

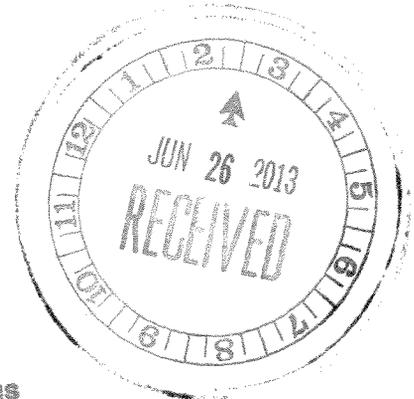
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234476

Steptoe
STEPTOE & JOHNSON LLP

June 26, 2012



VIA HAND DELIVERY

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

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Office of Proceedings

JUN 26 2013

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Re: MC-F-21054, Frank Sherman, Evergreen Trails, Inc., Cabana Coaches, LLC, TMS West Coast, Inc. and FSCS Corporation—Intra-Corporate Family Transaction

Dear Ms. Brown:

Enclosed for filing in the above-captioned docket please find the original and ten copies of the Verified Notice of Exemption of Frank Sherman, Evergreen Trails, Inc., Cabana Coaches, LLC, TMS West Coast, Inc. and FSCS Corporation pursuant to 49 C.F.R § 1182.9 Also enclosed please find a check covering the associated filing fee of \$1,700.00.

Please feel free to contact me if you have any questions.

Respectfully submitted,

David H. Coburn
Christopher G. Falcone
STEPTOE & JOHNSON LLP
1330 Connecticut Ave.
Washington, DC 20036
(202) 429-8063

RECEIVED

JUN 26 2013

**SURFACE
TRANSPORTATION BOARD**

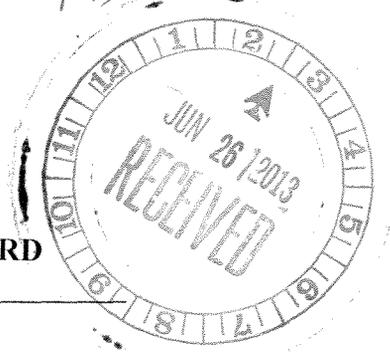
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JUN 26 2013

**SURFACE
TRANSPORTATION BOARD**

Attorneys for Frank Sherman, TMS West Coast, Inc., FSCS Corporation, Evergreen Trails, Inc. and Cabana Coaches, LLC

234476



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. MC-F- 21054

**FRANK SHERMAN, EVERGREEN TRAILS, INC., CABANA COACHES, LLC, TMS
WEST COAST, INC. AND FSCS CORPORATION—INTRA-CORPORATE FAMILY
TRANSACTION**

**VERIFIED NOTICE OF EXEMPT TRANSACTION
INTRA-CORPORATE FAMILY TRANSACTION**

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JUN 26 2013
SURFACE
TRANSPORTATION BOARD

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Attorneys for Frank Sherman, TMS West
Coast, Inc., FSCS Corporation, Evergreen
Trails, Inc. and Cabana Coaches, LLC

Dated: June 26, 2013

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JUN 26 2013
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TRANSPORTATION BOARD

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. MC-F- 21054

**FRANK SHERMAN, EVERGREEN TRAILS, INC., CABANA COACHES, LLC, TMS
WEST COAST, INC. AND FSCS CORPORATION—INTRA-CORPORATE FAMILY
TRANSACTION**

**VERIFIED NOTICE OF EXEMPT TRANSACTION
INTRA-CORPORATE FAMILY TRANSACTION**

Pursuant to the Board's regulations at 49 CFR 1182.9, Frank Sherman, Evergreen Trails, Inc. ("Evergreen"), Cabana Coaches, LLC ("Cabana"), TMS West Coast, Inc. ("TMS"), and FSCS Corporation ("FSCS") (collectively "Applicants"), hereby file this Verified Notice of Exemption ("Notice") with respect to an intra-corporate control transaction described below.¹ Frank Sherman is an individual who controls motor passenger carriers Evergreen and Cabana and is CEO/President and controlling shareholder of non-carrier holding companies FSCS and TMS. Cabana is owned directly by FSCS and Evergreen is owned indirectly by FSCS through TMS.

