

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

COACH AM GROUP HOLDINGS CORP,
et al.,¹

Debtors.

Chapter 11

Case No.: 12-10010 (KG)

(Jointly Administered)

Objection Deadline: March 12, 2012 at 4:00 p.m.

Hearing Date: March 19, 2012 at 2:00 p.m.

**APPLICATION FOR AN ORDER PURSUANT TO SECTIONS 328(a) AND 1103
OF THE BANKRUPTCY CODE, RULE 2014 OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE, AND LOCAL RULE 2014-1 AUTHORIZING
EMPLOYMENT AND RETENTION OF IMPERIAL CAPITAL, LLC AS FINANCIAL
ADVISOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
NUNC PRO TUNC TO JANUARY 17, 2012**

The Official Committee of Unsecured Creditors (the “Committee”) in the above-captioned cases hereby submits this application (the “Application”) for entry of an order, in substantially the form attached hereto as Exhibit A, authorizing the Committee to employ and retain Imperial Capital, LLC (“Imperial Capital”) as financial advisor to the Committee pursuant to sections 328(a) and 1103 of title 11 of the United States Code (the “Bankruptcy Code”), rule

¹ The Debtors in these cases, along with the last four (4) digits of their federal tax identification numbers are: Coach Am Group Holdings Corp. (4830), Coach Am Holdings Corp. (1816), Coach America Holdings, Inc. (2841), American Coach Lines, Inc. (2470), American Charters, Ltd. (Coach America) (8246), American Coach Lines of Atlanta, Inc. (4003), American Coach Lines of Jacksonville, In. (1360), American Coach Lines of Miami, Inc. (7867), American Coach Lines of Orlando, Inc. (2985), Coach America Group, Inc. (2816), B&A Charter Tours, Inc. (9392), Dillion’s Bus Service, Inc. (5559), Florida Cruise Connection, Inc. (9409), Hopkins Airport Limousine Service, Inc. (1333), Lakefront Lines, Inc. (5309), The McMahon Transportation Company (0030), Midnight Sun Tours, Inc. (2791), Royal Tours of America, Inc. (2313), Southern Coach Company (6927), Tippitt 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 (1244), CUSA EE, LLC (1982), CUSA ELKO, LLC (4658), 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) and Coach Leasing BCCAE, L.P. (6784).

2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), *nunc pro tunc* to January 17, 2012. In support of the Application, the Committee relies on the *Declaration of Robert Warshauer in Support of the Application for an Order Pursuant to Sections 328(a) and 1103 of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure, and Local Rule 2014-1 Authorizing Employment and Retention of Imperial Capital, LLC as Financial Advisor to the Official Committee of Unsecured Creditors Nunc Pro Tunc to January 17, 2012* (the “Warshauer Declaration”), attached hereto as Exhibit B. In support of this Application, the Committee respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 328(a) and 1103 of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Rule 2014-1.

BACKGROUND

3. On January 3, 2012 (the “Petition Date”), each of the Debtors filed a voluntary petition with this Court under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On January 5, 2012, this Court entered an order jointly administering these Cases pursuant to Bankruptcy Rule 1015(b). No trustee or examiner has been appointed in these cases.

5. On January 13, 2012, the United States Trustee for Region 3 (the “U.S. Trustee”) appointed the Committee to represent the interests of all unsecured creditors in these chapter 11 cases pursuant to section 1102 of the Bankruptcy Code. The members appointed to the Committee are: (i) ABC Companies; (ii) National Diagnostics, Inc.; (iii) Valerie S. Rybka aka Valerie Schwartz; (iv) Universal Studios LLC; and (v) The Sign Company, LLC. The *Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 92] was filed on January 13, 2012.

RELIEF REQUESTED

6. By this Application, the Committee respectfully requests that the Court enter an order, substantially in the form annexed hereto as Exhibit A, pursuant to sections 328(a) and 1103 of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Rule 2014-1, authorizing the Committee to employ and retain Imperial Capital as its financial advisor in these Cases. The Committee seeks to retain Imperial Capital *nunc pro tunc* to January 17, 2012 because Imperial Capital began providing services to the Committee as of such date. The Committee believes that such *nunc pro tunc* retention is appropriate in these Cases because the Committee required Imperial Capital’s financial advisory services prior to such time as a retention application could be submitted to the Court due to the exigencies of these Cases, and Imperial Capital has been providing services to the Committee since January 17, 2012.

