

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re:)	Chapter 11
)	
ATA Holdings Corp., et al., ¹)	Case No. 04-19866
)	(Jointly Administered)
Debtors.)	

**MOTION FOR ORDER AUTHORIZING ENTRY INTO 1110(a) ELECTIONS
AND 1110(b) STIPULATIONS EXTENDING TIME TO COMPLY
WITH 11 U.S.C. § 1110 AND REQUEST TO FILE STIPULATIONS AND
AIRCRAFT AGREEMENT MODIFICATIONS UNDER SEAL;
REQUEST TO SHORTEN NOTICE AND SCHEDULE HEARING**

ATA Airlines, Inc., f/k/a American Trans Air, Inc. and Chicago Express Airlines, Inc., debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “Airlines” and, together with the other debtors-in-possession in the above-captioned chapter 11 cases, the “Debtors”), by counsel, hereby request the entry of an Order pursuant to 11 U.S.C. § 1110, (i) approving the form of, and authorizing the Airlines to make elections in substantial conformity with Exhibit A (each, an “1110(a) Election”) and to perform obligations under certain leases and secured financings (the “Aircraft Agreements”) relating to aircraft and aircraft engines (the “Aircraft Equipment”) that may be subject to 11 U.S.C. § 1110; (ii) authorizing the Airlines to make such payments and to take such other actions as are necessary to cure defaults and retain protection of the automatic stay with respect to the Aircraft Equipment in compliance with 11 U.S.C. § 1110 and the 1110(a) Election; (iii) approving the form of, and authorizing the Airlines to enter into stipulations in substantial

¹ 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).

conformity with Exhibit B (each a “1110(b) Stipulation”) with their aircraft lessors and financiers (the “1110 Parties”) extending the time to perform obligations required under section 11 U.S.C. § 1110; and (iv) authorizing Airlines to file the 1110(b) Stipulations and any modifications to the Aircraft Agreements under seal pursuant to 11 U.S.C. § 107 and S.D. Ind. L.R. 5.3(c). In support of its Motion, the Airlines respectfully represent as follows:

I. JURISDICTION AND GENERAL BACKGROUND

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

2. No trustee or examiner has been appointed. On November 1, 2004, the United States Trustee appointed an Official Unsecured Creditors’ Committee (the “Committee”) in these cases pursuant to § 1102(a)(1) of the Bankruptcy Code.

3. 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.

4. The bases for the relief sought herein are §§ 105, 107 and 1110 of the Bankruptcy Code, as well as Fed. R. Bankr. P. 9018 and S.D. Ind. L.R. 5.3(c).

5. The Airlines currently operate an aircraft fleet consisting of eighty-two (82) aircraft. A large number of these aircraft are leased pursuant to single investor leases.

Others are leased pursuant to enhanced equipment trust certificates (“EETC”). A small number of the Airlines’ aircraft are owned by the Airlines but pledged as security to secured creditors.

6. As such, the bulk of the Airlines’ aircraft fleet, along with most if not all of its spare aircraft engines, may constitute “equipment” as that term is defined in § 1110(a)(3) of the Bankruptcy Code (collectively, the “Equipment”) and is governed by § 1110 of the Bankruptcy Code.²

7. A significant number of the Aircraft Agreements were negotiated with higher payments in early years in order to reduce total rental costs over the related lease terms. Given the current depressed state in the airline industry, the Airlines’ payments under the Aircraft Agreements may be substantially higher than the current market rate for the similar equipment.

8. Because the Airlines are paying prices for their Equipment that may be above-market, it is necessary for the Airlines to seek to reduce payments under the Aircraft Agreements to market rates so as to maximize revenue in a difficult financial environment and to best enable the Airlines to reorganize successfully.

9. Although the Airlines have initiated negotiations with parties to the Aircraft Agreements, it is unlikely that many final agreements will be reached before the end of the sixty (60) day period contained in § 1110 (the “1110 Period”). Accordingly, it is necessary to seek extension of the 1110 Period.

