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Harvey R. Miller
Stephen Karotkin
Alfredo R. Pérez
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Attorneys for Debtors
and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
AMR CORPORATION, *et al.*,	:	**11-15643 (SHL)**
Debtors.	:	**(Jointly Administered)**

DEBTORS' OMNIBUS REPLY TO OBJECTIONS TO DEBTORS' MOTION FOR ENTRY OF ORDER PURSUANT TO 11 U.S.C. § 365(a) AUTHORIZING REJECTION OF CERTAIN EXECUTORY CONTRACTS

TO THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE:

AMR Corporation and its related debtors, as debtors and debtors in possession (collectively, the "Debtors") respectfully submit this reply to the objection (the "M&T Objection") filed by Manufacturers and Traders Trust Company ("M&T") and the objection (the

"Marathon Objection") filed by Marathon Asset Management, LP ("Marathon")[1], in each case to the Sixth Omnibus Motion of the Debtors For Entry of Order Pursuant to 11 U.S.C. § 365(a) Authorizing Rejection of Certain Executory Contracts, dated February 23, 2012 [Docket No. 1338] (the "Motion"), and respectfully represent:

I. PRELIMINARY STATEMENT

1. Pursuant to the Motion, the Debtors seek approval to reject the Facilities Agreements,[2] to the extent they are executory. The Motion does not seek to reject any guaranties issued by the Debtors relating to Facilities Agreements. M&T and Marathon contend that the Facilities Agreements are not executory and, therefore, may not be rejected. To the extent M&T and Marathon are willing to stipulate that the Facilities Agreements are not executory, but instead, general unsecured obligations of the Debtors, the Debtors will withdraw their Motion and treat the claims related to the Facilities Agreements under their plan of reorganization as general unsecured obligations of the applicable Debtors.[3]

2. The relief requested by the Debtors is neither unique nor novel. Other airlines that have filed for bankruptcy protection have discharged general unsecured bond debt. Notwithstanding the straightforward request in the Motion, in an attempt to convince this Court that the Debtors should pay approximately $1.3 billion of general unsecured debt (that would otherwise be treated under the Debtors' plan) in full, M&T argues that the various Facilities Agreements at each of the airports are integrated with nearly every other agreement relating to

[1] The reply to the Marathon Objection shall not constitute an admission by the Debtors that Marathon has the independent right (outside of those bestowed on M&T, as Marathon's indenture trustee), pursuant to its applicable indentures, to file the Marathon Objection and seek the relief asserted therein.

[2] Capitalized terms used, but not otherwise defined, herein shall have the meanings ascribed to them in the Motion.

[3] The net financial effect of rejection of the Facilities Agreements will be the same regardless of whether the Debtors reject the agreements as executory contracts or treat them as unsecured obligations under a plan.

the Debtors' lease or use of premises and equipment at AFW and DFW. M&T attempts to do this by artificially defining the various documents collectively as "Project Agreements."[4] This collective term ignores the fact that the documents referenced, among other things, (i) relate to different subject matters; (ii) provide for different consideration; (iii) are performed independently of each other; (iv) in the case of DFW, were executed by different parties; (v) were executed at different times (sometimes ***decades*** apart); (vi) contain merger clauses; (vii) have different term durations; and (viii) are not cross-defaulted. These factors support the inevitable conclusion that each of the agreements is a separate contract and separate obligation of the Debtors that cannot properly be considered integrated together under applicable Texas law. Based on these reasons alone, M&T's argument (namely that one "Project Agreement" cannot be assumed or rejected without assuming or rejecting all of the other "Project Agreements") must fail.

3. A prime example of M&T's attempt to obfuscate the nature of the agreements is its contention that a lease executed in 1972 relating to premises that are either no longer leased by the Debtors or are leased pursuant to other agreements and that relates to airport bonds no longer outstanding is somehow integrated with the Facilities Agreements executed nearly three decades later with a different counterparty. As set forth in more detail below, M&T has failed to show that any of the separate Facilities Agreements could properly be considered integrated with any – let alone all – of the other agreements at DFW and AFW. Furthermore, even if M&T were correct (which it is not) that the Facilities Agreements were integrated, they would be severable under Texas law and, thus, rejection would still be permissible. Thus the

[4] Incredibly, M&T defines "Project Agreements" to include agreements (e.g., trust indentures) to which the Debtors are not even a party.

outcome is the same: the Debtors' treatment of each of the Facilities Agreements – whether they are ultimately rejected (if executory) or treated as unsecured obligations pursuant to a plan – can have no effect on the Debtors' rights to use and occupy the leased premises under separate use or lease agreements.

