

**UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa**

In the Matter of	:	Case No. 98-5481-DH
	:	
IOWA JET SERVICES, L.C.,	:	Chapter 11
	:	
Debtor.	:	

**ORDER—MOTION FOR TURNOVER AND MOTION
TO USE CASH COLLATERAL**

This case pends upon Debtor in Possession's Motion for Turnover and Motion to Use Cash Collateral, and the resistances thereto. Hearing was held on December 31, 1998, and January 4, 1999. The parties appeared by their attorneys of record, Michael P. Mallaney for the Debtor in Possession, (hereinafter Iowa Jet); C. Peter Hayak for Iowa State Bank and Trust Co. (hereinafter ISB); and Dan Childers and R. Gratton Brown, Jr. for National Bank of Commerce (hereinafter NBC).

The court having heard and considered the evidence, and having considered the written arguments of counsel now enters its findings of fact and conclusions of law pursuant to Fed.R.Bankr.P. 7052.

JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. § 1334 and order of the U. S. District Court, Southern District of Iowa, referring all bankruptcy matters to this court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E), orders to turn over property of the estate, and § 157(b)(2)(A), matters concerning the administration of the estate.

FINDINGS

1. Iowa Jet filed a voluntary petition under chapter 11 of Title 11 on December 21, 1998.
2. Iowa Jet is an Iowa limited liability company with its principal place of business in Coralville, Johnson County, Iowa. Iowa Jet was originally organized as Advanced Aircraft Leasing, L.C., on April 9, 1997. The business name was changed to Iowa Jet Services, L.C., in January 1998.
3. Robert B. Staib and Barbara L. Staib were the sole members of Advanced Aircraft Leasing and are the sole members of Iowa Jet. Their residence and the principal office of Iowa Jet is located at 1709 Brown Deer Trace, Coralville, Iowa.
4. The chapter 11 petition was signed by Robert B. Staib and Barbara L. Staib, as the sole members of Iowa Jet.
5. The filing of the petition herein was occasioned when the Iowa District Court, Linn County, issued a writ of replevin and granted NBC immediate possession of the following described aircraft, with all logs and maintenance records on each aircraft, on or about December 18, 1998:
 - a. Cessna Citation III Garrett TFE-731-3C-1005 S/N 87299 and 87304 (serial no. 650-0094), N650SP, hereinafter referred to as the Citation III;
 - b. Cessna Citation II Pratt and Whitney JT 15D-4 PCE 71483 and 71481 (serial no. 550-8575), N387RE, hereinafter referred to as the Citation II;
 - c. Piper PA 31-350 (serial no. 31-8152134), N40872, hereinafter referred to as the Navajo Chieftain; and

d. Piper Saratoga (serial no. 32-8306002), N82723, hereinafter referred to as the Saratoga.

6. The Iowa District Court, Linn County also issued a temporary injunction prohibiting and restraining Iowa Jet Services, Robert B. Staib and Barbara L. Staib, from in any way moving, altering, destroying, encumbering, conveying, selling, renting or otherwise disposing of said aircraft.

7. NBC has posted a \$17,000,000.00 bond with the Iowa District Court, Linn County, pursuant to Iowa R.Civ.P. 327.

8. NBC financed the purchase of the four planes referred to in paragraph 5 above. NBC refinanced the four planes at the request of Robert Staib for Iowa Jet. The first payment under this refinancing agreement was due on December 1, 1998. Iowa Jet sent four checks to NBC for this payment of \$97,600.00. These checks were refused by Iowa Jet's bank, Iowa State Bank and Trust Co., when presented for payment by NBC, because of insufficient funds in the account. It was this financial transaction which caused NBC to seek the writ of replevin. A company by the name of Neural Applications, controlled by Robert Staib, had paid \$97,600.00 to Iowa Jet, and these checks were returned for insufficient funds causing the overdraft in the Iowa Jet account. Robert A. Staib signed the check from Neural Applications to Iowa Jet Services that was dated November 30, 1998. (Exh. ISB P, third page). This payment of \$97,600.00 from Neural Applications to Iowa Jet was for rental of Iowa Jet's aircraft over a long period of time. None of Iowa Jet's witnesses, including Barbara Staib, could testify as to the financial condition of Neural Applications as of the date of the hearing. All of this information was in the control of Robert Staib.