² Nothing herein shall be construed as an admission or concession that any specific 1110 Party is entitled to any rights under § 1110 of the Bankruptcy Code and that any Equipment is subject to § 1110 of the Bankruptcy Code, and the Debtors expressly reserve all rights and defenses with respect to the ultimate application of § 1110 to an 1110 Party.

II. RELIEF REQUESTED

10. By this Motion, the Airlines seek entry of an Order under § 1110 of the Bankruptcy Code: (a) approving the form of, and authorizing the Airlines to make, 1110(a) Elections to perform obligations under § 1110 of the Bankruptcy Code with respect to Equipment designated by the Debtors, (b) authorizing the Airlines to make such payments and other actions as are necessary to cure defaults and retain protection of the automatic stay with respect to the Equipment subject to the 1110(a) Elections, and (c) approving the form of, and authorizing the Airlines to enter into, 1110(b) Stipulations with 1110 Parties extending the time to perform obligations under § 1110 of the Bankruptcy Code.

11. The 1110(a) Elections shall be subject to final approval of the Court as provided below. Upon execution and filing of a 1110(a) Election before 11:59 p.m. (EST) on December 24, 2004³, and timely performance thereafter of the obligations under the 1110(a) Election, the Airlines request that the Court conclusively determine that the Airlines have complied with § 1110(a) of the Bankruptcy Code notwithstanding, among other things, that the 1110(a) Elections are subject to final approval of the Court.

12. The 1110(b) Stipulations also shall be subject to final approval of the Court, as provided below. Upon execution and filing of 1110(b) Stipulations on or before 11:59 p.m. (EST) on December 24, 2004, and timely performance thereafter of the obligations under the 1110(b) Stipulation, the Airlines request that the Court conclusively determine

³ The Airlines chose December 24, 2004 out of an abundance of caution, but reserve the right to contend that the relevant 60 day periods contemplated by § 1110 of the Bankruptcy Code do not expire until December 27, 2004.

that the § 1110 Period has been extended notwithstanding, among other things, that the 1110(b) Stipulations are subject to final approval of the Court.

13. Furthermore, the Airlines request authority to file under seal both executed 1110(b) Stipulations and modifications to Aircraft Agreements. The Airlines will provide copies of the 1110(b) Stipulations and proposed modifications of the Aircraft Agreements to counsel for the Committee, the U.S. Trustee, and counsel for the Air Transportation Stabilization Board.

III. BASIS FOR RELIEF REQUESTED

14. Section 1110(a)(1) of the Bankruptcy Code, if applicable, provides 1110 Parties with certain rights with respect to the Equipment:

[t]he right of a secured party with a security interest in the Equipment ... or of a lessor or conditional vendor of the Equipment to take possession of such Equipment in compliance with a[n Aircraft Agreement] and to enforce any of its other rights or remedies under such [Aircraft Agreement] to sell, lease, or otherwise retain or dispose of such Equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court.

15. However, those rights are limited by § 1110(a)(2) of the Bankruptcy Code, which provides as follows:

The right to take possession and to enforce the other rights and remedies described in paragraph (1) shall be subject to section 362 if -

(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the approval of the court, agrees to perform all obligations of the debtor that become due on or after the date of the order under such [Aircraft Agreement]; and

(B) any default, other than a default of a kind specified in section 365(b)(2), under such [Aircraft Agreement]

(i) that occurs before the date of the order is cured before the expiration of such 60-day period; and

(ii) that occurs after the date of the order and before the expiration of such 60-day period is cured before the later of

(I) the date that is 30 days after the date of the default; or

(II) the expiration of such 60-day period; and

(iii) that occurs on or after the expiration of such 60-day period is cured in compliance with the terms of such [Aircraft Agreement], if a cure is permitted under the [Aircraft Agreement].