BASIS FOR RELIEF

7. The Committee submits that the retention of Imperial Capital under the terms described herein is appropriate under sections 328(a) and 1103 of the Bankruptcy Code. Section 1103 of the Bankruptcy Code, empowers the Committee, with the Court's approval, to employ attorneys, accountants or other professional persons so long as such professionals do not represent any other entity having an adverse interest in connection with the case. 11 U.S.C. § 1103(a)-(b).

8. Section 328(a) authorizes the employment of a professional person "on any reasonable terms and conditions of employment, including on a ... fixed or percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a). Accordingly, section 328 of the Bankruptcy Code permits the compensation of professionals, including financial advisors on more flexible terms that reflect the nature of their services and market conditions. As the United States Court of Appeals for the Fifth Circuit recognized in *Donaldson Lufkin & Jenrette Sec. Corp. v. Nat'l Gypsum (In re Nat'l Gypsum Co.)*:

Prior to 1978 the most able professionals were often unwilling to work for bankruptcy estates where their compensation would be subject to the uncertainties of what a judge thought the work was worth after it had been done. That uncertainty continues under the present section 330 of the Bankruptcy Code, which provides that the court award to professional consultants "reasonable compensation" based on relevant factors of time and comparable costs, etc. Under present section 328 the professional may avoid that uncertainty by obtaining court approval of compensation agreed to with the trustee (or debtor or committee).

123 F.3d 861, 862 (5th Cir. 1997) (internal citations and emphasis omitted).

9. Furthermore, under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, certain modifications were made to section 328(a) of the Bankruptcy Code, which now provides as follows:

The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including *on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.*

See 11 U.S.C. § 328(a) (emphasis added). As such, section 328(a) of the Bankruptcy Code, as amended, now makes clear that committees may retain, subject to bankruptcy court approval, a professional on a fee basis such as the fee structure proposed by the Committee herein.

10. The Committee believes that under the facts and circumstances of these cases, the retention of Imperial Capital as financial advisor is reasonable, appropriate, and in the best interests of the Committee and the Debtors' estates.

11. Imperial Capital is a full service investment banking firm focused on providing financial advisory and capital raising services. Specifically, Imperial Capital offers a diverse range of products and services, including, without limitation: investment banking and financial advisory services, institutional equity research, sales and trading, fixed income services and broker-dealer services. The Committee has selected Imperial Capital to serve as its financial advisor because Imperial Capital's professionals have extensive experience and knowledge in analyzing, structuring, negotiating and effecting restructuring and recapitalization transactions, evaluating business operations, properties, financial conditions and prospects, developing strategies for accomplishing proposed transactions, assessing valuations, providing expert

testimony, and other expert and investment banking support related to reorganization and sales of assets.

12. In light of the complexity of these chapter 11 cases, the Committee requires the services of a seasoned and experienced financial advisor, and one that is familiar with the Debtors' businesses and operations and the chapter 11 process. Additionally, the Committee believes that by having a financial advisor provide these services in these chapter 11 cases, other professionals retained by the Committee will be able to focus better on their respective competencies and their core tasks.

13. The Committee believes that Imperial Capital's general financial advisory experience and expertise, its knowledge of the capital markets and its merger and acquisition capabilities will inure to the benefit of the Committee in pursuing the services described herein. The Committee further believes that the value to the Committee of such services and the amount of compensation is reasonable regardless of the number of hours to be expended by Imperial Capital's professionals in the performance of the services to be provided to the Committee. With its experienced senior professionals and familiarity of the Debtors' business, Imperial Capital fulfills a critical role that complements the services offered by the Committee's other professionals.