9. Robert Staib was arrested on December 3, 1998, on a warrant issued by United States District Court, Northern District of Iowa. It is alleged that Robert Staib committed fraud in representing that 100,000 shares of United Airlines common stock were authentic and offered as security for the procurement of credit when in fact these shares were not authentic.

10. Robert B. Staib resigned as manager of Iowa Jet on December 30, 1998 and Shannon Curran replaced him as manager of the company. (Exh. 14). Robert Staib continues to be a member of Iowa Jet Services L.C. and participated in the naming of Shannon Curran as the manager. Up until Robert Staib's resignation, the day-to-day operations of Iowa Jet were conducted by Shannon Curran, and Robert Staib conducted all of the financial business of the company.

11. Advanced Aircraft Leasing and Iowa Jet were formed with the intention to operate a fixed based charter flying service with a FAA 135 certification. At the time of the filing of the bankruptcy petition Iowa Jet had not received this certification.

12. Iowa Jet purchased five aircraft commencing in 1997 in order to accomplish this goal. Four of the aircraft are described in paragraph 5 above and the fifth plane is described as follows:

Cessna 172N, 1978, FAA registration no. N739NP, ser. no. 17270676
(This plane will be referred to as the Cessna 172 hereafter.)

13. The aircraft were purchased on the following dates for the following purchase prices:

Citation III (jet)	\$ 5,425,000.00	April 1998
Citation II (jet)	\$ 2,500,000.00	January 1998
Navaho Chieftain (prop)	\$ 282,000.00	September 1998
Saratoga (prop)	\$ 138,000.00	April 1997
Cessna 172 (prop)	\$ 40,000.00	August 1998

14. NBC financed the purchase of all the planes, except the Cessna 172, at 90% of the purchase price. NBC took liens on the planes as collateral and they are cross-collateralized. Robert and Barbara Staib also gave an unlimited guarantee to NBC.

15. Robert and Barbara Staib gave a net worth statement to ISB in December 1996 which stated their net worth was \$87,959,275.00 as of that time. This statement included 620,800 shares of UAL stock with a value of \$37,713,600.00; 248,000 shares of Neural Applications stock with a value of \$992,000.00; and the H. J. Heinz Ivory Collection with an approximate value of \$992,000.00. (ISB Exh. Q).

16. Robert Staib gave NBC a net worth statement on March 4, 1997 (Exh NBC 6) which stated that Robert and Barbara Staib had a net worth as of that date of \$88,554,990.00. This statement included 620,800 shares of UAL stock with a value of \$39,808,800.00; 248,000 shares of Neural Applications Corp. stock with a value of \$992,000.00; and the H. J. Heinz Ivory Collection with an approximate value of \$992,000.00.

17. Robert Staib also gave a net worth statement to NBC on or about January 14, 1998, which stated that Robert and Barbara Staib had a net worth on that date of \$105,834,212.60 (Exh. NBC- 17). This statement included 645,200 shares of UAL stock with a value of \$56,898,897.60; 248,000 shares of Neural Applications common stock with a value of \$1,892,240.00; and the H. J. Heinz Ivory Collection with the approximate value of \$55,000,000.00.

18. On November 25, 1998, Robert Staib gave a net worth statement to ISB that stated Robert and Barbara Staib's net worth as of November 25, 1998, was \$111,596,315.00. This statement included 945,200 shares of UAL stock with a value of

\$61,438,000.00; 248,000 shares of Neural Applications common stock with a value of \$1,892,240.00; 1,000,000 shares of Stroll-N-Go stock with a value of \$360,000; and the H. J. Heinz Ivory Collection with an estimated value of \$55,000,000.00. This statement stated that 420,000 of the UAL shares were pledged to secure an \$11,000,000 line of credit for Neural Applications. Stroll-N-Go, Inc. is a corporation either owned or controlled by Robert Staib.

