

The court incorporates by reference in this paragraph and adopts as the findings and analysis of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: April 13 2005

Mary Ann Whipple  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re:	)	Case No. 04-70451
	)	
Ohio Turbine Center, Inc.,	)	Chapter 11
	)	
Debtor.	)	
	)	JUDGE MARY ANN WHIPPLE

**MEMORANDUM OF DECISION REGARDING  
MOTION FOR RELIEF FROM STAY AND ABANDONMENT**

This case is before the court for decision after final hearing on the Combined Motion for Relief from the Automatic Stay and Request for Abandonment [Doc. #33] filed by Aircraft Structures International Corp., formerly known as Aircraft Structures, Inc. (“ASIC”). ASIC seeks relief from the automatic stay in order to enforce a possessory mechanic’s lien against certain property consisting of a wrecked Cessna Caravan airplane (Serial No. 20800215) and abandonment of that property pursuant to 11 U.S.C. § 554. At the hearing, documentary and testimonial evidence was offered by both ASIC and Debtor.

This memorandum of decision constitutes the court’s findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52, made applicable to this contested matter by Fed. R. Bankr. P. 9014 and 7052. Regardless of whether or not specifically referred to in this decision, the court has examined the submitted

materials, weighed the credibility of the witnesses, considered all of the evidence, and reviewed the entire record of the case. Based upon that review, and for the following reasons, ASIC's motion will be granted.

### **FACTUAL BACKGROUND**

Debtor is an Ohio corporation in the business of aircraft engine repair and overhauling. Robert Ruhe ("Ruhe") is Debtor's president and a fifty percent shareholder. His wife, Marilyn Ruhe, is the secretary and treasurer and owns the remaining fifty percent of Debtor's stock.<sup>1</sup> Ruhe is employed by Debtor, which has one part-time and two full-time employees. Ruhe testified that he also "helps manage" Specialty Aviation Systems, Inc. ("SAS."), an air freight business, and Ruhe Sales, Inc. ("Ruhe Sales"). According to Ruhe, his wife owns and is president of both SAS and Ruhe Sales and he neither owns stock nor is an officer of either corporation.

ASIC is an Oklahoma corporation that specializes in the rebuilding of a particular aircraft, the Cessna Caravan. Mickey Stowers owns and operates ASIC. The mechanic's lien at issue arose as a result of repair work done by ASIC on a wrecked Cessna Caravan ("the Aircraft") that had been flown into the side of an Alaskan mountain. Ruhe had negotiated an oral contract between Debtor and ASIC to repair the Aircraft in exchange for Debtor rebuilding several engines for ASIC. The wrecked Aircraft, including the engine, had been purchased by SAS for \$56,200. But sometime after the purchase, it transferred title to Ruhe Sales. Thus, the contract between Debtor and ASIC was apparently negotiated for the benefit of Ruhe Sales and/or SAS, who was the intended end user of the Aircraft after its repair.

After work under the contract had been done but not completed by both Debtor and ASIC, a contract dispute arose that resulted in litigation in the United States District Court for the Western District of Oklahoma. In the Oklahoma district court case, the court found that Debtor had breached its contract with ASIC and, on July 9, 2004, entered judgment in favor of ASIC on its breach of contract claim in the amount of \$461,545.06, plus statutory interest from the date of judgment. The court also found that the judgment is secured by ASIC's "possessory and properly filed mechanics lien on [the Aircraft]." [ASIC's Ex. 10, Order, p. 27]. The court ordered the return of the engines and parts furnished by ASIC to Debtor and the return of the Aircraft's engine to Debtor that it had

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<sup>1</sup> Although Ruhe testified at the hearing that he did not know if he owned all of Debtor's stock, Debtor's Statement of Financial Affairs states that Ruhe and his wife are each fifty percent shareholders. The court takes judicial notice of the contents of its case docket and the Debtors' schedules. Fed. R. Bankr. P. 9017; Fed. R. Evid. 201(b)(2); *In re Calder*, 907 F.2d 953, 955 n.2 (10<sup>th</sup> Cir. 1990).

