

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

COACH AM GROUP HOLDINGS CORP.,  
*et al.*,<sup>1</sup>

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.

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR  
AN ORDER CLARIFYING THE REQUIREMENTS TO PROVIDE ACCESS TO  
CONFIDENTIAL OR PRIVILEGED INFORMATION**

The Official Committee of Unsecured Creditors (the “Committee”) of Coach Am Group Holdings Corp., *et al.* (collectively, the “Debtors”) hereby moves this Court (the “Motion”) for entry of an order pursuant to sections 105(a), 107(b), and 1102(b)(3)(A) of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), clarifying the requirement of the Committee to

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<sup>1</sup> 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); 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 BCCA, 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 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 BCCA, L.P. (3488); Coach Leasing BCCA, L.P. (6784). The Debtors’ corporate offices are located at 8150 North Central Expressway, Suite M1000, Dallas, Texas 75206.

provide access to confidential or privileged information to creditors. In support of the Motion, the Committee respectfully states as follows:

### **Jurisdiction**

1. Jurisdiction is proper pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105(a), 107(b) and 1102 of the Bankruptcy Code.

### **Background**

3. On January 3, 2012 (the “Petition Date”), the Debtors commenced this case by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors continue in possession of their property and continue to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors’ chapter 11 cases.

5. On January 13, 2012, the Office of the United States Trustee for the District of Delaware (the “UST”) appointed the Committee to represent all unsecured creditors of the Debtors pursuant to section 1102(a)(1) of the Bankruptcy Code.

### **Relief Requested**

6. By this Motion, the Committee seeks entry of an order of the Court clarifying the requirement of the Committee to provide access to the Debtors’ Confidential

Information (as defined below) and/or Privileged Information (as defined below) to any creditor the Committee represents. The procedure proposed herein will help ensure that confidential, privileged, proprietary and/or material non-public information will not be disseminated to the detriment of the Debtors' estates and will aid the Committee in performing its statutory function.

### **Basis for Relief**

7. Section 1102(b)(3) of the Bankruptcy Code states, in relevant part, that a creditors' committee appointed under section 1102(a) of the Bankruptcy Code shall "provide access to information for creditors who (i) hold claims of the kind represented by that committee; and (ii) are not appointed to the committee." 11 U.S.C. § 1102(b)(3)(A). Section 1102(b)(3)(A) does not indicate how a creditors' committee should provide "access to information" to the creditors it represents nor does the associated legislative history provide any guidance.

8. The lack of specificity in section 1102(b)(3)(A) creates significant issues for debtors and creditors' committees. Typically, a debtor will share various confidential and other non-public proprietary information with a creditors' committee (the "Confidential Information").<sup>2</sup> The creditors' committees then use this Confidential Information to assess,

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<sup>2</sup> For purposes of this Motion, all such information that is identified or labeled by the Debtors as "Confidential" and that is material and non-public, confidential or proprietary and is furnished, disclosed, or made known to the Committee, whether intentionally or unintentionally and in any manner, including written form, orally, if identified as Confidential, or through any electronic, facsimile or computer-related communication, is hereinafter referred to as the "Confidential Information," and shall include, without limitation, (a) any notes, summaries, compilations, memoranda, or similar written materials disclosing or discussing Confidential Information; (b) any written Confidential Information that is discussed or presented orally; and (c) any other Confidential Information conveyed to the Committee orally that the Debtors or their advisors advise the Committee at the time of such oral communication and confirm in writing within two (2) business days should be treated as confidential.