19. ISB financed 100% of the Cessna 172 and took a lien on the plane as collateral. Robert Staib individually signed the \$40,000 promissory note as well as the promissory note on behalf of Iowa Jet. (Exh. ISB B).

20. ISB also provided credit cards to Iowa Jet for use by its pilots and issued letters of credit to suppliers of Iowa Jet for fuel purchases.

21. Iowa Jet, as successor in interest to Advanced Aircraft Leasing, employed the services of Belle Plaine Air Service to assist in the management of its business and also to obtain the FAA 135 certification.

22. Shannon Curran was a principal of Belle Plaine Air and became the chief operating officer of Iowa Jet on September 1, 1998. Up until that time Iowa Jet did not have any employees other than Robert and Barbara Staib.

23. Shannon Curran assisted in the purchase of the planes and also the purchase of add-ons to the planes. Mr. Curran testified that as these add-ons were added to the planes, the values of the planes appreciated on a dollar for dollar basis.

24. Bill Briggs, the loan officer for NBC, testified that as the add-ons were added to the planes, the value of the planes increased, but not on a dollar for dollar basis.

25. Iowa Jet has entered into a lease arrangement with Aviation Charter, Inc., Eden Prairie, Minnesota. Aviation Charter signed this agreement on July 16, 1998, and Iowa Jet, over the signature of Robert B. Staib, signed this agreement on July 28, 1998. Pursuant to these agreements the Citation II jet and the Citation III jet were leased to Aviation Charter. (Exhs 10 and 11). This was Iowa Jet's first experience of in the air charter business.

26. Aviation Charter is a certified air carrier in the business of chartering aircraft in accordance with Part 135 of the Federal Aviation Regulations. Generally, Iowa Jet was to maintain the aircraft, pay for the maintenance costs, maintain the records, and pay for the insurance. Aviation Charter was to solicit charters, collect payment from charter customers, pay Iowa Jet for charter usage of the two aircraft, and furnish the flight crews on charter flights.

27. All five aircraft are adequately insured. (Exh 21).

28. Shannon Curran, Iowa Jet's COO, testified that there were the following expenditures for additional equipment on the four aircraft:

Citation III	\$120,000
Citation II	250,000
Navaho Chieftain	22,000
Saratoga	<u>120,000</u>
Total	\$512,000

29. Mr. Briggs testified that the total amount of improvements financed by NBC as part of the loan refinancing was \$277,329.00.

30. NBC is owed somewhat in excess of \$8,550,000.00, which includes estimated costs including storage, insurance, and attorney's fees, which have not been paid. Mr. Briggs testified that interest is accruing at the rate of \$1,553.97 per day.

Storage costs of the two jets accumulates at the rate of \$325.00 per day and insurance at \$300.00 per day.

31. Iowa Jet is indebted to ISB on a promissory note in the amount of approximately \$40,000 and on credit card purchases in an amount slightly more than \$90,000. The credit card accounts increased from \$50,000.00 on December 1, 1998, to \$92,000.00 as of January 4, 1999. Iowa Jet has guaranteed the debt of Robert Staib and the debt of one of his companies in the approximate amount of \$3,300,000.

32. After Robert Staib's arrest and the freezing of Iowa Jet's bank accounts on or about December 2, 1998, Iowa Jet pledged its assets, including the accounts receivable (Exh L), the Citation II (Exh J) and the Citation III (Exh K), for the debts of Robert Staib, individually, and Stroll-N-Go Child Products, Inc. Iowa Jet also entered into two unlimited continuing guaranty agreements, one in which Iowa Jet guaranteed the loans to Robert B. Staib individually, and the other in which Iowa Jet guaranteed the repayment of the Stroll-N-Go Child Products, Inc. loan (Exhs H and I).