delivered to ASIC for installation in the Aircraft. As such, ASIC's possessory mechanic's lien on the Aircraft does not include a lien on the engine as it had not been installed at the time the dispute arose and it was returned to Debtor as ordered. Although an appeal of the district court's judgment is pending, Debtor failed to post a surety bond as was required by the district court's order dated October 12, 2004, in order to stay execution pending appeal.<sup>2</sup> [ASIC's Ex. 7]. In the absence of a surety bond posted in accordance with the district court's order, on November 5, 2004, the district court entered an order allowing ASIC to pursue foreclosure of its possessory mechanic's lien. [ASIC's Ex. 8]. Thereafter, on November 22, 2004, Debtor was ordered to appear at a judgment debtor's examination in the Oklahoma district court on December 16, 2004, and was further ordered not to transfer or dispose of any property until further order of the court. [ASIC's Ex. 6]. The November 22, 2004, order also required Debtor to produce 17 different categories of documents, including profit and loss statements for 4 years, a listing of all assets and debts and an accounts receivable list with the addresses and phone numbers of the account debtors. [ASIC Ex. 6].

Because Debtor had failed to post a surety bond pending its appeal of the district court order, the district court approved foreclosure of ASIC's mechanic's lien and ASIC commenced proceedings to sell the Aircraft at auction. But before the auction was held, Ruhe Sales transferred the Aircraft to Debtor by Bill of Sale dated December 1, 2004. [Debtor's Ex. A]. A certificate of aircraft registration was issued on December 21, 2004.<sup>3</sup> Debtor filed its Chapter 11 bankruptcy petition on December 14, 2004, two days before the auction was to occur and two days before Debtor was required by the November 22, 2004, order to appear in Oklahoma for the judgment debtor's examination.

Debtor's Chapter 11 petition lists assets in the total amount of \$538,995, of which \$461,545 represents the value listed for the Aircraft. While Debtor lists miscellaneous hand tools at \$4,800, Ruhe testified that all other tools and machinery used by Debtor are owned by Ruhe Sales. He further testified that Debtor does not have to pay for the tools and machinery provided by Ruhe Sales since it uses SAS as a supplier of engine parts. The only other assets listed by Debtor consist of a checking

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<sup>2</sup> The district court ordered Debtor to post a surety bond in the amount of \$500,000 if another lien in favor of an Ohio bank was removed and in the amount of \$350,000 if the bank's lien was not removed. [ASIC's Ex. 7].

<sup>3</sup> Although ASIC argues that ownership of the Aircraft was not transferred until December 21, 2004, when the registration was completed, the court disagrees. The Certificate of Registration itself states that "[t]his certificate is issued for registration purposes only and is not a certificate of title. The Federal Aviation Administration does not determine rights of ownership as between private persons." [Debtor's Ex. A, p. 3].

account valued at \$150, a Thrush airframe without wings valued at \$5,000, office equipment valued at \$2,500, inventory consisting of a used engine located in Oklahoma valued at \$65,000, and, in an amended Schedule B, accounts receivable owed by the related entity, SAS, in the amount of \$68,589. As liabilities, Debtor lists the secured claim of ASIC in the amount of \$461,545<sup>4</sup> and an undisputed security interest in the Aircraft that is held by the Bank of Leipsic in the amount of \$180,000. Debtor lists only three unsecured creditors, two of which are related entities - Bob Ruhe Ag Services, Inc., for a loan in the amount of \$32,246 and SAS for a loan in the amount of \$67,692. The third unsecured creditor is a law firm in Oklahoma, identified as having a claim for legal services in the amount of \$16,282. Notwithstanding these representations in the schedules, the balance sheets in Debtor's operating reports filed in this case for the periods ending December 31, 2004, January 30, 2005, and February 28, 2005, list only one unsecured prepetition debt - the debt for legal services in the amount of \$16,282. [See Record, Doc. ## 29, 50 and 65]. In response to Question 10 in Debtor's Statement of Financial Affairs, seeking identification of all property transferred other than in the ordinary course of business during the year before commencement of the case, Debtor checked the box marked none.