Notwithstanding the foregoing, Confidential Information shall not include any information or portions of information that: (i) is or becomes generally available to the public or is or becomes available to the Committee on a non-confidential basis, in each case to the extent that such information became so available other than by a violation of a contractual, legal, or fiduciary obligation to the Debtors; or (ii) was in the possession of the Committee prior to its disclosure by the Debtors and is not subject to any other duty or obligation to maintain confidentiality.

among other things, a debtor's capital structure, opportunities for the restructuring of a debtor's business in chapter 11, the results of any revised operations of the debtor, and the debtor's overall prospects for reorganization under a chapter 11 plan. In addition, creditors' committees typically execute confidentiality agreements or similar arrangements with a debtor to ensure that the committee's members do not use Confidential Information except in connection with the applicable chapter 11 case, and on terms acceptable to the debtor. Section 1102(b)(3)(A) raises the issue of whether a creditors' committee could be required to share a debtor's Confidential Information with any creditor that the creditors' committee represents notwithstanding any confidentiality agreement between the creditors' committee and the debtor.

9. In this case, absent appropriate protections, the Debtors might be unwilling to share Confidential Information with the Committee, impeding the Committee's ability to function effectively and impairing the Committee's working relationship with the Debtors. Given the importance of the issue, the Committee seeks an order of the Court clarifying the requirement of the Committee to provide access to the Debtors' Confidential Information to any creditor the Committee represents.

10. That section 1102(b)(3)(A) could be read to permit the disclosure of attorney-client privileged information (or information protected by any other applicable privilege for that matter) to the creditors the Committee represents also raises the issue of whether the Committee could be required to disclose the Debtors' or its own privileged information (collectively, the "Privileged Information").<sup>3</sup> Given the importance of the issue, the Committee

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<sup>3</sup> For the purposes of this Order, the term "Privileged Information" shall mean any information subject to the attorney-client or some other state, federal, or other jurisdictional law privilege (including attorney work product),

seeks an order of the Court clarifying the requirement of the Committee to provide access to the Debtors' Privileged Information to any creditor the Committee represents. Of course, the Committee should be permitted, but not required, to provide access to Privileged Information to any party so long as (a) such Privileged Information was not Confidential Information, and (b) the relevant privilege was held and controlled solely by the Committee.

11. In sum, the Committee respectfully submits that section 1102(b)(3)(A) of the Bankruptcy Code is unclear and ambiguous. The statute simply requires a committee "to provide access to information," without offering any guidance as to the type, kind and extent of the information to be provided. In its extreme, section 1102(b)(3)(A) could be read as requiring a committee to provide access to all information provided to it by a debtor, or developed through exercise of its investigative function, regardless of whether the information is confidential, privileged, proprietary or material non-public information and regardless of whether disseminating such information implicates securities laws disclosure requirements. *See* 17 C.F.R. §§ 243.100 to 243.103 (2005). The Committee submits that this is not the proper reading.

12. Instead, given the ability to rapidly disseminate information online or otherwise, the drafters of section 1102(b)(3) likely intended this provision to mean that a creditors' committee's constituency should have easier access to relevant public information about a debtor without the burden of retaining counsel to monitor the numerous proceedings within a bankruptcy case. Congress could not have intended for a creditors' committee to be

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whether such privilege is solely controlled by the Committee or is a joint privilege with the Debtors or some other party.

required to provide unfettered access to every type and kind of information that a creditors' committee receives from a debtor. If this had been the intention, section 1102(b)(3) would then frustrate numerous provisions of the Bankruptcy Code.

13. Section 107(b)(1) of the Bankruptcy Code suggests that the Committee's interpretation is correct because section 107(b)(1) provides that "on request of a party in interest, the bankruptcy court shall . . . protect an entity with respect to trade secret or confidential research, development, or commercial information." *Video Software Dealers Ass'n v. Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994) (providing that the protections of section 107(b)(1) are mandatory upon request). That any interpretation of section 1102(b)(3) must be in keeping with the mandatory provisions of section 107(b)(1) is further supported by Bankruptcy Rule 9018, which states, in relevant part, that "on motion or on its own initiative, with or without notice, the court may make any order which justice requires to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information." Fed. R. Bankr. P. 9018. As a result, section 107(b)(1) and Bankruptcy Rule 9018 strongly suggest that this Court should protect the Debtors' Confidential Information and all Privileged Information from disclosure to general creditors.

