IN THE 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)
	)	
	)	(Jointly Administered)
Debtors.	)	
	)	**Obj. Deadline: February 27, 2012 @ 4:00 p.m.**
	)	**Hearing Date: March 19, 2012 @ 2:00 p.m.**

MOTION OF ROSALINDA SIMON AND DIEGO ACOSTA FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO SECTION 362(D) OF THE BANKRUPTCY CODE

Rosalinda Simon and Diego Acosta (the "Movants"), by and through their undersigned counsel, hereby move this Honorable Court (the "Motion"), pursuant to section 362(d) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Federal Rule of Bankruptcy Procedure 4001, and Local Rule 4001-1 for an order lifting the automatic stay imposed by section 362(a) of the Bankruptcy Code for the purpose of (i) permitting liquidation of the Movants' personal injury cause of action against debtor-defendants CUSA, LLC, d/b/a Coach America LLC and CUSA KBC, LLC, d/b/a Kerrville Bus, Coach America, Kerrville Bus Company, and/or Kerville Bus Company, Coach America San Antonio (the "Debtor-Defendants") asserted in

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: 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); American Coach Lines of Atlanta, Inc. (4003); American Coach Lines of Jacksonville, Inc. (1360); 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); Dillon's Bus Service, Inc. (5559); Florida Cruise Connection, Inc. (9409); Hopkins Airport Limousine Services, 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); 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 (1244); CUSA EE, LLC (1982); CUSA ELKO, LLC (4648); CUSA ES, LLC (1941); CUSA FL, LLC (1920); CUSA GCBS, LLC (1891); CUSA GCTm LLC (183); CUSA KBC, LLC (1808); CUSA K-TCS, LLC (1741); CUSA Leasing, LLC (1321); CUSA PCTSC, 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 Expresway, Suite M1000, Dallas, TX 75206.

the First Amended Petition (the "Petition") filed in the District Court of Val Verde County, Texas in the 63rd Judicial District of Texas in the case styled Rosalinda Simon, Individually and as Next Friend of Minor Child, Diego Acosta v. Werner Enterprises, Inc., Toure Amara, Driver, CUSA LLC, CUSA KBC, LLC, and Donald Ray Cumbo, Sr., Driver, Cause No. 29085 (the "State Court Action"), and (ii) to proceed to collect any judgment in the first instance against any available insurance proceeds under any applicable policy (the "Motion"). In support of their Motion, the Movants respectfully state the following:

The Parties

1. On January 3, 2012 (the "Petition Date"), the above-captioned debtors (the "Debtors") filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On January 5, the Court entered an order jointly administering the Debtors' cases for procedural purposes [D.I. 44].

2. An official committee of unsecured creditors has been appointed in this case [D.I. 92]. On information and belief, the Debtors continue to operate their businesses and remain in possession of their property.

3. As set forth in the Petition in the State Court Action, the Movants are residents of Val Verde County, Texas. Rosalinda Simon is the mother of Diego Acosta, a minor, and brought the Petition both in her individual capacity and as the next friend of her minor child. *See* State Court Petition, attached hereto as **Exhibit A**, ¶ 1.

Background[2]

4. Prior to the Petition Date, on July 15, 2011 the Movants instituted the State Court Action against several parties, including the Debtor-Defendant. The initial petition in the State

[2] The following description of events is provided by way of general summary only. For further description of the incident, please see the Petition in the State Court Action ("State Court Petition"), attached hereto as **Exhibit A**.

Court Action was subsequently amended on or about July 27, 2011. The State Court Action relates to a vehicular collision occurring on or about June 6, 2011 on Interstate 10 near Mobile, Alabama. The Plaintiff, Diego Acosta, was a passenger on a charter bus owned and operated by one or more of the Debtor-Defendants. The State Court Action alleges that Debtor-Defendants' charter bus failed to see an overturned trailer and negligently and violently collided with the vehicle. *See* Petition, ¶ 10. The State Court Action also alleged that the Debtor-Defendants, among others, failed to provide proper maintenance for the charter bus involved in the collision, as well as failed to retain and properly train personnel to safely operate the bus. Such failures are alleged to be the proximate cause of the Plaintiffs' injuries. *See* Petition, ¶¶ 10-11.

