

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-00598-LTB-MEH

COLORADO CROSS-DISABILITY COALITION, a Colorado non-profit Corporation,  
JULIE REISKIN,  
LORAINA A. JOHNSON,  
BARBARA MOCZYGEMBA, and  
EILEEN HOPE KRAUSE,

Plaintiffs,

v.

GREYHOUND LINES, INC., a Delaware Corporation,  
BURLINGTON STAGE LINES, LTD., d/b/a BURLINGTON TRAILWAYS, an Iowa  
limited liability company,  
TEXAS, NEW MEXICO AND OKLAMOMA (TNM&O) COACHES, INC., a Delaware  
corporation, and  
BUSCO, INC., d/b/a BUSCO, INC. ARROW STAGE LINES, a Nebraska corporation, and  
BLACK HILLS STAGE LINES, INC., a Nebraska corporation,

Defendants.

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**DEFENDANT BUSCO, INC. AND BLACK HILLS STAGE LINES'  
MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS'  
SECOND CLAIM FOR RELIEF**

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Defendants, Busco, Inc., d/b/a Busco, Inc. Arrow Stage Lines (“Busco”) and Black Hills Stage Lines, Inc. (“Black Hills”) (collectively referred to as “Defendants”), by and through their counsel, Marcel Krzystek of JESTER & GIBSON, LLP, and pursuant to F.R.C.P. 56(c), hereby move the Court to enter an order dismissing Plaintiffs’ second claim for relief, and in support thereof Defendants state as follows:

**FACTUAL ALLEGATIONS**

1. On April 11, the Court granted the Plaintiffs’ Unopposed Motion for Leave to File First Supplemental and Second Amended Complaint [75] (“Amended Complaint”).

2. In this case, several individual Plaintiffs and organizational Plaintiff, Colorado Cross-Disability Coalition, assert three claims for relief against various over-the-road bus transportation companies. Plaintiffs generally allege that the Defendant bus companies have discriminated against Plaintiffs in violation of the Americans with Disabilities Act, 42 U.S.C. § 12184(a) and the Rehabilitation Act, 29 U.S.C. § 794. Plaintiffs also assert Colorado Consumer Protection Act claims against some of the Defendants (although not Busco or Black Hills).

3. The only individual Plaintiff to assert a claim against Busco and Black Hills is Eileen Hope Krause, and her allegations relate to incidents outlined in paragraphs 40 and 41 of the Amended Complaint. Ms. Krause's factual allegations are as follows:

- a. On June 1, 2007, Ms. Krause contacted Black Hills forty-eight hours in advance of a June 3 trip from Fort Morgan to Denver. Ms. Krause alleges that she spoke with "Connie" and was assured that she would be provided a bus with a lift for both legs of the trip. *See* Amended Complaint, ¶ 40.
- b. Ms. Krause alleges that on June 3, she and an assistant arrived at the bus station for the 6:00 p.m. trip. However, Ms. Krause alleges that the bus driver advised her that the bus did not have a wheelchair lift or ramp, and stated that he was unaware of a request for an appropriately equipped bus. In either event, Ms. Krause alleges, the bus driver advised her that the next bus would arrive at 4:00 a.m. and that she would need to take that bus. *See* Amended Complaint, ¶ 40.
- c. In response, Ms. Krause contacted the CCDC Legislative Liaison, who then spoke with the bus driver. According to Ms. Krause, the bus driver advised the Liaison that dispatch was not open, but the Liaison insisted that someone

at Black Hills be contacted. Ultimately, the driver did contact dispatch and asked Ms. Krause where she could be picked up. Ms. Krause provided the bus driver her home address and telephone number and returned home. Approximately three hours later, a Black Hills bus picked up Ms. Krause at her home and drove her and her assistant to Denver. *See* Amended Complaint, ¶ 40.

- d. Ms. Krause attempted to contact Black Hills on February 23, 2008, forty-eight hours prior to her departure from Fort Morgan to Denver on February 26; however, the office was closed and she was unable to make a request for an accessible bus at that time. Ms. Krause successfully contacted Black Hills on February 25, explained that she had attempted to contact Black Hills on February 23, and requested a bus with a lift, at which time she received a verbal confirmation number from Black Hills. *See* Amended Complaint, ¶ 41.
- e. On this trip, the bus driver was rude to Ms. Krause and told her that she needed to make a request for a lift equipped bus. However, the bus was equipped with a lift, and Ms. Krause makes no further allegations related to discrimination regarding the February 26 trip. *See* Amended Complaint, ¶ 41.

4. In addition, paragraphs 16, 77, and 79 of the Amended Complaint allege, “on information and belief,” that Defendants received federal financial assistance.

5. Based upon those factual allegations, the Amended Complaint asserts two claims for relief against Defendants Busco and Black Hills: (1) violation of the Americans with Disabilities Act, 42 U.S.C. § 12184(a); and (2) violation of the Rehabilitation Act, 29 U.S.C. § 794.

