

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	)	CHAPTER 11
	)	
COACH AM GROUP	)	Case No. 12-10010 (KG)
HOLDING CORP., <u>et al.</u> ,	)	Jointly Administered
	)	
Debtors	)	Hearing Date: <b>March 19, 2012 at 2:00 PM</b>
	)	Objections Due: <b>March 12, 2012 at 4:00 PM</b>
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**LIMITED CONSOLIDATED OBJECTION OF  
BNSF RAILWAY COMPANY TO MOTIONS FOR  
RELIEF FROM THE AUTOMATIC STAY  
IN ACCORDANCE WITH 11 U.S.C. SECTION 362(d)**

BNSF RAILWAY COMPANY (“BNSF”), through its counsel, Pepper Hamilton LLP, hereby asserts a limited objection to the following three Motions, all seeking relief from the automatic stay in accordance with 11 U.S.C. § 362(d), thus permitting wrongful death and bodily injury actions to continue in the courts where the lawsuits are presently pending:

Sean Loehr [wrongful death] (Docket No. 170)  
Lorraine Kenny [wrongful death] (Docket No. 172)  
Michael and Dawn Galusha [bodily injury] (Docket No. 174)

(collectively, the “Wrongful Death and Bodily Injury Plaintiffs”).

**FACTS**

1. All three lawsuits are being prosecuted in state and Federal courts situate in the State of Washington. Named as parties defendant are entities of the Debtors, as well as BNSF. Joint and several liability is asserted by each plaintiff.

2. The operative facts as to each lawsuit are similar. Each Plaintiff essentially alleges that bodily injuries/deaths were sustained while an entity of the Debtors was transporting crewmen employed by BNSF.

3. In all instances, the Debtors have maintained insurance policies with the primary risk underwritten by National Union Fire Insurance Company of Pittsburgh, PA. (“NUFICO”). Chartis Claims, Inc. is the claims’ administrator for NUFICO.

4. On January 5, 2012, this Court entered a first-day Order authorizing the Debtors to continue coverage and to pay all related premiums and obligations thereunder (Docket No. 10). Thereafter, this Order was amended on January 27, 2012 (Docket No. 167) in manners unrelated to this proceeding.

5. BNSF is an additional named insured in the NUFICO policy. As a result, NUFICO is contractually obligated to provide a defense, as well as to provide indemnity to BNSF for claims which fall within the ambit of coverage. The obligations of NUFICO to BNSF are independent and collateral to its concomitant obligations to the Debtors.

6. The independent obligations and duties owed by NUFICO to BNSF to the contrary notwithstanding, shortly after the commencement of these Chapter 11 proceedings on January 3, NUFICO (through Chartis Claims, Inc.), notified BNSF that it believes that the automatic stay provision in Section 362 of the Bankruptcy Code “applies.” NUFICO then ceased providing a defense to BNSF and also discontinued paying invoices rendered by defense counsel. It further concluded that defense obligations arise under a policy that is an “asset of the bankruptcy estate.”

7. BNSF has disputed the accuracy and validity of the positions asserted by NUFICO, since they ignore the existence of an independent contractual obligation to defend and indemnify BNSF, as an additional named assured.

8. NUFICO has formally asserted identical positions in other lawsuits and claims asserted by bodily injury plaintiffs where persons have been transported by the Debtors and where BNSF is also an actual or putative defendant.

9. BNSF objects to the lifting of the automatic stay for the continued prosecution of the bodily injury actions, unless similar relief is accorded to the Railroad. Otherwise, the rights of BNSF to be provided a defense would be fundamentally impaired.

10. However, in an effort to accommodate the respective interests of the bodily injury plaintiffs depicted above, as well as the interests of the Debtors and BNSF, this limited objection can be resolved upon entry of an Order by this Court that specifically includes relief from the automatic stay with regard to the duty of NUFICO, as underwriter, and Chartis, as Claims Administrator, to defend and indemnify BNSF to the extent provided by its policy of insurance. Further, it is envisaged that resolution should be crafted on a universal basis, so as to preclude the necessity of further judicial intervention. Accordingly, BNSF proposes that the entry of any Order also provides that the automatic stay under Section 362 of the Bankruptcy Code be lifted to allow NUFICO and Chartis to comply with their contractual undertakings in all existing and future claims and lawsuits in which they are so required by the policy of insurance.

11. Reservation of Rights. The accommodation to all parties, as proposed in the previous paragraph, is designed to craft a pragmatic solution for advancing the wrongful death/bodily injury cases to liquidation. However, BNSF reserves the right to seek further judicial determinations regarding obligations of the Debtors, together with their insurance underwriters, regarding the liquidation and payment of third-party claims.

WHEREFORE, BNSF Railway Company requests that the Court enter an Order:

- a. Denying the relief sought by the Wrongful Death and Bodily Injury Plaintiffs; alternatively,
- b. Should the Court grant relief sought by the Wrongful Death and Bodily Injury Plaintiffs, that the automatic stay also be lifted to allow NUFICO and Chartis Claims, Inc. to comply with their contractual undertakings owed to BNSF; and
- c. That such stay relief be made applicable to all existing and future claims and lawsuits involving the Debtors and BNSF Railway Company.

/s/ James C. Carignan  
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