16. Finally, § 1110(b) of the Bankruptcy Code provides that:

The trustee and the secured party, lessor, or conditional vendor whose right to take possession under subsection (a) may agree, subject to the approval of the court, to extend the 60-day period specified in subsection (a)(1).

17. December 25, 2004 is the 60th day after the Debtors' orders for relief were entered in these cases. Because this date falls on a Saturday and on a holiday, by operation of Fed. R. Bankr. P. 9006, the 1110 Period should extend to Monday, December 27, 2004. Nevertheless, as noted earlier, the Debtors are treating December 24, 2004 as the operative deadline, out of an abundance of caution, but reserving their rights.

A. 1110(a) Elections

18. To comply with the requirements of § 1110(a), the Airlines seek authority to do the following:

- (a) Subject to the Court's approval, the Airlines agree to perform substantially all obligations under an Aircraft Agreement with respect to the Equipment that become due on or after the Petition Date (and before the effective date of rejection) with respect to such equipment (*see* § 1110(a)(2)(A));
- (b) Before 11:59 p.m. (EST) on December 24, 2004, the Airlines cure any default under an Aircraft Agreement with respect to the Equipment that occurred on or before the Petition Date, other than a default of a kind specified in § 365(b)(2) of the Bankruptcy Code (*see* § 1110(a)(2)(B));
- (c) With respect to any default under an Aircraft Agreement with respect to the Equipment, other than a default of a kind specified in § 365(b)(2) of the Bankruptcy Code, that occurs after the Petition Date but before 11:59 p.m. (EST) on December 24, 2004, the Airlines cure such default before December 24, 2004 or the thirtieth day after the date on which such default occurs, whichever is later (*see* § 1110(a)(2)(B)); and
- (d) With respect to any default under an Aircraft Agreement with respect to the Equipment, other than a default of a kind specified in § 365(b)(2) of the Bankruptcy Code, that occurs on or after December 24, 2004, the Airlines cure such default in accordance with the terms of the relevant Aircraft Agreement, if a cure is permitted thereunder (*see* § 1110(a)(2)(B)).

19. Satisfying its cure obligations with respect to certain Aircraft Agreements subject to a 1110(a) Election may be in the best interests of the Debtors' estates when such Aircraft Agreements have favorable payment structures and/or the Equipment covered has value to the estates which exceeds the corresponding obligations. Accordingly, the Airlines have determined, as a preliminary matter, to commence taking

steps necessary to preserve the automatic stay with respect to certain of their Equipment pursuant to § 1110 of the Bankruptcy Code.

20. With respect to each of the Aircraft Agreements subject to an 1110(a) Election, the Airlines will, pursuant to a 1110(a) Election, agree to perform all obligations that become due on or after the Petition Date, and before rejection or renegotiation.

21. To date, the Airlines have been fully engaged in addressing other issues critical to its reorganization efforts, including working with prospective competing bidders, and analyzing its fleet requirements and the many Aircraft Agreements. Until the Airlines' analysis of its fleet requirements, and each of the Aircraft Agreements, has been completed, they simply will not know what Equipment they will seek to retain. Accordingly, as of the date of the motion, the Airlines have not yet entered into any 1110(a) Elections in connection with the Equipment.

22. By this motion, the Airlines request approval of the Court to enter into 1110(a) Elections, and orders approving the same, in form and substance similar to **Exhibit A** attached hereto. Entering into these 1110(a) Elections on a timely basis is clearly in the best interests of the Debtors' estates and their creditors.

23. The 1110(a) Elections, and any amendment to Aircraft Agreements referenced therein, shall not constitute assumptions of any of the Aircraft Agreements. *See* 124 Cong. Rec. 102 (Sept. 28, 1978) (“[T]he Trustee or debtor in possession is not required to assume the executory contract or an unexpired lease under section 1110; rather, if the Trustee or debtor in possession complies with the requirements of section 1110(a), the Trustee or debtor in possession is entitled to retain the aircraft or vessel subject to normal

requirements of section 365”); *see also In re Airlift Int’l Inc.*, 761 F.2d 1503, 1508 (11th Cir. 1985) (“While the section 1110 stipulation in this case bears resemblance to a section 365 assumption of an executory contract, the legislative history of section 1110 counsels that they are not identical”).