33. On November 30, 1998, Iowa Jet had \$4,787.79 in its account at ISB. (Exh. 12). On December 2, 1998, the balance was \$2,965.50, and on December 9, 1998, the balance was \$308.02 (Exh. ISB O). On December 28, 1998, the balance was \$22,330.61. (Exh. 12).

34. Barbara Staib testified about the cash flow projections of Iowa Jet which were admitted into evidence as Exhibit 3. Barbara Staib assisted in the preparation of this exhibit but it was Robert Staib who principally authored this document. Some of the payments which were supposed to be made prior to the hearing on December 31, 1998 have not been made because of fears regarding the filing of the bankruptcy petition by

Iowa Jet. Exhibit 3 reveals that Iowa Jet projects a balance on its books as of July 31, 1999 of \$159,451.57. This is after paying pre-petition debts of \$110,000.00.

35. These cash flow projections depend in part upon payments from McGladrey & Pullen. The agreement by and between McGladrey & Pullen (hereinafter McGladrey) and Iowa Jet (Exh. 9) has not been signed by Iowa Jet and there is no provision for minimum number of aircraft hours leased by McGladrey. Paragraph 2. of this proposed lease agreement requires that Iowa Jet, "in a timely manner, locate, purchase, and upgrade an additional Citation II aircraft to be designated as McGladrey's 'Primary Jet.' "

36. The cash flow projections also depend upon payments to Iowa Jet by companies controlled by Robert Staib. AMT is one of these companies and is not billed through Aviation Charter. The accounts receivable document, Exhibit 5, shows an account receivable from AMT in the amount of \$51,806.47 which was invoiced to AMT on December 29 and 30, 1998. Neural Applications is another of these companies and the accounts receivable of Iowa Jet show an account receivable from Neural Applications in the amount of \$266,577.40. The first invoice to Neural Applications Corp. is dated December 1, 1998 with the last invoice dated December 29, 1998. This is the same company which gave Iowa Jet insufficient funds checks upon which Iowa Jet relied when it made its December 1, 1998, payment to NBC. The present financial condition of Neural Applications was not known by any of the witnesses for Iowa Jet. Neural Applications and Robert Staib have been customers of ISB for several years. ISB has been a participant with Northern Trust, a Chicago banking organization, with regard to several million dollars of loans from Northern Trust to Neural Applications but the status of these loans is not known.

37. Iowa Jet's balance sheet as of December 29, 1998, (Exh. 1) was received in evidence. This exhibit states that as of December 29, 1998, there was a cash balance of \$50,000.00. This is incorrect. As of December 29, 1998, there was a cash balance of \$22,330.61. (Exh. 12). This balance sheet reveals a note receivable from Stroll-N-Go, Inc. of \$400,000.00 and a note receivable from Telemedia/Curt Bradley in the amount of \$600,000.00.

38. The note receivable from Stroll-N-Go is in fact a personal receivable of Robert Staib and the \$600,000.00 note receivable from Telemedia/Curt Bradley was a personal receivable of Robert Staib which was assigned to ISB on December 7, 1998.

39. Iowa Jet's business records are kept at the Staib home in Coralville. Barbara and Robert Staib are the only people who have access to the business computer located at their home and Robert Staib is the one with the primary knowledge of the computer and its contents. Barbara Staib is unfamiliar with the financial statements referred to herein and does not know their net worth as of this time.

40. All of Iowa Jet's aircraft are for sale. One bid for the two jets has been received after December 3, 1998. This cash bid was for \$8,000,000.00 from Bell Aviation. This bid was not accepted by Iowa Jet.

41. The court received several opinions as to the value of the aircraft. Essentially the value testimony was based in part either on the V-Ref Aircraft Value Reference or the aircraft Blue Book. The aircraft Blue Book is the older of the two reference materials. V-Ref is edited by one Fletcher Aldredge who formerly was associated with aircraft Blue Book. V-Ref has been published for approximately four years and is not generally used

as the primary reference by dealers of aircraft because it is so new and has a tendency to overvalue aircraft.

