

STEPTOE & JOHNSON LLP
ATTORNEYS AT LAW

David H. Coburn
202.429.8063
dcoburn@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

May 28, 2010

VIA Electronic Filing

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

227170 227171 227172

Re: STB Docket Nos. MC-F-20904, MC-F-20908, MC-F-20912 – Petition of Coach USA, Inc. and Megabus Northeast LLC to Reopen Approval of Fourth Amendment

Dear Ms. Brown:

Coach USA, Inc. and Megabus Northeast LLC (jointly, “Coach USA”) hereby submit this letter to bring the Board’s attention to certain gross misstatements and omissions in the May 17, 2010 Opposition of Greyhound Lines, Inc. and Peter Pan Bus Lines, Inc. (“GLI/PPB”) to the above-referenced Coach USA Petition to Reopen. Coach USA submits that the Board should consider the following points in view of the mischaracterization of Coach USA’s Petition by GLI/PPB.¹ The Board should also take note of the fact that GLI/PPB do not dispute the fact that circumstances have changed since the Fourth Amendment to their pooling agreements was approved.

First, and most starkly, GLI/PPB characterize the Coach USA Petition as a means to “eliminat[e] one of the company’s main rivals on the Northeast Corridor bus routes – namely, the BoltBus line of enhanced bus service authorized by the Fourth Amendment.” (GLI/PPB Opposition at 1). Playing on

¹ Coach USA understands that the Board’s rules do not permit a reply to a reply. Here, given the mischaracterization of their Petition acceptance of this letter should help to clarify the record. To the extent that a motion to file this letter is required, Coach USA respectfully urges the Board to accept this letter into the record.

the same theme, they claim that “Eliminating a competitor, BoltBus, would not protect or enhance competition; it would merely promote the agenda of a BoltBus competitor, Megabus.” (GLI/PPB Opp. at 11, emphasis in original). In light of these GLI/PPB misstatements, it bears reiterating that the Coach USA Petition has *nothing whatever to do with eliminating BoltBus as a competitor*. Were the Board to reconsider and withdraw the April 2008 approval of the Fourth Amendment issued by its then Acting Secretary, either GLI or PPB still would be free to operate BoltBus or a BoltBus-type service on any route that the operator wished to serve. They simply could no longer do so jointly under the cloak of an antitrust-immunized pooling agreement.² GLI and PPB offer no reason why BoltBus could not be operated by one or the other of them.

Second, GLI/PPB admit the changed circumstances on which the Coach USA Petition relies: “The circumstances surrounding enhanced bus services have indeed changed since April 2008 when the board approved the Fourth Amendment, and they have changed generally as Megabus portrays them in its Petition.” GLI/PPB Opp. at 9. It is therefore no surprise that, in a May 10, 2010 BusinessWest Online article, attached hereto, the chairman of Peter Pan described BoltBus as an “enormous success.”³ The article notes that Boltbus is running at an 80% load factor (referred to in the article as “capacity”), one third higher than the industry average and hardly indicative of the excess capacity that resulted in the grant of the original pooling applications. GLI/PPB claim, however, that the changed circumstances are not material to whether or not the pooling allowed by the Fourth Amendment should continue to be approved under the statutory standards set forth at 49 U.S.C. 14302(b), and therefore should be overlooked. Coach USA submits, however, that if the changed circumstances obviate the need for pooling – as they do – then they meet any materiality standard that may apply and the pooling should end. Further, GLI and PPB do not dispute that the Board retains broad discretion under the pooling statute to reopen initiate a proceeding concerning pooling (sec 14320(e)) and to issue a “further order” concerning an approved pooling agreement. See 14302(g).

Third, Greyhound and Peter Pan argue that the Fourth Amendment is working consistent with the “better service to the public” standard of 14302(b)(1) by allowing BoltBus to offer new and efficient services that are responsible for the changed circumstances. In effect, they argue that the Fourth Amendment brought about the more competitive environment that exists today. However, they offer no support for their suggestion that the Fourth Amendment should be credited for the changed circumstances. The Fourth Amendment surely was not responsible for other operators, including

² In fact, in the absence of a pooling agreement, GLI and PPB would be free of their current obligation to seek expansion of the pooling agreements when they wished to serve new routes via BoltBus. See MC-F-20908, *Peter Pan Bus Lines, Inc. – Pooling – Greyhound Lines, Inc.* (served March 24, 2010) (rejecting proposition that GLI and PPB can use Boltbus to serve Washington-Philadelphia route without filing for expansion of their pooling).

³ The article appeared after Coach USA filed its May 3 Petition.

