

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

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

**SAN FRANCISCO AIRPORT COMMISSION’S OBJECTION TO NOTICE
REGARDING MAXIMUM CURE AMOUNT**

The City and County of San Francisco, acting by and through the San Francisco Airport Commission (“San Francisco”), by and through its undersigned counsel, respectfully submits its Objection to Notice Regarding Maximum Cure Amount (this “Objection”). As grounds for this Objection, San Francisco states as follows:

Background

1. On October 26, 2004 (the “Petition Date”), ATA Holdings Corp., and certain of its affiliates (collectively, “Debtors”) filed voluntary petitions under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”). Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

2. On November 2, 2004, Debtors filed their Transaction Motion and Bid Procedures Motion.² Pursuant to the Transaction Motion, Debtors seek authority to sell and

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

assign certain assets, including Debtor's gates at Chicago Midway Airport, to AirTran Airways, Inc. ("AirTran"). The Transaction Motion also leaves open the possibility for Debtors to sell other assets beyond the Midway gates to buyers other than AirTran.

3. Pursuant to the Procedures Motion, Debtors sought entry of an order approving, *inter alia*, (a) bid procedures (the "Bid Procedures"), to use in connection with proposals that may be made for one or more asset transfer transaction (the "Transactions"); and (b) forms of notice of the establishment of the Bid Procedures.

4. On November 19, 2004, the Court entered an 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 Order"). Pursuant to the Transaction Order, Debtors were required provide a notice to all non-Debtor parties to executory contracts or unexpired leases that may be affected by the Transactions setting forth Debtors' calculation of the amount to be paid and any other actions to be taken necessary to cure any defaults under any executory contract or unexpired lease (each, a "Cure Notice").

5. On December 6, 2004, San Francisco, a creditor in this case and the owner and operator of the San Francisco International Airport ("SFO"), received a Cure Notice (the "SFO Notice"). Pursuant to the SFO Notice, Debtors list San Francisco as "City and County

² The Transaction Motion is fully-titled: "Motion for Order Pursuant to 11 U.S.C. §§ 105(a), 363, 365 and 146(c) and Fed. R. Bankr. P. 2002, 6004 and 6006 Approving the AirTran Transaction or, if Applicable, One or More Alternative Transactions." The Procedures Motion is fully-titled: "Emergency Motion to Establish (A) Procedures for Approval of Transaction, (B) a Break-up Fee, and (C) Forms of Notice."

of San Francisco” contract party number 105, and state that the maximum cure amount due under one contract bearing Internal ID No. 130 is \$18,288.00 (the “Cure Amount”).

6. The SFO Notice fails to properly identify each of the contracts between Debtors and San Francisco and the Cure Amount differs significantly from the actual amount owed by Debtors to San Francisco. Therefore, San Francisco objects to the SFO Notice.

Debtors Use of SFO

7. Debtors have used SFO’s facilities in the operation of their businesses by, among other things, causing passenger aircraft to land at and takeoff from SFO; using SFO terminal space, including gates, offices, baggage and ramp areas; using non-terminal space, such as cargo areas and aircraft parking spaces; and using SFO equipment, including one or more jet bridges.

8. Debtors are party to the following four separate agreements with SFO: (i) Airline Operating Permit, dated May 1, 1997; (ii) Revocable Jet Bridge Use and Operating Permit, dated December 19, 2001; (iii) Airline Terminal Space or Use Permit, dated July 1, 2002; and (iv) Airline Nonterminal Space or Use Permit (collectively, the “Permits”).

9. Under the Permits, Debtors incur the following obligations to San Francisco on a monthly basis: (i) rent, charges and landing fees in the approximate amount of \$345,700; and (ii) Passenger Facility Charges (“PFCs”) in the approximate amount of \$202,000.

10. Attached hereto as **Exhibit A** is a spreadsheet indicating amounts owed by Debtors to San Francisco under the Permits. As detailed in Exhibit A, prior to the Petition

Date, Debtors' incurred debt to San Francisco in the aggregate amount of \$276,496.70 (the "Prepetition Debt"). The Prepetition Debt includes prepetition landing fees in the amount of \$281,001.85, electricity in the amount of \$2,938.99, jet bridge fees in the amount of \$12,800.00, aircraft parking fees in the amount of \$7,833.33, security services fees in the amount of \$2,904.80, telecommunication fees in the amount of \$16.00 and miscellaneous charges in the amount of \$14,122.84. In addition, San Francisco has calculated that Debtors may be entitled to certain prepetition credits for rental of space in SFO's South Terminal in the amount of \$44,275.11 and for licenses and permits in the amount of \$846.00.

11. As also detailed in Exhibit A, Debtors owe \$582,386.45 for their postpetition use of SFO, calculated through and including December 31, 2004 (the "Postpetition Debt").³ The Postpetition Debt includes \$334,499.73 for landing fees, \$8,268.85 for electricity, \$32,200.00 for jet bridge fees, \$18,481.84 for air cargo space, \$14,391.67 for aircraft parking, \$130,047.94 for South Terminal space, \$12,240.10 for security services, \$16.00 for telecommunications fees, \$480.00 for licenses and permits, and \$31,760.32 for miscellaneous charges.

12. Debtors have made two postpetition payments to San Francisco, in the amount of \$130,047.94 and \$40,44.29, respectively. The first postpetition payment was applied to Debtors' South Terminal space rental obligations for November, 2004. The second postpetition payment was received by San Francisco on December 8, 2004 and was applied to prepetition amounts owed for electricity, jet bridge fees, and aircraft parking. These

³ Certain of the amounts included in the Postpetition Debt are projected and subject to final adjustment.

payments are reflected on Exhibit A. Debtors have also paid its prepetition and postpetition obligations to San Francisco for PFCs.

13. Thus, the total amount actually necessary to cure San Francisco under the Permits, pursuant to 11 U.S.C. § 365(b)(1)(A), is the aggregate principal sum of \$858,883.15.

14. Consistent with the Transaction Order, San Francisco reserves all of its rights under the Permits and under the Bankruptcy Code, including its rights to object to any assignment absent demonstration of adequate assurance of future performance as required by 11 U.S.C. § 365(b)(1)(C).

WHEREFORE, San Francisco respectfully requests that the Court enter an Order: (i) sustaining this Objection; (ii) granting San Francisco all proper and just relief that may be necessary for Debtors to properly cure San Francisco; and (iii) for such other relief as is appropriate.

[Signature page follows]

Dated this 10th day of December, 2004.

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 10th day of December, 2004, the foregoing **San Francisco Airport Commission's Objection to Notice Regarding Maximum Cure Amount**, was served via postage paid, first class U.S. Mail to the parties on the attached listing and via facsimile as indicated below:

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