

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-00598-ZLW-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 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.

SECOND SUPPLEMENTAL AND THIRD AMENDED COMPLAINT

Plaintiffs, Colorado Cross-Disability Coalition, Julie Reiskin and Loraine A. Johnson, Barbara Moczygamba and Eileen Hope Krause, by and through their attorneys, Kevin W. Williams and Carrie Ann Lucas, of the Colorado Cross-Disability Coalition and Fox & Robertson, P.C., hereby submit their Second Supplemental and Third Amended Complaint (“Complaint”) for violations of the Americans with Disabilities Act, the Rehabilitation Act, and the Colorado Consumer Protection Act. As grounds for this Complaint, Plaintiffs allege the

following:

INTRODUCTION

1. Despite the passage of the Americans with Disabilities Act in 1990, 42 U.S.C. § 12101, *et seq.*, and the Rehabilitation Act, 29 U.S.C. § 794, *et seq.*, in 1973 Defendants, all over-the-road bus (“OTRB”) transportation companies, still discriminate against persons with disabilities in ways that are described in this Complaint. Such failures include, but are not limited to: (1) failing to acquire accessible vehicles; (2) failing to reserve buses with wheelchair lifts when requested forty-eight hours in advance; (3) failing to allow passengers who use wheelchairs off the bus at stops; (4) failing to schedule all legs of a trip with one phone call; (5) failing to maintain wheelchair lifts in working order; (6) failing to remain courteous and respectful to passengers with disabilities; (7) failing to maintain the capacity to receive communications at all times concerning interline service for passengers with disabilities; and (8) failing to provide alternative transportation as required by the regulations.

2. Plaintiffs seek to ensure that OTRB transportation is accessible to people who use wheelchairs throughout Colorado and bring this Complaint seeking injunctive relief, damages and recovery of their reasonable attorneys’ fees and costs.

JURISDICTION

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 and pursuant to its pendent jurisdiction over claims brought under the laws of the State of Colorado.

4. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

PARTIES

5. Colorado Cross-Disability Coalition (“CCDC”) is a Colorado non-profit corporation whose members are persons with disabilities and their non-disabled allies.

6. Julie Reiskin was at all times material hereto a resident of Colorado residing at 3645 Milwaukee Street, Denver, Colorado 80205. Ms. Reiskin is substantially limited in several major life activities, including walking, and requires the use of a motorized wheelchair for mobility. Julie Reiskin is CCDC’s Executive Director and a CCDC member.

7. Loraine A. Johnson was at all times material hereto a resident of Colorado residing at 2716 Abrams Avenue, Montrose, Colorado 81401. Ms. Johnson is substantially limited in several major life activities, including walking, and requires the use of a motorized wheelchair for mobility. Loraine A. Johnson is a CCDC member.

8. Eileen Hope Krause was, at all times material hereto, a resident of Colorado, residing at 414 Southridge Street, Apartment 101A, Fort Morgan, Colorado 80701. Ms. Krause is substantially limited in several major life activities, including walking, and requires the use of a motorized wheelchair for mobility. Ms. Krause is a CCDC member.

9. Defendant Greyhound Lines, Inc. (“Greyhound”) is a Delaware corporation, with its principal place of business at 15110 N. Dallas Parkway, Dallas, TX 75248. Greyhound is licensed to do business in Colorado. Greyhound is a subsidiary of Laidlaw Transportation Holdings, Inc., a Delaware Corporation. Greyhound is a “large operator” under Department of Transportation rules and regulations. On information and belief, on June 6, 2008, Greyhound took ownership of and is now the sole shareholder of Defendant TNM&O. In the merger,

Greyhound assumed all obligations of Defendant TNM&O.

10. At the time this litigation commenced, Defendant Texas, New Mexico and Oklahoma Coaches, Inc. ("TMN&O") was a Delaware corporation with its principal place of business at 1313 13th St, Lubbock, TX 79401. TMN&O was licensed to do business in the state of Colorado. TMN&O was a subsidiary of Greyhound. Defendant TNM&O was a "large operator" under Department of Transportation rules and regulations. On June 6, 2008, Defendant TNM&O was merged into Greyhound. This merger occurred as the result of a Certificate of Ownership and Merger filed on behalf of the two companies with the Delaware Secretary of State. Greyhound is responsible for all of TNM&O's obligations.

11. Defendant Busco, Inc., d/b/a Busco, Inc. Arrow Stage Lines ("Busco") is a Nebraska corporation, which is registered to do business in Colorado, with its principal place of business at 720 E. Norfolk Ave., Norfolk, NE 68701. On information and belief, Busco either operates or is affiliated with Defendant, Black Hills Stage Lines, Inc. as is more fully described below and conducts business in Colorado. Busco is a Class I motor carrier. Busco has the same business address and some of the same company officers, shareholders and employees as Defendant, Black Hills Stage Lines, Inc.