4. The other arguments raised by M&T equally lack merit. The relief sought in the Motion does not require heightened scrutiny. Treatment of each of the Facilities Agreements as general unsecured obligations of the Debtors, whether through rejection or treatment under a plan, will have absolutely no effect on the Debtors' use or occupancy of premises at DFW or AFW, whether under the existing leases or under alternative arrangements, and will certainly not result in M&T's unsupported assertions of disruption of air traffic "throughout the United States and the world." Finally, M&T's contention that relief on the Motion must be delayed because formal discovery is necessary is a simple delay tactic. The Debtors filed the Motion on February 23, 2012. Since then,[5] M&T has requested (and the Debtors have provided) hundreds if not thousands of pages of informal discovery – including copies of bond documents that should already have been in M&T's possession, as the indenture trustee on the relevant bonds. M&T has had ample time to review the documents. There is no reason for further delay.

II. BACKGROUND

5. The Debtors lease premises and equipment at AFW and DFW pursuant to multiple, separate leases. At DFW, the Debtors lease their airport premises and equipment from The Dallas/Fort Worth International Airport Board (the "DFW Board"). At AFW, the Debtors

[5] The last request by M&T for documents (and to which the Debtors responded) was made on April 3, 2012. Since then, the Debtors are unaware of any additional requests for informal discovery.

lease their airport premises and equipment from AllianceAirport Authority, Inc. ("AAA"). Over the years, the Debtors also entered into various separate Facilities Agreements to finance the costs of acquisition, construction, equipment and improvement of certain facilities located at those airports. Although called "Facilities Agreements[6]," the agreements, in reality, are unsecured contractual obligations of the Debtors to repay certain bond obligations. By their express terms, the Facilities Agreements **do not** provide the Debtors with any right of use or occupancy of the airport premises and equipment; nor are those rights limited if the Debtors default on repayment of the debt thereunder.[7] Indeed, none of the Facilities Agreements are integrated with any other agreement at AFW or DFW to which a Debtor is a party.[8]

III. ARGUMENT

[6] The Facilities Agreements the Debtors seek to reject are: (1) the Facilities Agreement by and between American Airlines, Inc. and AllianceAirport Authority, Inc., dated as of October 1, 1991, M&T Exh. E; (2) the Facilities Agreement by and between American Airlines, Inc. and Dallas-Fort Worth International Airport Facility Improvement Corporation, dated as of November 1, 1995, M&T Exh. L; (3) the Facilities Agreement by and between American Airlines, Inc. and Dallas-Fort Worth International Airport Facility Improvement Corporation, dated as of September 1, 1999, M&T Exh. O; (4) the Facilities Agreement by and between American Airlines, Inc. and Dallas-Fort Worth International Airport Facility Improvement Corporation, dated as of August 1, 2000 relating to the Dallas-Fort Worth International Airport Facility Improvement Corporation American Airlines, Inc. Revenue Refunding Bonds, Series 200)A, M&T Exh. S; (5) the Facilities Agreement by and between American Airlines, Inc. and Dallas-Fort Worth International Airport Facility Improvement Corporation, dated as of August 1, 2000, for the Dallas-Fort Worth International Airport Facility Improvement Corporation American Airlines, Inc. Revenue Refunding Bonds, Series 2000B, M&T Exh. U; (6) the Facilities Agreement by and between American Airlines, Inc. and Dallas-Fort Worth International Airport Facility Improvement Corporation, dated as of August 1, 2000, relating to the Dallas-Fort Worth International Airport Facility Improvement Corporation American Airlines, Inc. Revenue Refunding Bonds, Series 2000C, M&T Exh. Y; (7) the Facilities Agreement by and between American Airlines, Inc. and Dallas-Fort Worth International Airport Facility Improvement Corporation, dated as of April 1, 2002, relating to the Dallas/Fort Worth International Airport Facility Improvement Corporation American Airlines, Inc. Revenue Bonds, Series 2002, M&T Exh. BB; (8) the Facilities Agreement by and between American Airlines, Inc. and Dallas-Fort Worth International Airport Facility Improvement Corporation, dated as of June 1, 2007, for the Dallas-Fort Worth International Airport Facility Improvement Corporation American Airlines, Inc. Revenue Refunding Bonds, Series 2007, M&T Exh. JJ; (9) the Facilities Agreement by and between AllianceAirport Authority, Inc. and American Airlines, Inc., dated as of March 1, 2007, M&T Exh. GG. The Facilities Agreements relating to DFW are collectively defined as (the "DFW Facilities Agreements"). The Facilities Agreements relating to AFW are collectively defined as (the "AFW Facilities Agreements").

[7] Each Facilities Agreement makes clear that lease and use of the "project" is governed by the applicable separate lease agreements.

[8] Annexed as Exhibit A hereto is a summary of the various leases pursuant to which the Debtors use and occupy the premises at AFW and DFW. A related diagram is also included.

6. The Debtors have sought to reject the Facilities Agreements in the event they are executory.[9] M&T's principal argument is that the Facilities Agreements are executory insofar as they are allegedly integrated with a myriad of other agreements at DFW and AFW. For the reasons stated below, M&T's position lacks merit.