### STANDARD OF REVIEW

6. Defendants Busco and Black Hills move this Court to grant them summary judgment on the Plaintiffs' second claim for relief.<sup>1</sup> Summary judgment is appropriate "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). When determining a motion under Rule 56(c), a court must consider the factual record, together with all reasonable inferences derived therefrom, in the light most favorable to the non-moving party. *See, e.g., Jones v. Barnhart*, 349 F.3d 1260, 1265 (10<sup>th</sup> Cir. 2003). At this stage of the proceedings, a court does not weigh the evidence or make credibility determinations. *Id.*

7. Although the movant must show the absence of a genuine issue of material fact, he or she need not negate the nonmovant's claim. *See Simms v. Okla. Ex rel. Dep't of Mental Health & Substance Abuse Servs.*, 165 F.3d 1321, 1326 (10<sup>th</sup> Cir. 1999). Once the movant carries this burden, the nonmovant cannot rest upon his or her pleadings, but must bring forward specific facts showing a genuine issue for trial as to those dispositive matters for which he or she carries the burden of proof. *Id.* The mere existence of a scintilla of evidence in support of the nonmovant's position is insufficient to create a dispute of fact that is genuine; an issue of material fact is genuine only if the nonmovant presents facts such that a reasonable jury could find in favor of the nonmovant. *Id.*

### ARGUMENT

8. The Affidavit of Steve Busskohl, President and Secretary of Black Hills, shows

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<sup>1</sup> Defendants also filed a Motion to Dismiss Plaintiffs' First Claim for relief contemporaneously with this Motion for Summary Judgment.

that there is no genuine issue as to any material fact and that Defendants are entitled to judgment as a matter of law on Plaintiffs' second claim for relief. By its express terms, and as is admitted in paragraph 77 of the Amended Complaint, the Rehabilitation Act applies only to "any program or activity receiving Federal financial assistance . . ." 29 U.S.C. § 794(a). As paragraphs 3 and 4 of the Affidavit of Steve Busskohl demonstrate, Black Hills does not receive federal financial assistance. Consequently, Plaintiffs' Rehabilitation Act claim against Black Hills fails as a matter of law.

9. Neither Ms. Krause nor any other Plaintiff make any direct factual allegation of discriminatory conduct toward Busco; Busco is a defendant based upon Plaintiffs' allegation that Busco "either operates, is affiliated with or is the parent company of Defendant, Black Hills Stage Lines, Inc." Amended Complaint, ¶ 13. Because Plaintiffs have failed to assert a viable Rehabilitation Act claim against Black Hills, their Rehabilitation Act claim against Busco also necessarily fails.

#### **CONCLUSION**

10. There exists no genuine issue of material fact that Plaintiffs will be unable to prove a necessary element of their Rehabilitation Act claim, i.e., that Black Hills received federal financial assistance. With the exception of their allegation that Busco "either operates, is affiliated with or is the parent company of" Black Hills, Plaintiffs have made no allegations against Defendant Busco. Consequently, Defendants are entitled to summary judgment on Plaintiffs' second claim for relief.

WHEREFORE, Defendants Busco and Black Hills respectfully move the Court to (1) grant summary judgment in favor of Defendants and against Plaintiffs on Plaintiffs' second

claim for relief; (2) grant Defendants their reasonable attorneys' fees and costs; and (3) any further relief the Court deems just and proper.

Dated this 25<sup>th</sup> day of April, 2008.

Respectfully submitted,

JESTER & GIBSON, LLP

s/ Marcel Krzystek

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Marcel Krzystek  
Jay S. Jester  
Jester & Gibson, LLP  
1875 Lawrence St., Ste. 740  
Denver, CO 80202  
Phone: 303-377-7888  
[mkrzystek@jgllp.com](mailto:mkrzystek@jgllp.com)  
Attorneys for Defendant BUSCO, INC.,  
d/b/a BUSCO, INC. ARROW STAGE  
LINES and BLACK HILLS STAGE  
LINES, INC.

### **CERTIFICATE OF SERVICE**

I hereby certify that on April 25, 2008, a true and correct copy of the foregoing **DEFENDANT BUSCO, INC. AND BLACK HILLS STAGE LINES' MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' SECOND CLAIM FOR RELIEF**, together with all associated exhibits and/or attachments, was filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

- **Kevin W. Williams**  
[kwilliams@ccdconline.org](mailto:kwilliams@ccdconline.org), [clucas@ccdconline.org](mailto:clucas@ccdconline.org)
- **Susan Penniman Klopman**  
[sklopman@bhfs.com](mailto:sklopman@bhfs.com)
- **Timothy Patrick Fox**  
[tfox@foxrob.com](mailto:tfox@foxrob.com), [arob@foxrob.com](mailto:arob@foxrob.com)
- **Leslie Lynn Schluter**  
[lschluter@lawincolorado.com](mailto:lschluter@lawincolorado.com)

JESTER & GIBSON, LLP

By: s/ Marcel Krzystek  
Marcel Krzystek

Jester & Gibson, LLP  
1875 Lawrence St., Ste. 740  
Denver, CO 80202  
(303) 377-7888  
[mkrzystek@jgllp.com](mailto:mkrzystek@jgllp.com)