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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

REPUBLIC AIRWAYS HOLDINGS INC., *et al.*,
Debtors.¹

Chapter 11

Case No. 16-10429 (SHL)

(Jointly Administered)

**SUPPLEMENTAL RESPONSE OF CITIBANK, N.A. TO DEBTORS' FIRST OMNIBUS
MOTION PURSUANT TO 11 U.S.C. §§ 105(a), 363(b), 365, 554 & 1110 AND FED. R.
BANKR. P. 6006 & 6007 FOR AN ORDER (I) AUTHORIZING DEBTORS TO
TRANSFER TITLE TO AND ABANDON CERTAIN OWNED AIRCRAFT AND
ENGINES AND REJECT RELATED AIRCRAFT LEASE AND (II) (A) AUTHORIZING,
BUT NOT DIRECTING, DEBTORS TO FULFILL THEIR OBLIGATIONS UNDER A
CERTAIN ENGINE PURCHASE AGREEMENT AND (B) DIRECTING CITIBANK,
N.A. TO TAKE ALL STEPS TO COOPERATE WITH THE CLOSING OF SAME**

Citibank, N.A. ("Citibank"), by and through its undersigned counsel, hereby files this
Supplemental Response (this "Supplemental Objection") to *Debtors' First Omnibus Motion
Pursuant to 11 U.S.C. §§ 105(A), 363(B), 365, 554 & 1110 and Fed. R. Bankr. P. 6006 & 6007
for an Order (I) Authorizing Debtors to Transfer Title to and Abandon Certain Owned Aircraft
and Engines and Reject Related Aircraft Lease and (II) (A) Authorizing, but not Directing,
Debtors to Fulfill Their Obligations Under a Certain Engine Purchase Agreement and (B)
Directing Citibank, N.A. to Take All Steps to Cooperate With the Closing of Same* (the "Motion")

¹ The Debtors in these chapter 11 cases are the following entities: Republic Airways Holdings Inc.; Republic Airways Services, Inc.; Republic Airline Inc.; Shuttle America Corporation; Midwest Air Group, Inc.; Midwest Airlines, Inc.; and Skyway Airlines, Inc. The Debtors' employer tax identification numbers and addresses are set forth in their respective chapter 11 petitions.

[Dkt. No. 100].² In support of this Supplemental Objection, Citibank respectfully states as follows:

Supplemental Objection

1. On Sunday morning, the Debtors filed a reply brief (the “Reply”) with the Court in further support of the Motion. We write briefly to address the Reply, and specifically the return of certain engines that are subject to the Motion. Citibank’s other objections to the Motion remain unresolved, but are fully briefed in the Limited Objection [Dkt. No. 147] and will not be discussed here.

2. The parties agree that the Debtors must surrender and return the Excess Owned Equipment to Citibank pursuant to Section 1110(c) of the Bankruptcy Code in a reasonable manner. Simply put, what the Debtors propose to do is not reasonable.

3. On Friday, March 18, 2016, Citibank learned for the first time that not only were the engines that belonged in the airframes not at the same location as the aircraft, but that some of the engines that are in the airframes belong to unidentified third-parties and that those engines must be removed before the aircraft may be returned to Citibank.³ These facts were not fully disclosed by the Debtors and bear on the reasonableness – or lack thereof – of the Debtors’ proposed abandonment procedures.

4. The Debtors argue that they are not required to repair the aircraft before they are returned to Citibank and that the aircraft and engines should be returned “as is, where is.”

² Capitalized terms are defined in Citibank’s Limited Objection or in the Motion.

³ There is no basis for the Court to disregard Citibank’s arguments that the aircraft should be returned with their original engines. Citibank made it clear in its Limited Objection that it did not know whether the proper engines were on the proper airframes (Limited Objection ¶ 30), and consequently argued that the Debtors’ insurance obligations should be extended until the earlier of 30 days after entry of the order and Citibank’s retrieval of the aircraft. (*Id.* ¶ 24.) Citibank did not learn for certain until March 18, 2016 – only three days ago and after its Limited Objection was filed – that its engines were in a different location than the airframes and that the Debtors must remove the engines that are actually installed in those airframes.

