

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)	
)	Chapter 11
ATA HOLDINGS CORP., et al. ¹)	Case No. 04-19866-BHL-11
)	(Jointly Administered)
Debtors.)	
_____)	

**DEBTORS' MOTION FOR AN ORDER AUTHORIZING AND
APPROVING A PROCEDURE FOR THE REJECTION AND/OR
ABANDONMENT OF AIRCRAFT AND AIRCRAFT ENGINES
PURSUANT TO 11 U.S.C. §§ 365 AND 554; REQUEST
TO SHORTEN NOTICE AND SCHEDULE HEARING**

ATA Holdings Corp., et al., as debtors and debtors-in-possession (collectively, the "Debtors"), by counsel, hereby request an Order of the Court authorizing and approving a procedure for the rejection and/or abandonment of aircraft and aircraft engines pursuant to 11 U.S.C. §§ 365 and 554. The Debtors further request that the Court shorten notice of the motion so as to allow the Court to conduct a hearing on the relief requested on December 16, 2004. In support of their motion, the Debtors state as follows:

I. General Background

A. The Chapter 11 Filings And Jurisdictional Basis

1. On October 26, 2004 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the U.S. Code (the "Bankruptcy Code"). The Debtors are continuing to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy

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

Code. On October 29, 2004, this Court entered an Order for joint administration of these Chapter 11 cases (the “Cases”).

2. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

3. The statutory predicates for the relief requested herein are §§ 365 and 554 of the Bankruptcy Code.

B. Restructuring May Result In Reduction Or Realignment Of Necessary Aircraft And Aircraft Engines

4. As of the Petition Date, the Debtors fleet consisted of eighty-two (82) aircraft, the vast majority of which are leased pursuant to single investment leases or by multiparty Enhanced Equipment Trust Certificates. In addition, substantially all of the Debtors’ aircraft engines are leased pursuant to similar leasing arrangements.

5. The Debtors, as part of their ongoing restructuring efforts, are analyzing their flight schedules, aircraft and engine types and costs, projected demand for air travel, and other business factors in an effort to maximize their aircraft fleet’s utility and minimize the aircraft fleet’s cost. In accordance with this analysis, the Debtors have decided to retire certain aircraft and aircraft engines from their fleet.

6. Furthermore, the prospective sale of certain of the Debtors’ assets may require a reduction or realignment of the Debtors’ aircraft fleet. If that occurs, the Debtors will need to eliminate the costs associated with retaining and maintaining the idled and unnecessary aircraft and aircraft engines.

7. To that end, the Debtors respectfully request that the Court enter an Order authorizing and approving an expedited procedure for: (a) the rejection of aircraft and

aircraft engine leases; and (b) the abandonment of such rejected leased aircraft and aircraft engines as well as owned but encumbered aircraft and aircraft engines.

II. Relief Requested

A. Rejection Of Unnecessary Aircraft And Aircraft Engine Leases

8. Under § 365(a) of the Bankruptcy Court, the Debtors may reject any unexpired lease which is burdensome to the estate, subject to Court approval thereof. Generally speaking, a court will approve such a rejection, provided that the debtor-in-possession can demonstrate that such rejection is a proper exercise of its business judgment. *See In re G. Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994).

9. The Debtors submit that the rejection of aircraft and aircraft engines leases which are unnecessary for the Debtors' successful reorganization by virtue of the Debtors' reduced or modified flight schedules is, in fact, a proper exercise of their business judgment. If aircraft and aircraft engines cannot be deployed profitably, then it is axiomatic that the Debtors should not continue to incur administrative lease expenses and impose a substantial burden on the Debtors' financial resources.

B. Abandonment Of Rejected Aircraft And Aircraft Engine Leases And Owned Aircraft And Aircraft Engines

10. Section 544 of the Bankruptcy Code provides that the Debtors may, after notice and a hearing, abandon any property of the estate that is burdensome to their estates or is of inconsequential value and benefit to their estates.

11. Accordingly, the Debtors' abandonment of rejected aircraft and aircraft engine leases as well as owned aircraft and aircraft engines is proper if the Debtors can show that the property to be abandoned: (a) is property of the estate, *see In re Xonics, Inc.*, 813 F.2d 127, 131-32 (7th Cir. 1987); and (b) is burdensome or of inconsequential

value or benefit to the Debtors' estates, *see In re Trim-X, Inc.*, 695 F.2d 296, 300 (7th Cir. 1982).

12. Furthermore, a debtor-in-possession is afforded significant discretion in determining the value and benefits of property in the context of abandonment under § 554 of the Bankruptcy Code. *See, e.g., In re Cult Awareness Network, Inc.*, 205 B.R. 575, 579 (Bankr. N.D. Ill. 1997).