Preliminary Statement:

On June 4, 2012, Applicants filed an Application under 49 U.S.C. § 14303 and the Board's regulations at 49 C.F.R. Part 1182 to acquire the assets of 12 separate interstate motor passenger common carrier subsidiaries of non-carrier Coach America Holdings, Inc. ("Coach

¹ The verification of Frank Sherman, the CEO and President of TMS, FSCS, Evergreen and Cabana is attached to this Notice.

America”). These Coach America subsidiaries were all in Chapter 11 bankruptcy proceedings at the time of the application. On September 6, 2012, the Board issued a decision approving the acquisition of control of the assets of the Coach America subsidiaries by Applicants. *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.* STB Docket No. MC-F-21047 (STB served September 6, 2012). The transaction approved by the Board was thereupon consummated on September 13, 2012.

As relevant here, the entities from which these assets were acquired included Midnight Sun Tours, Inc. (“Midnight Sun”) and American Coach Lines of Miami, Inc. (“ACL Miami”), both of which were interstate motor carriers based in Florida. In the initial Application, Applicants stated that the assets of Midnight Sun and ACL Miami would be consolidated into Cabana. However, following consummation of the Board-approved transaction, Applicants decided, primarily for insurance reasons, that it would be more efficient and cost effective to consolidate the assets of Midnight Sun and ACL Miami into Evergreen rather than Cabana. Thus, Applicants proceeded to assign the assets to Evergreen. Applicants notified the Board of the assignment of assets to Evergreen in a letter dated October 9, 2012, a copy of which is attached.²

In a decision served June 6, 2013, the Board indicated that the transfer of assets to Evergreen appeared to constitute a transaction within a motor carrier family that required the filing of a notice of exemption under 49 C.F.R. § 1182.9. The Board directed Applicants to file

² The October 9, 2012 letter included as an exhibit, a protest filed by the Livery Operators Association of Las Vegas with the Nevada Transportation Administration. Since that protest is not relevant here, it has not been provided with the attached October 9, 2012 letter.

such a notice of exemption or explain why such a notice is not required, setting a June 26, 2013 due date. Accordingly, Applicants have filed the instant Notice.

1. Brief Summary of the Transaction:

The assets of Midnight Sun and ACL Miami were initially to be consolidated into Cabana. However, Applicants determined that it would be more cost effective and efficient to assign the assets to Evergreen. The assets are now directly owned by Evergreen, which is owned by the holding company TMS West Coast, Inc., which in turn is owned by the holding company FSCS Corporation, which is controlled by Frank Sherman. Cabana is owned directly by the holding company FSCS Corporation, which is controlled by Frank Sherman. Thus, assigning the assets to Evergreen did not affect the ultimate control of the assets, which remains with Frank Sherman, who was a party to the transaction approved in STB Docket No. MC-F-21047. Rather, it simply represented a change in the specific entity within the same corporate family.

2. Name, Address and Telephone Number of the Applicant:

Frank Sherman's business address is 17810 Meetinghouse Rd, Suite 200, Sandy Spring, MD 20860. His phone number is (301) 260-2070. The address and phone number of TMS is the same as the address and phone number for Mr. Sherman. The address of Evergreen's headquarters is 4500 W. Marginal Way S.W., Seattle, WA 98106. Its phone number is (972) 865-4838. The address of Cabana is 12805 NW 42 Ave, Opa-Locka, FL 33054. Its phone number is (305) 681-3021.

3. Name, Address and Telephone Number of Counsel to Whom Questions May Be Addressed:

Questions regarding this Notice may be addressed to undersigned counsel David H. Coburn, Steptoe & Johnson, 1330 Connecticut Avenue NW, Washington, DC 20036. His phone number is (202) 429-1301.

4. Proposed Time Schedule for Consummation of the Proposed Transaction:

As the Board is aware from prior filings by Applicants, the transaction has already been consummated.

5. Purpose of the Transaction:

As indicated above, the purpose of the assignment to Evergreen was to reduce insurance costs.

6. Contracts or Agreements:

The assets acquired from Midnight Sun and ACL Miami were assigned to Evergreen pursuant to an October 1, 2012 Assumption and Assignment Agreement entered in connection with the transaction that was the subject of the Board's decision in MC-F-21047.

7. Effect on Employees:

The only effect on employees as a result of assigning the assets to Evergreen is that employees that would have been employed by Cabana are now employed by Evergreen.

8. Effect on the Environment and Energy Resources:

The assignment of assets to Evergreen has not affected the nature of operations conducted. Rather, it has only changed the corporate entity conducting the operations. Thus, the assignment of assets to Evergreen has no effect on the quality of the human environment or the conservation of energy resources.