At the final hearing, Ruhe's testimony was, for the most part, evasive and often contradictory. When asked the simple question regarding whether Debtor owns an airplane now, he answered twice that he did not know. Later he testified that Debtor does own the Aircraft at issue. On a number of occasions, he attempted to distance himself when convenient from any knowledge or information about SAS and Ruhe Sales by deferring to his wife. Repeatedly, however, in virtually the next breath he lapsed into references to "we" and "us" in references to the other entities. And in reference to SAS's initial purchase of the Caravan, Ruhe stated that "I" bought it in Alaska. Ruhe also testified that he was not sure if Debtor received any of the \$180,000 loaned by the Bank of Leipsic, identified by Ruhe as "our" bank, that appears on his bankruptcy schedules, but that Debtor was liable "on paper" for the loan.

Ruhe further testified regarding the transfer of the Aircraft from Ruhe Sales to Debtor. His testimony on this subject was also contradictory. He first testified that he did not know whether there was any money exchanged in the transfer and he did not remember if he had asked his wife to transfer the Aircraft to Debtor. Later, he testified that, after Debtor's counsel and accountants reviewed the

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<sup>4</sup> As indicated above, Debtor valued the Aircraft on Schedule B at \$461,545, the amount of ASIC's secured claim. Nevertheless, Debtor seemingly contradicts this assertion on Schedule D, indicating that ASIC's claim is unsecured in the amount of \$310,000.

transaction, Debtor would pay Ruhe Sales “whatever is proper.” Finally, he testified regarding a special joint meeting of shareholders and directors of Debtor allegedly held on December 1, 2004, the date of the transfer. That meeting consisted of Ruhe, his wife, and another director. Minutes of the meeting were admitted into evidence at the hearing. [Debtor’s Ex. B]. Ruhe testified that the minutes accurately reflect the action taken by the shareholders and directors regarding the Aircraft. The minutes indicate that the meeting was called by Ruhe as President of Debtor to discuss a claim Debtor was asserting against Ruhe Sales in the amount of \$461,545, the amount of the mechanic’s lien of ASIC reduced to judgment against Debtor. The minutes indicate that because Ruhe Sales found the amount unreasonable and because payment would cause Ruhe Sales great financial hardship, Debtor would release its claim against Ruhe Sales in exchange for the transfer of ownership of the Aircraft and its engine from Ruhe Sales to Debtor and the release of a claim against Debtor for \$23,349 owed to Ruhe Sales by Debtor. [Debtor’s Ex. B].

Testimony regarding the value of the Aircraft was offered both at the March 28 hearing and at an earlier hearing on February 24, 2005. At the earlier hearing, Debtor’s expert aircraft appraiser, Howard Poole, testified. In November, 2004, he issued a Certificate of Appraisal valuing the Aircraft in its current condition without the engine at \$156,490. But at the hearing, he testified that the value could range as high as \$400,000 to \$650,000 if all records of the Aircraft are provided and all parts are properly labeled and displayed for potential buyers.

Ruhe testified that if Debtor obtained the Aircraft, it would cost approximately \$200,000 to get it into condition to fly. But he testified that a greater value could be obtained if he “parted it out,” by which he meant that if he sold the various parts of the Aircraft piecemeal over time. According to Ruhe, he could sell the parts over a period of two to three years for \$550,000. Although he testified as to values he believes he could get for the various parts of the Aircraft (i.e. wings, flaps, rudders, etc.), the court puts little weight on his testimony. Ruhe is in the turbine engine repair business, not the business of repairing aircraft or selling aircraft parts. And there is no credible evidence that he has any meaningful expertise in this area.

Mickey Stowers also testified regarding the value of the Aircraft. Stowers performs aircraft appraisals for a number of insurance companies. He testified that, while an increased value could be realized if the Aircraft was fully assembled and an engine was installed, the value of the plane in its present condition is approximately \$140,000. After incurring more than \$3,000 to advertise the Aircraft for sale at auction, he testified that the highest bid he has received is \$141,000, a bid based

on the existence of no bank lien. While the basis for and validity of the bank lien is unclear, Stowers testified that the existence of the bank lien would certainly affect the value that can be realized from the Aircraft.