42. The appraisal of aircraft is sometimes divided between wholesale and retail values. In aircraft parlance, wholesale value is the value of an aircraft if sold within a relatively short period of time, such as a sale within 30 days. This value is not based on a "fire" sale but on a sale conducted as quickly as possible after bids are taken and the maximum value is obtained. Retail value is the value of a plane if it is sold over a longer period of time, which could range from 90 to 180 days.

43. Iowa Jet places on the five planes a retail value of \$11,608,093.00 and a wholesale value of \$9,990,895.00. This value was placed on the aircraft by Mr. Curran and he relied completely upon V-Ref Aircraft Value Reference Book and a V-Ref computer program for establishing value. Mr. Curran has assisted in the purchase of aircraft for his employers but has never been in the business of buying and selling aircraft. Curran has never been involved in the sale of a jet aircraft.

44. Mr. Briggs, on behalf of NBC, placed a retail value of \$8,900,000.00 and a wholesale value of \$8,450,000.00 on the five aircraft. Briggs has appraised approximately 2,500 aircraft for the purpose of financing their purchase. NBC does not hire independent appraisers for appraisal of aircraft when it finances the purchase of aircraft and relies upon its employees for this type of an appraisal. NBC is presently financing the purchase of approximately 500 aircraft.

45. Steven D. Atker, an employee of PS Air, Cedar Rapids, Iowa, and employed by NBC as an independent appraiser for purposes of this hearing, appraised four of the planes. He did not render an opinion on the value of the Cessna 172. However, it is

uncontroverted that this plane has a retail value of \$51,520.00 and a wholesale value of \$45,375.00.

46. Mr. Atker is a broker of aircraft and has brokered hundreds of aircraft including jet aircraft. He viewed the exterior but did not go inside the jet aircraft and has not viewed the Saratoga, the Chieftain, or the Cessna 172. He was present in the courtroom to hear the testimony as to the equipment on the planes, their maintenance history, and their general condition.

47. Mr. Atker's appraisal of the four aircraft was \$8,900,000.00 retail and \$8,450,000.00 wholesale.

48. Aircraft may appreciate in value depending upon the condition of the planes, the condition of the market, and the price of new aircraft. Parked planes generally depreciate in value.

49. Some of the factors which enter into the appraisal of a plane are the pedigree, the specification sheet, the damage history, and the general condition of the aircraft. The pedigree of a plane includes who owned the plane, how the plane was used, and the maintenance record.

50. Mr. Curran increases the value of the aircraft on a dollar for dollar basis for those items of equipment which Iowa Jet added to the aircraft. Mr. Briggs and Mr. Atker consider the equipment which is on the plane and adjust the value of the plane as they believe a buyer generally would consider the aircraft.

51. The risks to NBC if Iowa Jet has possession and control of the aircraft include damage to and disappearance of the aircraft, and the imposition of mechanic's

liens on the aircraft if Iowa Jet is unable to pay for the maintenance and repair of the aircraft.

52. The Saratoga was damaged when wind caught the plane and it veered off a runway. Even if a damaged plane is completely repaired and paid for, the fact that it was damaged could decrease the value of the plane as much as 25%.

53. Routine maintenance costs of a jet can reach \$100,000.00 to \$150,000.00 per incident. An average engine overhaul on a Cessna 172, a single engine propeller plane, will be in the approximate sum of \$11,000.00.

54. Iowa Jet's director of maintenance left the company on December 4, 1998, and its office manager vacated her position after Iowa Jet filed its petition in bankruptcy.

55. Robert B. Staib did not appear at any of the hearings on subject motions although he had notice of the same.

56. A petition for involuntary bankruptcy under chapter 7 has been filed against Robert B. Staib. This petition was filed in this court on December 28, 1998, under the case no. 98-5541-D.