9. Mexican ownership:

None of the affected companies is domiciled in Mexico or controlled by persons of that country.

10. Certification:

The above-described transaction within the corporate family has not and will not result in any adverse changes in service levels, significant operational changes, or changes in the competitive balance with motor passenger carriers outside the corporate family.

Respectfully submitted,



David H. Coburn
Christopher G. Falcone
STEPTOE & JOHNSON LLP
1330 Connecticut Ave.
Washington, DC 20036
(202) 429-8063

Attorneys for Frank Sherman, TMS West Coast, Inc., FSCS Corporation, Evergreen Trails, Inc. and Cabana Coaches, LLC

Dated: June 26, 2013

VERIFICATION

I, Frank Sherman, Chief Executive Officer and President of Evergreen Trails, Inc., TMS West Coast, Inc., FSCS Corporation and Cabana Coaches, LLC declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Verified Notice of Exemption and that its statements are true and correct to the best of my knowledge, information, and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Evergreen Trails, Inc., TMS West Coast, Inc., FSCS Corporation and Cabana Coaches, LLC. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. § 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, I know that misstatements are punishable as perjury under 18 U.S.C. §. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense



Frank Sherman

Dated 6/26/13

David H. Coburn
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233118
ENTERED
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October 9, 2012

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

**Re: MC-F-21047, Frank Sherman, FSCS Corporation, TMS West Coast, Inc.,
Evergreen Trails, Inc. and Cabana Coaches, LLC – Acquisition and
Consolidation of Assets – American 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.**

Dear Ms. Brown:

On June 4, 2012, motor passenger carriers Evergreen Trails, Inc. (“Evergreen”) and Cabana Coaches, LLC (“Cabana”), as well as related non-carrier applicants (collectively “Applicants”) filed an application (“Application”) under 49 U.S.C. § 14303 and the Surface Transportation Board’s (“Board”) regulations at 49 C.F.R. Part 1182 to acquire the assets (including business good will and permits) of 12 separate interstate motor passenger common carrier subsidiaries of non-carrier Coach America Holdings, Inc. (Coach America). As relevant here, the entities from which these assets were acquired included CUSA K-TCS, LLC (“K-TCS”), Midnight Sun Tours, Inc. (“Midnight Sun”) and American Coach Lines of Miami, Inc. (“ACL Miami”). On September 6, 2012, the STB issued a decision approving the acquisition of

control of the Coach America assets by Applicants. *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.* STB Docket No. MC-F-21047 (served September 6, 2012) (“September 6 Decision”). The transaction approved by the Board was thereupon consummated on September 12, 2012 and the assets and motor carrier businesses that the Board authorized Evergreen and related entities to control are now being managed and operated by Evergreen.

This letter is to inform the Board of two business decisions Applicants have made since filing the application regarding the consolidation and operation of the acquired assets. As explained further below, although Applicants initially indicated that Evergreen did not have definitive plans regarding the operations in Nevada, after further consideration Evergreen determined that it will conduct certain operations in Nevada with the assets and permits that this Board authorized Evergreen to control. Further, Applicants have decided to consolidate the assets acquired from Midnight Sun and ACL Miami into Evergreen and not into its sister company Cabana, as had been contemplated at the time that the Application was filed.

A. Nevada Operations

The Application filed with the Board made clear at several points that the Applicants “intend to acquire” the assets of CUSA K-TCS, the Coach America carrier based in Las Vegas, NV. See Application at pages iii; 2 fn. 2; 5 fn. 4. The Application also described that Coach America company in the list of entities whose assets were being acquired, including its approximately 22 buses and intrastate operating permits. Application at 11. The Application further noted that K-TCS has terminated operations due to Coach America’s financial problems and stated what was correct at the time, namely that Evergreen “does not plan to resume

operations previously offered by [K-TCS].” Application at 5 n. 4. At that time, Evergreen did not have definitive plans to conduct operations in Nevada. However, Evergreen obviously was still open to the possibility of conducting operations of some sort at a future date in Nevada as indicated by Applicants’ clear statements that they were seeking to acquire the assets of the carrier, including the Nevada intrastate operating authority held by K-TCS which was specifically identified in the Application. *See* Application at 16 & n. 8. Indeed, the Board’s September 6 Decision notes that the transaction approved by the Board included the transfer of intrastate operating authority from K-TCS to Evergreen. September 6 Decision at 5. If Evergreen had completely rejected the idea of operating in Nevada, Evergreen obviously would not have purchased the intrastate authority and other assets of K-TCS (as it did when the transaction was consummated) or sought Board approval for the control of those assets.