5. On January 3, 2012, the Debtors filed for bankruptcy and, on January 16, 2012, Texas counsel in the State Court Action filed on behalf of the Debtors a "Suggestion of Bankruptcy" in the State Court Action. (See copy of Suggestion attached hereto as **Exhibit B**). As described in the Suggestion, the State Court Action proceedings have been halted with respect to the Debtor-Defendants as a consequence of the automatic stay.

6. In addition to the Debtor-Defendants, several other parties are named as defendants on negligence and respondent superior theories of liability. None of these parties are presumed beneficiaries of the automatic stay because they are non-debtors and no further relief has been requested from this Court to extend the stay to these additional defendants.

7. Upon information and belief, the Debtor-Defendants are covered by insurance policies applicable to the Movants' claims in the State Court Action. The Debtors' Initial Monthly Operating Report, filed in the Bankruptcy Court on January 23, 2012 [D.I. 131], identifies both commercial general liability and automobile liability coverage policies with up to $5,000,000 in current coverage. The Initial Report also identifies excess auto insurance. Furthermore, according to the Exhibit A to the Debtors' *Motion to Authorize Payment of Prepetition Insurance Policy*

Premiums (the "Insurance Motion") filed January 3, 2012 [D.I. 10], the Debtors have at least three auto insurance policies. (This Court entered its Order approving the Insurance Motion on January 27, 2012 [D.I. 167]). Movants believe these or similar policies would have been in existence on or about June 6, 2011, the date of the accident.

Statement of Relief Requested

8. By this Motion, the Movants seek relief from the automatic stay so that they may pursue the State Court Action to judgment or other resolution and satisfy any judgment or other resolution they may obtain against the Debtor-Defendants from the proceeds of any applicable insurance policies in the first instance.

Basis for the Relief Requested

9. The Bankruptcy Code provides:

> On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay ... for cause....

11 U.S.C. § 362(d). The term "cause" is not defined in the Code, but rather, must be determined on a case-by-case basis. In the Matter of Rexene Products Co., 141 B.R. 574, 576 (Bankr. D. Del. 1992) (citations, internal quotations omitted).

10. This Court has considered three factors when balancing the competing interests of debtor and movant: (1) the prejudice that would be suffered should the stay be lifted, (2) the balance of hardships facing the parties, and (3) the probable success on the merits if the stay is lifted. In re Continental Airlines, 152 B.R. 420, 424 (D. Del. 1993).

11. Here, the facts weigh in Movants' favor on each of these three prongs. First, the Debtors will not suffer prejudice should the stay be lifted because the Movants' claims will have to be liquidated at some point before Movants can receive any distribution in this bankruptcy proceeding. Further, as the Court is well aware, the Movants' claims against the Debtors must be

liquidated in a forum outside of the Bankruptcy Court. "The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending." 28 U.S.C. § 157(b)(5); Hays and Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 885 F.2d 1149, 1157 n.13, 1159 (3d Cir. 1989).

12. Moreover, based on the Debtors' representations in its Initial Monthly Operating Report and Insurance Motion, auto liability insurance was likely in place during the relevant time period and available to cover Movants' claims. To the extent that the Debtor-Defendants' liability to the Movants is covered by insurance policies, any recovery by the Movants will not affect the Debtors' estates. In re 15375 Memorial Corp., 382 B.R. 652, 687 (Bankr. D. Del. 2008), *on reconsideration*, 386 B.R. 548 (Bankr. D. Del. 2008), *rev'd on other grounds*, 400 B.R. 420 (D.Del. 2009) ("when a payment by an insurer cannot inure to the debtor's pecuniary interest, then that payment should neither enhance nor decrease the bankruptcy estate") (quoting In re Edgeworth, 993 F.2d 51); see also In re Allied Digital Tech. Corp., 306 B.R. 505, 510 (Bankr. D. Del 2004) (ownership by a bankruptcy estate of an insurance policy is not necessarily determinative of the ownership of the proceeds of that policy). To the extent that the Movants' claims are not covered by the Debtors' insurance, the Movants seek to liquidate, as opposed to collect, their claims via the State Court Action. In re Tricare Rehabilitation Systems, Inc., 181 B.R. 569, 578 (Bankr. N.D. Ala. 1994) (lifting the stay to liquidate, as opposed to collect); In re Metzner, 167 B.R. 414, 416 (E.D. La. 1994) (same).

