



*Denied for the reasons set forth in the Debtors' "Response" So Ordered*

IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF NEW YORK

In Re:

PERFORMANCE TRANSPORTATION SERVICES INC., et al.,

Case No. 07-04746 (MJK) Chapter 11

Debtors.

**MOTION OF THE TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTATION INDUSTRY NEGOTIATING COMMITTEE FOR STAY PENDING DISTRICT COURT'S DISPOSITION OF MOTION FOR MANDATORY WITHDRAWAL OF THE REFERENCE FROM THE BANKRUPTCY COURT PERTAINING TO PROCEEDINGS TO MODIFY OR REJECT COLLECTIVE BARGAINING AGREEMENTS**

The Teamsters National Automobile Transportation Industry Negotiating Committee (TNATINC), and its affiliated Local Unions, all affiliated with the International Brotherhood of Teamsters (collectively the Teamsters) and their members (the "Union") has moved the District Court pursuant to 28 U.S.C. §157(d) and Bankruptcy Rule 5011(a) for mandatory withdrawal of the reference from the bankruptcy judge of all matters pertaining to the modification or rejection of collective bargaining agreements to which the Teamsters are parties in the above-captioned matter. In connection with that motion, the Teamsters move this honorable Court for a stay of proceedings on the Debtor's the motions to modify and reject the parties' collective bargaining agreement.

1. Because the Debtors' motion to modify or reject implicates, among other things, the good faith in bargaining of the Debtor entities that are signatory to the NMATA, and the interplay between federal labor law and bankruptcy law on the question of waiver of the statutory right to engage in and withdraw from multi-employer bargaining, the motion



requires consideration of federal statutes affecting interstate commerce, namely the National Labor Relations Act and the Labor Management Relations Act, as well as the Bankruptcy Code.

2. This particular proceeding under §1113 of the Code requires consideration of both Title 11 and other laws of the United States regulating organizations and activities affecting interstate commerce, including but not limited to the National Labor Relations Act and Labor Management Relations Act, 29 U.S.C. §151 et seq.

3. The Teamsters have invoked the provisions of 28 U.S.C. §157(d) requiring mandatory withdrawal of the reference from the bankruptcy judge of this proceeding. This district court is required pursuant to 28 U.S.C. §157(d) to withdraw the reference from the bankruptcy judge in any proceeding, such as a proceeding under §1113, which requires consideration of both Title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce upon the motion of any interested party.

4. The Debtors have requested that their motions be heard on an expedited basis, and have indicated that they would like the district court to proceed to adjudicate their motions without regard for the Teamsters' pending Motion to Withdraw the Reference.

5. Any proceedings by the Bankruptcy Court that precede a District Court ruling on the Teamsters' Motion to Withdraw the Reference will be at best a waste of judicial resources. At worst, District Court proceedings will deprive the Teamsters of their statutory right to have matters of federal labor law adjudicated in the first instance in a district court, and possibly result in inconsistent rulings from two courts in the same matter within the same district.

6. Any claim by the Debtors that they will be prejudiced unless their motions are heard on an expedited without regard to proceedings in the District Court is belied by the Debtors' failure to recognize the purported need for §1113 relief until yesterday. The motion to modify or reject the agreement was filed when there were about 52 hours left on the life of the contract. The Debtors have participated fully in the collective negotiations conducted by NATLD since February 2008. They did not attempt to withdraw from the multi-employer unit in a timely fashion, or otherwise. They have not proposed changes to the current NMATA pursuant to 11 U.S.C. §1113. No separate discussions with the Debtors have taken place for changes in the collective bargaining agreement (other than the multi-employer negotiations which will produce a contract applicable to the entire industry). Until the day of the filing of the motions herein, at no time did the Debtors express an intention to leave collective negotiations or to pursue changes to the existing NMATA, other than in the context of multi-employer negotiations. Any urgency to the Debtors' motion is solely a result of the Debtors' inaction.

WHEREFORE, the Teamsters respectfully request that the Court enter an order staying proceedings on the Debtors' motions for 1113 relief unless and until the District Court has denied the Teamsters' Motion for Mandatory Withdrawal of the Reference.

Dated this 30<sup>th</sup> Day of May, 2008.

/s/ Frederick Perillo  
Frederick Perillo  
Andrea F. Hoeschen  
Previant, Goldberg, Uelmen, Gratz, Miller and  
Brueggeman, s.c.  
1555 North RiverCenter Drive, Suite 202