Megabus, entering the market or for the dramatic growth in ridership (detailed in the materials submitted with the Petition) that has attracted several new entrants. The development of the market and growing attractiveness of intercity curbside bus operations to new riders bears no relationship to the fact that Greyhound and Peter Pan chose not to compete with one another in the curbside, intercity sector as a result of an amendment (for which they offered no independent justification) to previously approved pooling arrangements.

Fourth, Greyhound and Peter Pan certainly cannot correctly claim (as they do at page 9 of their Opposition) that their pooling arrangement does not restrain competition: were approval of the Fourth Amendment to be revoked the traveling public would have *more* actual or at least potential competition on the BoltBus-served routes, not less. That is because both Greyhound *and* Peter Pan might initiate BoltBus-type operations, rather than pool their resources as they are allowed to do now. Whereas the competitive restraint resulting from their pooling might be acceptable in a setting in which carriers are struggling with “excess bus capacity” and reduced demand (as was the case in the period prior to the acknowledged changed circumstances) it becomes an unreasonable restraint in the acknowledged absence of such factors, and therefore inconsistent with Section 14302(b)(2). *See Peter Pan Bus Lines, Inc. – Pooling – Greyhound Lines, Inc.*, MC-F-20908 (Apr. 29, 1998) at 5 (approving pooling in light of demonstrated need for carriers at the time to reduce capacity and rationalize service.) It merits note that GLI/PPB never once refer to the special antitrust immunity and other competitive benefits that they enjoy as a result of the approved pooling arrangements in competing with Megabus and other competitors on the BoltBus-served routes. GLI and PPB are the only competitors on the routes served by BoltBus that can discuss and coordinate fares and schedules, and combine resources, under their pooling agreements. The Board should consider whether this situation advances any public interest.

Fifth, the fact that there is relatively easy entry into the intercity bus market is no answer here – this is not a control transaction in which the prospect of new entrants can offset competitive restraints resulting from a merger or consolidation. What is most relevant here is that Greyhound and Peter Pan should not be allowed the benefit of pooling through BoltBus when there is manifestly no justification for it. The playing field should be leveled so that BoltBus no longer has the competitive advantages (pooled resources, coordination of fares and schedules, etc.) offered by a pooling agreement, even if entry barriers are low.

Sixth, GLI and PPB have offered no meaningful justification for the fact that they are operating BoltBus beyond the terms of the Fourth Amendment approval. That approval quite clearly was based on the representation by GLI in its April 2, 2008 letter to the Board, repeated in the April 17, 2008 letter of the then Acting Secretary approving the Fourth Amendment, that the BoltBus service would be “offered only during morning and afternoon peak travel times.” Having chosen to participate in the market through a pooling arrangement (albeit one that cannot today be justified), GLI and PPB must be required to either live by the terms of the approval of that arrangement as they described it to the Board or to seek new permission if they desire to exceed the original terms. *See MC-F-20908, Peter Pan Bus Lines, Inc. – Pooling – Greyhound Lines, Inc.* (served March 24, 2010) (requiring that GLI and PPB submit new filing if they seek to expand the scope of their pooling). They have chosen to do neither.

Cynthia T. Brown
May 28, 2010
Page 4

Coach USA is not seeking more regulatory intrusion into the market as GLI and PPB suggest, but less. Nor is it suggesting that the Board should interfere with a currently successful intercity bus market. By removing its approval of the Fourth Amendment, the Board will be promoting a more competitive, less regulated environment in which BoltBus could continue to be operated by GLI or PPB, albeit without the unjustified benefits that it has today.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David H. Coburn", with a long horizontal flourish extending to the right.

David H. Coburn
Attorney for Coach USA, Inc. and Megabus
Northeast LLC

cc: All parties of record

Switch To The Charter Business Bundle **SAVE 38%** on fast internet and reliable phone service* Charter Business

BusinessWest Online THE BUSINESS JOURNAL OF WESTERN MASSACHUSETTS Published Bi-Weekly

Subscriber & Bookstore Ad Rates/Info/Calendar Careers About Us FAQ's

May 10, 2010 Edition

BusinessWest

Western Mass. COMMERCIAL REAL ESTATE For Sale and For Lease

Click Here to Search

Home Departments

- ◆ [Agenda](#)
- ◆ [Bankruptcies](#)
- ◆ [Briefcase](#)
- ◆ [Building Permits](#)
- ◆ [Chamber Corners](#)
- ◆ [Company Notebook](#)
- ◆ [Court Dockets](#)
- ◆ [DBA Certificates](#)
- ◆ [Incorporations](#)
- ◆ [People on the Move](#)
- ◆ [Picture This](#)
- ◆ [Real Estate](#)