24. To the extent the Airlines agree to perform under the Aircraft Agreements (as modified), the 1110(a) Elections shall be effective as of 11:59 p.m. (EST) on December 24, 2004, or as otherwise provided in such 1110(a) Election or in any amendment to the Aircraft Agreement executed pursuant to the 1110(a) Election.

25. Pursuant to an 1110(a) Election, the Airlines intend to make payments, and to take such other actions as may be necessary, before 11:59 p.m. (EST) on December 24, 2004, or on such date as mutually agreed to by the Airlines and a party to an 1110(a) Election, sufficient to cure non-§ 365(b)(2) prepetition defaults under the applicable Aircraft Agreement. In addition, the Airlines intend to cure all other non-§ 365(b)(2) defaults under such Aircraft Agreement either (a) in the time frame specified by agreement with the 1110 Party or (b) in the time frame provided by § 1110(a)(2)(B) of the Bankruptcy Code.

26. The Debtors do not believe that Court approval of cure payments or performance pursuant to § 1110(a) is necessary; however, out of an abundance of caution, the Debtors seek authority to make such cure payments, and to take such other actions, as may be necessary to cure defaults and retain the protection of the automatic stay.

B. 1110(b) Stipulations

27. The Airlines also seek authority to enter into 1110(b) Stipulations with 1110 Parties, and orders approving the same, in form and substance similar to **Exhibit B** attached hereto in order to extend the time to perform obligations under § 1110 of the Bankruptcy Code. The Airlines believe entry into such stipulations will likely be necessary to afford the Airlines and many 1110 Parties sufficient time to pursue negotiations regarding possible amendments to the terms of the Aircraft Agreements without risking the protections afforded by the automatic stay.

28. Although the 1110(b) Stipulations shall be subject to final approval of the Court, the Airlines respectfully request that the 1110 Period for each 1110 Party subject to a 1110(b) Stipulation be extended on a preliminary basis beyond 11:59 p.m. (EST) on December 24, 2004, pending final approval of the 1110(b) Stipulation by the Court.

29. Except to the extent specifically provided herein, the relief requested by this motion shall not prejudice, limit, or otherwise affect any rights of the Airlines or any 1110 Party, including the right to assert legal and equitable claims relating to the nonperformance of certain surrender and return conditions whether under the Aircraft Agreements or under § 1110(c)(1) of the Bankruptcy Code, subject to any and all defenses, setoffs, counterclaims and other objections of the Airlines and any other party-in-interest, all of which rights are expressly preserved, nor relieve the Airlines or any 1110 Party or otherwise vary the terms of § 1110 of the Bankruptcy Code.

C. Confidentiality Of 1110(b) Stipulations And Aircraft Agreements

30. The Airlines, pursuant to § 107(b) of the Bankruptcy Code, as well as S.D. Ind. L.R. 5.3(c), further request authority to file certain modifications to Aircraft Agreements subject to 1110(b) Stipulations and the 1110(b) Stipulations under seal. Without this relief, the Airlines believe that their competitors will utilize the 1110(b) Stipulations to the Airlines' and the other Debtors' disadvantage. The Airlines also believe that 1110 Parties who have not entered into 1110(b) Stipulations or modification of the Aircraft Agreements with the Airlines will use the information contained in any publicly available 1110(b) Stipulations to their advantage in their ongoing negotiations with the Airlines. By filing such 1110(b) Stipulations and Aircraft Agreement modifications under seal, the Airlines will be able to preserve the confidentiality of the terms and commercial information of these contracts and maintain a level playing field amongst the Airlines' competitors and all of the 1110 Parties. The Airlines intend to provide copies of any such modifications to counsel for the Committee, counsel for the ATSB and the U.S. Trustee.