In determining the probable value of the Aircraft, the court has also considered the fact that Schedule D of Debtor's petition schedules ASIC's claim in the amount of \$461,545 but states that it is unsecured in the amount of \$310,000. Thus, Debtor valued the Aircraft on Schedule D at approximately \$150,000.

The court finds Stower's appraisal and the pre-bankruptcy appraisal by Debtor's own expert reflect the more probable range in value of the Aircraft. These appraisals are supported both by the bid of a third party and Debtor's own valuation on Schedule D of its petition. Although there was a dispute regarding the labeling and organization of the Aircraft parts in ASIC's hangar and the additional value that such organization could allegedly add to the Aircraft, the court is not persuaded that the parts were actually in such a state of disorganization or that the additional value as indicated by Poole would be realized. Furthermore, the \$180,000 bank lien, if not released will obviously affect the sale price of the Aircraft. Thus, the court finds that the value of the Aircraft in its present condition ranges between \$140,000 and \$156,000.

Finally, Stowers testified that the Aircraft's engine had been repaired by Debtor and was ready to be installed at the time their dispute arose and the engine was returned to Debtor. According to Stowers, the engine has a value of approximately \$150,000. Ruhe testified that Debtor has the engine but that he has no idea what its value is today. It is not clear whether this engine was listed as an asset in Debtor's bankruptcy schedules.<sup>5</sup>

### **LAW AND ANALYSIS**

ASIC seeks relief from the automatic stay under § 362(d) and abandonment under § 554 in order to proceed with a foreclosure sale of the Aircraft under state law. Debtor opposes the motion and seeks to regain possession of the Aircraft in order to sell it (or its parts) to generate funds it argues are necessary for its reorganization.<sup>6</sup> Although the court has construed the motion as being brought

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<sup>5</sup> Debtor lists a "used PT 6 -114 engine parts - Stroud, Oklahoma" under the category of "Inventory." While it does not appear from the testimony in this proceeding that the Aircraft's engine would be used as inventory, that fact is simply not clear to the court.

<sup>6</sup> To the extent that Debtor argues in opposition to the motion that, because the Aircraft is not fully assembled, there is no "aircraft" to which ASIC's lien has attached, the court finds the argument not well taken. The Oklahoma district court's order and judgment disposed of that argument. Moreover, on December 1, 2004, Ruhe Sales transferred

under both §§ 362(d)(1) and (d)(2),<sup>7</sup> the court finds that cause exists under (d)(1) and, as such, does not address the (d)(2) argument.

**A. 11 U.S.C. § 362(d)(1)**

Section 362(d)(1) directs the court to grant relief from the automatic stay, on request of a party in interest, “for cause, including the lack of adequate protection of an interest in property of such party in interest.” There is no evidence that ASIC lacks adequate protection. Rather, the evidence indicates that ASIC has possession of the Aircraft that secures the debt owed by Debtor and that there has been no diminution in value of the Aircraft since Debtor filed for bankruptcy. Thus, the issue under § 362(d)(1) is whether other “cause” exists to grant the relief requested.

ASIC argues that Debtor’s bankruptcy was filed in bad faith, thus satisfying the “for cause” requirement. The Sixth Circuit has recognized that a debtor’s lack of good faith in filing a petition for bankruptcy is a basis for lifting the automatic stay. *Laguna Assoc. Ltd. P’ship v. Aetna Casualty & Surety Co. (In re Laguna Assoc. Ltd. P’ship)*, 30 F.3d 734, 738 (6th Cir. 1994). While no single fact is dispositive, the Sixth Circuit recognized that the following factors are relevant in determining whether an organizational debtor’s petition was filed in bad faith:

- (1) the debtor has one asset;
- (2) the pre-petition conduct of the debtor has been improper;
- (3) there are only a few unsecured creditors;
- (4) the debtor's property has been posted for foreclosure, and the debtor has been unsuccessful in defending against the foreclosure in state court;
- (5) the debtor and one creditor have proceeded to a standstill in state court litigation, and the debtor has lost or has been required to post a bond which it cannot afford;
- (6) the filing of the petition effectively allows the debtor to evade court orders;
- (7) the debtor has no ongoing business or employees; and
- (8) the lack of possibility of reorganization.