13. Here, the leases of aircraft and aircraft engines as well as the aircraft and aircraft engines thereunder are property of the estates. *See* 11 U.S.C. § 541. In addition, the aircraft and aircraft engines owned by the Debtors constitute property of the estates. *Id.* Accordingly, the first requirement of abandonment under § 554 of the Bankruptcy Code is satisfied.

14. As set forth above, the rejected aircraft and aircraft engine leases are or may rapidly become burdensome to the Debtors' estates as the maintenance and retention expenses have no concomitant benefit.

15. In addition, any owned but encumbered aircraft and aircraft engines sought to be abandoned by the Debtors will be of inconsequential value to their estates because: (a) the aircraft and aircraft engines will no longer be utilized by the Debtors in their reorganization efforts; (b) the Debtors have no equity in the aircraft and aircraft engines; and (c) the liens on the aircraft and aircraft engines exceed the value of the aircraft and the aircraft engines.

16. As an additional effort to minimize the Debtors' expenses under any aircraft and aircraft engines to be abandoned, the Debtors request that such abandonment

be “as is, where is” and without any warranties or representations regarding the abandoned aircraft and aircraft engines, both leased and owned.

C. Rejection and Abandonment Procedures

17. To assist the Debtors in rejecting leased aircraft and aircraft engines as well as abandoning rejected-lease aircraft and aircraft engines and owned aircraft and aircraft engines, the Debtors request that the Court authorize and allow the following rejection and abandonment procedures for aircraft and aircraft engines (the “Lease Rejection/Abandonment Procedures”):

- (a) The Debtors will file a notice (the “Notice”) to reject leases or mortgages for aircraft or aircraft engines substantially similar to the notice attached hereto as **Exhibit A**, and will serve the Notice via overnight delivery, email, or facsimile upon (i) each of the affected lessors or secured creditors (collectively, the “Affected Parties”); (ii) the U.S. Trustee (the “Trustee”); (iii) counsel for the Official Unsecured Creditors’ Committee (the “Committee”); and (iv) counsel for the Air Transportation Stabilization Board (the “ATSB”) (collectively, the “Notice Parties”). The Notice will: (1) advise the Notice Parties of the Debtors’ intent to reject the leases or abandon the leased, mortgaged or owned aircraft and/or aircraft engines; (2) specify the identity and location of the rejected and/or abandoned aircraft; (3) authorize the Affected Parties to take possession of their respective aircraft or aircraft engines after five (5) business days; and (4) notify the Notice Parties of the deadlines and procedures for filing objections to the Notice (as set forth below).
- (b) To satisfy the notice and hearing requirements of Fed. R. Bankr. P. 9014, the Debtors respectfully request that the Court enter an Order: (i) authorizing and approving the Lease Rejection/Abandonment Procedures; (ii) authorizing the Debtors to reject the leases and mortgages listed in the Notice(s); and (iii) authorizing the Debtors to abandon the aircraft and aircraft engines listed in the Notice(s), effective as of the date the Notice is filed (the “Effective Date”). Should the Trustee, Committee, ATSB or an Affected Party object to a proposed rejection or abandonment, such objecting party must file and serve a written objection so that such objection is filed with this Court and is actually received by the following parties within five (5) business days of the Effective Date: (1) counsel for Debtors, James M. Carr and Terry Hall, Baker & Daniels, 300 North Meridian Street, Suite 2700, Indianapolis, IN 46204 and co-counsel for the Debtors, Jerald I. Ancel and Michael P. O’Neil, Sommer Barnard

Attorneys, PC, One Indiana Square, Suite 3500, Indianapolis, IN 46204; (2) the U.S. Trustee, 101 West Ohio Street, Suite 1000, Indianapolis, IN 46204; and (3) counsel for the Committee, David H. Golden, Lisa G. Beckerman and David H. Botter, Akin Gump Strauss Haver & Feld, LLP, 590 Madison Avenue, New York, NY 10022-2524 and John W. Ames and C.R. Bowles, Jr., Greenbaum Doll & McDonald, 101 South 5th Street, Louisville, KY 40202.

- (c) If the Debtors have deposited monies with an Affected Party as a security deposit or other arrangement, the Debtors request that such party not be permitted to setoff or otherwise use such deposit without the prior authority of the Court.
- (d) If no objection to a Notice is timely filed, the Debtors propose that the Order automatically become final as of the Effective Date. If an objection is timely filed to a Notice, the Debtors request that the Court schedule a hearing to consider the objection only with respect to the rejection and/or abandonment of the specific aircraft or aircraft engine which is the subject of the objection. If such objection is overruled or withdrawn, the Order would also be deemed final as of the Effective Date.

