

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

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

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**OBJECTION OF THE SARASOTA MANATEE AIRPORT AUTHORITY  
TO THE CURE AMOUNTS SET FORTH IN THE NOTICE REGARDING  
MAXIMUM CURE AMOUNTS**

The Sarasota Manatee Airport Authority (the “Authority”) a public and governmental body, existing under and by virtue of the laws of the State of Florida, by and through its undersigned counsel, hereby objects to the Maximum Cure Amount specified in the *Notice Regarding Maximum Cure Amounts* (the “Notice”), relevant to the Authority, and in support hereof, avers as follows:

**BACKGROUND**

1. The Debtors and the Authority are parties to a Scheduled Airline Operating Agreement and Terminal Building Lease dated October 4, 1999, and as subsequently amended (the “Lease”), which provides for the Debtors' use of certain facilities of the Sarasota Bradenton International Airport located in Sarasota and Manatee Counties, Florida.

2. On or about October 26, 2004, ATA Holdings Corp. and certain of its affiliates filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

3. On or about November 2, 2004, the Debtors filed a motion requesting authority to sell certain assets at auction (the “Proposed Sale”).

4. On November 19, 2004, this Court entered its Order (A) Establishing Procedures for Approval of One or More Transactions, (B) Approving and Authorizing a Break-Up Fee and Expense Reimbursement, and (C) Approving a Form of Notice (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.

5. On November 29, 2004, the Debtors served the Notice upon the Authority including Exhibit 332 which seeks to establish a “Maximum Cure Amount” of \$112,943.00 (the “Proposed Cure”).

6. The Authority’s internal financial records show that the Debtors owe the Authority at least \$174,071.70, as of December 1, 2004, on account of the obligations associated with the Lease (the “December 1 Cure Amount”).

7. Furthermore, the Debtors continue to operate under the terms of the Lease and therefore continue to incur obligations to the Authority. The actual cure amount due and owing to the Authority as of the date of assumption, will therefore almost certainly be greater than the December 1 Cure Amount (the “Actual Cure Amount”).

#### **THE RELIEF REQUESTED AND REASONS THEREFORE**

8. Pursuant to 11 U.S.C. § 365(b), the Debtor may only assume an executory contract or unexpired lease:

(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default

*See* 11 U.S.C. § 365(b)(1)(A).

9. Thus, under 11 U.S.C. § 365, the Debtors may only assume and assign the Lease if there is a full cure of all defaults. In the present case, the Proposed Cure falls far short of the Actual Cure Amount. The Authority therefore objects to the Proposed Cure as deficient. In order to comply with 11 U.S.C. § 365(b), at the very minimum, the “Maximum Cure Amount,” as defined by the Debtors, must be increased to \$174,071.70 plus all other sums that become due and owing after December 1, 2004, and prior to the date of actual assumption.<sup>1</sup> Thus, the amount the Debtors propose as a Maximum Cure Amount does not meet the standards of 11 U.S.C. § 365(b) and should be amended accordingly, and the Authority therefore reserves all rights to insist upon full payment of the appropriate cure amount under the Lease.

10. Moreover, the Debtor’s Cure Notice purports to include only those amounts due under the Lease for the 60-day period following the Petition Date. Under section 365 of the Bankruptcy Code, the Debtors are obligated to cure *all* monetary defaults under the Contracts, not merely those occurring post-petition. The Lease provides 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).

11. As part of its Motion seeking entry of the Transaction Procedures Order, the Debtors have identified a proposed transaction with AirTran Airways, Inc. (“AirTran”) whereby AirTran will have the option of assuming certain gate leases (the “Gate Leases”) which does not, at this time, appear to include the Sarasota Bradenton International Airport facilities that are the

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<sup>1</sup> The Authority will provide an updated payoff to the Debtors upon request.

subject of the Lease, and therefore the Authority reserves all rights to object to the assumption and/or assignment of the Lease by Airtran.

12. Additionally, consistent with the Transaction Procedures Order, the Authority reserves its right to object to any assignment of the Lease absent receiving "adequate assurance of future performance" as required by 11 U.S.C. § 365(b)(1)(C) by the party seeking to take such an assignment as part of an Alternative Transaction as defined in the Transaction Procedures Order.

WHEREFORE, the Sarasota Manatee Airport Authority hereby requests that this Honorable Court reject the Maximum Cure Amount proposed by the Debtors and order the Debtors to increase the Maximum Cure Amount relevant to the Sarasota Manatee Airport Authority to at least \$174,071.70 plus all other sums that become due and owing after December 1, 2004, and prior to the date of actual assumption, and that the Court find that the Authority shall not be deemed to have consented to any assumption and/or assignment of the Lease and shall have preserved its right to object to assumption and assignment of the Lease.

Respectfully submitted this 10<sup>th</sup> day of December, 2004.

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