12. Defendant Black Hills Stage Lines, Inc. ("Black Hills") is a Nebraska corporation, which is registered to do business in Colorado, with its principal place of business at 720 E. Norfolk Ave., Norfolk, NE 68701. On information and belief, Black Hills is operated by and is affiliated with Defendant, Busco as is more fully described below and conducts business in Colorado. On information and belief, Defendant Black Hills is a "large operator" under

Department of Transportation rules and regulations. Black Hills has the same business address, and some of the same company officers, shareholders and employees as Defendant, Busco. On information and belief, Busco and Black Hills have a sufficient common identity to cause Busco to be liable for Black Hills' failures to comply with the statutes at issue in this Complaint, or Busco and Black Hills are the same company for purposes of determining Busco's liability.

GENERAL ALLEGATIONS

13. On information and belief, Defendants, Greyhound, TNM&O, and Black Hills, are concurring members of the National Bus Traffic Association, Inc. ("NBTA") Under a NBTA agreement, defendants are permitted to sell tickets for OTRB bus company trips provided by the members.

14. Each of the defendants operates OTRB services, regulated under 49 C.F.R., pt. 37, and, on information and belief, each of the defendants receives federal financial assistance, as defined in 29 U.S.C. § 794 *et seq.*, in the form of grants from federal agencies.

15. Plaintiff Julie Reiskin is the Executive Director of CCDC, and she uses a motorized wheelchair. Her job requires her to travel around the state of Colorado. She is a frequent user of OTRB companies. Over the years, Ms. Reiskin has experienced numerous problems with wheelchair access with these transportation services including, without limitation, the following: drivers not knowing how to operate wheelchair lifts and securement devices; scheduling accessible buses forty-eight hours in advance and having the bus arrive with no wheelchair lift; and not being permitted to leave the bus on rest breaks when all other passengers were permitted to do so. She has reported some of these problems on behalf of herself and other

CCDC members for years, including filing a Department of Justice complaint on behalf of a CCDC member in or about 2003.

16. Ms. Reiskin experienced a discriminatory incident on July 28, 2006. Ms. Reiskin scheduled the trip from Denver to Delta, Colorado with Greyhound slightly more than forty-eight hours in advance. She called Greyhound again the day before she left on her trip to get confirmation that the TNM&O bus she was scheduled to transfer to in Grand Junction, Colorado, was accessible. She was told TNM&O had been notified, and the bus for her trip would be an accessible bus. Ms. Reiskin departed Denver on a Greyhound bus at approximately 12:00 a.m. She arrived in Grand Junction at approximately 4:15 a.m. As she was getting off the bus, the driver of the bus indicated to another employee that Ms. Reiskin was heading south. The driver of that bus came to Ms. Reiskin and asked where she was going. Ms. Reiskin informed the driver that she was going to Delta, scheduled at 5:30 a.m. About an hour later, Ms. Reiskin was told that there was no bus with a wheelchair lift. None of the TMN&O employees seemed to know what to do. Ms. Reiskin is familiar with transportation in the area and suggested they call Millennium Cab Service. She explained that if TNM&O could get an accessible cab, TNM&O would have to pay the fare. The TNM&O employee agreed that the fare would be paid by TNM&O and worked out a payment arrangement with the owner of the cab company. Ms. Reiskin called and spoke with Stacey Lemmons at TNM&O early in the morning to report that there had not been a bus with a wheelchair lift and to find out if there was going to be an accessible bus for her trip the following day. Stacey Lemmons from TNM&O called Ms. Reiskin back before 8:00 a.m. She said she was not aware that Ms. Reiskin needed an accessible

bus that morning and asked her for details about how Ms. Reiskin had made the scheduling arrangements with Greyhound. After several calls with Stacey Lemmons, Ms. Reiskin learned that Greyhound had faxed the request for a lift bus to TNM&O and had never called to assure someone got it. Apparently, no one received the request. Stacey Lemmons told Ms. Reiskin that a manager had spoken to the Greyhound ADA office manager and required that they no longer fax such requests without also making a call to assure that someone receives and acts on the information. Ms. Reiskin called Stacey Lemmons a couple more times that day because she wanted to be sure that the bus for the trip on July 29th would have a lift. Ms. Reiskin was concerned because if she needed to find alternative transportation, she would have to make a reservation early. Stacey Lemmons assured Ms. Reiskin the bus would have a lift.

