

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re:)	Chapter 11
)	
ATA HOLDINGS CORP., <u>et al.</u> ,)	Case No. 04-19866
)	(Jointly Administered)
Debtors.)	

**OBJECTION OF GE ENGINE SERVICES, INC. AND
GENERAL ELECTRIC CAPITAL CORPORATION TO
NOTICE REGARDING MAXIMUM CURE AMOUNTS**

GE Engines Services, Inc. (“GE Engines”) and General Electric Capital Corporation, on behalf of itself and certain of its affiliates (“GECC” and, collectively with GE Engines, “GE”),¹ as and for its objection to the Notice of Maximum Cure Amounts, dated November 29, 2004, filed by the above-captioned debtors (the “Debtors”), represents as follows:

Background

1. On October 26, 2004 (the “Petition Date”), the Debtors filed voluntary petitions in this Court commencing cases under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On November 19, 2004, this Court entered an order, *inter alia*, establishing procedures for the sale of some or all of the Debtors’ assets and businesses, including the assumption and assignment of the Debtors’ executory contracts and

¹ Contemporaneously herewith, a separate objection to the Notice of Maximum Cure Amounts is being submitted by an affiliate of GE with regard to leases of hardware and software used in ATA’s reservation and ticketing systems.

unexpired leases (the “Contracts”) to the successful purchaser in connection therewith (the “Transaction Procedures Order”). The Transaction Procedures Order provides that, on or before November 29, 2004, the Debtors shall file and serve notices of the amounts required to cure any and all defaults under the Contracts (the “Cure Notices”). The Transaction Procedures Order further provides that counterparties to the Contracts may object to the amounts set forth on the Cure Notices on or before December 10, 2004.

3. The Debtors and GE are parties to numerous contracts and leases, including leases of certain aircraft, engines, related equipment and aircraft simulators and certain engine maintenance agreements (the “GE Contracts”). Almost all of the GE Contracts relate to “equipment” within the meaning of sections 1110(a)(3)(A)(i) and 1110(a)(3)(B) of the Bankruptcy Code and are subject to the provisions of section 1110 of the Bankruptcy Code and the protections afforded thereunder.

Objection

4. The Cure Notices purport to identify the “maximum amount [the] Debtors believe they would be obligated to pay should they exercise their right to assume and/or assign the Contract(s).” For the reasons set forth herein, the Cure Notices are deficient and GE should not be bound by their terms.

A. Service Was Improper

5. One day after the Petition Date, counsel for GE filed their notice of appearance and have been in frequent communication with the Debtors and their counsel throughout these proceedings. Yet, the Debtors did not serve GE’s counsel of record until December 6, 2004 – a full week after service was supposed to be effectuated and only four days before objections to the Cure Notices were due. Service of the Cure

Notices to GE's offices scattered throughout the U.S. and Europe is not a substitute for service upon counsel.

6. There is no excuse for the Debtors' failure to serve the Cure Notices on all parties filing notices of appearance and requests for the service of papers under Rule 2002 of the Federal Rules of Bankruptcy Procedure and, to the extent parties have been deprived of their due process, the imposition of a maximum cure amount is inappropriate.

B. Section 365 Requires Cure of All Obligations Under a Contract, Not Merely Base Rental

7. The Cure Notices purport to identify only base rent obligations due prepetition and, in some instances, during the first 60 days of these chapter 11 cases. Under section 365 of the Bankruptcy Code, the Debtors are obligated, *inter alia*, to cure *all* monetary defaults under the Contracts, not merely base rent. The GE Contracts provide for interest, attorneys fees and other charges which are required to be paid under section 365 of the Bankruptcy Code and must be cured upon assumption. *See e.g. In re Child World, Inc.*, 161 B.R. 349, 353 (Bankr. S.D.N.Y. 1993).

C. The Debtors Purport to Limit the Cure Amount Regardless of the Actual Date of Assumption

8. To the extent that the assumption and assignment of the Contracts does not occur on or before such 60th day (as currently contemplated by the Debtors' own stalking horse purchaser), the Debtors will be obligated to pay additional amounts with respect to this entire period, not merely the maximum amounts set forth in the Cure Notices.

D. After the 60th Day of the Chapter 11 Case, Section 1110(a) Requires Full Performance of All Obligations

9. The overwhelming majority of the GE Contracts relate to "equipment" within the meaning of section 1110 of the Bankruptcy Code (the "1110 Agreements").

On the 60th day of these chapter 11 cases, GE will have the right to take possession of its equipment and to enforce other right and remedies unless the Debtors make an election under section 1110(a) of the Bankruptcy Code and agree to perform all obligations under the 1110 Agreements – a commitment which cannot be limited by any purported “maximum cure amount.”

E. The Debtors May Not Assign the GE Aircraft Equipment

10. The Debtors may not “exercise their right” under section 365 of the Bankruptcy Code to assign the 1110 Agreements because they have no such right. As clarified by the 2000 amendments to the Bankruptcy Code, the 1110 Agreements may not be assumed and assigned without GE’s consent except in the limited circumstances expressly permitted in, and subject to the terms and conditions of, the 1110 Agreements. *See* Wendall H. Ford Aviation and Reform Act of 2000, Pub. L. No. 106-181, § 744 (clarifying ambiguity created by the holding in *In re Western Pacific Airlines, Inc.*, 219 B.R. 298 (Bankr. Colo. 1998)).

F. Reservation with Respect to Cure Amounts

11. Due the fact that the Cure Notices were not served upon GE’s attorneys or record until December 6, 2004, GE is neither in a position to fully validate the current amounts outstanding (including interest, fees, etc.), nor capable of making such estimation in light of the uncertain proposed date of assumption. Accordingly, GE reserves all of its rights with respect to the proper amount of cure payments

12. Subject to the objections set forth herein, GE acknowledges, however, that the amounts set forth in the Cure Notices appear to identify correctly the base rental currently due or payable in the near future on GE aircraft, though there may be additional

amounts due on account of maintenance, defaults and supplemental rental obligations. The Cure Notices have not provided cure amounts for several spare engines currently in the possession of the Debtors that are subject to 1110 Agreements. In addition, the amounts provided with respect to the Boeing 737 Simulator Lease (ID#192) should be \$244,986.

13. With respect to the engine maintenance agreements, GE Engines cannot confirm the Debtors' estimate of cure amounts set forth in the Cure Notices because charges under such agreements can only be determined following a review of ATA's actual use of the engines. However, based on amounts already due and a reasonable estimate of ATA's anticipated use, the cure amounts provided with respect to the Chicago Express Maintenance Agreement (ID#191) and 737-800 Engine Maintenance Agreement (ID#193) are understated by approximately \$520,208 and \$115,800.22, respectively.

14. For the foregoing reasons and as set forth herein, the relief requested should be denied.

WHEREFORE GE (i) requests the Court deny the imposition of “maximum cure amounts” with respect to the GE Contracts, (ii) reserves all rights and claims that it may have under the GE Contracts, including, but not limited to, the calculation of the proper cure amounts, with respect to the assumption and assignment of the GE Contracts, and (iii) requests such other and further relief as is just.

Dated: December 10, 2004
Indianapolis, Indiana

GE ENGINE SERVICES, INC. and
GENERAL ELECTRIC CAPITAL CORPORATION,
on behalf of itself and certain of its affiliates

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