A. The Facilities Agreements Are Not Integrated With the Other Agreements at DFW and AFW

7. M&T's contrived definition of "Project Agreements" purports to include *all* of the Facilities Agreements, the equipment leases at AFW and DFW, the "Guaranty Agreements" (pertaining to both airports), the "Trust Indentures" (ostensibly pertaining to both airports), the 1972 Special Facilities Lease Agreement (defined on Exhibit A) and the Additional Supplemental Leases (defined on Exhibit A).[10] M&T then notes that "[t]o view the Facilities Agreements independent of the other Project Agreements, and permit the Debtors to reject one without the rest, is contrary to express language of the Project Agreements and departs from well-established bankruptcy law." M&T Objection, p. 17. M&T, however, offers no support for its contention that the "***collective*** intent of DFWFIC, AAA, the Board, the Debtors and the Indenture Trustee [was] to treat ***the documents*** as components of a ***single transaction***." M&T

[9] "Although § 365 does not define the term 'executory contracts,' courts have long employed the definition articulated by Professor Countryman, i.e., 'a contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other.'" *U.S. Wireless Data, Inc. v. Halperin (In re Wireless Data, Inc.)*, 547 F.3d 484, 488 (2d Cir. 2008) (quoting Vern Countryman, *Executory Contracts in Bankruptcy: Part I*, 57 Minn. L. Rev. 439, 460 (1973)). "A contract is not executory if the only performance required by one side is the payment of money." *In re Calpine Corp.*, No. 05–60200 (BRL), 2008 WL 3154763, at *4 (Bankr. S.D.N.Y. Aug. 4, 2008) (quoting *In re Digicon, Inc.*, 71 F.App'x 442 (5th Cir. 2003)). Here, there are no unperformed obligations owed by DFWFIC or AAA to the Debtors under the Facilities Agreements. The only obligations remaining are those of American to repay prepetition unsecured debt under the Facilities Agreements.

[10] The Guaranty Agreements are M&T Exhs. G, M, P, T, W, Z, CC, DD, HH, and KK; the Trust Indentures are M&T Exhs. E, H, K, N, R, U, X, AA, FF, and II; the 1972 Special Facilities Lease Agreement is M&T Exh. A; the Additional Supplemental Leases are M&T Exhs. B and C.

Objection, p. 18 (emphasis added).[11] Indeed, M&T has failed to show the agreements are integrated, even with respect to each distinct airport.

8. M&T misinterprets Texas law by stating that it "***instructs*** that agreements executed at the same time, with the same purpose, and as part of the same transaction ***are*** interpreted as one contract" and will be construed together. M&T Objection, p. 17. Although "documents pertaining to the same transaction ***may*** be read together," *In re Laibe Corp.*, 307 S.W.3d 314 (Tex. 2010) (emphasis added), the fact that two agreements relate to the same transaction or are executed at the same time is not, as M&T suggests, dispositive of whether they are integrated as one agreement. Where agreements may have been executed contemporaneously, factors such as (i) whether there was separate consideration for each agreement, (ii) whether the agreements address different rights or subject matter, and (iii) whether the effectiveness of one agreement is dependent on execution of the other are equally examined in assessing integration. *See Baker v. Baker*, 143 Tex. 191, 197-98 (Tex. 1944). Furthermore, "before one contract is merged into another, the last contract must be between the *same parties* as the first, must embrace the *same* subject matter, and must have been *so intended* by the parties." *Fish v. Tandy Corp.*, 948 S.W.2d 886, 898-99 (Tex. App. 1997) (emphasis added).

9. Significantly, courts examine the intent of the parties reflected, among other things, in the terms of the documents themselves. *See Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983) (construing contracts requires ascertaining the parties' intentions, as reflected by

[11] To the extent the M&T Objection stands for the proposition that agreements at AFW may be integrated into a single transaction with those at DFW, M&T offers no evidence that the transactions at AFW are related to – let alone integrated with – the transactions at DFW.

the written terms of the document).[12] Where a written contract contains a "merger clause" courts do not consider external agreements or other negotiations in interpreting the contract.[13]

10. In sum, Texas law makes clear that the analysis must begin and end with an examination of the express language of each of the Facilities Agreements, particularly where, as here, they contain merger clauses. M&T, however, sidesteps the express terms of the Facilities Agreements and instead refers to the 1972 Special Facilities Agreement and a history of the premises at DFW to argue, without substantiation, that the Facilities Agreements are integrated with the remainder of the "Project Agreements." It concludes that because the premises at DFW were constructed in the 1970's using bond proceeds from bonds issued by the ***DFW Board***, this transaction alone integrates ***all*** of the Facilities Agreements with the 1972 Special Facilities Agreement and Additional Supplemental Leases. *See* M&T Objection, pp. 19-20. Importantly, M&T ignores the fact that those premises were improved over **two decades later**, under the terms of different agreements, using bond proceeds from bonds issued by the ***DFWFIC***. There is no support for its position. Significantly, the bonds at issue in the older agreements are no longer outstanding.[14] Even applying the standards articulated by M&T (namely focusing on

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[12] *See also R & P Enterprises v. LaGuarta, Gavrel & Kirk, Inc.*, 596 S.W.2d 517, 518 (Tex.1980) (the primary concern of the court is to ascertain the true intentions of the parties as expressed in the instrument.)*; City of Pinehurst v. Spooner Addition Water Co.*, 432 S.W.2d 515, 518 (Tex. 1968) (same).