17. Ms. Reiskin arrived at the Delta, Colorado station at approximately 9:50 a.m. The bus she was scheduled to ride on arrived and did not have a wheelchair despite Stacey Lemmons' assurances that it would. Both the person staffing the bus station, Debbie, and Ms. Reiskin asked the driver about this. The driver told them that he did receive paperwork stating that he needed a bus with a lift, but he was directed to take the bus without a lift. On information and belief, paperwork was also at the Delta station showing that Ms. Reiskin had made her reservation for an accessible bus at that time. Ms. Reiskin called the TNM&O number and was connected to the bus depot in Lubbock, Texas. After explaining what had happened to several people on the phone, she was connected to a supervisor. The supervisor said he would make some calls to figure out how to get a bus to her and call her back. Debbie had also made calls and received the same response. They waited an hour, and no one called back. Debbie called

back to Lubbock and discovered that nothing had been done to get an accessible bus. Ms. Reiskin was informed she could go the next day, and TNM&O would have a bus with a lift. They agreed that if Ms. Reiskin got to Grand Junction and there was no accessible bus, the bus that took her from Delta to Grand Junction would take her to Denver. Ms. Reiskin called the cab company that brought her to Delta the day before, and they agreed to come back and transport her to Grand Junction. By the time Ms. Reiskin arrived in Grand Junction, it was 2:00 p.m. and too late for her attend the event for which she made the trip to Grand Junction.

18. On information and belief, Ms. Reiskin never received confirmation of her request for accessible buses, described in paragraphs 16 and 17 of this Complaint, from Greyhound or TNM&O, using the Service Request Form found in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a).

19. Ms. Reiskin suffered damages from these incidents.

20. Ms. Reiskin sent a letter to TMN&O on August 3, 2006, detailing the problems she had with Grand Junction and Delta trips and demanding an explanation of how TMN&O would resolve the wheelchair lift bus assignment problems. In the letter, Ms. Reiskin also requested damages for CCDC for TNM&O's discriminatory conduct and for time and resources CCDC had expended dealing with TNM&O's discriminatory practices. On or about September 6, 2006, Ms. Reiskin received a letter from Bobby Greenhill, Director of Operations of TNM&O explaining that a supervisor in the Albuquerque station had been replaced, and that this change in personnel should solve the wheelchair-lift bus assignment problem. TNM&O offered CCDC bus passes for TNM&O trips in the amount of \$125.00, which CCDC has used.

21. On another trip from Grand Junction to Denver on September 8, 2006, at approximately 4:10 p.m., Ms. Reiskin encountered a Greyhound employee at the Grand Junction Greyhound station who asked Ms. Reiskin if she was going to Denver. Ms. Reiskin said that she was, and the driver asked her if she had informed Greyhound. She had scheduled the trip forty-eight hours in advance with Greyhound and told the driver this. The employee looked at his computer, which had Ms. Reiskin's return trip to Denver scheduled the previous day. Ms. Reiskin is meticulous about confirming trip dates and times over the phone. She received a confirmation form after she returned from her trip, and it showed the return trip was scheduled on the wrong date. The bus for this trip had a wheelchair lift, but it did not work. Employees at the station were able to repair the lift, but they were concerned about it malfunctioning again and asked Ms. Reiskin if she would mind not getting off at rest stops in case there was a lift failure. Ms. Reiskin needed the ride, so she boarded. Ms. Reiskin did not get off the bus for the five hour trip.

22. Ms. Reiskin never received confirmation of her request for an accessible bus, using the Service Request Form found in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a) for the trip described in Paragraph 21.

23. As a result of Defendants' violations of law, Ms. Reiskin experienced injuries and damages. Ms. Reiskin would like to use the services of the OTRB companies and will do so if the OTRB companies stop discriminating against her on the basis of her disability.

24. On August 29, 2005, Plaintiff Loraine Johnson called TNM&O to request accessible buses for a trip from Montrose, Colorado to San Jose, California on September 5,

2005. Upon arriving at the bus station in Montrose, Colorado, Ms. Johnson was informed no lift bus would be available. At the time, Ms. Johnson got on the bus using the stairs. Because of her disabilities, doing so was very painful for Ms. Johnson. It would have been far easier for her to board using her wheelchair and the lift. The TNM&O bus driver stored her wheelchair under the bus. The bus took her to Grand Junction, Colorado, where Ms. Johnson was scheduled to transfer to a Greyhound bus. The Greyhound bus had a wheelchair lift, but the driver did not know Ms. Johnson was coming and did not know how to operate the wheelchair lift. It took the driver in Grand Junction, Colorado forty-five minutes to successfully operate the lift. Ms. Johnson boarded using her wheelchair. As a result of this delay, she was late getting to Los Angeles, CA. When Ms. Johnson arrived in Los Angeles, CA, she was scheduled to board a Greyhound bus. Greyhound did not provide a bus with a lift again. Ms. Johnson had a six hour layover in Los Angeles, which was scheduled to be much less. During the entire trip from Grand Junction, Colorado to San Jose, California, the Greyhound drivers never allowed Ms. Johnson to exit the bus at intermediate and/or rest stops.

