

**COZEN O’CONNOR**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA**

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

**OBJECTION OF THE WACKENHUT CORPORATION TO DEBTORS’ NOTICE  
REGARDING MAXIMUM CURE AMOUNTS**

The Wackenhut Corporation (“Wackenhut”), by and through its undersigned counsel, hereby submits this objection (the “Objection”) to the proposed maximum cure amount asserted by the above-captioned Debtors (collectively, the “Debtors”) in their Notice Regarding Maximum Cure Amounts (the “Notice”) and, in support thereof, respectfully state as follows:

**BACKGROUND**

1. One of the Debtors, ATA Airlines, Inc. (“ATA”), provides transpacific airline services between the western United States and Hawaii.
2. Wackenhut provides security services at airports around the country, and has in existence two contracts with “American Trans Air” for services in Hawaii as follows:

(a) Services Contract, effective May 1, 2003, under which Wackenhut employees provide wheelchair service to airline passengers boarding or disembarking from a flight operated by the Debtors at Kahului International Airport in Hawaii (the “Wheelchair Contract”); and

(b) Services Contract, effective June 1, 2003, under which Wackenhut employees check the identification and tickets of passengers boarding a flight operated by the Debtors, and conduct other general security services at, Kahului International Airport in Hawaii (the “Ticket Checker Contract”) (the Wheelchair Contract and the Ticket Checker Contract together, the “Contracts”).

The Contracts are attached hereto and incorporated herein as Exhibit “A.”

3. The entity “American Trans Air” is not a debtor in this case however, Wackenhut believes that “American Trans Air” may be a “doing business as” or “trading as” name of one of the within Debtors. For purposes of this Objection, “American Trans Air” is included within the definition of “Debtors.”

4. As of the date hereof, Wackenhut continues to perform its obligations under the Contracts.

5. On October 26, 2004 (the “Petition Date”), the Debtors filed with this Court their respective voluntary petitions for relief under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Pursuant to Section 1107 and 1108 of the Bankruptcy Code, the Debtors are continuing to operate their respective businesses and manage their respective affairs as debtors-in-possession.

6. On November 29, 2004, the Debtors filed the Notice by which the Debtors seek to, inter alia, establish maximum cure amounts for several of their executory contracts and

leases. The Notice states that the United States Bankruptcy Court for the Southern District of Indiana (the “Bankruptcy Court”) has entered an order approving certain procedures in connection with an auction of all or a portion of the Debtors’ assets (the “Procedures Order”). Notice, at 1. The Notice also states that service of the Notice “was contemplated” by the Procedures Order. Notice, at 1.

7. Attached to the Notice is the “Schedule Regarding Maximum Cure Amounts for Executory Contracts and Unexpired Leases that May be Assumed and Assigned” (the “Maximum Cure Amount Schedule”). The Wheelchair Contract is listed as item number 513 on the Maximum Cure Amount Schedule. According to the Maximum Cure Amount Schedule, the maximum cure amount of the Wheelchair Contract is \$6,398.00. A telephone conversation with Debtors’ counsel confirmed that the Ticket Checker Contract was inadvertently omitted from the Maximum Cure Amount Schedule. Therefore, this Objection applies to both of the Contracts and, with respect to either Contract, Wackenhut hereby objects to the maximum cure amount listed on the Maximum Cure Amount Schedule.

8. Pursuant to the Notice, counterparties contesting the maximum cure amounts scheduled on the Maximum Cure Amount Schedule must file an objection by December 10, 2004.

### **RESPONSE**

9. Wackenhut objects to the Debtors’ request to fix the maximum cure amount of either of the Contracts at \$6,398.00.

10. Pursuant to subsection 365(b)(1) of the Bankruptcy Code, a debtor-in-possession cannot assume an executory contract, unless, at the time of assumption of the executory contract, the debtor-in-possession cures, or provides adequate assurance that the debtor-in-possession will

promptly cure, any breaches or defaults thereunder regardless of whether the breaches or defaults occurred before or after the date of the debtor's bankruptcy filing. 11 U.S.C. § 365(b)(1); Collier on Bankruptcy § 365.05[2] (Alan N. Resnick & Henry J. Sommer eds., 15th ed., vol. 3, 2004).

11. As stated above, the Notice was sent in connection with the Procedures Order. As part of the Debtors' assets offered for sale, the Debtors may attempt to assign either or both of the Contracts to the successful bidder of the Debtors' assets. The fact that the Debtors may attempt to assign either or both of the Contracts to the successful bidder does not alter or reduce, in any way, the Debtors' obligation to cure any existing pre-petition or post-petition default under either of the Contracts. Pursuant to 11 U.S.C. § 365(f)(2), a debtor-in-possession cannot assign an executory contract until and unless it has first satisfied the Bankruptcy Code's requirements for assuming the executory contract under subsection 365(b)(1) of the Bankruptcy Code. 11 U.S.C. § 365(f)(2).

12. With respect to the Wheelchair Contract, as of December 6, 2004, Wackenhut has not been paid the following amounts on account of services rendered prior to the Petition Date:

<b>Invoice No.</b>	<b>For Services Rendered</b>	<b>Amount</b>
a) 3259663	July 26, 2004 – August 15, 2004	\$203.28
b) 3266265	August 16, 2004 – August 29, 2004	\$172.48
c) 3287847	August 30, 2004 – September 26, 2004	\$308.00
d) 3316639	September 27, 2004 – October 26, 2004	\$646.80

The invoices listed above total \$1,330.56 (the “Wheelchair Contract Pre-Petition Amount Outstanding”). Copies of the invoices listed above are attached hereto and incorporated herein as Exhibit “B.” The Debtors have \$33.87 in credits against Wackenhut with respect to the Wheelchair Contract (the “Wheelchair Contract Credit Amount”). The Wheelchair Contract Pre-Petition Amount Outstanding minus the Wheelchair Contract Credit Amount equals \$1,296.69 (the “Wheelchair Contract Amount of Outstanding Pre-Petition Services”). The Wheelchair Contract Amount of Outstanding Pre-Petition Services constitutes only a portion of the proper cure amount of the Wheelchair Contract that the Debtors must pay, in full, prior to their assumption and/or assignment of the Wheelchair Contract.