57. NBC spoke with Robert Staib by phone on December 16, 1998. At that time Mr. Staib refused to say whether the 100,000 shares of United Airlines stock were authentic. He also refused to say whether the net worth statement of January 14, 1998 (Exh. 17) was accurate.

58. ISB has determined that the stock certificate for 100,000 shares of United Airlines Corporation stock, which Robert Staib presented as collateral, is not a valid stock certificate.

DISCUSSION

The filing of a chapter 11 petition results in an automatic stay of actions against the debtor. 11 U.S.C. § 362. This stay prevents a creditor from pursuing remedies against the debtor's assets. This helps the debtor in possession to rehabilitate the business by using all of the assets in the ongoing operation.

Relief from the automatic stay is provided in 11 U.S.C. § 362(d). The secured party may obtain relief from the stay "for cause," including the lack of adequate protection of the property interest of the creditor. § 362(d)(1).

11 U.S.C. § 362(d)(2) provides that relief from the stay should be granted when the debtor has no equity in the collateral and the collateral "is not necessary to an effective reorganization." Property is "not necessary to an effective reorganization" if there is no reasonable possibility that a successful reorganization can be achieved within a reasonable time. United Savings Ass. of Tex. v. Timbers of Inwood Forrest Associates, Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740(1988).

11 U.S.C. § 361 governs the concept of adequate protection. A secured party is entitled to protection against loss or depreciation of its property interest caused by the automatic stay. The debtor in possession must propose and provide an adequate protection method fashioned by the circumstances of the case as provided in § 361.

11 U.S.C. § 1110 provides special treatment for secured parties with a security interest in aircraft, and specified parts thereof. This section alters the concept of adequate protection in the context of qualifying aircraft to provide the creditor with what the creditor bargained for: compliance with the terms of the security agreement or return of the property. GATX Leasing Corp. v. Airlift Int'l., Inc., 761 F.2d 1503, 1508, 1512-13

(11th Cir. 1985).

§ 1110 provides that the rights of secured creditors to take possession of equipment, as defined in § 1110(a)(2), from a debtor in possession is not affected by § 362, 363, or 1129, unless within 60 days after the order for relief, the debtor in possession, subject to the court's approval, agrees to perform all obligations of the debtor and cures defaults. Post-petition defaults have to be cured within 30 days after the default or within 60 days after the order for relief, whichever is later, in order to subject the secured creditor to the provisions of §§ 362 and 363 of the code.

§ 1110(a)(2)(A) defines "equipment" as:

1. an aircraft, aircraft engine propeller, appliance, or spare part
2. that is subject to a secured interest granted by
3. a debtor that is a citizen of the United States
4. holding an air carrier operating certificate issued by the Secretary of
Transportation pursuant to chapter 447 of title 49
5. for aircraft capable of carrying 10 or more individuals or 6000 pounds
or more of cargo. . . .

The record reveals that Iowa Jet does not hold an air carrier operating certificate issued by the Secretary of Transportation. The record further does not reveal that any of the aircraft is capable of carrying 10 or more individuals or 6000 pounds or more of cargo.

Accordingly, the aircraft herein do not qualify as aircraft within the provisions of § 1110 and the provisions of §§ 362 and 363 are not affected.

11 U.S.C. § 542(a) provides that if a trustee or debtor in possession can use, sell, or lease the property held by a third party, the third party can be required to deliver that property to the trustee or the debtor, or to account to the estate for its value. This is referred to as "turnover" in bankruptcy usage.

In this case the questions to be addressed are whether the estate has an interest in the property that is of more than inconsequential value or benefit to the estate, and whether the debtor in possession is entitled to use, sell, or lease the property. In answering these questions, the court is balancing the needs of the parties, not the relative values of the property interests of the debtor and the secured creditor. The importance of the property in the reorganization process is a major factor in deciding whether to order a turnover, especially when the debtor has little or no equity in the property. United States v. Whiting Pools, Inc., 462 U.S. 198, 208 n.17, 103 S.Ct. 2309, 2315 n.17, 76 L.Ed.2d 515 (1983).