Search Commercial Real Estate Contact Us

- ◆ [Subscriptions](#)
- ◆ [Sales Department](#)
- ◆ [Editor](#)

Archives Search This Website

Please enter a word or a phrase

Go

Feature Stories

Profiles in Business

Transit Company Exec Is Driven to Succeed

By GEORGE O'BRIEN

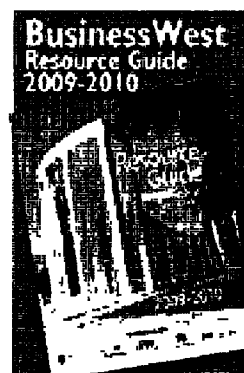
Peter A. Picknelly and his wife, Melissa, have a long-standing, built-in Friday date-night routine — only there's nothing routine about it.

Each week, it's a different restaurant, all within roughly 45 minutes of their home in Springfield, and Peter's in charge of picking the venue and, essentially, providing the surprises. They come in the form of usually smaller, lesser-known establishments that he finds via a combination of referrals and exhaustive research.

Through that mix, he has found such gems, as he calls them, as the Mill at 2T in Tarriffville, Conn., the Trattoria Rustica in Pittsfield, and Cavey's in Manchester, Conn., all of which have made his very-much-unofficial list of favorites. "We get a kick out of finding new ones, and try not to go to the same one twice in a year," he said. "And we hardly ever miss a Friday — only if there's kid issues."

Picknelly, third-generation president of Peter Pan Bus Lines, the regional transit business started by his grandfather, Peter C. Picknelly, is quick to point out that, while he's ventured far out of the Springfield area to find new places for date-night dinners, he's still quite partial to established eateries in and around the City of Homes. "I'm at the Fort five days a week for lunch," he said, acknowledging that he's exaggerating slightly, but that on those days when he's not at that downtown Springfield landmark, he's at one of several other nearby restaurants.

And he's almost always there with a manager from Peter Pan Bus Lines, either a direct report or one of another few dozen department administrators. These are working luncheons for the most part, and, for Picknelly, learning opportunities.



Click logos to visit our Sponsors:



PeoplesBank



"I bring a list of things to discuss," he told BusinessWest. "We talk about business and family. I never leave without some tidbit of information that helps me understand the business better."

All this time in restaurants serves to help Picknelly better focus on the two most important aspects of his life — family and the family business (the community and service to it would place a close third) — and to do what he thinks he might do best: plan.

"I'm definitely a planner," he said, adding that this goes for his family, Peter Pan, and a host of other business ventures with which he's involved. "And with the family, it's vacations that I love planning; I know where we'll be vacationing a year from now."

That would be Tuscany in Italy, the first European excursion for the family as a unit, meaning Peter, Melissa, and their four children — Lauren and Alyssa (13-year-old twins), Peter (that's Peter D.), 10, and Olyvia, 7. Together, they've been to several spots on this side of the Atlantic, including the Bahamas, Mexico, and, most recently, Costa Rica.

'Planning' is a term that may also be applied to Picknelly's affinity for high-end sports cars — very high-end. The burgundy Ferrari F4-30 (license plate: PETER) now in the Peter Pan parking lot will soon be replaced by the Italian automaker's 2010 4-58 Italia model, this one blue, and, reportedly, the first one in New England.

Picknelly, who says he'll get nearly what he paid for the F4-30 when he turns it in, has owned a variety of fast cars over the years, including a few Lotuses and Jaguars, choices far different from his father (the late Peter L. Picknelly), who was, as most in the region know, partial to Rolls-Royces.

"I can't see me driving one of those," said Picknelly, adding that he hasn't emulated his father in several other ways — he believes he's a much better delegater and family man, for example — but took a number of life and business lessons from him.

BusinessWest will elaborate on those and other points as it continues its Profiles in Business series with a look at someone who's a driving force in local business and the community — literally and figuratively.

In the Clutch

As he talked about the many nuances of life in a family business, Picknelly noted that there are advantages and disadvantages, and they often go hand in hand.

He acknowledged that many people look at second-, third-, or fourth-generation managers of family businesses and conclude that things have been handed to them, and that they are perhaps not as worthy of praise for their exploits as someone who started from scratch and built his or her

own company.

"And there's something to that, certainly," he noted. "I wouldn't be where I am if it wasn't for my father and grandfather; I know that I've been incredibly fortunate. If you were to go out right now and hire a president for Peter Pan, I'm not sure I'd make the cut.

"That said, I'm quite sure that you couldn't find anyone who would work harder in this job than me," he continued, adding that part of what drives him is that recognition of the fact that, to many, it's simply his last name that is responsible for his title and success.

