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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Docket No. MC-F-21035**

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

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**STATE OF NEW YORK'S REPLY IN OPPOSITION TO  
APPLICANTS' MOTION FOR PROTECTIVE ORDER**

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Attorney General  
State of New York

January 28, 2010

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The State of New York ("NYSAG") and respectfully submits its Reply in Opposition to Applicants' Motion for Protective Order ("Protective Order") pursuant to 49 C.F.R. § 1104.14. The NYSAG's investigative authority explicitly allows it to disclose information it deems appropriate. Applicants' motion is unwarranted and patently unfair.

Applicants file this motion less than week before the reply of the State of New York is due to the Surface Transportation Board ("STB") in connection with the above captioned STB Docket No. MC-F-21035 ("Application") by decision dated January 11, 2010. The time set for the NYSAG is short and it is being further shortened by requiring New York to respond to an unwarranted and unfair motion for a protective order. Applicants' Motion for Protective Order should be denied for the reasons set forth below.

**RESTRAINT OF LAW ENFORCEMENT AUTHORITY**

Applicants' motion for a protective order is tantamount to restraining the Attorney General's authority to carry out its duty to disclose what it has uncovered in its investigation. The NYSAG's investigative authority is derived in part from section 343 of the New York General Business Law ("Section 343"). Section 343 allows the Attorney General to disclose documents

obtained from an investigation where it is deemed appropriate. Generally, such situations arise where it is in the public interest to show the nature of any alleged wrongdoing or to show with as much specificity the basis of its allegation.

New York courts have repeatedly upheld this authority, most recently in *People of the State of New York v. Thain*, 874 N.Y.S.2d 896 (Sup.Ct.N.Y. Cty. 2009). There, the Court construing analogous language in New York's Martin Act stated "New York courts have interpreted this language as tantamount to authority in the Attorney-General to direct whether the inquiry in its entirety shall be secret or public." *Id.* at 901.

#### **APPLICANTS HAVE ALREADY DISCLOSED CONFIDENTIAL DOCUMENTS**

Without a protective order, Applicants have already disclosed confidential documents and cited from confidential documents they now claim could harm or disadvantage them as stated in their Protective Order Motion at page 2. (See documents disclosed and cited in Reply of Applicants to Comments of New York State Attorney General dated November 17, 2009 ("Reply") and in the Verified Statements of Zev Marmurstein, Exhibits 1-3, Ross Kinnear, Exhibits 1-6, and Prof. Robert D. Willig, Exhibits 1-11).

Applicants now unfairly want to pick and choose which documents are deemed confidential for the NYSAG's filing yet Applicants freely attached confidential documents for their own filing even without a protective order.

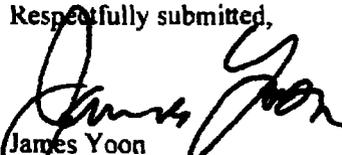
Applicants have used documents they claim contain confidential commercial and financial information without a protective order. For example, in Applicants' Reply, Mr. Ross Kinnear's Verified Statement, Exhibit 6, Applicants attached various reseller contracts and even a document that states "*Confidential* Virgin Holidays Rates..." with rates redacted. (Emphasis added). It is only fair to afford the NYSAG at its discretion to do the same in its filing.

Documents relevant to reply to the Applicants' assertions are in the public interest in a transaction that affects the public as well as the integrity of the STB application process.

Applicants' Motion for Protective Order should be denied.

DATED: January 28, 2010

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that I have on this 28th day of January, 2010 served a copy of the foregoing Reply in Opposition to Applicants' Motion for Protective Order by overnight courier to:

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