25. On her return trip from San Jose, California to Montrose, Colorado, Ms. Johnson called TNM&O on September 6, 2005 and requested accessible buses. During her entire trip from San Jose to Montrose, Colorado, beginning on September 11, 2005, was not assisted by any Greyhound or TNM&O driver in getting off the bus at any intermediate or rest stops.

26. Plaintiff Johnson never received confirmation of her request for an accessible bus, using the Service Request Form found in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a) for the trips described in Paragraphs 24-25.

27. On or about October 11, 2006, Ms. Johnson called TNM&O to schedule a trip from Montrose, Colorado to Grand Junction, Colorado on October 15, 2006, and a return trip from Grand Junction, Colorado to Montrose, Colorado on October 17, 2006 for her and her assistant Dan Weis. She requested a bus with a wheelchair lift. Ms. Johnson also called TNM&O to confirm her bus would have a wheelchair lift, which Stacey Lemmons did confirm over the phone. When Ms. Johnson got to the bus terminal, her scheduled bus did not have a wheelchair lift. Because of Ms. Johnson's increasing level of disability, she was no longer able to get on the bus without her wheelchair. At this time and since, she uses different wheelchair for mobility. This wheelchair does not collapse. The bus was scheduled to depart at 2:50 p.m. It left without Ms. Johnson. She waited until approximately 4:00 p.m. for TNM&O to find her an accessible bus or equivalent transportation. -They provided neither. As a result, Ms. Johnson incurred hotel penalties and missed the class she wanted to attend. Ms. Johnson contacted TNM&O again to complain about the missed trip, and she was told that her paperwork had mistakenly be sent to Colorado Springs, not Montrose.

28. Ms. Johnson did not receive confirmation of her request for an accessible bus, using the Service Request Form found in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a) for the trip described in Paragraph 27.

29. Ms. Johnson called TNM&O to schedule a trip from Montrose, Colorado to Denver, Colorado to depart on February 25, 2008 and return on February 28, 2008. Ms. Johnson made the request at least forty-eight hours in advance. She requested wheelchair lift equipped buses for all legs of both trips. When Ms. Johnson arrived at the Montrose, Colorado bus

terminal, the driver of the TNM&O bus could not get the lift door of the bus to open. It took four people forty-five minutes working with the lift door to finally get it to open. Ms. Johnson finally boarded using the wheelchair lift. When Ms. Johnson arrived in Grand Junction, Colorado, she transferred to a Greyhound bus. The bus had a wheelchair lift, and Ms. Johnson boarded. At a rest stop in Glenwood Springs, Ms. Johnson attempted to get off the Greyhound bus using the lift. Ms. Johnson's rear wheels got stuck on the inner lift ramp because the lift buckled a few inches when she attempted to drive her wheelchair on to it. Mr. Weis assisted Ms. Johnson with transferring to a bus seat. Mr. Weis then drove the wheelchair onto the ramp and helped Ms. Johnson into the wheelchair. When the Greyhound bus arrived in Denver, Mr. Weis again assisted Ms. Johnson with transferring to a bus seat and then drove the wheelchair onto the lift and then helped Ms. Johnson into the wheelchair.

30. On Ms. Johnson's return trip from Denver, Colorado to Montrose, Colorado on February 28, 2008, Ms. Johnson arrived at the Denver terminal and encountered the same TNM&O driver she had on the February 25 trip from Montrose to Grand Junction. The driver informed Ms. Johnson that the lift door on the bus had not been fixed and he could not get it open. Ms. Johnson was denied transportation and had to stay in Denver another night and wait for an accessible the next day. The person staffing the Greyhound desk at the Denver terminal provided Ms. Johnson with accessible cab vouchers to get to a hotel and hotel vouchers. Ms. Johnson asked if the hotel room was an accessible room. The woman staffing the desk informed Ms. Johnson the hotel did not have any available accessible rooms. Ms. Johnson went to the hotel and found she could get in the room, but with difficulty. The restroom in the hotel room

was not wheelchair accessible.

31. On February 29, 2008, Ms. Johnson returned to the Denver terminal to return to Montrose. Ms. Johnson boarded the TNM&O bus using the lift. At a rest stop in Frisco, Colorado, Ms. Johnson attempted to exit the bus using the lift. The wheelchair lift went part of the way down and became stuck. Ms. Johnson was unable to exit the lift and had to go back up the lift and return to the bus. Ms. Johnson later had to use the restroom on the bus, which she had great difficulty doing and required the assistance of her assistant, Mr. Weis, to get to the restroom. When the bus arrived in Grand Junction, Colorado, Ms. Johnson was scheduled to transfer to another bus. Everyone got off of Ms. Johnson's bus. When Ms. Johnson went to get off the bus, the driver of the bus to which Ms. Johnson was scheduled to transfer informed the passengers and driver on Ms. Johnson's bus that the lift door on the transfer bus was broken. Ms. Johnson remained on her bus, the other passengers re-boarded, and that bus went on to Montrose. When the bus arrived in Montrose, the wheelchair lift did not work again. Once again, the driver requested that Ms. Johnson transfer to a seat and that her wheelchair be taken down the lift without her. With Mr. Weis' assistance, Ms. Johnson again transferred to a bus seat. When the driver attempted to take the wheelchair down the lift, it became stuck again. Six people lifted Ms. Johnson's wheelchair from the wheelchair lift to the ground. Mr. Weis had to assist Ms. Johnson to the lift. The lift did work to lower Ms. Johnson to the ground.