[13] Texas law focuses on the language of the contract itself, instructing that "contemporaneous agreements [are] ordinarily inadmissible to add to, vary, or contradict the terms of an unambiguous written contract intended by the parties to be the final expression of their agreement." *JBV Inc. v. Barkley*, No. 03-96-00279-CV, 1997 WL 420785 (Tex. App. July 24, 1997) (citing *Tracy v. Annie's Attic, Inc.*, 840 S.W.2d 527, 532 (Tex. App. 1992); *see also See Barker v. Roelke*, 105 S.W.3d 75, 83 (Tex. App. 2003) (holding a merger clause prevented appellant from relying on extraneous agreements to inform the court's understanding of the contract); *see also Smith v. Smith*, 794 S.W.2d 823, 827 (Tex. App. 1990) ("The parol evidence rule provides that [particularly where a merger clause exists]. . . all prior negotiations and agreements with regard to the same subject matter are excluded from consideration whether they were oral or written.").

[14] Indeed, some of the premises leased under the older leases are now leased by the Debtors pursuant to different lease agreements.

contemporaneous execution) reveals that the Facilities Agreements cannot possibly be integrated with agreements executed, in some cases, over thirty years earlier. The fact that, as M&T argues, the DFW Facilities Agreements require the Debtors to use the projects financed by bond proceeds in the manner designated by the separate leases does not, under Texas law, integrate the documents where the DFW Facilities Agreements, among other things, (i) contain merger clauses, (ii) pertain to a different subject matter (repayment of bond proceeds vs. lease of premises) and (iii) are supported by separate consideration. In fact, the DFW Facilities Agreements expressly state that possession, use and occupancy of the bond-financed projects are governed by the separate lease agreements and that nothing in the Facilities Agreements is intended to limit the exercise of rights by American under such leases. *See* DFW Facilities Agreements, § 3.1 (M&T Exhs. L, O , S, U, Y, BB, and JJ). They further provide that termination of the DFW Facilities Agreements does not affect the rights of American under the leases. *See* DFW Facilities Agreements, § 2.2 (M&T Exhs. L, O, S, U, Y, BB and JJ).

11. As "proof" of integration of the Facilities Agreements with the other "Project Agreements," M&T also cites to the DFW Master Equipment Leases executed in 1999 and 2002. (M&T Exhs. Q, EE) Even if M&T's argument were *solely* that the equipment leases were integrated with the DFW Facilities Agreements executed in the same years, M&T still cannot show that those agreements are integrated. Again, the DFW Master Equipment Leases and the allegedly "related" DFW Facilities Agreements were (i) executed by different parties, (ii) are supported by separate consideration, (iii) contain merger clauses indicating the respective agreement constitutes the entire agreement of the parties, and (iv) function independently of one another. Further, these agreements are not cross-defaulted.

12. As with the DFW Facilities Agreements, M&T raises similar arguments with respect to the AFW Facilities Agreements[15], the AFW Master Equipment Leases[16] and the "other Project Agreements." M&T Objection, p. 23. It notes that the 2007 AFW Facilities Agreement was used to refinance a prior bond issue – the proceeds of such prior bond issue financed construction of facilities at AFW. Again, none of these factors are dispositive in an integration analysis. At bottom, the AFW Lease Agreement[17], AFW Master Equipment Lease, and Facilities Agreements (i) were not each executed at the same time; (ii) are supported by separate consideration; (iii) are not cross-defaulted[18]; and (iv) have different maturities. Further, the AFW Lease Agreement and AFW Master Equipment Lease each have a merger clause. *See* AFW Lease Agreement §7.7; AFW Master Equipment Lease § 13.8. Ultimately, M&T fails to show that all of the Facilities Agreements were, collectively, with the other agreements to which American became a party at DFW and AFW, a "single, integrated agreement." In sum, M&T's broad, sweeping statements concerning the integration of all of the "Project Agreements" lack any support and most be overruled. Indeed, as reflected on the chart annexed on Exhibit B, a detailed analysis of the agreements shows they are not integrated with the leases of the airport premises.

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[15] *See, e.g.*, M&T Exhs. E and GG.

[16] Annexed as Exhibit C hereto is a true and correct copy of the Master Equipment Lease Agreement by and between AllianceAirport Authority, Inc. and American Airlines, Inc. dated April 1, 1991 (the "AFW Master Equipment Lease").

[17] Annexed as Exhibit D hereto is a true and correct copy of the Lease Agreement by and between AllianceAirport Authority, Inc. and American Airlines, Inc. dated March 1, 1990 (the "AFW Lease Agreement").