31. Section 107(b) of the Bankruptcy Code provides the Court with clear authority to authorize the filing of the 1110(b) Stipulations and modification to the Aircraft Agreements under seal:

On the request of a party in interest, the bankruptcy court shall...(1)
protect an entity with respect to a trade secret or confidential research,
developments or commercial information...

11 U.S.C. § 107(b). Similarly, Fed. R. Bankr. P. (1) empowers the Court to “protect the estate ... in respect of a trade secret or other confidential research, development, or commercial information....” Commercial information has been defined as information

which would cause an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” In re Handy Andy Home Imp. Centers, Inc., 199 B.R. 376, 381 (Bankr. N.D. Ill. 1996) (quoting In re Orion Pictures Corp., 21 F.3d 24, 27 (2nd Cir. 1994)). Once information is determined to be commercial information, the Bankruptcy Code requires that the information not be disclosed unless otherwise agreed by the party seeking to prevent its dissemination.

D. Prior Requests

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

E. Request To Shorten Notice And To Schedule Hearing

33. Given the fast approaching expiration of the 1110 Period and the dire consequences of losing the protection of the automatic stay as to the Equipment, it is imperative that the Airlines and the other Debtors obtain a hearing on the relief requested prior to the expiration of the 1110 Period.

34. The Airlines and the other Debtors therefore respectfully request that the Court shorten notice of the motion so that the Court may hear this matter on December 16, 2004.

35. To afford parties the maximum time to object to the relief requested, the Airlines and the other Debtors request that any objection be filed with the Court and served on counsel for the Debtors no later than 4:00 p.m. (EST) on Wednesday, December 15, 2004.

36. The Airlines and the other Debtors further request that the Court schedule a hearing on the relief requested herein on December 16, 2004 at 1:30 p.m. (EST) in Room 310 of the U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204.

WHEREFORE, the Airlines and the other Debtors respectfully request that the Court enter an Order (i) approving the form of, and authorizing the Airlines to enter into, 1110(a) Elections, subject to final approval of the Court; (ii) authorizing the Airlines to make such payments, and to take such actions, as are necessary to cure defaults and retain protection of the automatic stay with respect to Equipment subject to an 1110(a) Elections; (iii) approving the form of, and authorizing the Airlines to enter into, 1110(b) Stipulations extending the time to perform obligations under § 1110 of the Bankruptcy Code; (iv) authorizing the Airlines to file 1110(b) Stipulations and Aircraft Agreement modifications under seal; (v) shorten notice of the motion so as to allow the Court to conduct a hearing on the relief requested on December 16, 2004; and (vi) granting the Airlines and the other Debtors such other and further relief as the Court deems proper.

Dated: December 6, 2004

ATA AIRLINES, INC. AND
CHICAGO EXPRESS AIRLINES, INC.,
as debtors and debtors-in-possession,

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

Jerald I. Ancel
Michael P. O'Neil
Sommer Barnard Attorneys, PC
One Indiana Square, Suite 3500
Indianapolis, IN 46204
Telephone: (317) 713-3500
Facsimile: (317) 713-3699
ancel@sommerbarnard.com
moneil@sommerbarnard.com

David A. Foster
Baker & Daniels
600 E. 96th Street, Suite 600
Indianapolis, IN 46240
Telephone: (317) 569-4686
Facsimile: (317) 569-4800
david.foster@bakerd.com

James M. Carr
Terry E. Hall
Baker & Daniels
300 North Meridian Street, Suite 2700
Indianapolis, IN 46204
Telephone: (317) 237-0300
Facsimile: (317) 237-1000
james.carr@bakerd.com
terry.hall@bakerd.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the forgoing was caused to be served by BMC Corp. on this 6th day of December, 2004 via electronic transmittal or overnight delivery to the Core Group and the 2002 Service List, and potential 1110 Parties.

/s/ Michael P. O'Neil