32. Ms. Johnson never received confirmation of her request for an accessible bus, using the Service Request Form found in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a) for the trip described in Paragraphs 29-31.

33. Ms. Johnson would like to use the services of the OTRB companies and will do so if the OTRB companies stop discriminating against her on the basis of her disability. Ms. Johnson has been injured and harmed by Defendants' conduct.

34. On or about May 9, 2007, Hope Krause contacted Black Hills to schedule an accessible bus from Fort Morgan, Colorado to Denver, Colorado and for a return trip from Denver, Colorado using an accessible bus on May 16, 2007. On information and belief, Ms. Krause spoke with Angelita Tabares, an employee of Busco to schedule the trip. After being assured that appropriate buses had been reserved for both legs of the trip (the return trip was to be provided by Burlington Stage Lines, Ltd., "Burlington," another OTRB carrier), Ms. Krause inquired as to whether she needed to call again on May 14, 2007, forty-eight hours prior to her return trip to ensure that a bus with a lift had been reserved. She was told that she did not need to make a second call to ensure that her the bus on her return trip would have a wheelchair lift. According to Black Hills records, Ms. Krause was scheduled to return with an accessible bus from Denver to Fort Morgan on May 16, 2007, at 6:00 p.m. on Burlington's route. On May 16, 2007, for the return trip, the bus had an inoperative wheelchair lift. As a result, Ms. Krause and Ms. Araujo had to stay in Denver for another night.¹ On information and belief, a Burlington representative contacted Black Hills, which agreed to send a bus to transport Ms. Krause and Ms. Araujo the next day from their hotel to Fort Morgan, Colorado. Even after Black Hills was contacted concerning the need for an accessible bus, when the bus arrived at the hotel, the bus

¹ Burlington was a defendant in this action, but has been dismissed as the result of an agreement reached with that entity.

had an inoperative lift. The Black Hills bus driver did not know how to operate the bus either electronically or manually. On information and belief, Black Hills failed to conduct a regular maintenance check on this lift and to train this bus driver how to use the lift. Eventually, after making more arrangements, Ms. Krause and Ms. Araujo took an accessible cab back to Fort Morgan, Colorado, her destination.

35. On June 1, 2007, Ms. Krause called 48 hours in advance to arrange for an accessible bus for a trip from Fort Morgan to Denver, scheduled for June 3, 2007 at 6:00 p.m. She tried calling Black Hills several times during business hours, but no one answered. She then contacted Burlington, who agreed to make the arrangements for the trip.

36. Burlington operated a bus on the return leg of the trip from Denver back to Fort Morgan, Colorado.

37. On June 3, 2007, Ms. Krause and her personal care attendant, Jaimie Chosa arrived at the bus station in Fort Morgan.

38. The route from Fort Morgan to Denver at that time was operated by Black Hills.

39. The bus did not have a wheelchair lift or ramp.

40. On information and belief, this bus was purchased by Busco, and used by Black Hills.

41. On information and belief, the driver of the bus was Paul Sylvander.

42. The driver rudely asked Ms. Krause if she had called ahead about requiring a bus with a lift. Ms. Krause informed him that she had requested a bus with a wheelchair lift. The driver said he had not been notified of this request, and that there was nothing he could do. He

told Ms. Krause that the next bus would arrive at 4:00 a.m., and that she would have to take that bus.

43. Ms. Krause contacted Sheila Hicks, who spoke with the bus driver. Ms. Hicks asked the driver to contact dispatch, and the driver refused, stating that dispatch is only open from 9:00 a.m. to 5:00 p.m.

44. Ms. Hicks insisted that he contact someone within the company. The driver eventually contacted dispatch, then asked Ms. Krause where she could be picked up. Ms. Krause's attendant gave the driver her home address and telephone number, and the driver informed Ms. Krause that she would receive a call from dispatch shortly.

45. More than two hours after returning home, Ms. Krause had not received a call, so her attendant contacted the Denver bus station to get the telephone number for Black Hills. Ms. Chosa then contacted Black Hills directly and was told that a bus would pick Ms. Krause up "some time."