[18] Not only is there no cross-default clause in any of the AFW agreements, but each of the AFW Facilities Agreements contains language expressly prohibiting any inference that the agreements are cross-defaulted: "Termination of this Agreement shall not affect the respective rights and obligations of the Authority and the Company under the [AFW Lease Agreement and AFW Master Equipment Lease]." 1991 AFW Facilities Agreement §2.2 (M&T Exh. E); 2007 AFW Facilities Agreement §2.2 (M&T Exh. GG).

B. Even If the Facilities Agreements Were Integrated, Rejection is Permissible Because the Agreements Are Severable under Texas Law

13. Even if M&T were correct (which it is not) and the Facilities Agreements were integrated with the other agreements cited by M&T, rejection is still permissible because, where a lease or contract can be severed under the applicable state law, "section 365 allows assumption or rejection of the severable portions of the lease or contract." *In re FFP Operating P'Ship, L.P.*, No. 03-90171-BHJ-11, 2004 WL 3007079, at *1 (Bankr. N.D. Tex. Dec. 27, 2004) (citing *Stewart Title Guar. Co. v. Old Republic Nat'l Title*, 83 F.3d 735, 741 (5th Cir. 1996). Courts have found that even if multiple agreements are deemed integrated, where they can be severed, they may be assumed or rejected separately. *See, e.g., Moore v. Pollock (In re Pollock),* 139 B.R. 938, 930-42 (9th Cir. BAP 1992) (citing *In re Gardinier,* 831 F.2d 974, 978 (11th Cir.1987)) ("If the obligations are severable, then all obligations need not be assumed under Bankruptcy Code § 365."); *In re Plitt Amusement Co. of Washington, Inc.,* 233 B.R. 837, 846 (Bankr. C.D. Cal. 1999) (lease was severable from other instruments and could be rejected separately).

14. Under Texas law, a severable contract is one "that includes two or more promises each of which can be enforced separately, so that failure to perform one of the promises does not necessarily put the promisor in breach of the entire contract." *In re FFP Operating P'Ship, L.P.*, 2004 WL 3007079, at *2 (citations omitted). If the separate promises can be performed independent of one another, they are severable. *Id.* at *5; *see also St. John v. Barker*, 638 S.W.2d 239, 243 (Tex. App. 1982). Where the terms of the agreements provide for separate consideration for each type of right, the promises are severable. *See Stewart Title Guar. Co.*, 83. F.3d at 739 (holding that, although use rights and reproduction rights are interrelated, they are severable where separate consideration was given for both).

15. Here, there can be no dispute that each Facility Agreement is supported by separate consideration from other Facility Agreements and other agreements cited by M&T. Furthermore, each of the Facilities Agreements is performed independent of the performance of the lease agreements. Indeed, at DFW, the counterparty to the DFW Facilities Agreements is not even the same party as the counterparty to the leases. Ultimately, even if the Court finds that any of the Facilities Agreements are integrated with any other agreement at DFW or AFW, the foregoing reflects that they are also severable and may be assumed or rejected separately.

C. Rejection of the Facilities Agreements Does Not Implicate a Public Interest

16. M&T makes the unsupported assertion that the rejection of the Facilities Agreements (if executory) will somehow implicate a public interest by causing a disruption of the Debtors' operations and affecting "air traffic" in the United States and worldwide. M&T Objection, p. 26. The Facilities Agreements are unsecured contractual obligations, which do not confer a right of possession, use or occupancy with respect to the airport premises. The Debtors retain such rights to use and occupy airport premises under separate lease and use agreements. Accordingly, the treatment of each of the Facilities Agreements as general unsecured obligations of the Debtors, whether through rejection or treatment under a plan, will have no effect on the Debtors' use or occupancy of premises at DFW or AFW, whether under the existing leases or under alternative lease arrangements, and will certainly not result in M&T's exaggerated claim of disruption of worldwide air traffic. Furthermore, the Debtors are not the first airline to discharge bond debt under a plan. *See, e.g., In re Delta Air Lines, Inc.*, Case No. 05-17923 (Bankr. S.D.N.Y. Feb. 7, 2007) [Docket No. 4494] (providing in the disclosure statement that certain bonds issued in connection with its Atlanta and DFW premises were general unsecured obligations and would be discharged under the plan); *In re UAL Corp.*, Case No. 02- 48191 (Bankr. N.D. Ill. Oct. 24, 2005) [Docket No. 13321] (providing in the disclosure statement that certain bonds issued in connection with debtor's Miami and Boston airport premises were general unsecured obligations and would be discharged under the plan). To suggest that treatment of the obligations under the Facilities Agreements as general unsecured obligations would cause worldwide chaos is imaginative, at best.

D. The Relief Sought in the Motion is Limited to the Facilities Agreements

17. M&T and Marathon suggest that the Debtors may, through the Motion, attempt to disclaim liability under certain guaranties or other instruments. That is not the case. The Debtors have not sought to "reject" the guaranties. Nothing in the Motion is intended to waive any party's rights (including those of the Debtors) under such guaranties to the extent they are enforceable.