(Reply ¶ 10.) However, Citibank is not asking the Debtors to repair the aircraft before they are returned. Citibank is simply asking that the Debtors return the aircraft with the matching engines because those are the engines that are subject to Citibank's security interest. And notwithstanding their argument that "as is" is the appropriate return standard, the Debtors apparently do not actually intend to surrender the planes to Citibank "as is." Rather, Citibank understands that the Debtors must remove third-party engines that are currently installed on the Citibank airframes. The Debtors have not disclosed what is required to remove the other engines, how long it will take, or when it will be completed, but until it is done, it is impossible for Citibank to retrieve its collateral.⁴ To make matters worse, the Debtors seek permission to terminate their obligation to insure the aircraft before the third-party engines are removed and before Citibank is even able to retrieve its collateral. This is not reasonable.

5. Under similar circumstances, courts have required debtors to either return the airframes with the proper engines or pay for the cost of doing so. In In re FLYi, Inc., the Bankruptcy Court for the District of Delaware gave the debtors the option of making the aircraft available for pick up or delivering the planes to the appropriate party. In either case, the court ordered the debtors to surrender the aircraft with "the two engines originally installed." In re FLYi, Inc., Case No. 05-20011(MFW), 2005 Bankr. LEXIS 3575, at *5-7 ¶ 6 (Bankr. D. Del. Dec. 5, 2005). Likewise, in In re ATA Holdings Corp., the Bankruptcy Court for the Southern District of Indiana ordered the debtors to return the original engines to the appropriate airframes at their own cost prior to returning the aircraft. In re ATA Holdings Corp., Case No. 04-19866, Dkt. No. 1049, ¶ 7 (Bankr. S.D. Ind. Jan. 3, 2005) (the "ATA Order," a copy of which is annexed hereto as Exhibit A). Similarly, in In re Delta Air Lines, Inc., Judge Beatty found it was

⁴ Indeed, were Citibank to attempt to retrieve the airframes with engines belonging to third-parties it could be held liable for conversion.

“appropriate” for the debtors to “align the engines with the right airframes” subject to a \$180,000 cap the parties had agreed to. (Reply Ex. C at 20:6–8; Delta Order at 4.)

6. The Debtors should be required to remove the third-party engines from the Citibank airframes and realign the Citibank engines with the proper airframes at their own cost, and they should be required to cover the cost of maintaining, insuring, and storing the aircraft and engines until both tasks are completed. In Delta – a case in which the engines needed to be realigned with their proper airframes – Judge Beatty ordered the debtors to continue their insurance and storage program for 30 days from entry of the order. (Delta Order at 3–4.) Here, a 30-day period is reasonable because we understand that the Debtors must remove the engines that belong to unidentified third-parties from the aircraft before Citibank can retrieve its collateral. Citibank intends to move expeditiously and its consultants are in the process of inspecting the airframes and the engines to determine if they are airworthy.⁵

7. The revised order attached to the Reply is not the proposed order that was shared with Citibank last week and differs in several material respects. Citibank has not addressed every issue with the revised order and reserves the right to respond at the hearing.

⁵ However long the Court directs the Debtors to provide insurance coverage, the coverage period should not begin to run until an order is entered. (See Delta Order at 3-4; AMR Order at 4.) Under the Debtors’ revised order, their obligation to provide insurance would end immediately upon entry of an order approving abandonment of the Excess Owned Equipment. That is not reasonable.

WHEREFORE, Citibank respectfully requests that the Court (i) deny approval of the Abandonment Procedures in their current form, and (ii) grant such other relief as is the Court deems appropriate.

Dated: New York, New York
March 21, 2016

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EXHIBIT A

SO ORDERED: January 03, 2005.



Basil H. Lorch III

**Basil H. Lorch III
United States Bankruptcy Judge**

IN THE 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.)

