement of any nature whatsoever.

IT IS THEREFORE FURTHER CONSIDERED AND ORDERED that Q is hereby deemed entitled to the rights and remedies afforded by § 1110 of the Bankruptcy Code in respect of the Aircraft and the obligations contained in § 1110(c)(1) of the Bankruptcy Code are and shall be applicable to the Debtors under the new leases for the Aircraft.

IT IS THEREFORE FURTHER CONSIDERED AND ORDERED that for all purposes of that certain Interim Order Authorizing Debtor's Use of Cash Collateral and Use, Sale or Lease of Other Pre-Petition Collateral, that certain Second Interim and Final Order Authorizing Debtor's Use of Cash Collateral and Use, Sale or Lease of Other Pre-Petition Collateral, and that certain Interim Order (I) Authorizing Post-Petition Secured Super-Priority Financing Pursuant to Sections 105(a), 362, 364(c)(1), 364(c)(2), 364(c)(3) and 507 of the Bankruptcy Code and (II) Scheduling a Final Hearing Pursuant to bankruptcy Rules 4001(c) and 4001(d), in each case including any final order entered thereon, and all extensions, amendments and supplements thereof, and any other order authorizing use of cash collateral or approving any post petition financing (collectively, the "Financing and Cash Collateral Orders"), the LOI, the Aircraft and the new leases, including any interest in and proceeds of any of them are hereby deemed to be, and are, Section 1110 Assets and Section 1110 Agreements (as such terms are defined in the

Financing and Cash Collateral Orders), and shall not be Replacement Collateral (as such term is defined in the Financing and Cash Collateral Orders), nor shall the liens (including the Replacement Liens as defined thereunder) granted under any such Financing and Cash Collateral Order extend to any of the LOI, the Aircraft or the new leases, including any interest in and proceeds of any of them, except that subject to the terms and conditions of, and solely to the extent provided in, the Second Interim and Final Order Authorizing Debtor's Use of Cash Collateral and Use, Sale or Lease of Other Pre-Petition Collateral, the Replacement Liens created by such order shall extend to proceeds from the Debtors' disposition, if any, to which the Debtors have any rights after the performance and payment in full of all of the Debtors' obligations to Q related to the LOI, the Aircraft and the new leases, including as required under § 1110 of the Bankruptcy Code.

IT IS THEREFORE FURTHER CONSIDERED AND ORDERED that this Order shall be binding upon the Debtors and any trustee, whether pursuant to chapter 11 or chapter 7, who may be appointed for the Debtors, and all parties with an interest in the Aircraft.

IT IS THEREFORE FURTHER CONSIDERED AND ORDERED that the provisions of this Order are non-severable and mutually dependent and may not be amended or modified without Q's prior written consent.

IT IS THEREFORE FURTHER CONSIDERED AND ORDERED that any and all claims by Q arising under or related to the new leases for the Aircraft hereby are and shall be deemed administrative expenses pursuant to §§ 503(b) and 507(a)(1) of the Bankruptcy Code. Nothing herein shall be deemed to grant to Q any claim with "super-priority" status under § 507(b) of the Bankruptcy Code; accordingly any administrative expense claims held by Q related to the LOI, new leases, and this Order, shall, to the same extent as any other administrative

expense claim pursuant to §§ 503(b) and 507(a)(1) of the Bankruptcy Code, be subject and subordinate to any allowed § 507(b) “super priority” administrative expense claims.

IT IS THEREFORE FURTHER CONSIDERED AND ORDERED that the ten-day stay imposed by Fed.R.Bankr.P. 6004 hereby is and shall be waived, making this Order final upon the date so entered.

# # #

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**Distribution:**

Core Group  
2002 Service List

220048

Enterprise Systems Incorporated  
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Reston, Virginia 20190-5234

# CERTIFICATE OF SERVICE

District/off: 0756-1  
Case: 04-19866

User: cathy  
Form ID: pdfOrder

Page 1 of 1  
Total Served: 1

Date Rcvd: May 09, 2005

The following entities were served by first class mail on May 11, 2005.  
aty +Jeffrey J. Graham, Sommer Barnard Attorneys, PC, One Indiana Sq Ste 3500,  
Indianapolis, IN 46204-2023

The following entities were served by electronic transmission.  
NONE.

TOTAL: 0

\*\*\*\*\* BYPASSED RECIPIENTS \*\*\*\*\*

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.  
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

First Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 11, 2005

Signature: \_\_\_\_\_

