

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-CV-598-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
corporation, and
TEXAS, NEW MEXICO AND OKLAHOMA (TNM&O) COACHES, INC., a Delaware
corporation,
BUSCO, INC., d/b/a BUSCO, INC. ARROW STAGE LINES, a Nebraska corporation, and
BLACK HILLS STAGE LINES, INC., a Nebraska corporation,

Defendants.

**DEFENDANT BURLINGTON STAGE LINES, LTD'S ANSWER
TO FIRST SUPPLEMENTAL AND SECOND AMENDED COMPLAINT**

Defendant, Burlington Stages Lines, Ltd., d/b/a Burlington Trailways (hereinafter
“Burlington Trailways”), by and through its counsel, hereby answers Plaintiffs’ First
Supplemental and Second Amended Complaint as follows:

INTRODUCTION

1. Burlington Trailways admits that it provides over-the-road bus transportation.
Burlington Trailways denies all remaining allegations in Paragraph 1 of the Second Amended
Complaint.

2. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 2 of the Second Amended Complaint and, therefore, denies them.

JURISDICTION

3. Paragraph 3 of the Second Amended Complaint is an invocation of jurisdiction to which no response is required. To the extent a response is required, however, Burlington Trailways denies that it committed any violations of federal law and denies all remaining allegations in Paragraph 3 of the Second Amended Complaint.

4. Burlington Trailways admits the allegations in Paragraph 4 of the Second Amended Complaint.

PARTIES

5. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 5 of the Second Amended Complaint and, therefore, denies them.

6. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 6 of the Second Amended Complaint and, therefore, denies them.

7. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 7 of the Second Amended Complaint and, therefore, denies them.

8. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 8 of the Second Amended Complaint and, therefore, denies them.

9. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 9 of the Second Amended Complaint and, therefore, denies them.

10. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 10 of the Second Amended Complaint and, therefore, denies them.

11. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 11 of the Second Amended Complaint and, therefore, denies them.

12. Burlington Trailways admits that it is an Iowa Corporation with a principal business address of 906 Broadway, West Burlington, IA 52655. Burlington Trailways denies the remaining allegations in Paragraph 12 of the Second Amended Complaint as to the time periods relevant to this lawsuit.

13. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 13 of the Second Amended Complaint and, therefore, denies them.

14. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 14 of the Second Amended Complaint and, therefore, denies them.

GENERAL ALLEGATIONS

15. Burlington Trailways admits that it is a member of the National Bus Traffic Association, along with other defendants, and that under the NBTA a mechanism exists by which members can act as agents for the sale of tickets on other member bus lines. Burlington Trailways denies all remaining allegations in paragraphs 15 of the Second Amended Complaint.

16. Burlington Trailways admits that it operates over-the-road bus services and that it has received discrete and limited federal financial assistance. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 16 of the Second Amended Complaint and, therefore, denies them.

17. The allegations in Paragraph 17 of the Second Amended Complaint are not directed to Burlington Trailways and, therefore, Burlington Trailways does not respond to those allegations. To the extent a response is required, however, Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 17 of the Second Amended Complaint and, therefore, denies them.

18. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 18 of the Second Amended Complaint and, therefore, denies them.

19-24. The allegations in Paragraphs 19 through 24 of the Second Amended Complaint are not directed to Burlington Trailways and, therefore, Burlington Trailways does not respond to those allegations. To the extent a response is required, however, Burlington Trailways is

without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraphs 19 through 24 of the Second Amended Complaint and, therefore, denies them.

25. Burlington Trailways admits that it told Ms. Reiskin she needed to purchase a ticket in order to make a reservation and that she called Burlington Trailways on September 12, 2006 to purchase a ticket and make a reservation. Burlington Trailways further admits that Ms. Reiskin was told to call another bus company to schedule a return trip. Burlington Trailways denies the remaining allegations in Paragraph 25 of the Second Amended Complaint.

26. To the extent the allegations in Paragraph 26 of the Second Amended Complaint are directed to Burlington Trailways, Burlington Trailways denies them.

27-34. The allegations in Paragraphs 27 through 34 of the Second Amended Complaint are not directed to Burlington Trailways and, therefore, Burlington Trailways does not respond to those allegations. To the extent a response is required, however, Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraphs 27 through 34 of the Second Amended Complaint and, therefore, denies them.