"It does push me a little harder," he told BusinessWest. "It's when people say I can't do something that I try to prove them wrong."

While Picknelly says he's been helped by the Peter Picknellys who preceded him, he's had to earn his stripes. And that meant starting at the bottom, which, in the bus business, means cleaning, or 'dumping' (that's the technical term), the toilets in the back of the vehicles.

"Yeah, I did that — I've done just about every job in the company," said Picknelly, noting that he started working in the garage on weekends and during the summer when he was just 13. He would later go on to take a number of different positions, from dispatcher to manager of the company's then-much-smaller Boston operation when he was a student at Boston University. Years ago, he actually drove a bus on occasion when the company was short-handed and needed someone, but hasn't done that for decades, and couldn't now because his standard Class 2 license wouldn't credential him to do so.

He kept moving up the ladder, and eventually assumed the title of president several years ago, when his father became chairman.

Over the past several years, he's strived to continue growing Peter Pan, even in the face of mounting competition from new carriers, and even improved rail service to many cities the company serves.

"The business has changed considerably over the years .. it is more competitive now than perhaps it ever was," he said. "We just have to put ourselves in a position to succeed."

As Picknelly mentioned, he took a number of life and business lessons from his father, and far more of the latter than the former. One of the keys from that realm was achieving diversity in one's business portfolio, as a hedge against the vagaries of the economy and society in general, he said.

The younger Picknelly has accomplished this through both acquisition and new-business development. In the first category are purchases of companies including Camfour, a firearms distributor based in Westfield; Belt Technologies,

an Agawam-based maker of metal belts and pulleys for several applications, including aerospace, medical equipment, and food processing; another firearms distributor in Austin, Texas; and a woodworking company based in Connecticut.

As for new business development, Picknelly, in conjunction with Greyhound, started a second transportation-based operation, called BoltBus. Designed as competition for so-called street-corner operators who offer low fares and few, if any, frills, BoltBus, which features more leg room and WiFi, among other amenities, has been an enormous success, said Picknelly. With runs to and from several large Northeast cities and New York, the carrier is boasting 80% capacity for all its runs, about one-third higher than the average for the industry.

✱

Meanwhile, Picknelly has started a real-estate operation, called OPAL, an acronym that takes the first letters of his children's names, in reverse order from when they were born.

Among other initiatives, OPAL is the main developer of the intermodal transportation facility taking shape in an old downtown fire station in Holyoke. It will feature a bus terminal, a two-story learning center to be operated in conjunction with Holyoke Community College, and a Head Start facility.

The value of such diversity was clearly on display during the recent economic downturn, said Picknelly. "Belt Technologies has been a victim of the economy," he said, "but Camfour had its best year ever. Now, Belt is starting to pick up a little, and Camfour is slowing somewhat. My father always used to stress the importance of diversity, and I've learned that lesson well."

But while Picknelly has emulated his father in many regards, from most business philosophies to work within the community, he's written a much different script in what he considers the most important realm — family life.

"My father always used to say that if he had to do it all over again, he would have spent more time with his children," said Picknelly, adding that his early years did not include trips to the Bahamas, and probably because of that, he devotes what he considers excessive amounts of time and energy to family.

"It's very important to me; I love being a dad," he said, adding that, unlike his father, he doesn't micromanage every aspect of his businesses, and that leaves him time for other, more important things.

In High Gear

A quick look around Picknelly's office and adjoining conference room provides ample evidence of the forces that shape his life.

There are photos of the generations that preceded him,

models and pictures of buses from several different decades, a globe (presumably to help with planning the next family vacation), and several drawings crafted by his youngest child, Olyvia.

Together, they explain what drives him, professionally and personally, to succeed at whatever he's doing.

Even picking the restaurant for date night.

George O'Brien can be reached at
obrien@businesswest.com

CERTIFICATE OF SERVICE

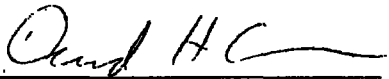
I hereby certify that I have this 28th day of May 2010 served a copy of the foregoing

Letter by regular mail on the following parties of record:

Daniel R. Barney
Scopelitus, Garvin, Light, Hanson & Feary
1850 M Street, N.W., Suite 280
Washington, DC 20036-5804

Jeremy Kahn
Kahn and Kahn, Attorneys at Law
1730 Rhode Island Avenue, N.W., Suite 810
Washington, DC 20036

Director of Operations
Antitrust Division
U.S. Department of Justice
601 D Street, N.W., Room 1013
Washington, DC



David H. Coburn