

Exhibit D

Relevant Excerpts from the March 19, 2012 Hearing Transcript

1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF DELAWARE

3 IN RE:) Case No. 12-10010 (KG)
4) Chapter 11
5 COACH AM GROUP HOLDINGS CORP.,)
6 et al.) Courtroom No. 3
7) 824 Market Street
8 Debtors.) Wilmington, Delaware 19801
9)
10)
11) March 19, 2012
12) 2:00 P.M.

13 TRANSCRIPT OF HEARING
14 BEFORE HONORABLE CHIEF JUDGE KEVIN GROSS
15 UNITED STATES BANKRUPTCY JUDGE

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32 Proceedings recorded by electronic sound recording:
33 transcript produced by transcription service.
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1 of Central Florida, and on approximately December 2, 2008, he
2 boarded a bus shuttle at the college, the bus was owned and
3 operated by an employee of American Coach Lines of Orlando,
4 and he suffered a grave injury while riding that shuttle to
5 class. He sustained very substantial injuries to his back,
6 in particular, and on June 19th, 2009, he did file a law suit
7 against American Coach Orlando which is pending in Florida,
8 and that complaint is attached to our motion, it serves two
9 causes of action. One is for vicarious liability,
10 essentially it's a negligence action.

11 THE COURT: Right.

12 MR. ROSSNER: And the second count is a statute that
13 is relevant to Florida, it's the Florida's dangerous
14 instrumentality doctrine. Basically the bus is a dangerous
15 instrumentality, and it was operated by a Coach employee in a
16 negligent manner, so that's the second count. And I'll just
17 join in with the comments made by Mr. Sullivan and reserve
18 rights to make a closing and to participate in any cross-
19 examination of any witnesses.

20 THE COURT: All right.

21 MR. ROSSNER: Thank you, Your Honor.

22 THE COURT: Thank you, Mr. Rossner. Mr. Teele.

23 MR. TEELE: Thank you, Your Honor. For the record
24 Jason Teele for the Debtors. You know, I listened to Mr.
25 Sullivan's argument pretty closely and he gets a lot of it

1 right, but he misses the ultimate point. So let's talk about
2 what he got right before we talk about what's missing from
3 the argument. His reading of the insurance policies may well
4 be correct that National Union might have a direct obligation
5 to anybody who has a judgment claim under the policy. And he
6 might well be correct that National Union is acting in a
7 capacity almost as a surety with respect to folks that have
8 claims under the policy.

9 THE COURT: Yes.

10 MR. TEELE: I'm not sure that we want to dispute
11 that, I'm not sure that that's relevant to these motions.
12 But what the point that was missed is that these policies
13 undeniably on their face inarguably have a \$5 million
14 deductible. There's no way around it. The policies speak
15 for themselves. The policies are in the record, we will move
16 them into evidence shortly. Each policy that is applicable
17 to each of these motions, the policies are substantially
18 identical among the three motions. The only differences are
19 it's the policy year for the year in which the accident
20 occurred with respect to each Movant. All three policies
21 here include a \$5 million deductible. That \$5 million
22 deductible includes defense costs. That \$5 million
23 deductible is something that the company must pay or
24 reimburse to the insurance company if the insurance company
25 has to make any payments under the policy to a claimant.

1 Here's the point that's missed. If the Debtors default in
2 their obligations to the insurance company, the insurance
3 company has a direct right to draw down on the letter of
4 credit. There have been several letters of credit over the
5 last couple of years and they've increased in value. They're
6 now in round numbers \$39 million in favor of the insurance
7 carriers under these policies.

8 Now, I'm not going to concede the point, but there
9 may not be a point ever worth arguing that the insurance
10 company probably could draw down on that letter of credit
11 without coming back to Your Honor for prior approval because
12 of the body of case law that says they can do that. I think
13 if we ever got there, we might be in front of Your Honor
14 asking for some relief, I'm not sure that we would get it.

15 THE COURT: But when? In other words, after they
16 paid any judgment.

17 MR. TEELE: If they have to pay a judgment and they
18 make a demand on the Debtors for reimbursement of the
19 deductible and the Debtors tell the insurance carriers no,
20 the insurance carriers will draw down on the letter of
21 credit. We might have something to say about that if the
22 automatic stay is still applicable. Your Honor might have
23 something different to say about it, given the law of letters
24 of credit and property of the estate.

