UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
COACH AM GROUP HOLDINGS CORP., *et al.*,[1]	Case No. 12-10010 (KG)
Debtors.	(Jointly Administered)

SEVENTH OMNIBUS MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 365 AND FED. R. BANKR. P. 6006 AUTHORIZING THE REJECTION OF CERTAIN EXECUTORY CONTRACTS AND LEASES OF PERSONAL PROPERTY

THIS MOTION SEEKS TO REJECT CERTAIN CONTRACTS AND LEASES. PARTIES RECEIVING THIS MOTION WHOSE CONTRACTS AND LEASES ARE SUBJECT TO REJECTION SHOULD LOCATE THEIR NAMES AND THEIR CONTRACTS AND LEASES IN THE EXHIBIT TO THIS MOTION

The above-captioned debtors and debtors in possession (collectively, the "**Debtors**"), by and through their counsel, submit this motion (the "**Motion**"), for entry of an

[1] Coach Am Group Holdings Corp. (4830); Coach Am Holdings Corp. (1816); Coach America Holdings, Inc. (2841); American Coach Lines, Inc. (2470); America Charters, Ltd. (8246); CUSA Atlanta, Inc. (4003); American Coach Lines of Jacksonville, Inc. (0136); American Coach Lines of Miami, Inc. (7867); American Coach Lines of Orlando, Inc. (0985); Coach America Group, Inc. (2816); B & A Charter Tours, Inc. (9392); CUSA Dillon's, Inc. (5559); Florida Cruise Connection, Inc. (9409); Hopkins Airport Limousine Services, Inc. (1333); CUSA LL, Inc. (5309); The McMahon Transportation Company (0030); Midnight Sun Tours, Inc. (2791); Royal Tours of America, Inc. (2313); Southern Coach Company (6927); Tippet Travel, Inc. (8787); Trykap Airport Services, Inc. (0732); Trykap Transportation Management, Inc. (2727); KBUS Holdings, LLC (6419); ACL Leasing, LLC (2058); CAPD, LLC (4454); Coach America Transportation Solutions, LLC (6909); CUSA, LLC (3523); CUSA ASL, LLC (2030); CUSA AT, LLC (2071); CUSA AWC, LLC (2084); CUSA BCCAE, LLC (2017); CUSA BESS, LLC (3610); CUSA CC, LLC (1999); CUSA CSS, LLC (9896); CUSA EE, LLC (1982); CUSA ELKO, LLC (4648); CUSA ES, LLC (1941); CUSA FL, LLC (1920); CUSA GCBS, LLC (1891); CUSA GCT, LLC (1833); CUSA KBC, LLC (1808); CUSA K-TCS, LLC (1741); CUSA Leasing, LLC (1321); CUSA PCSTC, LLC (1701); CUSA PRTS, LLC (1591); CUSA RAZ, LLC (0640); CUSA Transit Services, LLC (8847); Get A Bus, LLC (1907); Coach BCCAE, L.P. (3488); Coach Leasing BCCAE, L.P. (6784). The Debtors' corporate offices are located at 8150 North Central Expressway, Suite M1000, Dallas, Texas 75206.

order pursuant to section 365 of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), authorizing the Debtors to reject certain executory contracts and leases of personal property. In support of the Motion, the Debtors respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference dated February 29, 2012 (Sleet, C.J.). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief sought herein are sections 105(a) and 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

BACKGROUND

A. General Background

3. On January 3, 2012 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (collectively, the "**Chapter 11 Cases**").

4. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

5. By order dated January 5, 2012, this Court has authorized the joint administration of the Chapter 11 Cases. *See* Docket No. 44.

6. On January 13, 2012, the Office of the United States Trustee appointed an official committee of unsecured creditors (the "**Committee**") pursuant to section 1102(a)(1) of the Bankruptcy Code. *See* Docket No. 92.

7. Detailed information regarding the Debtors' business and the events leading to the Chapter 11 Cases is set forth in the *Declaration in Support of Chapter 11 Petitions and First Day Motions*. *See* Docket No. 3.