46. At approximately 9:15 p.m., more than three hours after Ms. Krause's original departure time, a bus arrived at Ms. Krause's home and transported her and Ms. Chosa to Denver.

47. Ms. Krause attempted to contact Black Hills on February 23, 2008, forty-eight hours prior to her departure from Fort Morgan Colorado to Denver, Colorado on February 26, 2008; however, the office was closed and she was unable to make a request for an accessible bus at that time.

48. Ms. Krause successfully contacted Black Hills on February 25, 2008 to request a

bus with a lift and explained that she had attempted to call earlier, but the office was closed.

49. On information and belief, Ms. Krause spoke with Lindsay, an employee of Busco.

50. Ms. Krause received a verbal confirmation number including the letter "BHL" which, on information and belief, stands for "Black Hills Stage Lines, Inc."

51. On this trip, she encountered the driver, Paul, referenced above. He informed Ms. Krause that he had received no notice that she would be riding. He was rude to her and told her she needed to make a request for an accessible bus. Fortunately, the bus had a lift and Ms. Krause was able to ride, but the driver's behavior is inexcusable, and there is no explanation why Paul did not receive prior notice of her request. Neither Black Hills nor Busco has a record of Ms. Krause's February 25 trip.

52. Ms. Krause never received confirmation of her request for an accessible bus from Black Hills using the Service Request Form found in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a) for the trips referenced in Paragraphs 34-50.

53. On information and belief, all buses used by Black Hills are leased from Busco.

54. On information and belief, all drivers used by Black Hills are supplied by Busco.

55. On information and belief, at times relevant to the allegations set forth herein, less than fifty percent of the bus fleet used by Busco was lift equipped.

56. On information and belief, at times relevant to the allegations set forth herein, less than fifty percent of the bus fleet used by Black Hills was lift equipped.

57. On information and belief, after October 30, 2000, Busco has purchased or leased

new buses without lifts that have been used on Black Hills' fixed route services.

58. On information and belief, after October 30, 2000, Black Hills has purchased or leased new buses without lifts that have been used on its fixed route services.

59. On information and belief, Black Hills has not submitted annual reports to the Department of Transportation as is required under 49 C.F.R. § 37.213.

60. Plaintiff Krause would like to use Black Hills' (and other OTRB) services in the future and will do so if Defendants stop operating their services in a discriminatory matter.

61. Plaintiff Krause has been injured and harmed and has sustained damages as a result of Busco's, Black Hills' and Burlington's actions.

62. CCDC's purpose is to work for systemic change that promotes independence, self-reliance, and full inclusion for people with disabilities in the entire community. As part of that purpose, CCDC seeks to ensure that persons with disabilities have access to -- and do not encounter discrimination in -- the programs, activities and services provided by OTRB companies, like those owned and operated by Defendants.

63. CCDC engages in extensive outreach as well as advocacy and educational efforts to promote access for and combat discrimination against people with disabilities. This effort and this purpose have been and continue to be adversely affected by Defendants' violations of the laws cited herein.

64. Defendants' actions have caused and continue to cause distinct, palpable, and perceptible injury to CCDC.

65. CCDC has devoted resources, which could have been devoted to its other

outreach, advocacy, legislative, and educational efforts, to communicating with the Defendants in an attempt to secure non-discriminatory conditions for Defendants' OTRB services.

66. CCDC has devoted resources, which could have been devoted to its other outreach, advocacy, legislative, and educational efforts, to counseling members and others who have been injured by Defendants' discrimination.

67. Defendants' discrimination has been and continues to be a barrier to the full participation of persons with disabilities and, therefore, frustrates CCDC's ability to achieve full inclusion for persons with disabilities.

68. Defendants' discrimination has required and continues to require CCDC to make a greater effort -- and to allocate significant resources -- to educate the public that such discrimination is wrong and otherwise to counteract the adverse impact of such discrimination. This perceptibly impairs CCDC's counseling, advocacy, legislative, educational, and training missions.

69. CCDC also has devoted and continues to devote resources -- including but not limited to those devoted to the present lawsuit -- to identifying and counteracting the sources of discrimination in the community, including that of Defendants.

70. CCDC's injuries -- including, without limitation, those described herein -- are traceable to Defendants' discriminatory conduct alleged in this Complaint and will be redressed by the relief requested in it.

71. CCDC's members and their spouses, friends, relatives, and associates have been injured and will continue to be injured by Defendants' discrimination.

72. The elimination of discrimination, such as that of Defendants, and the integration of persons with disabilities into all aspects of community life are at the core of CCDC's organizational purpose.

73. The participation of individual CCDC members in the lawsuit is not required either to resolve the claims at issue or to formulate relief.

74. Defendants acted intentionally or with reckless, callous and/or deliberate indifference to the federally protected rights of others.