35. Burlington Trailways admits that on February 17, 2007, Ms. Moczygmba prepared to board a Burlington Trailways bus in Sterling, Colorado, bound for Denver, Colorado and that she contacted Burlington Trailways on February 14, 2007 to request a lift-equipped bus. Burlington Trailways admits that the wheelchair accessible lift and the kneeling system on its bus, as well as the door through which the lift would be deployed, were all frozen shut. Burlington Trailways affirmatively states that, upon information and belief, a design and/or manufacturing flaw causes the kneeler and locks for the lift doors to become inoperable or to malfunction in freezing weather. Burlington Trailways further states that de-icers and other

means have proven unsuccessful in overcoming this design/manufacturing flaw. Burlington Trailways admits that the driver requested that Ms. Moczygamba step onto the bus, which he assisted her in doing. Burlington Trailways further admits that the driver suggested and Ms. Moczygamba agreed that he store her motorized scooter in the lower baggage compartment. Burlington Trailways admits that Ms. Moczygamba rode its bus to Denver. Burlington Trailways denies all remaining allegations in paragraph 35 of the Second Amended Complaint.

36. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of what Ms. Moczygamba observed and, therefore, denies those allegations. Burlington Trailways admits that the wiring to the battery compartment of the motorized scooter was torn upon its arrival in Denver. Burlington Trailways denies all remaining allegations in paragraph 36 of the Second Amended Complaint.

37. Upon information and belief, Burlington Trailways is aware that Ms. Moczygamba has rented a motorized scooter. Burlington Trailways admits that when Ms. Moczygamba contacted Burlington, Burlington Trailways explained its standard luggage damages policy. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 37 of the Second Amended Complaint and, therefore, denies them.

38. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 38 of the Second Amended Complaint and, therefore, denies them.

39. Burlington Trailways admits that on May 16, 2007, Ms. Krause and her personal care attendant arrived at the Denver bus station to take a bus to Fort Morgan, Colorado. Ms.

Krause had reserved round trip tickets with Defendant Arrow, but arrived at a time when Burlington Trailways was operating a bus to Fort Morgan. Nonetheless, Burlington Trailways offered to transport Ms. Krause and Ms. Araujo on its lift-equipped bus. Due to an electronic glitch in the lift operating mechanism, however, the driver was unable to operate the lift upon two tries. Burlington Trailways admits that its dispatcher and Ms. Araujo had a conversation on May 16, 2007. Burlington Trailways admits that a representative of Burlington Trailways and a representative of CCDC had a conversation in which Burlington Trailways agreed to help Ms. Krause and Ms. Araujo get to Fort Morgan as soon as possible. Burlington Trailways states that it then suggested to Defendant Arrow that it provide transportation for Ms. Krause and Ms. Araujo to Fort Morgan on May 17, 2007. Burlington Trailways denies that Hope Krause contacted it in advance of her trip from Fort Morgan, Colorado to Denver, Colorado. Burlington Trailways without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 39 of the Second Amended Complaint and, therefore, denies them.

40-41. The allegations in Paragraphs 40 and 41 of the Second Amended Complaint are not directed to Burlington Trailways and, therefore, Burlington Trailways does not respond to those allegations. To the extent a response is required, however, Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraphs 40 and 41 of the Second Amended Complaint and, therefore, denies them.

42. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 42 of the Second Amended Complaint and, therefore, denies them.

43. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 43 of the Second Amended Complaint and, therefore, denies them.

44. To the extent the allegations in Paragraph 44 of the Second Amended Complaint are directed to Burlington Trailways, Burlington Trailways denies them.

45. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 45 of the Second Amended Complaint and, therefore, denies them.

46. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 46 of the Second Amended Complaint and, therefore, denies them.

47. To the extent the allegations in Paragraph 47 of the Second Amended Complaint are directed to Burlington Trailways, Burlington Trailways denies them. Burlington Trailways further denies it has discriminated against any of the Plaintiffs in violation of federal law.

48. To the extent the allegations in Paragraph 48 of the Second Amended Complaint are directed to Burlington Trailways, Burlington Trailways denies them. Burlington Trailways further denies it has discriminated against any of the Plaintiffs in violation of federal law.

49. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 49 of the Second Amended Complaint and, therefore, denies them.