B. Sale of the Debtors' Assets

8. On January 13, 2012, the Debtors filed the *Motion for Orders (I) Approving (A) Bidding Procedures, (B) Form and Manner of Sale Notices, and (C) Sale Hearing Date, and (II) Authorizing and Approving (A) Sale of Substantially All of the Assets Free and Clear of Liens, Claims, and Encumbrances, and (B) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [Docket No. 102] (the "**Bidding Procedures Motion**").

9. On January 27, 2012, the Court entered the *Order Pursuant to 11 U.S.C. §§ 105(a), 363 and 365 and Fed. R. Bankr. P. 2002, 6004, 6006 and 9014 Approving (I) Bidding Procedures, (II) Form and Manner of Sale Notices, and (III) Sale Hearing Date* [Docket No. 161] (the "**Bidding Procedures Order**").

(i) Sale of the Residual Assets to TMS

10. On May 25, 2012, the Court entered the *Order Pursuant to 11 U.S.C. §§ 105(a), 363 and 365 and Fed. R. Bankr. P. 2002, 6004, 6006, and 9014 Authorizing and Approving (I) Sale of Certain Assets of the Debtors Free and Clear of Liens, Claims, and Encumbrances and (II) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [Docket No. 760] (the "**TMS Sale Order**"), authorizing the sale of the assets of Debtors CUSA ASL, LLC, CUSA BCCAE, LLC, CUSA CC, LLC, CUSA FL, LLC, CUSA GCBS, LLC, CUSA K-TCS, LLC, CUSA Transit Services, LLC, CUSA GCT, LLC, America Charters, Ltd, American Coach Lines of Jacksonville, Inc., Midnight Sun Tours, Inc., American Coach Lines of Orlando, Inc., American Coach Lines of Miami, Inc. and Trykap Transportation Management, Inc. (collectively, the "**TMS Sellers**") to Transportation Management Services, Inc. ("**TMS**") in accordance with the Asset Purchase Agreement between the Sellers and TMS,

dated as of May 18, 2012 (together with the exhibits and schedules thereto, as may be amended or supplemented from time to time, collectively, the "**TMS APA**"). A copy of the TMS APA is attached as Exhibit A to the TMS Sale Order.

11. Section 2.1 of the TMS APA provides, in pertinent part, that the purchased assets include the following:

> (b) the Contracts listed or described on Schedule 2.1(b) under the heading "Contracts Being Assumed"...; provided, however, that (i) the Assumption Notice may not be sent without prior written notice to the Purchaser sent two (2) Business Days prior to the sending of the Assumption Notice, and (ii) the Purchaser, in its absolute discretion and prior to the sending of the Assumption Notice, may add any Contract to Schedule 2.1(b) or redesignate any Contract from under the heading "Contracts Being Rejected" to under the heading "Contracts Being Assumed" or redesignate any Contracts from under the heading "Contracts Being Assumed" to "Contracts Being Rejected" and, in each case, the Contract shall be a Purchased Asset, except that "Contracts Being Rejected" shall be rejected by the Sellers; provided, further, however, the Purchaser shall pay only the Cure Costs related to any Contracts listed under the heading "Contracts Being Assumed" and Schedule 2.6 shall be updated for such Cure Costs;

12. The sale to TMS closed on September 12, 2012 (the "**TMS Closing Date**").

RELIEF REQUESTED

13. As a result of the sale to TMS, and certain other asset sales that were approved by orders of the Court (*see* Docket Nos. 759, 761 and 762), the Debtors have transferred substantially all of their assets to various purchasers, are winding down the operations at their corporate offices in Dallas, Texas and no longer require certain executory contracts.

14. Accordingly, by this Motion, the Debtors seek the entry of an order authorizing the Debtors to reject the executory contracts and leases of personal property set forth on **Exhibit A** (collectively, the "**Contracts and Leases**"), effective as of the dates specified on Exhibit A (the "**Rejection Effective Date**").