SERVICES TO BE RENDERED

14. Imperial Capital is expected to render financial advisory services in these Cases as requested by the Committee and its counsel. Subject to further order of this Court,

Imperial Capital is expected to render, among other services, the following services to the

Committee:

- a. Review and evaluate the assets and liabilities of the Debtors;
- b. Assess the Debtors' existing operations;
- c. Analyze the financial and operating statements of the Debtors;
- d. Analyze the business plans, budgets, and forecasts of the Debtors;
- e. Assess the Debtors' liquidity needs and advise the Committee as to available debtor-in-possession financing;
- f. Analyze the Debtors' employee incentive plans and related issues;
- g. Provide such specific valuation or other financial analysis as the Committee may require in connection with its discussions with the Debtors;
- h. Review and assess the financial issues and options concerning the various alternatives the Debtors may pursue, including, but not limited to, plans and efforts to sell assets, recapitalize or reorganize the Debtors or restructure its operations or financial obligations;
- i. Assist and advise the Committee and its counsel in the development, evaluation and documentation of any plan(s), financing or strategic transaction(s) and strategic alternatives for recovery, and the consideration that is to be provided to unsecured creditors thereunder;
- j. Advise the Committee as to proposals from third parties for new sources of capital for the Debtors or the sale of a portion or substantially all of the assets of the Debtors;
- k. Provide testimony in court, on behalf of the Committee, if necessary or as reasonably requested by counsel; and
- l. Provide such other support as may be reasonably requested by the Committee or counsel.

15. These services are necessary to enable the Committee to seek to maximize the value of recoveries to unsecured creditors. Imperial Capital will carry out unique functions

and the Committee will use reasonable efforts to coordinate Imperial Capital's services with the Committee's other retained professionals to ensure that there is no duplication of the services.

PROFESSIONAL COMPENSATION

16. Imperial Capital intends to apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with these Cases, subject to the Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any other applicable procedures and orders established by this Court and consistent with the proposed compensation set forth herein (the "Fee Structure"). Further, because the Committee is seeking approval of the Fee Structure under section 328(a) of the Bankruptcy Code, the Committee believes that Imperial Capital's compensation should not be subject to any additional standard of review under section 330 of the Bankruptcy Code and should not be deemed to constitute a "bonus" or fee enhancement under applicable law.

17. Imperial Capital shall receive a monthly fee ("Monthly Fee") until the conclusion or termination of its engagement at the rate of \$75,000 per month. If the Monthly Fee shall be payable for a partial month, such Monthly Fee shall be pro-rated for the number of days of service in such month. Payment of the Monthly Fees shall be made in accordance with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and applicable orders of the Bankruptcy Court governing the compensation of professionals in this Case.

18. In addition, Imperial Capital shall be entitled to seek approval by the Bankruptcy Court for a deferred fee (the "Deferred Fee") of up to \$400,000, such amount to be

determined in the sole discretion of the Committee prior to the applicable deadline for filing final fee applications.

19. Imperial Capital will receive monthly reimbursement for reasonable out-of-pocket expenses incurred in connection with the rendition of financial advisory services. Such expenses will include, but are not limited to, reasonable attorneys' fees and expenses, travel, out-of-town accommodations, ground transportation and meals, overnight delivery, database access charges, and telephone, facsimile, postage, printing and duplication costs, document materials and similar items.

20. The Committee believes that the Fee Structure is comparable to those generally charged by financial advisory and investment banking firms of similar stature to Imperial Capital and for comparable engagements, both in and out of bankruptcy proceedings.

21. Indeed, similar fixed fee arrangements in other large chapter 11 cases have been routinely approved and implemented by courts in this district.

22. The hours worked, the results achieved and the ultimate benefit to the Committee of the work performed by Imperial Capital in connection with this engagement may vary and the Committee has taken this into account in setting the above fees. In order to induce Imperial Capital to undertake this engagement, the fees were set with consideration of the difficulty of the assignment.

23. Imperial Capital's corporate restructuring expertise as well as its capital markets knowledge, financing skills, and restructuring capabilities, some or all of which may be required by the Committee during the term of Imperial Capital's engagement hereunder, were

important factors to the Committee in determining the Fee Structure. The Committee believes that the ultimate benefit to the Committee of Imperial Capital's services hereunder cannot be measured merely by reference to the number of hours to be expended by Imperial Capital's professionals in the performance of such services.