Following the filing of the Application, Evergreen identified certain business opportunities in Nevada and decided it would use the motorcoach assets and Nevada intrastate operating authority obtained pursuant to the Board’s decision, as well as its own federal interstate operating authority, to conduct operations there. Although the Application suggested that the Applicants did not intend to operate the K-TCS business (which had closed prior to the Application being filed), nothing in the Application foreclosed the possibility that Applicants might reconsider their Nevada plans. The fact that they very clearly sought permission to acquire the K-TCS intrastate authority and other assets speaks for itself in that regard.

Applicants are advising the Board of their planned Nevada operations because on September 26, 2012 the Livery Operators Association of Las Vegas (“LOA”) filed a protest with the Nevada Transportation Authority, the state’s motor carrier regulatory agency, regarding the Board-authorized transfer of intrastate authority from K-TCS to Evergreen. *See* Exhibit 1.

Applicants will be vigorously opposing this protest. In the protest LOA argues, among other things, that Applicants intentionally misled the Board regarding their intentions with respect to operations in Nevada so that the Board would not conduct a detailed analysis of the transportation market in Nevada and would approve the application more quickly. The notion that Applicants were attempting to mislead the Board to avoid an analysis of the Nevada market is absurd on its face. As demonstrated by the Board's September 6, 2012 decision, the Board does not conduct a detailed analysis of individual transportation markets when determining whether to approve transactions such as the one at issue here. Further, any definitive plans to conduct operations in Nevada would only have strengthened the Application. Because K-TCS had ceased all operations, any operations conducted by Evergreen would represent an increase in competition and services available to the public and add to the number of employees that would be employed by Applicants as a result of the transaction. These factors would only make the Application that much more compelling.

There was no plainly advantage in terms of timing or otherwise to be gained by misleading the Board as to Applicants' Nevada plans. As noted above, a statement by Evergreen indicating that it was certain to conduct operations in Nevada would not have led the Board to conduct a detailed, time-consuming analysis of the transportation market in Nevada. Indeed, Evergreen and its co-applicants indicated that they intended to continue the operations of ten other carriers and yet the Board issued a decision within days following Evergreen's reply to public comments. More importantly, as explained above, the statements made in the Application were accurate and indicated that Applicants were keeping their options open with respect to operating in Nevada.

Further, should the need arise, Applicants will seek a determination from the Board that any effort to interfere with Evergreen's exercise of its rights under the transferred Nevada intrastate operating rights would be preempted under 49 U.S.C. § 14303(f). That statute very clearly provides that a party to a motor carrier control transaction approved by the Board under that statute may carry out the transaction, and exercise control of assets and franchises acquired in the transaction, without the approval of a state authority.¹

B. Florida Operations

The other decision made by Applicants following the filing of the Application relates to Midnight Sun and ACL Miami. In the Application, Applicants stated that the assets of Midnight Sun and ACL Miami would be consolidated into Cabana and that Cabana would conduct the operations previously conducted by these two carriers. However, upon further analysis, Applicants have decided, primarily for insurance reasons, that it would be more efficient and cost effective to consolidate the assets of Midnight Sun and ACL Miami into Evergreen rather than Cabana.

Evergreen and Cabana share the same owners. Thus, this change does not affect the ultimate control of the assets. Rather, it simply represents a change in the specific corporate entity under which the assets will be operated from that described in the Application. Nonetheless, in the interests of full disclosure, Applicants wanted the Board to be aware of this change.

¹ While Evergreen therefore did not require Nevada's approval for the acquisition of the K-TCS assets or permits, Evergreen provided timely notification of its acquisition of control to the Nevada TSA, which is now in the process of formalizing the transfer of the intrastate certificates to Evergreen. LOA's protest was filed in the context of that transfer proceeding.

Ms. Cynthia T. Brown
October 9, 2012
Page 6

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STEPTOE & JOHNSON LLP

Respectfully submitted,



David H. Coburn
Christopher G. Falcone

Attorneys for Frank Sherman, FSCS
Corporation, TMS West Coast, Inc.,
Evergreen Trails, Inc. and Cabana Coaches,
LLC

cc: Kimberly Maxson-Rushton, Esq.
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