50. Burlington Trailways denies the allegations in Paragraph 50 of the Second Amended Complaint.

51. Burlington Trailways denies the allegations in Paragraph 51 of the Second Amended Complaint.

52. Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 52 of the Second Amended Complaint and, therefore, denies them. Burlington Trailways further denies it has discriminated against any of the Plaintiffs in violation of federal law.

53. Burlington Trailways denies the allegations in Paragraph 53 of the Second Amended Complaint.

54. Burlington Trailways denies the allegations in Paragraph 54 of the Second Amended Complaint.

FIRST CLAIM FOR RELIEF
(Violations of the Americans with Disabilities Act)

55. Burlington Trailways incorporates its responses to Paragraphs 1 through 54 as if set forth herein.

56. Paragraph 56 of the Second Amended Complaint contains a legal conclusion to which no response is required. To the extent a response is required, however, Burlington Trailways states that the applicable laws speak for themselves.

57. Burlington Trailways admits that it operates over-the-road bus services for the public and that its operations affect commerce. Burlington Trailways denies all remaining allegations in Paragraph 57 of the Second Amended Complaint.

58. The allegations in Paragraph 58 of the Second Amended Complaint constitute a legal conclusion to which no response is required. To the extent a response is required, however, Burlington Trailways denies the allegations in Paragraph 58 of the Second Amended Complaint.

59. The allegations in Paragraph 59 of the Second Amended Complaint contain a legal conclusion to which no response is required. To the extent a response is required, however, Burlington Trailways states that the applicable laws speak for themselves.

60. Burlington Trailways denies the allegations in Paragraph 60 of the Second Amended Complaint.

61. The allegations in Paragraph 61 of the Second Amended Complaint contain a legal conclusion to which no response is required. To the extent a response is required, however, Burlington Trailways states that the applicable laws speak for themselves.

62. To the extent the allegations in Paragraph 62 of the Second Amended Complaint are directed to Burlington Trailways, Burlington Trailways denies them.

63. The allegations in Paragraph 63 of the Second Amended Complaint contain a legal conclusion to which no response is required. To the extent a response is required, however, Burlington Trailways states that the applicable laws speak for themselves.

64. To the extent the allegations in Paragraph 64 of the Second Amended Complaint are directed to Burlington Trailways, Burlington Trailways denies them.

65. The allegations in Paragraph 65 of the Second Amended Complaint contain a legal conclusion to which no response is required. To the extent a response is required, however, Burlington Trailways states that the applicable laws speak for themselves.

66. To the extent the allegations in Paragraph 66 of the Second Amended Complaint are directed to Burlington Trailways, Burlington Trailways denies them.

67. The allegations in Paragraph 67 of the Second Amended Complaint contain a legal conclusion to which no response is required. To the extent a response is required, however, Burlington Trailways states that the applicable laws speak for themselves.

68. To the extent the allegations in Paragraph 68 of the Second Amended Complaint are directed to Burlington Trailways, Burlington Trailways denies them.

69. The allegations in Paragraph 69 of the Second Amended Complaint contain a legal conclusion to which no response is required. To the extent a response is required, however, Burlington Trailways states that the applicable laws speak for themselves.

70. To the extent the allegations in Paragraph 70 of the Second Amended Complaint are directed to Burlington Trailways, Burlington Trailways denies them.

71. The allegations in Paragraph 71 of the Second Amended Complaint contain a legal conclusion to which no response is required. To the extent a response is required, however, Burlington Trailways states that the applicable laws speak for themselves.

72. To the extent the allegations in Paragraph 72 of the Second Amended Complaint are directed to Burlington Trailways, Burlington Trailways denies them.

73. To the extent the allegations in Paragraph 73 of the Second Amended Complaint are directed to Burlington Trailways, Burlington Trailways denies them.

SECOND CLAIM FOR RELIEF
(Violations of Section 504 of the Rehabilitation Act)

74. Burlington Trailways incorporates its responses to Paragraphs 1 through 73 as if set forth herein.

75. The allegations in Paragraph 75 of the Second Amended Complaint contain a legal conclusion to which no response is required. To the extent a response is required, however, Burlington Trailways states that the applicable laws speak for themselves.

76. The allegations in Paragraph 76 of the Second Amended Complaint contain a legal conclusion to which no response is required. To the extent a response is required, however, Burlington Trailways states that the applicable laws speak for themselves.