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

75. Plaintiffs reallege and incorporate by reference the allegations set forth above as if fully set forth herein.

76. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce. 42 U.S.C. § 12184(a).

77. All Defendants operate specified public transportation services, OTRB services, that are primarily engaged in the business of transporting people and their operations affect commerce.

78. The regulations implementing 42 U.S.C. § 12184(a) are found at 49 C.F.R., part 37. These regulations took effect with respect to large operators on October 30, 2000, and to small operators on October 29, 2001.

79. All over-the-road, fixed route transportation providers that have purchased or leased new vehicles since the effective dates above have been required to purchase or lease accessible buses, or, in the case of small operators, they have had the option of providing equivalent service. 49 C.F.R. § 37.183. For large operators, half of their bus fleet was required to be accessible by October 30, 2006, unless an extension was requested. 49 C.F.R. § 37.185.

80. On information and belief, Defendants have not acquired accessible buses as required by the regulations.

81. With respect to interline service, “[w]hen the general public can purchase a ticket or make a reservation with one operator for a fixed-route trip of two or more stages in which another operator provides service, the first operator must arrange for an accessible bus, or equivalent service, as applicable, to be provided for each stage of the trip to a passenger with a disability.” 49 C.F.R. § 37.187(a). Each operator retains the responsibility for providing the transportation required by the regulations to the passenger for its portion of an interline trip. 49 C.F.R. § 37.187(b). The passenger shall be required to make only one request, which covers all legs of the requested trip (e.g., in the case of a round trip, both the outgoing and return legs of the trip; in the case of a multi-leg trip, all connecting legs). 49 C.F.R. § 37.213(a). In addition, all fixed-route operators involved in interline service shall ensure that they have the capacity to receive communications at all times concerning interline service for passengers with disabilities, 49 C.F.R. § 37.187(c), and confirmation of requests for accessible buses must be communicated to the passenger in one business day, using the Service Request Form in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a).

82. As described in this Complaint, Defendants have failed to ensure that individuals who require accessible transportation are able to schedule accessible vehicles for all legs of their trip and have failed to maintain the capacity to receive communications at all times concerning interline service for passengers with disabilities. As described herein, Defendants have failed to communicate confirmation of accessible buses to Plaintiffs within one business day, using the Service Request Form in Appendix A of 49 C.F.R., pt. 37. 49 C.F.R. § 213(a).

83. Until all buses in an operator's fleet are accessible, OTRB transportation providers must make accessible buses available on request. 49 C.F.R. § 37.193(a)(1). The operator may require up to 48 hours advance notice to provide this service. 49 C.F.R. § 37.193(a)(1)(I).

84. Despite Plaintiffs' efforts to make requests for accessible bus services 48 hours or more in advance and their repeated attempts to confirm accessible buses, Defendants failed to provide accessible buses.

85. With respect to intermediate and rest stops, "a passenger with a disability, including an individual using a wheelchair, shall be permitted to leave and return to the bus on the same basis as other passengers. The operator shall ensure that assistance is provided to passengers with disabilities as needed to enable the passenger to get on and off the bus at the stop (e.g., operate the lift and provide assistance with securement; provide other boarding assistance if needed, as in the case of a wheelchair user who has transferred to a vehicle seat because other wheelchair users occupied all securement locations)." 49 C.F.R. § 37.201(a).

86. As explained in this Complaint, Defendants failed to allow Plaintiffs to leave and

return to the bus on the same basis as other passengers and failed to provide other boarding assistance.

87. Wheelchair lifts are required to be maintained and inspected to ensure they are operative, and buses with inoperative lifts are to be taken out of service for maintenance. 49 C.F.R. § 37.203.

88. On information and belief, during the incidents described in this Complaint, and at other times, Defendants failed to inspect and maintain bus lifts to ensure they were operative and failed to take buses with inoperative lifts out of service as required by the regulations.

89. Unlawful discrimination under the regulations includes, without limitation: (1) Denying transportation to passengers with disabilities; (2) requiring or requesting a passenger with a disability to reschedule his or her trip, or travel at a time other than the time the passenger has requested; (3) failing to provide reservation services to passengers with disabilities equivalent to those provided other passengers; and (4) failing or refusing to comply with any applicable provision of the regulations. 49 C.F.R. § 37.207.

90. Defendants, through their actions described in this Complaint, engaged in unlawful discrimination prohibited by 49 C.F.R. § 37.207.

91. All bus drivers are required to receive training in proper operation and maintenance of accessibility features and equipment, boarding assistance, securement of mobility aids, sensitive and appropriate interaction with passengers with disabilities, handling and storage of mobility devices, and familiarity with the requirements of the regulations. 49 C.F.R. § 37.209. OTRB operators shall provide refresher training to personnel as needed to

maintain proficiency. *Id.* Entities which operate fixed route systems shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities. 49 C.F.R. § 37.173.

