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September 05, 2012

Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

DOCKET NO: MCF_21047_0

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, CUSAK-TCS, LLC, AND MIDNIGHT SUN TOURS, INC.

Surface Transportation Board,

I am writing this letter in response to:

RE: MCF-21047; Frank Sherman, FSCS Corporation, TMS West Coast, Inc, Evergreen Trails, Inc., and Cabana Coaches, LLC - Acquisition and Consolidation of Assets - American Charters Ltd, et al. (232929).

Counsel makes the following argument in support of the application for control:

If the Board's decision in this matter is not rendered this week, the Coach America Subsidiaries will be in real and significant danger of being forced to cease passenger transportation operations, which will have the effects of eliminating the availability of passenger vehicle transportation for thousands of commuters and passengers, and substantially disrupting what are currently established transportation networks utilized by the public for transportation for work, school, medical needs and pleasure. Accordingly, in requesting an immediate issuance of a decision, we support the Request filed by the Applicants.

As I have already argued, the Coach America bus companies, as demonstrated by the actions of Midnight Sun Tours, require the Coach America bus drivers to falsify their records of duty status by logging off-duty during their tours of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2.

Question 2: What conditions must be met for a CMV driver to record meal and other routine stops made during a tour of duty as off-duty time?

Guidance:

1. *The driver must have been relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying.*
2. *The duration of the driver's relief from duty must be a finite period of time which is of sufficient duration to ensure that the accumulated fatigue resulting from operating a CMV will be significantly reduced.*
3. *If the driver has been relieved from duty, as noted in (1) above, the duration of the relief from duty must have been made known to the driver prior to the driver's departure in written instructions from the employer. There are no record retention requirements for these instructions on board a vehicle or at a motor carrier's principal place of business.*
4. *During the stop, and for the duration of the stop, the driver must be at liberty to pursue activities of his/her own choosing and to leave the premises where the vehicle is situated.*

Any record of duty status, in which a driver logs off-duty during a tour of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2, is a false record of duty status.

Coach America bus drivers who refuse to falsify their records of duty status by logging off-duty during their tours of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2, are written up, suspended, and eventually fired; as I was.

the duration of the relief from duty must have been made known to the driver prior to the driver's departure in written instructions from the employer

What follows is a description of the written instructions that every Coach America bus company must provide its drivers, in order that the Coach America drivers be able to log off-duty during their tours of duty in accordance with Provision 3 in Question 2 of the Guidance to FMCSR 395.2. This description is taken from the Coach America "Hours of Service Guidance Logging Off Duty during a Tour of Duty" policy, dated August 1, 2007.

A driver must have a written statement, specific to the exact trip that he or she is performing which expressly authorizes the driver to log Off Duty for specific breaks and sufficient time to relieve fatigue during a Tour of Duty, Chartered Trip, Fixed Route or Shuttle.

The written statement should be part of the charter order, printed onto the charter order or attached to the charter order, trip sheet or route sheet, with specifics that relate to that exact piece of work.

The duration of the driver's relief must be a finite time with a starting time and a return to duty time.

The duration of the relief time Off Duty must be made known to the Driver prior to the driver's departure, in writing.

None of the Coach America bus companies, certainly not Midnight Sun Tours, provide the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2; and yet, the Coach America bus drivers are logging off-duty during their tours of duty; and the

Coach America bus companies are accepting those logs.

Because of the way FMCSR 395.5 is written, the Coach America bus companies enjoy an unfair competitive advantage by requiring the Coach America bus drivers to falsify their records of duty status by logging off-duty during their tours of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2.

§395.5 Maximum driving time for passenger-carrying vehicles.

Subject to the exceptions and exemptions in [§395.1](#):

(a) No motor carrier shall permit or require any driver used by it to drive a passenger-carrying commercial motor vehicle, nor shall any such driver drive a passenger-carrying commercial motor vehicle:

(a)(1) More than 10 hours following 8 consecutive hours off duty; or

(a)(2) For any period after having been on duty 15 hours following 8 consecutive hours off duty.

(b) No motor carrier shall permit or require a driver of a passenger-carrying commercial motor vehicle to drive, nor shall any driver drive a passenger-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after—

(b)(1) Having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or

(b)(2) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

[68 FR 22516, April 28, 2003; 70 FR 50071, Aug. 25, 2005]

Any segments logged as off-duty segments during a tour of duty, do not count towards the 15 hour maximum on-duty time beyond which a driver may not drive.

Any segments logged as off-duty segments during a tour of duty, do not count towards the 70 hour maximum on-duty time beyond which a driver may not be on-duty during any given 8 day period.

The Coach America bus companies are able to exceed the 15 and 70 hour safety limits, simply by requiring the Coach America bus drivers to falsify their records of duty status, by logging off-duty during their tours of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2.

Counsel argues that “the Coach America Subsidiaries will be in real and significant danger of being forced to cease passenger transportation operations”.

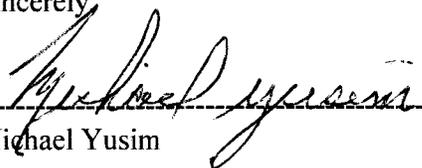
The Coach America bus companies should have been forced to cease passenger transportation operations the moment the Coach America bus companies decided to endanger the public safety by requiring the Coach America bus drivers to falsify their records of duty status by logging off-duty during their tours of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2.

If the Coach America bus companies cannot do business without requiring the Coach America bus drivers to falsify their records of duty status by logging off-duty during their tours of duty

without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2, then for the sake of the public safety, the Coach America bus companies should not be allowed to do business at all.

Coach America's decision to cease passenger transportation operations will allow for competitors to enter the marketplace; competitors who, unlike Coach America, will not seek an unfair competitive advantage, nor endanger the public safety, by requiring drivers to falsify their records of duty status by logging off-duty during their tours of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2.

Sincerely



Michael Yusim

cc:

Andrew K. Light
Scopelitis, Garvin, Light, Hanson & Feary
10 West Market Street, Suite 1500
Indianapolis, IN, 46204



August 1, 2007

FMCSR 395 – Hours of Service Guidance Logging Off Duty during a Tour of Duty

The General Manager, Operations Manager, Safety Manager and Sales Manager shall be thoroughly trained and well-versed in Hours of Service rules.

A driver must have a written statement, specific to the exact trip that he or she is performing which expressly authorizes the driver to log Off Duty for specific breaks and sufficient time to relieve fatigue during a Tour of Duty, **Chartered Trip, Fixed Route or Shuttle.**

The written statement should be part of the charter order, printed onto the charter order or attached to the charter order, trip sheet or route sheet, with specifics that relate to that exact piece of work. **Distinctive software program has this capability.**

In general, a driver may log Off Duty if:

- The Driver is relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, cargo and passengers. This means the bus is securely parked, there are no passengers onboard and the driver is not responsible for the bus's cargo.
- The duration of the driver's relief must be a finite time with a starting time and a return to duty time.
- The duration of the relief time Off Duty must be made known to the Driver prior to the driver's departure, in writing.

The sales department must work with the client to define break times, meal stops and enroute destination stops in order that these times can be specified on Charter Orders and Trip Sheets.

Prior to a trip's departure, the client should be instructed by the Sales or Operations department that changes to an itinerary which would affect a Driver's Hours of Service are prohibited unless approved by a manager of the company. If the client wishes to make changes to the itinerary while enroute (during a trip or charter), then the client and the driver must (together) attempt to call the Coach America office to obtain approval/denial from a Manager.