24. The Committee also acknowledges and agrees that the Fee Structure has been agreed upon by the parties in anticipation that a substantial commitment of professional time and effort will be required of Imperial Capital and its professionals, and in light of the fact that such commitment may foreclose other opportunities for Imperial Capital. Moreover, the Committee understands that the actual time and commitment required of Imperial Capital and its professionals to perform the financial advisory services may vary substantially from week to week or month to month, creating "peak load" issues for Imperial Capital.

25. In light of the foregoing, and given the numerous issues that Imperial Capital may be required to address in the performance of its services hereunder, Imperial Capital's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for Imperial Capital's services for engagements of this nature, the Committee believes that the terms and conditions set forth herein are fair, reasonable and market-based under the standards set forth in section 328(a) of the Bankruptcy Code.

26. Subject to this Court's approval and in accordance with section 328(a) of the Bankruptcy Code, the applicable Bankruptcy Rules, the Local Rules, and any other procedures that may be fixed by the Court, the Committee requests that Imperial Capital receive reimbursement of actual and necessary expenses incurred in connection with their representation

of the Committee in these cases. The Committee also requests that all such fees and expenses shall be subject to the approval by the Court only in accordance with the standard of review set forth in section 328(a) of the Bankruptcy Code and shall not be subject to any other standard of review set forth in section 330 of the Bankruptcy Code.

27. In accordance with section 504 of the Bankruptcy Code, Imperial Capital has informed the Committee that there is no agreement or understanding between Imperial Capital and any other entity, other than an employee of Imperial Capital, for the sharing of compensation received or to be received for services rendered in connection with these Cases.

CONFLICTS OF INTEREST

28. To check and clear potential conflicts of interest in these cases, Imperial Capital performed a conflicts search on the Debtors and other significant parties-in-interest (collectively, the "Potential Parties-in-Interest"). The identities of the Potential Parties-in-Interest were provided to Imperial Capital by the Committee and are set forth in Schedule 1 to the Warshauer Declaration. Imperial Capital researched its computer database to determine its connections to the Potential Parties-in-Interest. Except as disclosed in the Warshauer Declaration, Imperial Capital has indicated that based on the results of its computer database research conducted to date, and to the best of its knowledge, neither Imperial Capital, nor any employee thereof, has any connection with the Debtors, their creditors, equity holders, or any other Potential Parties-in-Interest (as reasonably known to Imperial Capital) or the Debtors' attorneys and accountants, or the United States Trustees, or any person employed in the office of the United States Trustee.

29. To the best of the Committee's knowledge, information and belief, and except to the extent disclosed in the Warshauer Declaration, Imperial Capital does not represent any entity having an adverse interest to any of the Potential Parties-in-Interest in the matters for which it is proposed to be retained. Accordingly, the Committee believes that Imperial Capital does not have any conflict of interest that would disqualify it from serving as financial advisor to the Committee under the standard set forth in section 1103 of the Bankruptcy Code. The Committee's knowledge, information and belief regarding the matters set forth herein are based, and made in reliance, upon the Warshauer Declaration.

30. Imperial Capital has indicated that if it discovers any information that is contrary to or pertinent to the statements made in the Warshauer Declaration, Imperial Capital will disclose such information to this Court, creditors of the Debtors and the United States Trustee.

INDEMNIFICATION

31. Pursuant to Schedule 2 of the Warshauer Declaration (the "Indemnity Agreement"), the Debtors have agreed, among other things, to indemnify, hold harmless and provide contribution and reimbursement to Imperial Capital and its affiliates, counsel and other professional advisors, and the respective officers, controlling persons, agents and employees of each of the foregoing under certain circumstances.²

² The Indemnity Agreement provides, in part, that the Debtors will indemnify and hold harmless Imperial Capital and each Indemnified Party (as defined in the Indemnity Agreement) from and against any losses, claims or proceedings, directly or indirectly related to or arising out of Imperial Capital's engagement, except to the extent that any such loss, claim, damage, liability or expense is finally judicially determined to have resulted primarily from such Indemnified Party's willful misconduct, fraud or gross negligence. To the extent that the description in this Application and the terms of the Indemnity Agreement are inconsistent, the terms of the Indemnity Agreement shall control.