E. Rejection of the Facilities Agreements Is In the Exercise of the Debtors' Business Judgment

18. M&T argues that the Debtors have not met the "business judgment rule" because they "offer no Declaration, proffer and cite no evidence in support of . . . [Debtors'] rejection of the Facilities Agreements." M&T Objection, p. 12. But the "business judgment" standard is not strict; it requires only that rejection of the unexpired lease or executory contract will benefit the debtor's estate. *See In re Balco Equities, Inc.*, 323 B.R. 85, 99 (Bankr. S.D.N.Y. 2005). The Debtors have noted that the Facilities Agreements are general unsecured obligations. They are not integrated with the Debtors' right to use or occupy the leased premises and, as such, rejection or breach of the Facilities Agreement will not dispossess the Debtors of the premises. Indeed, the only reason the Debtors filed the Motion was out of an abundance of caution to ensure and provide notice that, if the Facilities Agreements were considered executory, they would be rejected and would continue to be treated as unsecured obligations. Whether rejected as executory contracts or treated under a plan, the net result will be the same – the claims under the Facilities Agreements will constitute general unsecured obligations of the Debtors. Conversely, "assuming" the obligations would require the Debtors to pay a general

unsecured obligation of approximately $1.3 billion with no attendant benefits. Accordingly, the relief sought in the Motion is a reflection of the Debtors' business judgment.[19]

CONCLUSION

19. For the reasons stated above, M&T and Marathon have failed to show that the Facilities Agreements are integrated or that there is any reason not to grant the relief sought in the Motion.

WHEREFORE the Debtors respectfully request the Court overrule the Objections and grant the relief requested in the Motion and such other and further relief as is just.

Dated: New York, New York
May 7, 2011

/s/ Alfredo R. Perez
Harvey R. Miller
Stephen Karotkin
Alfredo R. Pérez

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

[19] M&T demands that the Debtors submit additional evidence or declarations to support the exercise of their valid business judgment. But this demand turns the law squarely on its head: a party seeking to challenge "must sufficiently plead facts which if true would take defendants' actions outside the protection afforded by the business judgment rule." *Crescent Mach I Partners L.P. v. Turner*, 846 A.2d 963, 984 (Del. Ch. 2000). "To overcome the presumption of the business judgment rule, plaintiffs bear the burden to show that the defendant directors failed to act (1) in good faith; (2) in the honest belief that the action was in the best interest of the corporation; or (3) on an informed basis." *Crescent Mach I Partners L.P.*, 846 A.2d at 984 (citing *Aronson*, 473 A.2d at 812). Unless a party can demonstrate that a decision was not a business decision, lacked disinterestedness and independence, lacked due care, and lacked good faith, the burden of proof does not shift to the defendant. *Mills Acquisition Co. v. Macmillan, Inc.*, 559 A.2d 1261, 1280 (Del. 1989). "Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task." *In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005). M&T has failed to offer any such evidence, and its bald assertion that the Debtors' "conclusory statements lack evidentiary support" do not save its argument here.

Attorneys for Debtors
and Debtors in Possession

Exhibit A

Summary of Leases

DFW

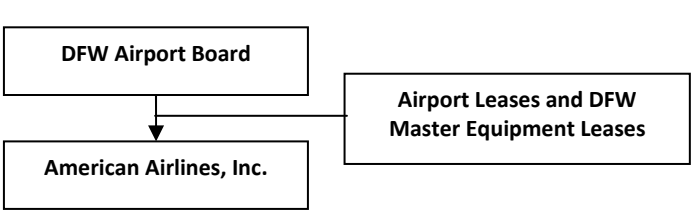
Airport Leases	Description	Airport Counterparty
DFW Airport Lease (October 1, 2010) (Annexed hereto as Exhibit E)	The primary lease governing American's occupancy of the DFW premises is a multi-lateral Lease and Use Agreement dated as of October 1, 2010 (the "DFW Airport Lease"), which expires on September 30, 2020. Rent payable by the Debtors under the DFW Airport Lease is calculated according, among other things, to an allocation method based on DFW's revenues and expenditures.	DFW Board
Priority Parcel Lease (December 31, 2009) (Annexed hereto as composite Exhibit F)	Pursuant to a lease originally dated February 11, 2003, as amended by an amendment dated December 31, 2009, by and between the DFW Board and American (as amended, the "Priority Parcel Lease"), the Debtors lease a priority parcel service facility located at 2300 Crossunder #3, consisting of 2.560 acres. The term of the Priority Parcel Lease expires on September 30, 2020. Rent is paid to the DFW Board in accordance with the rates published by DFW from year to year.	DFW Board
GSE Facility Lease (December 31, 2009) (Annexed hereto as composite Exhibit G)	Pursuant to a lease originally dated February 1, 2003, as amended by an amendment dated December 31, 2009, by and between the DFW Board and American (as amended, the "GSE Facility Lease"), the Debtors lease a ground equipment facility. The term of the GSE Facility Lease expires on September 30, 2020. Rent is paid to the DFW Board in accordance with the ground rental rate published by DFW from year to year.	DFW Board
Cargo Facility Lease (December 31, 2009) (Annexed hereto as Exhibit H)	Pursuant to a lease originally dated July 5, 1988, as amended through five separate amendments thereto through and including an amendment dated December 31, 2009 (the "Cargo Facility Lease"), by and between the DFW Board and American, the Debtors lease an air mail facility located at 1874 N. Service Road consisting of 18.441 acres. The term of the Cargo Facility Lease expires on September 30, 2020. Rent is paid to the DFW Board in accordance with the ground rental rate published by DFW from year to year	DFW Board
1972 Special Facilities Lease Agreement and Supplemental Facilities Agreements	On or about October 1, 1972, the DFW Board and American entered into a Special Facilities Lease Agreement relating to among other things, terminal space, and a catering facility (the "1972 Special Facilities Lease Agreement"). Pursuant to the 1972 Special Facilities Lease Agreement, American was	DFW Board