92. On information and belief, during the incidents described in this Complaint, Defendants failed to provide appropriate training as required by the regulations.

93. Defendant's violations of the ADA have harmed Plaintiffs, who have sustained damages as a result.

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

94. Plaintiffs reallege and incorporate by reference the allegations set forth above as if fully set forth herein.

95. The Rehabilitation Act prohibits recipients of federal financial assistance from denying, on the basis of disability, the benefits provided by the recipient, or from subjecting persons with disabilities to discrimination. 29 U.S.C. § 794.

96. For OTRB companies entities receiving federal financial assistance from the Department of Transportation, compliance with applicable requirements of 49 C.F.R., pt. 37, is a condition of compliance with section 504 of the Rehabilitation Act of 1973 and of receiving financial assistance. 49 C.F.R. § 37.21(b).

97. On information and belief, Defendants receive federal financial assistance from

the Department of Transportation and/or other federal agencies.

98. For OTRB companies entities receiving federal financial assistance from the Department of Homeland Security, compliance with applicable requirements of 49 C.F.R., pt. 37 is a condition of compliance with section 504 of the Rehabilitation Act of 1973 and of receiving financial assistance. 49 C.F.R. § 37.21(b).

99. On information and belief, Defendants receive federal financial assistance from the Department of Homeland Security.

100. Defendants have violated Section 504 the Rehabilitation Act by denying Plaintiffs and other persons with disabilities the benefits of their OTRB services and otherwise failing to comply with the regulations applicable to OTRB companies as described in this Complaint.

101. Defendants' violations of the Rehabilitation Act have harmed Plaintiffs.

THIRD CLAIM FOR RELIEF

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

102. Plaintiffs reallege and incorporate by reference the allegations set forth above as if fully set forth herein.

103. The Colorado Consumer Protection Act (“CCPA”) requires that “[e]xcept in a class action, any person who, in a private civil action, is found to have engaged in or caused another to engage in any deceptive trade practice . . . shall be liable in the amount equal to the sum of . . . [t]hree times the actual damages sustained or two hundred and fifty dollars, whichever is greater; and . . . [i]n the case of a successful action to enforce said liability the costs of the action together with reasonable attorney fees as determined by the court.”

104. Plaintiffs Julie Reiskin and Loraine Johnson seek recovery under the CCPA.

105. In addition, the CCPA provides, “[a]ny person who violates or causes another to violate any provision of [the CCPA] shall forfeit and pay to the general fund of this state a civil penalty of not more than two thousand dollars for each such violation [;] a violation of any provision shall constitute a separate violation with respect to each consumer or transaction involved; except that the maximum civil penalty shall not exceed one hundred thousand dollars for any related series of violations.” Colo. Rev. Stat. § 6-1-112(1).

106. Section 6-1-112 is enforceable by a plaintiff in a private cause of action.

107. Under the CCPA, “[a] person engages in a deceptive trade practice when, in the course of such person’s business . . . such person:”

- a. “[k]nowingly makes a false representation as to the characteristics . . . uses, alterations, or quantities of . . . services . . . ;
- b. “[r]epresents that . . . services . . . are of a particular standard, quality or grade . . . if he knows or should know that they are of another;”
- c. “[a]dvertises . . . services with intent not to sell them as advertised;”
- d. “[a]dvertises . . . services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;”
- e. “[e]mploys ‘bait and switch’ advertising, which is advertising accompanied by an effort to sell . . . services . . . other than those advertised or on terms other than those advertised and which is also accompanied by

[the] following practice . . . demonstrating defective . . . services which are unusable or impractical for the purposes set forth in the advertisement; and

- f. “[f]ails to disclose material information concerning . . . services . . . which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction.

Colo. Rev. Stat. § 6-1-105(1).

108. Defendants Greyhound and TNM&O advertise that they provide accessible buses with 48 hours prior notice. As set forth in this Complaint, these Defendants did not and, on information and belief, do not provide accessible buses with 48 hours prior notice.

109. Plaintiffs Julie Reiskin and Loraine Johnson were led to believe and did believe that they would have accessible transportation based on Greyhound’s and TNM&O’s representations. Plaintiffs did not receive the service they were promised.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction.
2. That this Court issue an injunction ordering Defendants to comply with the ADA, the Rehabilitation Act, and the CCPA.
3. That this Court award compensatory damages to Plaintiffs as permitted under the referenced statutes.

4. That this Court award reasonable attorneys' fees and costs.

5. That this Court award such additional or alternative relief as may be just, proper and equitable.

JURY DEMAND: Plaintiff demands a jury on all issues which can be heard by a jury.

Dated: September 5, 2008

Respectfully submitted,

s/ Kevin W. Williams

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