

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-21035

STAGECOACH GROUP PLC AND COACH USA, INC., ET AL.–  
ACQUISITION OF CONTROL–TWIN AMERICA, LLC

Decided: January 29, 2010

On August 19, 2009, Stagecoach Group PLC, a noncarrier, its noncarrier intermediate subsidiaries (Stagecoach Transport Holdings plc, SCUSI Ltd., Coach USA Administration, Inc.), Coach USA, Inc., International Bus Services, a motor passenger carrier (MC-155937) controlled by Coach USA, City Sights Twin, LLC, a noncarrier, and Mr. Zev Marmurstein (collectively, Applicants), filed an application under 49 U.S.C. 14303 to acquire control of Twin America, LLC when it becomes a carrier. By decision served January 12, 2010, the Board adopted a procedural schedule to allow interested persons to submit additional comments and evidence in opposition to the application. On January 27, 2010, Applicants filed a motion for protective order under 49 CFR 1104.14(b) to submit confidential documents or information in this proceeding.

On January 28, 2010, the New York State Attorney General (NYSAG) filed a reply in opposition to the motion for protective order. The NYSAG argues that the protective order would contravene section 343 of the New York General Business Law and would restrain the Attorney General from disclosing information uncovered in its ongoing investigation involving the Applicants. The NYSAG also argues that Applicants have already disclosed confidential documents and have cited from confidential documents in the pleadings before the Board and in the state investigation, thus waiving their right to claim them as covered by the protective order.

The protective order will be issued, as attached in Appendix A. First, the Board is not precluded by state law from issuing a protective order. Such an order may provide that parties who are required to disclose commercially sensitive information in connection with a proceeding must hold that information in confidence and undertake that they are willing to do so. Second, the effect of this order is prospective only. Disclosures that Applicants have made of commercially sensitive information to NYSAG before the issuance of this order lie beyond the scope of the order. Moreover, the scope of the order governs only the use of commercially sensitive information in connection with this proceeding. NYSAG has not explained, nor does the record before us indicate, how an undertaking to treat commercially sensitive information in confidence would inhibit a criminal investigation or prosecution.

Applicants submit that a protective order is necessary because the comments and reply comments may contain commercially sensitive and confidential information that could cause competitive or other harm to Applicants if they were made public.

The motion conforms with the Board's rules at 49 CFR 1104.14 governing protective orders to maintain the confidentiality of materials submitted to the Board. Issuance of the protective order will ensure that confidential information will be used solely for this proceeding and not for other purposes. Accordingly, the motion for protective order will be granted and any confidential information shall be subject to the Protective Order and Undertaking as modified in the Appendix to this decision.<sup>1</sup>

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The Protective Order and Undertaking in the Appendix to this decision are adopted.
2. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

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<sup>1</sup> A proposed protective order and undertaking were included with the motion.

**APPENDIX A**

**PROTECTIVE ORDER**

1. For the purposes of this Protective Order:
  - (a) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.
  - (b) “Confidential Information” means traffic data (including but not limited to study movement sheets and databases), financial and cost data, business plans, market assessments, and other confidential or proprietary business or personal information.
  - (c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” in accordance with paragraph 3 of this Protective Order, and any Confidential Information contained in such materials.
  - (d) These “Proceedings” consist of STB Finance Docket No. MC-F-21035, and any related proceedings before the Surface Transportation Board (Board) and any judicial review proceedings arising from STB Finance Docket No. MC-F-21035 or from any related proceedings before the Board.
2. If any party to these Proceedings determines that any part of a document it submits, of a discovery request or response, of a transcript of a deposition or hearing, or of a pleading or other paper filed or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as “CONFIDENTIAL.” Any information or documents designated or stamped as “CONFIDENTIAL” shall be handled as provided for hereafter.
3. Designated material and any copies, data or notes derived therefrom:
  - (a) Shall be used solely for the purpose of these Proceedings.
  - (b) May be disclosed only to counsel of the party requesting or receiving such material, counsel’s support staff, or outside experts or consultants retained in this proceeding who have a need to know, handle, or review the material for purposes of these Proceedings, and only where such counsel, counsel’s support staff, or outside expert or consultant has been given and has read a copy of this Protective Order, agrees to be bound by its terms,

and executes the attached Undertaking for Confidential Material prior to receiving access to such materials.

- (c) Must be destroyed by the requesting or receiving party at the completion of these Proceedings. However, counsel and consultants for a party are permitted to retain file copies of all pleadings which they were authorized to review under this Protective Order.
  - (d) Shall, in order to be kept confidential, be submitted to the Board under seal in a package clearly marked on the outside “Confidential Materials Subject to Protective Order.” See 49 CFR 1104.14.
  - (e) Shall be clearly labeled as “CONFIDENTIAL” in any submission made to the Board.
4. If any party intends to use “CONFIDENTIAL” material at any hearings in these Proceedings, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such “CONFIDENTIAL” material to the Board, or the court, as appropriate, with a written request that the Board or the court: (a) restrict attendance at the hearings during discussion of such “CONFIDENTIAL” material; and (b) restrict access to the portion of the record or briefs reflecting discussion of such “CONFIDENTIAL” material in accordance with the terms of this Protective Order.
  5. Any party to these Proceedings may challenge the designation by any other party of information or documents as “CONFIDENTIAL” by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenge(s).
  6. Except for these Proceedings, the parties agree that if a party is required by law or order of a governmental or judicial body to release any “CONFIDENTIAL” material as to which it obtained access subject to this Protective Order, the party so required shall notify the producing party in writing within 3 working days of the determination that the “CONFIDENTIAL” material, or copies or notes are to be released, or within 3 working days prior to such release, whichever is soonest, to permit the producing party the opportunity to contest the release.
  7. Information that is publicly available from a person with a right to disclose it shall not be subject to this Protective Order even if the same information is produced and designated as “CONFIDENTIAL” in this proceeding.
  8. Any party filing with the Board a “CONFIDENTIAL” pleading in this proceeding should simultaneously file a public version of the pleading.

**UNDERTAKING**

**CONFIDENTIAL MATERIAL**

I, \_\_\_\_\_, [as outside counsel or support staff] or [as outside consultant or expert] have read the Protective Order served on January 29, 2010, governing the production of confidential documents in STB MC-F-21035, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purposes other than the preparation and presentation of evidence and argument in STB Finance Docket No. MC-F-21035 or any judicial review proceeding arising herefrom. I further agree not to disclose any data or information obtained under this Protective Order to any person who has not executed an Undertaking in the form hereof. At the conclusion of this proceeding and any judicial review proceeding arising herefrom, I will promptly destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me, provided, however, that counsel and consultants may retain copies of pleadings which they were authorized to review under the Protective Order.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing confidential documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

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Dated: \_\_\_\_\_