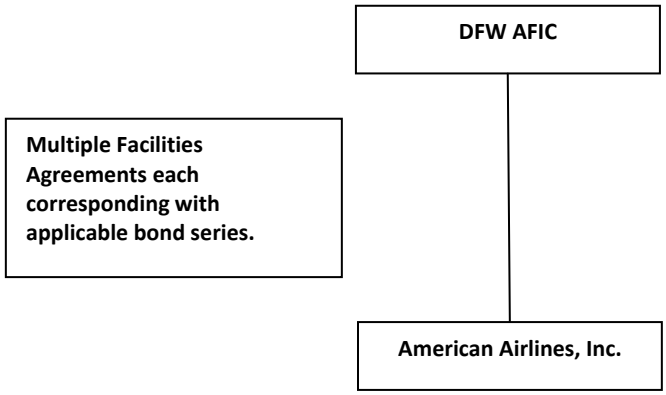
Airport Leases	Description	Airport Counterparty
	required to pay a ground rent and a separate net with respect to then-existing bonds issued by the DFW Board. From 1973 through 1987 (collectively, the "Additional Supplemental Leases"), American entered into four additional supplemental facilities lease agreements with the DFW Board pursuant to which American leased additional space (including a training center and flight training academy) and agreed to pay certain ground rent relating to the space leased plus additional "net rent" relating to certain amounts owed on then existing airport bonds issued by the DFW Board. American no longer leases the catering facility or the equipment described in the 1972 Special Facilities Lease Agreement and no longer leases some of the premises described in the Additional Supplemental Leases. The terminal space is now leased pursuant to the DFW Airport Lease. Significantly, the bonds issued by the ***DFW Board*** described in the 1972 Special Facilities Lease Agreement and the Additional Supplemental Leases are not the same bonds that were issued by the ***DFWFIC*** pursuant to subsequent Facilities Agreements.	
Hangar Leases (Annexed as Exhibit I)	Through separate leases between the DFW Board and American, the Debtors lease certain hangar facilities (collectively, the "Hangar Leases"). The Debtors pay ground rent and building rent in accordance specific rental rates contained in the Hangar Leases. Some of the Hangar Leases have expired, and the Debtors continue to the lease the facilities as holdover tenants. In other cases, the leases expire from 2014 through 2026, as applicable.	DFW Board
DFW Master Equipment Leases	Through separate equipment leases dated as of December 1, 1990 (as amended by a first amendment dated as of November 1, 1992),[20] September 1, 1999, and April 1, 2002 (collectively, the "DFW Master Equipment Leases"), American leased from the DFW Board certain equipment.[21] Pursuant to the DFW Master Equipment Leases, American agreed to pay to the DFW Board, a basic rental payment plus maintenance charges, taxes, water, sewer and other utility charges, as well as any governmental charges or levies that may be imposed. In addition, the Debtors were required to insure the leased equipment at their own expense. *See* DFW Master Equipment Lease dated as of December 1, 1990, § 5.3; DFW Master Equipment Lease dated as of September 1, 1999, § 5.3; Master Equipment Lease dated as of April 1,	DFW Board

[20] It is not clear that any equipment continues to be leased under the 1990 and 1992 leases.

[21] The equipment was financed separately with proceeds from special facilities revenue bonds issued by the DFWFIC, a separate legal entity.

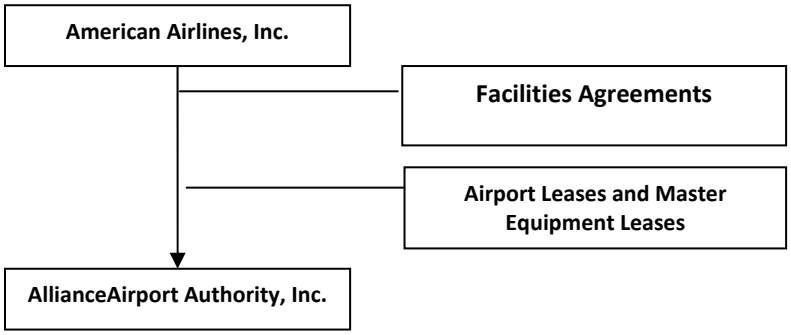
Airport Leases	Description	Airport Counterparty
	2002, §5.3.	