BASIS FOR RELIEF

15. Rejection of the Contracts and Leases reflects the Debtors' sound business judgment. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease." Courts routinely approve motions to reject executory contracts or unexpired leases upon a showing that the debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (stating that the traditional standard applied by courts to authorize the rejection of an executory contract is that of "business judgment"); *see also In re Taylor*, 913 F.2d 102 (3d. Cir. 1990); *In re Buckhead America Corp.*, 180 B.R. 83 (Bankr. D. Del. 1995).

16. Courts in this District have defined "business judgment" as "[t]he presumption that in making business decisions not involving direct self-interest or self-dealing, corporate directors act on an informed basis, in good faith, and in the honest belief that their actions are in the corporation's best interest." *Official Comm. of Unsecured Creditors v. Aust (In re Network Access Solutions, Corp.)*, 330 B.R. 67, 75 (Bankr. D. Del. 2005). The business judgment standard is not strict; it merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor's estate. Accordingly, courts generally will not second-guess a debtor's business judgment concerning the assumption or rejection of an executory contract or unexpired lease. *See In re Decora Indus.*, Inc., No. 00-4459, 2002 WL 32332749, at *8 (D. Del. May 20, 2002) (stating that "[a] debtor satisfies the 'business judgment' test when it determines, in good faith, that assumption of an executory contract will benefit the estate and unsecured creditors"); *In re Exide Techn.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006) (stating that the business judgment standard "is not a difficult standard to satisfy and requires only a showing that [the debtor's decision] will benefit the estate"); *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001) (observing that the business judgment standard is satisfied, and that a debtor's decision to assume or reject must be

"summarily affirmed," where such decision is not "the product of bad faith, or whim or caprice") (quotation omitted).

17. As set forth above, in light of the assets sales and the impending wind-down of the operations at the Debtors' corporate headquarters, the Debtors believe that the Contracts and Leases are no longer necessary to the Debtors' estates and represent an undue burden upon the Debtors' estates. Moreover, the Debtors believe that the Contracts and Leases have no market value and thus cannot be assigned to a third party for value. Accordingly, rejection of the Contracts and Leases represents an exercise of the Debtors' sound business judgment, is in the best interests of the Debtors' estates and creditors, and should be approved pursuant to section 365 of the Bankruptcy Code.

18. As set forth on Exhibit A, the Debtors seek rejection of one Contract *nunc pro tunc* to September 12, 2012 (the TMS Closing Date). The Debtors submit that *nunc pro tunc* rejection of such Contract is appropriate. This Court has authorized rejection on a *nunc pro tunc* basis. *See In re Chi-Chi's, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (acknowledging that a bankruptcy court may approve a retroactive rejection); *In re Fleming Cos., Inc.*, 304 B.R. 85, 96 (Bankr. D. Del. 2003) (stating that rejection has been allowed *nunc pro tunc* to the date of the motion or the lease premises were surrendered); *Thinking Machines Corp. v. Mellon Financial Servs. Corp. (In re Thinking Machines Corp.)*, 67 F.3d 1021, 1028 (1st Cir. 1995) (finding that "[i]n the section 365 context, this means that bankruptcy courts may enter retroactive orders of approval . . . .").

19. Accordingly, rejection of the Contracts and Leases effective as of the respective Rejection Effective Date identified on Exhibit A, and the attendant reduction in the estates' potential administrative costs, reflects the Debtors' exercise of sound business judgment and is in the best interest of the Debtors' estates and creditors.

NOTICE

20. No trustee or examiner has been appointed in the Chapter 11 Cases. Notice of this Motion has been given to (i) the Office of the United States Trustee for the District of Delaware, Attn: Tiiara Patton, Esq.; (ii) counsel to JPMorgan Chase Bank, N.A., as the DIP Agent and the Prepetition First Lien Agent; (iii) counsel to the Committee; (iv) the counterparties to the Contracts and Leases; and (v) all parties that have requested notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

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WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form submitted herewith, granting the relief requested herein and such other and further relief as this Court deems just and proper.

Respectfully submitted,

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Dated: September 21, 2012
Wilmington, Delaware