*Laguna Assoc. Ltd. P’ship*, 30 F.3d 734, 738 (6th Cir. 1994). The Sixth Circuit has also noted that the situation “in which a one-asset entity has been created or revitalized on the eve of foreclosure to isolate the

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to Debtor the Aircraft at issue by Aircraft Bill of Sale specifying the serial number for that Aircraft, notwithstanding that it was in a state of disassembly, and, on December 21, 2004, the Federal Aviation Administration issued a Certificate of Aircraft Registration for that Aircraft.

<sup>7</sup> Although ASIC’s prayer for relief mentions only § 362(d)(1), based on a lengthy prior hearing on February 24, 2005, and the tenor of the motion itself, both of which included allegations and argument in support of a § 362(d)(2) claim, the court indicated at the hearing that it construes the motion as being brought under both § 362(d)(1) and (2).

insolvent property and its creditors, exemplifies, although it does not uniquely categorize, bad faith cases.” *Id.* In determining a debtor’s good faith, or lack thereof, under § 362(d)(1), the burden of proof is on the debtor. 11 U.S.C. § 362(g); *In re Grand Traverse Development Co. Ltd. P’ship*, 150 B.R. 176, 191-92 (Bankr. W.D. Mich. 1993).

In *Laguna*, the court affirmed the bankruptcy court’s finding of bad faith where the debtor was created shortly before filing bankruptcy, was not engaged in an ongoing business, lacked sufficient cash flow, had few unsecured creditors and claimed as its sole asset real estate that was heavily encumbered. *Id.* The property had been transferred by a related entity to the debtor with no consideration being paid other than a transfer of interest in the debtor. *Id.* at 736. The debtor, “apparently driven by a desire to prevent foreclosure,” filed for bankruptcy the day after the transfer was recorded. *Id.* at 738.

Applying the *Laguna* factors to the evidence in this case and looking at the totality of the circumstances, the court concludes that Debtor filed its petition in bad faith. This case is very close in letter and spirit to *Laguna*. As will be explained below, of the eight factors listed by the Sixth Circuit in *Laguna*, seven of them are indicative of bad faith and support relief from stay in this case. The only one that does not support relief is numbered factor seven, as Debtor does have an ongoing business and employees.

After Debtor unsuccessfully defended against ASIC’s breach of contract claim in the Oklahoma district court case and failed to post a surety bond in that case, the district court approved, and ASIC had begun, proceedings to foreclose its mechanic’s lien on the Aircraft. Debtor then asserted a claim against Ruhe Sales for \$461,545, the amount of the judgment against it for the work completed on the Aircraft by ASIC, since Ruhe Sales, not Debtor owned the Aircraft at the time the repairs were done. However, approximately two weeks before the Aircraft was to be sold at auction, Debtor released Ruhe Sales from that claim in exchange for the transfer of ownership in the Aircraft. In addition, Ruhe Sales forgave a \$23,349 debt owed to it by Debtor.

The court notes, however, that Debtor’s appraiser had valued the Aircraft at only \$156,000 at the time of the transfer. In light of ASIC’s mechanic’s lien in the amount of \$461,545, the only actual consideration given for the release of Debtor’s claim was the \$23,349 debt forgiven by Ruhe Sales. Debtor’s claim against Ruhe Sales, a company owned by Ruhe’s wife and one in which he was admittedly involved, represented a significant asset belonging to Debtor that Debtor willingly relinquished just two

weeks before filing its Chapter 11 petition for minimal consideration. Debtor also failed to disclose this transaction in its Statement of Affairs in response to Question 10 as to transfers of property outside the ordinary course of business occurring within one year of filing. Moreover, Debtor's release of its claim against Ruhe Sales violated the November 22, 2204, court order directing Debtor "NOT TO PAY OUT, TRANSFER, MORTGAGE, ENCUMBER OR MAKE OTHER DISPOSITION OF ANY MONEY OR PROPERTY, EITHER REAL OR PERSONAL, NOT EXEMPT BY LAW, UNTIL FURTHER ORDER OF THE COURT." [ASIC Ex. 6; emphasis original].