AFW

Airport Leases		**Counterparty**
AFW Airport Lease (March 1, 1990)	The Debtors lease the airport premises at AFW airport pursuant to a certain Lease Agreement by and between AllianceAirport Authority, Inc. ("AAA") and American, dated March 1, 1990 (the "AFW Airport Lease"). Under the AFW Airport Lease, the Debtors must pay to AAA a base rental during the "Initial Term" of the AFW Airport Lease and additional rent during extension terms computed, among other things in accordance with fair market value. In addition to the foregoing, pursuant to the AFW Airport Lease, the Debtors must also pay all taxes and other similar charges associated with the leased premises (including maintenance charges, utility charges, and governmental levies).	AAA
AFW Master Equipment Lease (April 1, 1991)	Pursuant to a Master Equipment Lease Agreement by and between AAA and American dated April 1, 1991 (the "AFW Master Equipment Lease"), the Debtors leased from AAA certain equipment.[22] Pursuant to the AFW Master Equipment Lease, the Debtors must pay to AAA for use of the equipment, a basic rental payment plus maintenance charges, taxes, water, sewer and other utility charges, as well as any governmental charges or levies that may be imposed. *See* AFW Master Equipment Lease, § 3.3. In addition, the AFW Master Equipment Lease requires the Debtors to insure the leased equipment, at their expense. *See* AFW Master Equipment Lease, §7.2.	AAA



[22] The equipment was financed separately with proceeds from special facilities revenue bonds issued AAA pursuant to a separate agreement.

Exhibit B

DFW

	DFW Facilities Agreements	**Real Property Leases**	**Master Equipment Leases**
Parties	DFW AFIC	DFW Board	DFW Board
Consideration	Amounts necessary to pay principal, interest and premium (if any) on the bonds.	Ground rents calculated in accordance with square footage, market value or rates set forth by DFW	Base rent plus obligation to pay maintenance, utility, taxes and other similar charges; obligation to insure equipment
Subject Matter	Payment of principal, interest and premium (if any) on bonds only; no right of possession, use or occupancy (expressly noted)	Possession, use and occupancy of premises	Possession, use and occupancy of equipment
Time of Execution	Multiple years: 1995, 1999, 2000, 2002, 2007	Multiple years: 1972 – 2010	1990, 1992 (amendment), 1999, 2002
Merger Clause Integrates Facilities Agreements?	N/A (Note: merger clause indicates that Facilities Agreements constitute entire agreement of the parties)	No	No. Indicates that Master Equipment Lease constitutes entire agreement of the parties Further each item of equipment is considered to be a separate lease
Terms	Terminates upon payment of bonds	Varying terms; many of the Debtors' primary leases expire in 2020	***Later*** of termination of Facilities Agreement or performance of covenants under the lease (*i.e.*, survive the Facilities Agreement)
Cross Defaulted to Facilities Agreement?	N/A	No	No
Express Written Intent to Integrate with Other Agreements?	No	No	No
Capable of Being	Yes	Yes	Yes

	DFW Facilities Agreements	**Real Property Leases**	**Master Equipment Leases**
Performed Separately			

AFW

	AFW Facilities Agreements	**Real Property Lease**	**Master Equipment Lease**
Parties	AAA	AAA	AAA
Consideration	Amounts necessary to pay principal, interest, and premium (if any) on the bonds	Base rent plus ground rents calculated in accordance with appraisal procedure based on fair market value	Base rent plus obligation to pay maintenance, utility, taxes and other similar charges; obligation to insure equipment
Subject Matter	Financing for a portion of the costs of acquisition, construction, equipping, and improvement of the Project [1991]; Refunding of Series 1990 Bond debt [2007]	Use and occupancy of premises	Possession and use of equipment
Time of Execution	Multiple years: 1991, 2007	1990	1991
Merger Clause integrates Facilities Agreements?	N/A (no merger clause)	No	No
Terms	Terminates upon payment in full of bonds	Initial term with automatic extensions thereafter. Parties may elect not to extend upon written notice.	Varies; upon expiration of date specified in Equipment Schedule relating to each piece of equipment, not to exceed the Residual Interest Possession Date designated in each Equipment Schedule relating to each piece of equipment.
Cross Defaulted to Facilities Agreement?	N/A (Each Facilities Agreement at AFW expressly states that termination of the agreement is to have no effect on the rights of American with respect to any of the lease agreements)	No	No
Express Written Intent to Integrate with Other	No	No	No

Agreements?			
Capable of Being Performed Separately	Yes	Yes	Yes