18. The Lease Rejection/Abandonment Procedures are consistent with due process and the requirements of Fed. R. Bankr. P. 9014. *See, e.g., In re A.H. Robins Co.*, 788 F.2d 994, 1015 (4th Cir. 1986); *In re N-Ren Corp.*, 79 B.R. 730, 732 (Bankr. S.D. Ohio 1987; *see also* 11 U.S.C. § 105(a).

19. Furthermore, the Lease Rejection/Abandonment Procedures properly balance the due process rights of the affected parties with the Debtors' duty to minimize administrative expenses.

20. In addition, the equities in the case clearly favor granting the relief requested. *See In re Thinking Mach. Corp.*, 67 F.3d 1021, 1028 (1st Cir. 1995) (noting bankruptcy court authority to enter retroactive lease rejection relief and encouraging it when equities favor such action); *see also In re Jamesway Corp.*, 179 B.R. 33, 37-38 (S.D.N.Y. 1995); *In re Mid-Region Petroleum, Inc.*, 111 B.R. 968, 970 (Bankr. N.D. Okla. 1990).

21. Finally, the Lease Rejection/Abandonment Procedures are similar to those approved in other airline bankruptcies. *See In re UAL Corp., et al.*, Case No. 02-B-48191 (ERW) (Bankr. N.D. Ill. Feb. 7, 2003); *In re US Airways Group, Inc.*, Case No. 02-83985-SSM (Bankr. E.D. Va. Aug. 11, 2002).

22. In summary, the relief requested herein is proper pursuant to §§ 365 and 554 of the Bankruptcy Code. In addition, the relief requested is supported by the equities of the case as well as § 105(a) of the Bankruptcy Code. The Debtors therefore respectfully request that the Court grant the relief requested herein and authorize and approve the Lease Rejection/Abandonment Procedures.

23. To the extent the Debtors reject and/or abandon aircraft or aircraft engines of a lessor, mortgagee or secured creditor which is subject to a stipulation or election with the Debtors pursuant to § 1110(b) of the Bankruptcy Code (the “1110 Agreement”) or any of the post-petition stipulation or election (the “Other Agreement”) and there is a discrepancy between these Lease Rejection/Abandonment Procedures and the 1110 Agreement or Other Agreement, the terms of the 1110 Agreement shall control.

24. In addition, to the extent that the Debtors have filed a motion to reject or abandon aircraft or aircraft engines prior to this motion and the procedures therein conflict with the Lease Rejection/Abandonment Procedures, the terms of the earlier motion shall control.

III. Request To Shorten Notice And Schedule Hearing

25. Section 1110 of the Bankruptcy Code provides that the automatic stay only applies to lessors, mortgagees and secured creditors of aircraft equipment for sixty

(60) days after the entry of an Order for Relief. Here, that period expires December 24 or 27, 2004.

26. Because the Debtors must determine which aircraft and aircraft engines will be retained in their operations before then, it is imperative that the Debtors have the Lease Rejection/Abandonment Procedures in place promptly.

27. Furthermore, the Debtors have filed a motion to sell certain assets, subject to higher and better offers. Depending on whether the “stalking horse” offer or some different proposal is approved, the Debtors may well be required to take certain actions with regard to their aircraft fleet immediately. The sale hearing is scheduled for December 16, 2004, and the Debtors respectfully request that the Court shorten notice of this motion so as to allow the Court to hear this matter at that same hearing.

28. Service of this motion shall be done on the U.S. Trustee, the Core Group, 2002 Service List, counsel for the Committee, and counsel and/or business contacts for all potential Affected Parties via either electronic mail or overnight delivery as required by General Order 03-10.

WHEREFORE, the Debtors respectfully request that the Court enter an Order: (1) shortening notice of this motion so as to allow the Court to conduct a hearing on the relief requested on December 16, 2004; (2) authorizing and allowing the Lease

Rejection/Abandonment Procedures; and (3) granting the Debtors such other and further relief as the Court deems proper.

Dated: 12/6/04

ATA HOLDINGS CORP., ET AL.,
as debtors and debtors-in-possession,

By: /s/ Michael P. O'Neil
Michael P. O'Neil,
Co-Counsel For The Debtors

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Certificate Of Service

The undersigned hereby certifies that a true and accurate copy of the forgoing was cause to be served by BMC Corp. on this 6th day of December, 2004 via electronic transmittal or overnight delivery to the Core Group, the 2002 Service List, counsel for the Committee, the U.S. Trustee, and counsel and/or business contacts for the Affected Parties.

/s/ Michael P. O'Neil
Michael P. O'Neil