77. Burlington Trailways admits that it has received discrete and limited federal financial assistance from the Federal Transit Authority. Burlington Trailways denies all remaining allegations in Paragraph 77 of the Second Amended Complaint.

78. The allegations in Paragraph 78 of the Second Amended Complaint contain a legal conclusion to which no response is required. To the extent a response is required, however, Burlington Trailways states that the applicable laws speak for themselves.

79. Burlington Trailways admits that it has received discrete and limited federal financial assistance for security features on its buses. Burlington Trailways denies all remaining allegations in Paragraph 79 of the Second Amended Complaint.

80. To the extent the allegations in Paragraph 80 of the Second Amended Complaint are directed to Burlington Trailways, Burlington Trailways denies them.

81. To the extent the allegations in Paragraph 81 of the Second Amended Complaint are directed to Burlington Trailways, Burlington Trailways denies them.

THIRD CLAIM FOR RELIEF
(Against Greyhound Lines, Inc. and Texas,
New Mexico, and Oklahoma Coaches, Inc.:
Colorado Consumer Protection Act)

82. Burlington Trailways incorporates its responses to Paragraphs 1 through 81 as if set forth herein.

82-89. The allegations in Paragraphs 82 through 89 of the Second Amended Complaint are not directed to Burlington Trailways and, therefore, Burlington Trailways does not respond to those allegations. To the extent a response is required, however, Burlington Trailways is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraphs 82 through 89 of the Second Amended Complaint and, therefore, denies them.

ANSWER TO PRAYER FOR RELIEF

The paragraph immediately following Paragraph 89 of the Second Amended Complaint, labeled as subparagraphs 1 through 5, constitutes a prayer for relief, to which no response is required. To the extent a response is required, however, Burlington Trailways denies the allegations in each subparagraph.

Burlington Trailways denies all allegations in the Second Amended Complaint not specifically admitted herein.

AFFIRMATIVE DEFENSES

1. The Second Amended Complaint, in whole or in part, fails to state a claim upon which relief can be granted.
2. Plaintiffs' claims are barred by the applicable statute of limitation.
3. Plaintiffs' claims are barred by the doctrines of waiver and accord and satisfaction.

4. The Second Amended Complaint, in whole or in part, is barred by Plaintiffs' failure to exhaust their administrative remedies.

5. Plaintiff Colorado Cross-Disability Coalition's claims are barred by its lack of standing.

6. Upon information and belief, Plaintiffs have failed to mitigate their damages, if any.

7. All of Burlington Trailways' actions were taken in good faith efforts to comply with federal law.

8. Burlington Trailways reserves the right to move for separate trials under Fed.R.Civ.P. 42(b).

9. Plaintiffs' damages and losses, if any, were caused by the conduct of third persons over whom Burlington Trailways had no control or right to control.

10. Plaintiffs' damages and losses, if any, were caused by the design or manufacturing of certain bus components by third parties, processes over which Burlington Trailways has no control or right to control.

11. Plaintiff Reiskin's claims against Burlington Trailways are moot.

Burlington Trailways reserves the right to (a) rely upon such other affirmative defenses as may be supported by the facts to be determined through full and complete discovery, and (b) to voluntarily withdraw any affirmative defense.

PRAYER FOR RELIEF

WHEREFORE, having fully answered and responded to the allegations of the Second Amended Complaint, Burlington Trailways hereby prays that:

- (1) Plaintiffs' claims be dismissed with prejudice in their entirety;
- (2) Each and every prayer for relief contained in the Second Amended Complaint be denied;
- (3) Judgment be entered in favor of Burlington Trailways;
- (4) All costs, including reasonable attorney fees, be awarded to Burlington Trailways and against Plaintiffs, jointly and severally, pursuant to applicable law; and
- (5) Burlington Trailways be granted such other and further relief as this Court may deem just and proper.

Respectfully submitted this 28th day of April, 2008.

BROWNSTEIN HYATT FARBER SCHRECK,
LLP

s/ Susan P. Klopman

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ATTORNEYS FOR DEFENDANT
BURLINGTON STAGE LINES, LTD, d/b/a
BURLINGTON TRAILWAYS

CERTIFICATE OF MAILING

The undersigned hereby certifies that on this 28th day of April, 2008, a true and correct copy of the foregoing **DEFENDANT BURLINGTON STAGE LINES, LTD'S ANSWER TO FIRST SUPPLEMENTAL AND SECOND AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail address:

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