32. The Committee believes that the indemnification provisions contained in the Indemnity Agreement, as may be modified by the Order, are customary and reasonable for financial advisory and investment banking engagements, both in and out-of-court, and reflect the qualifications and limitations on indemnification provisions that are customary in this district and other jurisdictions. *See, e.g., In re Harry & David Holdings, Inc.*, Case No. 11-10884 (MFW) (Bankr. D. Del. Apr. 27, 2011); *In re Penton Business Media Holdings, Inc.*, Case No. 10-10689 (AJG) (Bankr. S.D.N.Y. Mar. 5, 2010); *In re FairPoint Commc'ns, Inc.*, Case No. 09-16335 (BRL) (Bankr. S.D.N.Y. Jan. 11, 2010); *In re Trident Resources, Corp.*, Case No. 09-13150 (MFW) (Bankr. D. Del. Sept. 8, 2009); *In re Charter Commc'ns, Inc.*, Case No. 09-11435 (JMP) (Bankr. S.D.N.Y. Apr. 15, 2009).

33. The terms and conditions of the Indemnity Agreement were negotiated by the Debtors, the Committee, and Imperial Capital at arm's-length and in good faith. The Committee respectfully submits that the indemnification, contribution, exculpation, reimbursement and other provisions contained in the Indemnity Agreement, viewed in conjunction with the other terms of Imperial Capital's proposed retention, are reasonable and in the best interests of the Debtors, their estates and creditors. Accordingly, as part of this Application, the Committee requests that the Court approve the Indemnity Agreement.

FEE APPLICATION AND WAIVER

34. Imperial Capital has informed the Committee that it is not in the general practice of financial advisory and investment banking firms to keep detailed time records similar to those customarily kept by attorneys and other professionals who are compensated on an hourly

basis and that Imperial Capital's financial advisory and investment banking personnel do not maintain their time records on a "project category" basis. However, Imperial Capital's professionals, when formally retained in chapter 11 cases and when required by local rules, do, and in these Cases will, keep reasonably detailed time records describing their general daily activities, the identity of persons who performed such activities, and the estimated amount of time expended on such activities on a daily basis.

35. The Committee respectfully submits that the time descriptions that Imperial Capital's restructuring personnel intend to submit to the Court should be sufficient for any review of the time entries in connection with a subsequent fee application. Accordingly, the Committee respectfully requests that notwithstanding anything to the contrary in the Bankruptcy Code, applicable Bankruptcy Rules, Local Rules, orders of this Court, or any guidelines regarding submission and approval of fee applications, in light of services to be provided by Imperial Capital and the structure of Imperial Capital's compensation pursuant to the terms set forth herein, that Imperial Capital's restructuring personnel be allowed to record time in their customary manner.

36. Based upon all of the foregoing, the Committee believes that the employment of Imperial Capital as its financial advisor would be appropriate and in the best interest of the unsecured creditor body that the Committee represents. The Committee requests that Imperial Capital's retention as its financial advisor in connection with these Cases be approved *nunc pro tunc*, effective as of January 17, 2012, as this is the date Imperial Capital was

selected as financial advisor to the Committee and commenced providing financial advisory services on behalf of the Committee.

NOTICE

37. Notice of this Application has been given to the following parties: (a) the U.S. Trustee; (b) counsel for the Debtors; (c) counsel for the Debtors' prepetition and postpetition secured lenders; and (d) those parties who have requested notice pursuant to Bankruptcy Rule 2002. The Committee submits that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

38. No previous request for the relief sought herein has been made to this or any other court.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court enter an order, in the form attached here to as Exhibit A, (a) authorizing the Committee to retain Imperial Capital *nunc pro tunc* to January 17, 2012 and (b) granting such other and further relief as may be just and proper.

**THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF COACH AM GROUP HOLDINGS
CORP., *et al.***

Dated: February 8, 2012

By: _____

Janice L. Miller, Esq.
Universal Studios LLC

Solely in her capacity as Chairperson, Official
Committee of Unsecured Creditors of Coach Am
Group Holdings Corp., *et al.*