13. Second, the Movant will face substantial hardship if the stay is not lifted. The Movants are residents of Texas. The conduct that is the subject of the Complaint occurred in Texas or in neighboring states. The relevant documents, witnesses, and physical artifacts are located in Texas or in neighboring states. If the Movants are forced to litigate their claims in Delaware, they

would incur the increased expense of bringing attorneys, witnesses, and physical evidence to Delaware. For this reason, the Rexene Products court stated that

> It will often be more appropriate to permit proceedings to continue in their place of origin, where no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere.

Rexene Products, 141 B.R. at 576.

14. Moreover, if the Movants are not permitted to liquidate their claims in the non-bankruptcy forum of their choice, the litigation in Delaware will be before the United States District Court. 28 U.S.C. § 157(b)(5). The Val Verde District Court in Texas is the more appropriate court for a trial governed by Texas negligence law. In re The Conference of African Union First Colored Methodist Protestant Church, 184 B.R. 207, 218 (Bankr. D. Del. 1995) ("[T]he existence of a more appropriate forum than the bankruptcy court is "cause" for relief under Code § 362(d)(1)."); see In the Matter of Baker, 75 B.R. 120, 121 (Bankr. D. Del. 1987) (granting relief from stay to permit Family Court to determine issues with which it had expertise).

15. Significantly, there are other defendants in the State Court Action who are not subject to the automatic stay and whose cases cannot be tried in Delaware's federal district court. Therefore, the Movants would have to proceed on two litigation tracts in two different states, or move to have the State Court Action transferred to a forum that is remote from the situs of the personal injury at issue. To the extent the Movants are forced to litigate the matter twice -- once against the Debtors in Delaware, and again against non-debtor defendants in Texas -- this could lead to conflicting judgments and would certainly be wasteful of judicial resources.

16. By contrast, the Debtors will not suffer any meaningful hardship if the State Court Action is allowed to proceed. The State Court Action is a negligence claim for personal injury, which does not present factual or legal issues which will impact or distract the Debtor-Defendants

from the reorganization process. In addition, the Debtor-Defendants have already retained counsel in the State Court Action who is presumably familiar with the case and not involved with the reorganization process.

17. Third, the final prong of the analysis is satisfied by "even a slight probability of success on the merits ... in an appropriate case." In re Continental Airlines, 152 B.R. at 425. This prong also weighs in the Movants' favor because they allege that their damages were caused by the negligence of the Debtor-Defendants or their employees. "Only strong defenses to state court proceedings can prevent a bankruptcy court from granting relief from the stay in cases where ... the decision-making process should be relegated to bodies other than [the bankruptcy] court." In re Fonseca v. Philadelphia Housing Authority, 110 B.R. 191, 196 (Bankr. E.D. Pa. 1990). No strong defenses would appear to exist here. At the very least, there can be no question that the Petition presents triable factual issues. In re Fernstrom Storage and Van Co., 938 F.2d 731, 736 (7th Cir. 1991) (the court lifted the automatic stay where underlying action was not frivolous).

18. On these facts, cause exists to lift the stay. Cf. In re Drexel Burnham Lambert Group, Inc., 113 B.R. 830, 838 n.8 (Bankr. S.D.N.Y. 1990) ("cause" utilized to permit litigation in another forum to liquidate personal injury claim); In the Matter of Rexene Products, Inc., 141 B.R. at 576 (legislative history indicates "cause" may be established by single factor including to permit action to proceed in another tribunal).

Conclusion

WHEREFORE, the Movants respectfully request the entry of an Order, substantially in the form of the proposed order attached hereto as **Exhibit C**, modifying the automatic stay imposed by section 362(a) of the Bankruptcy Code to allow the Movants (i) to prosecute the State Court Action to judgment or other resolution, (ii) to liquidate Movants' claim against the Debtor-Defendants, and (iii) to seek satisfaction of any judgment (or other resolution) obtained against the

Debtor-Defendants from the proceeds of any insurance coverage available to the Debtor-Defendants that may be applicable to the Movants' claims in the first instance.

Dated: February 13, 2012
Wilmington, Delaware

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