Since the secured creditor has the use of those provisions of the code terminating the automatic stay under § 362(d) and the use of collateral pursuant to § 363, the court must require the debtor in possession to show that the secured creditors are adequately protected at the time the court is considering the turnover motion. The secured creditors who are in possession of the property are entitled to adequate protection for their interests in the property which is subject to the turnover. Whiting Pools, 462 U.S. at 209.

The bankruptcy court must encourage reorganization and be flexible in applying the adequate protection standard. However, the secured creditor's interest cannot be impaired in the process. The bankruptcy court is required to (1) establish the value of the secured creditor's interest, (2) identify the risks to the secured creditor's value resulting

from the debtor's request for use of the property, and (3) determine whether the debtor's adequate protection proposal protects value as nearly as possible against risks to the value consistent with the concept of indubitable equivalence. In re Martin, 761 F.2d 472, 477 (8th Cir. 1985). The burden of proving adequate protection is on the party seeking the turnover order. 11 U.S.C. §§ 362(g), 363(o).

Iowa Jet proposes to pay NBC the January 1, 1999 installment payment due under the various promissory notes in the amount of \$75,587.07 with payments thereafter to be made as they become due. The payment of December 1, 1998, which was missed, would be made on February 21, 1999. Iowa Jet also contends that there is equity in the aircraft and the equity cushion provides additional adequate protection.

Iowa Jet proposed to grant ISB, as adequate protection for the use of the cash collateral, a replacement lien post-petition in the post-petition accounts receivable to the extent that ISB's lien, in cash and accounts receivable, is depleted or diminished by the use of the cash and accounts receivable as the secured claim of ISB is finally allowed.

The bankruptcy code is silent as to the standard of valuation which should be applied in the valuation of collateral. In addition, the code is silent as to the date to be used for valuation purposes. The date of the filing of the petition will be used for valuation purposes as the automatic stay commenced on that date and that is the date when the debtor wishes to exercise control over the assets of the estate.

In this case the debtor wishes to continue to operate the business and generate income. The court believes that the most commercially reasonable valuation should be applied to measure the respective interests in the collateral. This standard is consistent with U.C.C. § 9-504(3) (Iowa Code § 554.9504(3)) which requires that property be

disposed of in a commercially reasonable manner. In re American Kitchen Foods, Inc., 9 C.B.C. 537 (Bankr. D. Me. 1976). In using this standard the court will make reference to the debtor's prospects of rehabilitation.

Commencing in April 1997, the five planes were purchased by Iowa Jet for a total purchase price of \$8,410,000.00. The two jets were purchased in January and April 1998 for a total purchase price of \$7,950,000.00 or approximately 95% of the total purchase price. The total cost of the add-ons to the four planes financed by NBC was \$512,000.00. \$370,000.00 of this amount was for the two jets. These add-ons would not increase the value of the respective planes dollar-for-dollar as some of the add-ons are considered standard equipment; some would not be required by a prospective purchaser; and some are added strictly for the convenience of Iowa Jet and its pilots.

Iowa Jet presented evidence that the wholesale value of the four planes financed by NBC as of December 21, 1998 was \$9,835,520.00 and the retail value was \$11,556,573.00. Mr. Briggs of NBC testified that the value of the four planes ranged from \$8,495,375 wholesale to \$8,951,200 retail. Mr. Acker testified that the value of the same four planes ranged from \$7,860,947.00 wholesale to \$8,986,731.00 retail. The pedigree of these planes now contains the fact that Iowa Jet is in bankruptcy and one of the two members of Iowa Jet, Robert Staib, is facing serious legal problems with pending criminal charges and a pending involuntary petition in bankruptcy. The only commercial bid for these planes, solicited by Iowa Jet, is \$8,000,000.00. This bid could very well reflect the effect of the pedigree on the sale of these planes.

