

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

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

**OBJECTION OF GENERAL ELECTRIC CAPITAL CORPORATION
TO NOTICE REGARDING MAXIMUM CURE AMOUNTS**

General Electric Capital Corporation (“GECC”)¹, by and through its undersigned counsel, hereby objects to Debtors’ Notice Regarding Maximum Cure Amounts dated November 29, 2004, and more particularly that certain *Exhibit # 217 - Schedule Regarding Maximum Cure Amounts for Executory Contracts and Unexpired Leases That May Be Assumed and Assigned* (the “Exhibit 217 Cure Notice”) attached thereto, wherein Debtors allege that the cure amount owing under that certain agreements (the “GECC Agreements”) between ATA Holdings, Inc. and/or ATA Airlines, Inc. (the “Debtors” or “ATA”) and the GECC is \$25,343.17, and states 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 debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

¹ Contemporaneously herewith, a separate objection to the Notice of Maximum Cure Amounts is being submitted by an affiliate of GECC with regard to leases of aircraft and by GE Engine Services, Inc. with regard to maintenance service contracts.

2. 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.

3. The Debtors have identified GECC as Contract Party No. 217 on the Cure Notice and identified \$25,343.17 as the maximum cure amount due and owing under the three (3) GECC Agreements identified as follows:

Internal ID	Debtor Party	Nature of Agreement
665	ATA Holdings Corp.	Ground Equipment Lease, Computer Hardware and Software
259	ATA Airlines, Inc.	Non-residential real property lease, Master Lease Agreement No. 4251470
258	ATA Airlines, Inc.	Non-residential real property lease, Master Lease Agreement No. 4164357-001

Objection

4. The Debtors have incorrectly identified the maximum cure amounts, the nature of the Agreements, and the debtor entities that are parties to the Agreements, and the Debtors improperly served the Exhibit 217 Cure Notice.

A. Service Was Improper

5. Shortly after the Petition Date, counsel for GECC filed their notice(s) of appearance and have been in frequent communication with the Debtors and their counsel throughout these proceedings. Nonetheless, the Debtors did not serve GECC’s counsel of

record with a copy of the Exhibit 217 Cure Notice until December 6, 2004. Service of the Cure Notices to GECC's offices scattered throughout the U.S. and Europe is not a substitute for service upon counsel of record.

B. Debtors Failed to Properly Identify Executory Contracts

6. In addition to the GECC Agreements identified in the Exhibit 217 Cure Notice, GECC and the Debtors are parties to approximately 40 independent copier leases for copiers used by the Debtors at various locations (the "Copier Leases"). The Debtors have not identified these leases in the Exhibit 217 Cure Notice, nor in any other cure notice served on GECC. GECC therefore reserves all rights to insist upon full payment of the appropriate cure amount under each of the Copier Leases, and to object to the assumption and assignment of the Copier Leases.

7. The Debtors have provided insufficient information for GECC to identify the ground equipment lease for computer hardware and software identified by the Debtors with Internal ID No. 665 ("Lease 665") and therefore GECC has been unable to determine the appropriate cure amount for Lease 665, and whether such a lease even exists. As such, GECC reserves all rights to object to the assumption and/or assignment of such leases, including the calculation of cure amounts due and owing.

C. Debtors Failed to Identify Proper Lessee on the Executory Contracts and Failed to Calculate the Proper Cure Amounts

8. Master Lease Agreement No. 4251470 identified by the Debtors with internal ID No. 259 ("Lease 259") was entered into on or about December 22, 2003, by and between GECC and ATA Holdings Corp. (not ATA Airlines, Inc. as identified by the Debtors), by which ATA Holdings Corp. leased from GECC certain NCR Teradata hardware and software utilized by the Debtors as part of its reservation and ticketing

system. The correct cure amount for payments due under Lease 259 through December 25, 2004, including regular lease payments, taxes, and late fees, but exclusive of any claim for attorneys fees and costs, is \$107,738.43. See the attached Exhibit A summarizing the items included in this calculation.

9. Master Lease Agreement No. 4164357-001 identified by the Debtors with Internal ID No. 258 ("Lease 258") was entered into on or about December 3, 2002, by and between GECC and ATA Holdings Corp. (not ATA Airlines, Inc. as identified by the Debtors), by which ATA Holdings Corp. leased from GECC certain Bell Logix Computers and related equipment utilized by the Debtors as part of its reservation and ticketing system. The correct cure amount for payments due under Lease 258 through December 25, 2004, including regular lease payments, taxes, and late fees, but exclusive of any claim for attorneys fees and costs, is \$78,548.30. See the attached Exhibit B summarizing the items included in this calculation.

D. Reservation with Respect to Cure Amounts and All Other Objections

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

11. Furthermore, to the extent that the assumption and assignment of the Contracts does not occur on or before December 25, 2004, the Debtors will be obligated

to pay additional amounts until said leases are assumed or assigned, not merely the maximum amounts set forth in the Cure Notice and GECC therefore reserves all rights to insist upon full payment of the appropriate cure amount under each of the GECC Agreements.

12. 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 ground equipment leases (the "Ground Equipment Leases") which may or may not include the Agreements with GECC.

13. Pursuant to the agreement between AirTran and the Debtors, the Ground Equipment Leases to be assumed by AirTran as part of the proposed transaction are to be identified by AirTran and the Debtors at the time of the closing of the Transaction. Furthermore, it is unknown whether an alternative transaction will involve the assumption of the GECC Agreements.

14. Consistent with the Transaction Procedures Order, GECC reserves its right to object to any assignment of the GECC Agreements 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, GECC, objects to the Cure Notice identified as Exhibit 217 and respectfully requests that the Court enter an appropriate Order protecting its rights with respect to cure amounts due and owing to GECC upon the assumption of one or more of the GECC Agreements and that the Court find that GECC shall not be deemed to have

consented to any assumption and/or assignment of the GECC Agreements and shall have preserved its right to object to assumption and assignment of any or all of the GECC Agreements.

DATED this 10th day of December, 2004.

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