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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MCF 21054]

Frank Sherman, Evergreen Trails, Inc., Cabana Coaches, LLC, TMS West Coast, Inc. and FSCS Corporation—Intra-Corporate Family Transaction Exemption

Frank Sherman, Evergreen Trails, Inc. (Evergreen), Cabana Coaches, LLC (Cabana), TMS West Coast, Inc. (TMS), and FSCS Corporation (FSCS) (collectively, Applicants), have filed a verified notice of exemption under the Board's class exemption procedures at 49 C.F.R. § 1182.9.<sup>1</sup> The transaction involves the assignment of assets acquired by Frank Sherman from Coach America Holdings, Inc. (Coach America),<sup>2</sup> specifically, those of Midnight Sun Tours, Inc. (Midnight Sun) and American Coach Lines of Miami, Inc. (ACL Miami), to Evergreen. Frank Sherman is an individual who controls motor passenger carriers Evergreen and Cabana and is the controlling shareholder of noncarrier holding companies FSCS and TMS. Cabana is owned directly by FSCS and Evergreen is owned indirectly by FSCS through TMS.

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<sup>1</sup> The Board has exempted intra-corporate family transactions of motor carriers of passengers that do not result in significant operational changes, adverse changes in service levels, or a change in the competitive balance with carriers outside the corporate family in Class Exemption for Motor Passenger Intra-Corporate Family Transactions, FD 33285 (STB served Feb. 18, 2000).

<sup>2</sup> See Frank Sherman—Acquisition & Consolidation of Assets—American Charters, Ltd., MCF 21047 (STB served Sept. 6, 2012).

In Docket No. MCF 21047, Applicants indicated that, under the terms of an asset purchase agreement, TMS would have the right to purchase 12 Coach America subsidiaries and would then assign its right to purchase to either FSCS or to Evergreen and Cabana. If the right to purchase were assigned to Evergreen and Cabana, Cabana would receive the right to purchase and consolidate the assets of Coach-Miami and Midnight Sun into Cabana; Evergreen would receive the right to purchase and consolidate the assets of all of the other Coach America subsidiaries into Evergreen. The Board granted the application by decision served on September 6, 2012.

Applicants subsequently decided that, primarily for insurance reasons, it would be more efficient and cost effective to consolidate the assets of Midnight Sun and ACL Miami into Evergreen rather than Cabana, as had been contemplated at the time the acquisition application was filed. Applicants proceeded to assign the assets to Evergreen and state that the assignment of assets did not affect the ultimate control of the assets, which remains with Frank Sherman.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 C.F.R. § 1182.9. Applicants state that the transaction has not and will not result in any change in service levels, significant operational changes, or any change in the competitive balance with carriers outside the corporate family. Applicants also state that (1) the assets of Midnight Sun and ACL Miami were assigned to Evergreen pursuant to an Assumption and Assignment

Agreement, and (2) the only effect on employees is that employees that would have been employed by Cabana are now employed by Evergreen.

The transaction was consummated on October 1, 2012.<sup>3</sup>

If the verified notice contains false or misleading information, the Board shall summarily revoke the exemption and require divestiture. Petitions to revoke the exemption under 49 U.S.C. § 13541(d) may be filed at any time. See 49 C.F.R. § 1182.9(c).

An original and ten copies of all pleadings, referring to Docket No. MCF 21054, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

Board decisions and notices are available on our website at “[WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).”

Decided: July 18, 2013.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.

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<sup>3</sup> Applicants originally notified the Board of this transfer of assets to Evergreen in a letter filed on October 9, 2012. In a decision served on June 6, 2013, the Board, noting that this transfer appeared to be a transaction within a motor carrier family requiring Board approval, directed Applicants to file with the Board a notice of exemption under 49 C.F.R. § 1182.9 or explain why such a filing is unnecessary.