Although Debtor, unlike the facts in *Laguna*, had an ongoing business at the time the Aircraft was transferred to it and is not a one-asset company, those facts are not dispositive. Its primary asset is the recently transferred encumbered Aircraft, which was not used and will not be used in Debtor's business of aircraft engine repair and overhaul. Debtor owns some miscellaneous hand tools and office equipment, but Ruhe Sales owns all other tools and machinery used by Debtor in its engine repair business. In addition, Debtor's only unsecured creditor listed in its petition, other than the two related entities, Ruhe Sales and SAS, is a law firm owed legal fees in the comparatively minor sum of \$16,282. And as mentioned earlier, the balance sheets in Debtor's monthly operating reports filed in this case do not even list Ruhe Sales or SAS as unsecured creditors.

This case essentially involves a dispute between Debtor and one creditor, ASIC. To the extent that Debtor had a claim against Ruhe Sales, as it apparently believed it did at the time of the transfer of the Aircraft, the prepetition deals struck between Debtor's insiders,<sup>8</sup> which were not disclosed in its petition, effectively insulated Ruhe Sales from any attempt by ASIC to attach that claim in order to collect any deficiency judgment after the sale of the Aircraft. Thus, the practical effect of the transfer of ownership of the Aircraft to Debtor, who has minimal assets other than the Aircraft, was to preclude any eventual recovery against an insider's company, namely, Ruhe Sales.

Finally, as to the eighth factor, Debtor has offered no evidence that an effective reorganization is possible except for Ruhe's testimony, which the court did not find credible, that he could sell the parts of

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<sup>8</sup> Ruhe's wife, owner of Ruhe Sales, is an officer and director of Debtor and relative of a person in control of Debtor. As such, she is an insider. 11 U.S.C. § 101(31)(B).

the Aircraft for a figure that the court finds to be grossly inflated. The court finds Debtor's bankruptcy filing on the eve of foreclosure was an attempt to evade the Oklahoma district court's order approving foreclosure of ASIC's mechanic's lien in order to regain possession of the Aircraft, as Ruhe orally requested at the hearing in this court.<sup>9</sup> For this reason, together with Debtor's attempt to insulate an insider's wife's companies from any claims against them by ASIC and its failure to disclose the transactions relating to the Aircraft transfer by Ruhe Sales, the court finds that Debtor filed its bankruptcy petition in bad faith. Thus, ASIC is entitled to relief from the automatic stay under § 362(d)(1). Relief will be limited, however, to modifying the automatic stay to permit ASIC to foreclose on its mechanic's lien. The stay is not being terminated to permit ASIC to collect from Debtor outside of this court any deficiency that may arise upon foreclosure of its mechanic's lien in the Aircraft.

#### **B. Abandonment - 11 U.S.C. § 554**

Section 554(b) provides that “[o]n request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(b). The party seeking abandonment has the burden of proof under § 554(b). *In re Dillon*, 219 B.R. 781, 785 (Bankr. M.D. Tenn.1998).

As discussed above, ASIC has demonstrated that the probable value of the Aircraft ranges between \$140,000 and \$156,000. In light of ASIC's mechanic's lien in the amount of \$461,545 and the Bank of Leipsic's lien in the amount of \$180,000, the Aircraft is of inconsequential value and benefit to the estate. In addition to its lack of value to the estate, retaining the Aircraft as an estate asset may subject the estate to the added burden of paying for its storage at ASIC. *See* 11 U.S.C. § 503(b) (providing for an administrative expense for “the actual, necessary costs and expenses of preserving the estate”); ASIC Ex. 7 (district court authorizes reasonable monthly storage fee not to exceed \$500.00).

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<sup>9</sup> It also permitted Debtor to evade the judgment debtor's examination ordered to occur on December 16, 2004, which was two days after the commencement of this case. Ruhe disclaimed any familiarity with that order, but was more than willing to opine that the bankruptcy filing made it moot in any event.

## CONCLUSION

Based on the foregoing reasons and authorities, the Combined Motion for Relief from the Automatic Stay and Request for Abandonment [Doc. #33] will be granted. The stay will be modified and the court will order abandonment of the Aircraft from the estate. A separate order in accordance with this Memorandum of Decision will be entered by the clerk.