

ENTERED
Office of Proceedings
June 11, 2012

BEFORE THE
SURFACE TRANSPORTATION BOARD Public Record

STB DOCKET NO. MC-F-21047 and MC-F-21047-TA

FRANK SHERMAN, FSCS CORPORATION, TMS WEST COAST, INC.,
EVERGREEN TRAILS, INC. AND CABANA COACHES, LLC – ACQUISITION
AND CONSOLIDATION OF ASSETS – AMERICA CHARTERS, LTD.,
AMERICAN COACH LINES OF JACKSONVILLE, INC., AMERICAN COACH
LINES OF MIAMI, INC., AMERICAN COACH LINES OF ORLANDO, INC.,
CUSA ASL, LLC, CUSA BCCAE, LLC, CUSA CC, LLC, CUSA FL, LLC, CUSA
GCBS, LLC, CUSA GCT, LLC, CUSA K-TCS, LLC, AND MIDNIGHT SUN
TOURS, INC.

APPLICANTS' REPLY TO PROTEST OF MICHAEL YUSIM

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Inc. and Cabana Coaches, LLC

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On June 7, 2012, Mr. Michael Yusim filed identical protest letters in this proceeding and the related proceeding (MC-F-21047-TA) in which Applicants seek interim control authority. This will reply to those protest letters on behalf of the Applicants in the docketed proceedings, Frank Sherman, TMS West Coast, Inc. and related co-applicants (collectively, "TMS"). In these proceedings, this Board is considering the application, including a request for interim control authorization, of TMS to acquire and control the assets of eleven motor passenger carriers currently controlled by Coach America Holdings, Inc. ("Coach America").

Mr. Yusim, a bus driver, is apparently a complainant in a proceeding before the U.S. Department of Labor concerning alleged discrimination by his former employer, Midnight Sun Tours, Inc. ("Midnight Sun"), an interstate motor passenger carrier

currently controlled by Coach America that is among the carriers that TMS has applied to control. That DOL proceeding (which arises from claims relating to the reporting of hours of service) apparently has been stayed as a result of the automatic stay provisions in the Bankruptcy Code at 11 U.S.C. § 362 resulting from the bankruptcy filing under Chapter 11 by Coach America and Midnight Sun. *In re Coach Am Group Holdings Corp, Case No. 12-10010* (Bkcty. Del) (KG) (Jointly Administered) (filed Jan. 3, 2012). By his protest, Mr. Yusim asks the Board to disallow the sale of any Coach America carrier unless the Secretary of Labor is allowed to proceed to hear his case and a similar case. He also asks that the Board require purchasers of the Coach America bus companies to produce certain documents relating to hours of service reporting under rules administered by the Federal Motor Carrier Safety Administration (“FMCSA”).

To the extent that Mr. Yusim seeks a condition from the Board that would allow him to pursue his discrimination claim against Midnight Sun, the relief he seeks is more appropriately addressed to the Bankruptcy Court in the above-referenced Coach America bankruptcy proceeding, and not to the Board. Indeed, Mr. Yusim has previously filed multiple motions in the Bankruptcy Court seeking relief from the automatic stay and has also objected to the sale of Midnight Sun. In each instance, the Bankruptcy Court has denied Mr. Yusim’s request and refused to permit his individual claim against Midnight Sun to move forward. Copies of the Orders denying Mr. Yusim’s motions are attached hereto for the Board’s convenience. Because the Bankruptcy Court has refused to lift the automatic stay, Mr. Yusim’s administrative claims cannot move forward.

Consistent with customary practice, it is anticipated that the Bankruptcy Court will consider Mr. Yusim’s claims in due course. If his claims are valid, he may receive

distributions along with every other unsecured creditor in accordance with the priority schemes established by the Bankruptcy Code. The Board should refuse to permit Mr. Yusim to use the Board's processes as a method to gain extraordinary relief not permitted by the Bankruptcy Code.

Finally, the Board should deny Mr. Yusim's request that TMS, as a purchaser of the Coach America bus companies, produce certain hours of service records. Such records are plainly of no relevance to this acquisition of control proceeding, and concern matters relating to FMCSA hours of service rules over which the Board has no regulatory jurisdiction. In addition, the Board should be aware that each of the carriers on both sides of this transaction holds a satisfactory safety rating from FMCSA, except for one carrier which currently holds no safety rating.¹

For these reasons, TMS respectfully requests that the Board deny Mr. Yusim's protest and move expeditiously to process TMS' application and request for interim approval.

Respectfully submitted,



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Coaches, LLC

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¹ The carrier without a safety rating is CUSA GCBS, LLC, which is currently inactive.

CERTIFICATE OF SERVICE

I certify that I have this 11th day of June, 2012 served a copy of the foregoing Reply to

Protest by Federal Express on:

Director of Operations
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Ave. N.W. Room 303
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Premerger Notification
Office
Bureau of Competition
Federal Trade Commission
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Jeff Secrist
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and by first class mail, postage prepaid on:

North Carolina Utilities Commission
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Motor Carrier Services
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Colorado Public Utilities Commission
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