The court does not believe that these four planes have increased in value approximately 24% from the time of their purchase, a period of approximately one year,

as Mr. Curran would have us believe. Mr. Curran has never been involved in a sale of a jet and his entire method of appraisal was from an appraisal book which is considered to give high appraisal numbers for the marketing of aircraft. Accordingly, the court gives less weight to Mr. Curran's testimony than to that of Mr. Briggs and Mr. Acker.

The court concludes that on December 21, 1998, the four planes financed by NBC had a fair market value of \$8,990,000.00. It is undisputed that the Cessna 172 has a retail value of \$51,520.00 and the court places that value on that plane as of December 21, 1998. The evidence establishes that on December 21, 1998, the debt to NBC was slightly in excess of \$8,550,000. Interest is accumulating at the rate of \$1,553.97 per day.

Iowa Jet asserts that there is an equity cushion which is adequate protection for the interest of NBC in the four planes.

The court has determined that the value of the four planes financed by NBC as of December 21, 1998 was \$8,990,000.00 and that the debt to NBC as of the same date was approximately \$8,550,000.00. The differential between these two amounts is \$440,000.00, however that does not necessarily mean that it is an equity cushion.

In considering equity cushion, and realistically evaluating NBC's position regarding its collateral, the court must consider the aggregate of the amount of principal, interest and other permissible charges to the date of sale. The difference between this base price and the anticipated sales price may be referred to as the "cushion."

Interest on the NBC debt is increasing at the rate of \$1,553.97 per day. This would be approximately \$46,600.00 per month. The costs of sale could approximate 10% of the collateral value. Equity cushion is a very relative concept and the \$440,000.00 difference between the amount of debt owed to NBC and the value of its

collateral as of the date of the filing of the petition would erode within a very short period of time.

Robert Staib prepared balance sheets and a cash flow statement for use as evidence relating to subject motions. The balance sheet is false and the cash flow statement is highly suspect. The financial stability of companies affiliated with Robert Staib is unknown. This information is peculiarly available to the debtor in possession and the failure of that party to provide this evidence supports the inference that the truth would be damaging to the debtor in possession. In re Bicoastal Corp., 149 B.R. 212, 214 (Bankr.M.D. Fla. 1992). The good faith of the debtor as it deals with the court is questionable. There is no question that the debtor did not deal in good faith with its creditors as the conduct of Robert Staib reveals.

Iowa Jet is a start-up company and its short history fails to support Debtor's projected income over the next few months.

Robert Staib has now resigned as a managing officer of Iowa Jet. He was the driving force in the formation of Iowa Jet and handled all of the financing of this company. Barbara Staib and Shannon Curran have not been involved in any of the financing and do not know the financial integrity of Robert Staib's companies. Neither of them have any background in commercial financing.

The evidence shows that Iowa Jet's financing is based upon false information and the personal wealth of Robert and Barbara Staib is unknown but is subject to serious problems. Their guarantees of the various debts are in serious doubt and are unreliable.

Another risk that must now be faced by the creditors is that collateral could disappear. Jet aircraft is highly mobile and in demand on an international basis. This could be very tempting to a desperate person in search of economic relief.

There is no question that the aircraft are critical to the reorganization process of Iowa Jet. However, Iowa Jet's prospects of rehabilitation are very slim. The aircraft will not have the value as Iowa Jet's present circumstances are increasingly known and the ability of Robert and Barbara Staib to continue the financing of Iowa Jet is severely curtailed, if not eliminated. Iowa Jet does not have a contract with McGladrey & Pullen and Iowa Jet's ability to agree to the terms of that contract is questionable. Iowa Jet's ability to raise capital has been severely impaired. The pending involuntary petition under chapter 7 and the pending criminal charges against Robert Staib freeze his ability to support Iowa Jet in a personal and financial manner.

The court concludes that the motion for turnover and motion to use cash collateral must be denied.

IT IS ACCORDINGLY ORDERED that Debtor in Possession's Motion for Turnover and Motion to Use Cash Collateral are denied.

Dated this 16th day of January, 1999.

RUSSELL J. HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT