IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
COACH AM GROUP HOLDINGS CORP. *et al.*,	)	Case No. 12-10010 (KG)
Debtors.	)	Jointly Administered
	)	**[Proposed] Hearing Date: 3/19/ 2012 @ 2:00 p.m.** **Objection Deadline: TBD**

MOTION BY JON V. LEPORE FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO SECTION 362(d) OF THE BANKRUPTCY CODE

Jon V. Lepore ("Lepore" or "Movant"), by and through his undersigned attorneys, hereby files his Motion (the "Motion"), pursuant to 11 U.S.C. §§ 105 and 362(d)(1), for entry of an order granting relief from the automatic stay for the purpose of (i) continuing the prosecution of Movant's personal injury cause of action against debtor-defendant American Coach Lines of Orlando, Inc., a Florida corporation (the "Debtor-Defendant") in the action styled Jon V. Lepore v. American Coach Lines of Orlando, Inc. ("American Coach"), filed in the Circuit Court for the Ninth Judicial Circuit in and for Orange County, Florida, Case No. 2009-CA-019638-O (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. In support of his Motion, Movant respectfully states the following:

Relevant Background

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

2. An official committee of unsecured creditors has been appointed in these cases.

On information and belief, the Debtors continue to operate their businesses and remain in possession of their property.

3. Prior to the Petition Date, on June 19, 2009, Movant instituted the State Court Action against Debtor-Defendant. On June 3, 2010, the Second Amended Complaint was filed (the "Complaint") *See* **Exhibit A**. The Complaint describes an injury sustained by Lepore while riding on a commercial shuttle bus operated by American Coach. The Complaint alleges that the driver made a sudden and violent stop causing Lepore to be thrown forward several feet colliding with a plexiglass barrier behind the driver. The Complaint further alleges that the driver of Debtor-Defendant's shuttle bus operated the bus in the scope of his employment. Based on the foregoing, and the other allegations set forth in the Complaint, the Complaint asserts two causes of action: (i) Count I: vicarious liability of American Coach and (ii) Count II: liability of American Coach pursuant to Florida's Dangerous Instrumentality Doctrine.

4. The State Court Action is well advanced. Discovery is completed. Trial experts have been designated. Witnesses have been identified and an original trial date was set for October 25, 2011. On that date, Movant's Florida trial counsel appeared in the State Court Action, selected a jury and the jury was sworn. During arguments regarding motions in limine and prior to opening statements, the trial was continued to the April, 2012 trial docket. A copy of the docket from the State Court Action is attached hereto as **Exhibit B**.

5. On January 3, 2012, the Debtors filed for bankruptcy and, on January 31, 2012, Florida counsel to American Coach filed on its behalf an "Amended Suggestion of Bankruptcy" in the State Court Action. As described in the Suggestion, the State Court Action proceedings have been halted with respect to the Debtor-Defendant as a consequence of the automatic stay.

6. Upon information and belief, the Debtor-Defendant is covered by insurance

policies applicable to Movant's 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. Movant believes these or similar policies would have been in existence on or about December 2, 2008, the date Mr. Lepore was injured.

Relief Requested

7. By this Motion, Movant seeks relief from the automatic stay to pursue the State Court Action to judgment or other resolution and satisfy any judgment or other resolution he may obtain against the Debtor-Defendant from the proceeds of any applicable insurance policies in the first instance.

Basis for the Relief Requested

8. Section 362(d) of 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 ….

The term "cause" is not defined in the Bankruptcy Code, but must be determined on a case-by-case basis. See In the Matter of Rexene Products Co., 141 B.R. 574, 576 (Bankr. D. Del. 1992).

9. This Court has considered three factors when balancing the competing interests of debtor and movant with respect to stay relief: (a) the prejudice that would be suffered should the stay be lifted, (b) the balance of hardships facing the parties, and (c) the probable success of the merits if the stay is lifted. In re Continental Airlines, 152 B.R. 420, 424 (D. Del. 1993);

Levitz Furniture Inc. v. T. Rowe Price Recovery Fund, L.P. (In re Levitz Furniture Inc.), 2000 Bankr. LEXIS 1322, *15 (Bankr. D. Del. 2000); Save Power Limited v. Pursuit Athletic Footwear, Inc. (In re Pursuit Athletic Footwear, Inc.), 193 B.R. 713, 718 (Bankr. D. Del. 1996).

10. Further, courts may consider the legislative history attendant to section 362:

> 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.

In re Rexene Prods. Co., 141 B.R. 574, 576 ("cause" for relief was found in order to allow civil plaintiffs to proceed with a class action against the debtor because discovery was nearly complete, both parties were nearly ready for trial prior to the bankruptcy filing, trial of the claim in bankruptcy court would be burdensome to plaintiffs and risk unnecessary, duplicative litigation, and plaintiffs had at least some probability of success on merits of suit); see also In re Drexel Burnham Lambert Group, Inc., 113 B.R. 830, 838 n. 8 (Bankr. S.D.N.Y. 1990) (citing various examples of "cause" to permit litigation in another forum such as liquidation of a personal injury, arbitration or specialized jurisdiction claims).

11. Application of the facts presented to the applicable standard weighs in Movant's favor on each of the three prongs. First, the Debtors will not be prejudiced if the stay is lifted because Movant's claims have to be liquidated at some point, so Movant may receive a distribution in these bankruptcy cases. Further, Movant's personal injury 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 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). Finally, it appears that there are policies of insurance with respect to the types of claims asserted in the State Court Action.

12. With respect to the second prong, Movant will face substantial hardship if the stay is not lifted. Movant is a resident of Florida. The conduct that is subject of the Complaint occurred in Florida. The relevant documents, witnesses, and physical artifacts are located in Florida. If the Movant is forced to litigate his claim in Delaware, he would incur the increased expense of bringing attorneys, witnesses, and physical evidence to Delaware. If the Movant is not permitted to liquidate his claims in the State Court Action, the litigation in Delaware will be before the United States District Court. 28 U.S.C. §157(b)(5). It is respectfully submitted that the Florida Court is the more appropriate court for a trial governed by Florida 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).

13. 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 that 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 familiar with the case and presumably not involved with the reorganization process. The State Court Action is trial ready for that Court's April docket.

14. 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 Movant's 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 exist here.

15. Further, Movant submits that the interests of both Movant and Debtors would be protected by granting stay relief. All material witnesses are located in or near Florida, none are in Delaware. A Florida court is already familiar with this case and ready to try it. 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., 114 B.R. at 576 (legislative history indicates "cause" may be established by single factor including to permit action to proceed in another tribunal).

WHEREFORE, the Movant respectfully requests 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 Movant (i) to permit the prosecution of the State Court Action against Debtor Defendant along with any subsequent appeals, granting such other and further relief as this Court deems just and proper.

Dated: February 28, 2012
Wilmington, Delaware

Respectfully submitted,

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