ORDER AUTHORIZING DEBTORS TO REJECT CERTAIN AIRCRAFT EQUIPMENT

This matter is before the Court upon Debtors' Motion For Entry Of An Order Authorizing The Debtors To Reject Certain Leased Aircraft Equipment (the "Motion")² (Docket No. 537). The Court finds that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors; (iv) proper and adequate notice of this Motion and the hearing thereon

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).

² Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Motion.

has been given and that no further notice is necessary; and (v) good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion.

Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED.
2. The Lease is hereby rejected as of the later of the date of this order and the date of actual surrender and return of the Leased Aircraft, Leased Engines, and other rejected aircraft equipment (including all "equipment" as defined under section 1110 of the Bankruptcy Code) (expressly including spare parts, if any, and all documents and records relating thereto) (collectively, the "Rejected Aircraft Equipment") to the Lessor (the "Rejection Effective Date").
3. The Rejected Aircraft Equipment shall be surrendered and returned to Lessor at the storage facility of AAR Aircraft Services in Roswell, New Mexico.
4. The Notice requirement contained in paragraph 1 of the Amended Order Authorizing And Approving Procedure For Rejection And Surrender of Aircraft And Aircraft Engines Pursuant To 11 U.S.C. §365 (the "Rejection Procedures Order") entered by the Court on December 17, 2004 has been satisfied by the notice of the Motion.
5. The automatic stay otherwise provided under section 362 of the Bankruptcy Code shall not apply to (i) the Rejected Aircraft Equipment; or (ii) actions or proceedings taken in connection with the enforcement of rights or remedies with respect to such aircraft equipment, or under the applicable documents relating to the Rejected Aircraft Equipment, including the delivery of notices of default, acceleration, demand, or disposition of collateral; or (iii) any right of setoff or recoupment of any deposit held by Lessor with respect to

the Rejected Aircraft Equipment, provided that Debtors preserve all of their rights to seek turnover or accounting of such deposits, in the future, pursuant to an appropriate motion or adversary proceeding.

6. The Debtors shall make the records and documents relating to the Rejected Aircraft Equipment available to the Lessor as promptly as practicable, but in no event later than five (5) business days following the entry of this Order.

7. Through the Rejection Effective Date, the Debtors shall (i) maintain insurance on, and pay storage and parking fees for, the Leased Aircraft and Leased Engines and, if requested, submit adequate certificates of insurance to the Lessor if contractually required; and (ii) provide the Lessor with opportunity(ies) to inspect the Rejected Aircraft Equipment. After consultation with the Lessor, the Debtors may seek to cure any allegedly unacceptable condition of the Rejected Aircraft Equipment, other than for normal wear and tear and/or any deficiency in the books and records in accordance with applicable cure periods. To the extent the Debtors have (a) removed any of the Leased Engines from the Leased Aircraft in which they were originally installed; or (b) installed those Leased Engines in other aircraft, the Debtors, at their own expense, shall reinstall the Leased Engines, prior to the Rejection Effective Date, in the Leased Aircraft in which they were originally installed.

8. As of the Rejection Effective Date, the right to take possession of the Rejected Aircraft Equipment (and the documents and records relating thereto) shall be relinquished to the Lessor.

9. In addition to what is provided in paragraph 7 above, for the Rejected Aircraft Equipment, the Debtors shall (a) continue the existing insurance coverage for twenty (20) days after the Rejection Effective Date, and (b) during that twenty (20) day period, maintain it

pursuant to the short-term requirements of the Debtors' Federal Aviation Administration-approved maintenance program and other applicable agreements and laws.

10. Upon written request from the Lessor, the Debtors agree to provide the Lessor with a lease termination document to file with the Federal Aviation Administration in connection with the Rejected Aircraft Equipment, if applicable; provided however, that the Lessor shall be solely responsible for all costs associated with such lease termination document, including, but not limited to, and costs for preparation, filing and recordation.

11. Nothing in this Order shall limit Lessor's rights under the Bankruptcy Code, or create any right not expressly provided herein or enhance the status of any claim of the Lessor under the Bankruptcy Code.

12. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

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Core Group

2002 List

Appearance List

Lessor