13. With respect to the Ticket Checker Contract, as of December 6, 2004, Wackenhut has not been paid the following amounts on account of services rendered prior to the Petition Date:

<b>Invoice No.</b>	<b>For Services Rendered</b>	<b>Amount</b>
a) 3259699	July 1, 2004 – July 31, 2004	\$5,715.02
b) 3312714	August 1, 2004 – August 31, 2004	\$6,292.17
c) 3327804	September 1, 2004 – September 30, 2004	\$5,983.88

The invoices listed above total \$17,991.07 (the “Ticket Checker Contract Pre-Petition Billed Amount Outstanding”). Copies of the invoices listed above are attached hereto and incorporated

herein as Exhibit “C.” The Debtors have \$7,176.91 in credits against Wackenhut with respect to the Ticket Checker Contract (the “Ticket Checker Contract Credit Amount”). The Ticket Checker Contract Pre-Petition Billed Amount Outstanding minus the Ticket Checker Contract Credit Amount equals \$10,814.16 (the “Ticket Checker Contract Amount of Outstanding Pre-Petition Billed Services”). The Ticket Checker Contract Amount of Outstanding Pre-Petition Billed Services constitutes only a portion of the proper cure amount of the Ticket Checker Contract that the Debtors must pay, in full, prior to their assumption and/or assignment of the Ticket Checker Contract.

14. In addition to the above, Wackenhut has rendered services, both prior to and after the Petition Date, under the Ticket Checker Contract for which Wackenhut has been unable to generate and send an invoice to the Debtors because the Debtors, as of the date hereof, have not provided Wackenhut with current “passenger count” numbers (collectively, the “Outstanding Unbilled Services”). Pursuant to section 1 of the Ticket Checker Contract, Wackenhut needs the “passenger count” numbers in order to calculate the amount of its services provided during the time period covered by a given “passenger count” number. Until the Debtors provide Wackenhut with the necessary “passenger count” numbers, Wackenhut cannot calculate its bills or invoice the Debtors for the Outstanding Unbilled Services. In addition to the Ticket Checker Contract Amount of Outstanding Pre-Petition Billed Services, prior to the assumption and/or assignment of the Ticket Checker Contract, the Debtors must also pay, in full, the amount due to Wackenhut on account of the Outstanding Unbilled Services.

15. In addition to the above, Wackenhut will, unless either or both of the Contracts are rejected by the Debtors under the Bankruptcy Code, continue to provide services to the Debtors under the Contracts on a going-forward basis (the “Future Services”). The amount of

the Future Services is contingent upon many factors, including without limitation, the Debtors' needs, the future "passenger count" numbers, the Debtors' continued employment of Wackenhut and the date of assignment, if any, of either or both of the Contracts to a third party. Wackenhut contemplates that Future Services provided to the Debtors under the Contracts will be consistent with the level and amount of services Wackenhut has historically provided to the Debtors under the Contracts to date. Prior to the assumption and/or assignment of the Contracts, if any, the Debtors must pay, in full, the amounts due to Wackenhut on account of the Future Services.

16. For the reasons stated above and due to the contingent nature of Wackenhut's provision of services to the Debtors under the Contracts going forward, as of the date hereof, the maximum cure amount of either Contract is unknown.

17. If, on the date the Debtors assume and assign the Ticket Checker Contract to a third party (the "Assumption/Assignment Date"), any Outstanding Unbilled Services remain for services rendered by Wackenhut either prior to or after the Petition Date, Wackenhut requests that an escrow account be established to hold funds sufficient to pay the estimated amount of any Outstanding Unbilled Services remaining on the Assumption/Assignment Date. Wackenhut agrees to communicate with counsel for the Debtors to determine, in good faith, the estimated amount of any Outstanding Unbilled Services, if any, remaining on the Assumption/Assignment Date and the terms of the escrow account described in this paragraph.

18. Wackenhut reserves its rights to object to the assumption and/or assignment of either of the Contracts under the terms of the Contracts, the Bankruptcy Code or otherwise applicable law, including without limitation, its right to (a) supplement, if necessary, this Objection to assert any defaults under either of the Contracts that arise or accrue at any time before either of the Contracts are assumed and/or assigned, and (b) demand adequate assurance

of future performance under section 365(b)(1)(C) of the Bankruptcy Code if the Debtors attempt to assume either of the Contracts, and/or assign either of the Contracts to any third party.

**SHORT AND PLAIN STATEMENT REQUIRED BY L.B.R. B-9013-1**

19. Wackenhut objects to the Notice because the amount stated as the maximum cure amount for the Wheelchair Contract on the Maximum Cure Amount Schedule is incorrect.

20. Prior to the Debtors' assumption and/or assignment of either of the Contracts, the Debtors must cure all defaults under the Contract(s) so assumed and/or assigned, regardless of whether the defaults occurred before or after the Petition Date. 11 U.S.C. §§ 365(b)(1); 365(f)(2). It is not possible to calculate an accurate cure amount for either of the Contracts because the Contracts require the provision of services by Wackenhut after the Petition Date and until a "cut-off" date is established and final "passenger counts" are provided by the Debtors and confirmed, the actual amounts due to Wackenhut under either of the Contracts are at best speculative.

Dated: December 9, 2004

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