14. Accordingly, Courts in this District and elsewhere confronting this issue have entered orders providing that creditors' committees are not required to provide access to Confidential or Privileged information. *See, e.g., In re Consolidated Horticulture Group, LLC*, Case No. 10-13308 (CSS) (Bankr. D. Del. Nov. 17, 2010); *In re Point Blank Solutions, Inc.*, Case No. 10-11255 (PJW) (Bankr. D. Del. May 12, 2010); *Hayes Lemmerz Int'l, Inc.*, Case No.

09-11655 (MFW) (Bankr. D. Del. July 8, 2009); *In re W. Nonwovens, Inc.*, Case No. 08-11435 (PJW) (Bankr. D. Del. July 14, 2008); *In re Global Motorsport Group, Inc.*, Case No. 08-10192 (KJC) (Bankr. D. Del. Feb. 29, 2008).

15. Such an order is appropriate in this case because the Debtors are in a competitive industry with highly sensitive proprietary information. If the Debtors' general creditors or competitors buying claims could require the Committee to turnover Confidential Information in the possession of the Committee, such information could easily become public immediately thereafter. This would result in competitors gaining access to the Debtors' business strategies and intended initiatives, thereby allowing them to exploit the Debtors' Confidential Information, which would reduce – if not altogether eliminate – the value of such initiatives to the estates, and thus diminish the value of the estates to all creditors. Other Confidential Information of the Debtors, like compensation levels, is of a sensitive nature. Disclosure of such information could jeopardize employee morale and lead to sanctions under federal and state privacy laws. In sum, the dissemination of the Debtors' Confidential Information to parties who are not bound by any confidentiality agreement could be disastrous.

16. Accordingly, the Committee proposes the following protocol for providing access to information for creditors ("Creditor Information Protocol") in accordance with section 1102(b)(3)(A) and (B) of the Bankruptcy Code. The Committee may, until the earliest to occur of dissolution of the Committee, dismissal, or conversion of this chapter 11 case, and a further order of the Court, set up and maintain a website. For the sake of efficiency and economy and ease of access by creditors, the Committee proposes to keep creditors informed as required by

the statute by directing them to the Committee's own web page at [www.pszjlaw.com/coachamerica.html](http://www.pszjlaw.com/coachamerica.html) to make non-confidential and non-privileged information available to unsecured creditors, which contains links to the Court's pacer website, posts relevant pleadings, and provides creditors with the information necessary to email or contact Committee counsel. If and to the extent the creation of the web page dedicated to the Committee results in additional expenses to Committee counsel, the Committee requests reimbursement from the Debtors for such expense.

17. The Committee proposes that the Committee shall not be required to disseminate to any entity (all references to "entity" herein shall be as defined in section 101(15) of the Bankruptcy Code, "Entity"): (i) without further order of the Court, Confidential Information or (ii) Privileged Information. In addition, the Committee proposes that it not be required to provide access to information or solicit comments from any Entity that has not demonstrated to the satisfaction of the Committee, in its sole discretion, or to the Court, that it holds claims of the kind described in section 1102(b)(3) of the Bankruptcy Code.

18. The Committee also proposes that any information received (formally or informally) by the Committee from any Entity in connection with an examination pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure or in connection with any formal or informal discovery in any contested matter, adversary proceeding or other litigation shall not be governed by any order entered with respect to this Motion but, rather, by any order governing such discovery.



**No Prior Request**

19. No prior request for the relief sought in this Motion has been made to this or any other court.

**Notice**

20. Notice of this Motion has been given to the following parties, or their counsel, if known: (i) the UST; (ii) counsel to the Debtors' debtor in possession lenders; (iii) counsel to the Debtors; and (iv) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Committee submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Committee respectfully requests that this Court enter an order, substantially in the form attached hereto granting the relief requested therein, and such other and further relief as this Court deems appropriate.

Dated: February 13, 2012

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Bradford J. Sandler

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