25 THE COURT: Right.

1 MR. TEELE: Bottom line, no matter how you look at
2 this proposition, these estates will be depleted by a
3 significant amount if these actions go forward. They will be
4 depleted for sure in one of two ways if not both. Either we
5 will have to, the estates will have to direct pay all of the
6 costs and expenses of their defense in these actions. And
7 just for the record, only one of the actions represented by
8 the stay relief motions is the one that Mr. Rossner is here
9 for is even trial ready. The other two are still in the
10 nations stages of discovery. There's a lot of work to be
11 done, and even in the trial ready case that Mr. Rossner is
12 involved in, there's a significant amount of work that will
13 need to be done, and expenses that would have to be incurred
14 prior to there being any judgment.

15 MR. ROSSNER: Your Honor, I'm just going to note and
16 objection [indiscernible] relevance to that, and we have a
17 witness here for that, or we may have a witness here for
18 that. But I do wish to protect the record that the party to
19 testify as to cost, this is counsel, I don't think he's
20 involved in that Florida action.

21 THE COURT: And I assume your witness will be
22 testifying that the case is nearly trial ready.

23 MR. ROSSNER: I have produced the docket for that
24 case.

25 THE COURT: Okay.

1 MR. ROSSNER: And the court can take judicial notice
2 of that, and I have a witness and I will ask the witness his
3 understanding of the trial readiness of that case.

4 THE COURT: Very well. Okay, thank you, Mr.
5 Rossner.

6 MR. TEELE: Your Honor, just to respond to that. I
7 took the information about that case being trial reedy
8 directly from Mr. Rossner's papers, that was not provided to
9 me by any other source but Mr. Rossner.

10 So the fact is that you've got two of these actions
11 that are not trial ready, one of them that is trial ready,
12 whatever that means, however much it's going to cost,
13 somebody is going to pay lawyers to defend the company in
14 those actions, and the person who is going to pay that is the
15 company, the Debtors, whether it's directly from the
16 company's accounts or if it's in the form of reimbursement to
17 the insurance company or if it's in the form of loss of value
18 and the letter of credit which once it is drawn down upon by
19 the insurance company upon the company the Debtors default
20 under their insurance obligations is value that would never
21 come back into this estate, it's value that would never go
22 back to the lenders which is on account of their claims, it's
23 value that will never be available to all of the unsecured
24 creditors. It's the classic race to the courthouse, the
25 classic dismantling of the Debtors' estate by the first

1 person who is diligent enough to get into court.

2 THE COURT: But isn't that because the Debtors
3 elected to go with such a high deductible?

4 MR. TEELE: But I don't know if it's because --

5 THE COURT: Because that was a business decision
6 that the Debtors made to take this risk.

7 MR. TEELE: Well, without arguing the merits of
8 that, Your Honor, because I did not negotiate it, I don't
9 know what the circumstances were, I don't what other policy
10 options were available to the Debtors when they took this
11 policy out. But the bottom line is, this is the policy that
12 exists. These are the effects of lifting the automatic stay
13 at these stages of the case, the company, the estates, the
14 Debtors estates will be depleted by significant amount of
15 money for potentially up to \$5 million or more either through
16 direct pay or a drawdown of the letter of credit. That's an
17 inescapable fact whether anybody in this courtroom or on the
18 telephone wants to argue that the company is in compliance or
19 not in compliance with federal regulations with respect to
20 insurance, we believe the company is by the way, and whether
21 you know anybody wants to make a case that the company
22 negotiated poorly with the insurance carrier whenever they
23 negotiated the policies. It's an inescapable fact. You've
24 got a \$5 million deductible which is secured by a letter of
25 credit which the insurance company will get repaid for no

1 matter what. And once the insurance company has repaid, the
2 estates are depleted, the lenders chances of being paid are
3 reduced, and the chances of paying creditors more than
4 whatever they're going to get in these cases is also reduced.
5 And that is the basis of the opposition to the stay relief
6 motions.

7 Your Honor, we have a witness in Court who is
8 capable of testifying to the insurance policies who can point
9 Your Honor to the relevant provisions relating to the
10 deductible, who can authenticate the documents so that we can
11 have them admitted into evidence. I have not heard the other
12 counsel indicate whether they consent to the admission of
13 these policies and if it's necessary to put Mr. Cejka on the
14 witness stand. But if they do consent, I don't think we need
15 to put him on the witness stand, if they don't consent then
16 we will do that.

17 THE COURT: Counsel, do you contest the authenticity
18 of the insurance policy which has been produced?

19 MR. ROSSNER: Your Honor, Fred Rossner, for Mr.
20 Lepore, we would ask that the testimony be adduced by direct
21 examination, not proffer, proffer is a right with hearsay or
22 [indiscernible] and that the Court consider the admissibility
23 of the evidence at the conclusion of the testimony and the
24 cross. Thank you.

25 THE COURT: Mr. Busenkell.