

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MCKEESPORT AREA SCHOOL
DISTRICT,

Plaintiff,

v.

PENNSYLVANIA COACH LINES, INC.,

Defendant.

CIVIL DIVISION

No. GD-20-008633

**DEFENDANT'S RESPONSE TO
DECLARATORY JUDGMENT ACTION
AND COUNTERCLAIM FOR
DAMAGES AND PRELIMINARY
INJUNCTIVE RELIEF**

Filed on Behalf of Defendant, Pennsylvania
Coach Lines, Inc.

Counsel of Record for this Party:

Ray F. Middleman, Esq.
Pa. I.D. No. 40999
rmiddleman@eckertseamans.com

Lindsey Conrad Kennedy, Esq.
Pa. I.D. No. 318318
lkennedy@eckertseamans.com

ECKERT SEAMANS CHERIN & MELLOTT, LLC
Firm No. 75
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
412-566-6000 (telephone)
412-566-6099 (fax)

TO: PLAINTIFF

You are hereby notified to file a written
response to the foregoing Counterclaim within
twenty (20) days from service hereof or a
judgment may be entered against you.

/s/ Ray Middleman
Ray F. Middleman
Counsel for Defendant

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MCKEESPORT AREA SCHOOL
DISTRICT,

CIVIL DIVISION

No. GD-20-008633

Plaintiff,

v.

PENNSYLVANIA COACH LINES, INC.,

Defendant.

**DEFENDANT’S RESPONSE TO DECLARATORY JUDGMENT ACTION
AND COUNTERCLAIM FOR DAMAGES AND PRELIMINARY INJUNCTIVE RELIEF**

Defendant Pennsylvania Coach Lines, Inc. (“PA Coach”), by and through its attorneys, Eckert Seamans Cherin & Mellott, LLC, files this Response to Declaratory Judgment Action filed by Plaintiff McKeesport Area School District (the “District”) and Counterclaim for Damages and Preliminary Injunctive Relief. In support thereof, PA Coach states as follows:

Preliminary Statement

In this action, the District seeks to escape the contractual risk allocation it agreed to in its Transportation Agreement with its student transportation provider, and does so by offering a tortured, nonsensical reading of a new provision of the School Code aimed, in part, at alleviating the effects of the pandemic on school contractors. As if this were not troubling enough, since filing this action, the District has breached the parties’ contract yet again—this time, threatening irreparable harm to PA Coach and its continued ability to provide any student transportation services.

The parties’ Transportation Agreement is essentially a requirements contract, requiring the District to make a fixed payment to PA Coach each month of the school year in exchange for PA Coach providing whatever busing services the District may need, subject only to certain limited,

negotiated exceptions. In Spring 2020, when the Commonwealth temporarily (and eventually permanently) closed schools for the remainder of the school year, PA Coach had—and continues to have—buses and drivers on stand-by, ready to continue busing services at any given moment, as it is required to do under the Transportation Agreement.

The District, on the other hand, refused to continue making its monthly fixed payment to PA Coach as of April 2020, despite having contractually agreed to bear the risk of its transportation needs changing or becoming obsolete. When the District repeatedly ignored PA Coach’s requests for payment of the \$667,046.31 balance it owed under the Transportation Agreement for the remainder of the 2019-2020 school year, PA Coach placed the District on notice of its default pursuant to the termination provisions in the Transportation Agreement. Now, the District seeks a declaratory judgment excusing it from its failure to pay PA Coach and requiring that PA Coach provide busing services during the 2020-2021 school year, purporting to vilify PA Coach for seeking “taxpayer money . . . for services that were not provided.” (Declaratory Judgment Action at para. 22.).

In its Declaratory Judgment Action, the District points to Act 13, a new provision of the School Code which clearly states that, notwithstanding any other provision of Act 13, a school district that continues to pay its transportation providers will be eligible for reimbursement from the Commonwealth at the same rate it would have received absent the pandemic. 24 P.S. § 15-1501.8(1)(2). Ignoring this provision of Act 13, the District instead attempts to meld together separate subsections of Act 13 to argue that PA Coach must provide documentation to the District that its employee complement levels have remained constant in order for the District to be reimbursed by the Commonwealth and in order for the District to make payments under the parties’ Transportation Agreement. This is not what Act 13 or the parties’ Transportation Agreement

requires. To be sure, the Transportation Agreement requires the District to make fixed monthly payments to PA Coach regardless of its actual needs, and Act 13 enables the District to make such payments and receive reimbursement from the Commonwealth.

The judgment the District asks this Court to enter is unsupported by both the facts and the law, and is particularly inapposite given the demands it leveled upon PA Coach just after its filing. Specifically, just after filing this action, the District changed the fundamental basis of the contract by now requiring that PA Coach provide *double* the transportation for the upcoming 2020-2021 school year, in light of purported social distancing requirements. The District refuses to pay more for these services—*despite* PA Coach’s costs doubling (driver pay, fuel, mechanical services, etc.), *despite* the \$667,046.31 outstanding unpaid balance it owes to PA Coach, and *despite* the District’s ability to obtain reimbursement from the Commonwealth. If left unabated, the ultimate result of the District’s breaches of the Transportation Agreement will put PA Coach out of business, resulting in the very situation the District purports to seek to prevent: its children not getting to school.

For the reasons set forth herein, this Court should dismiss the District’s Declaratory Judgment Action, award PA Coach monetary damages for the District’s breach of the parties’ Transportation Agreement, and enter a preliminary injunction requiring the District to pay an additional prorated amount for the extraordinary, extra-contractual services it is now demanding of PA Coach.

PA Coach’s Response to Declaratory Judgment Action

Preliminary Statement

1. Denied as stated. This is an action that the District filed in a thinly-veiled attempt to renege on the payment it agreed to provide PA Coach in exchange for PA Coach providing all

of the District’s required bussing services for the 2019–2020 school year. It is, in effect, an *ex post facto* attempt by the District to impose additional conditions of payment that the parties did not agree to in violation of fundamental principles of contract law.

2. Admitted in part and denied in part. PA Coach admits only that the District seeks a declaration from this Court regarding the rights of the parties under the Transportation Agreement. PA Coach vehemently denies that the District is entitled to condition its contractually required payments of the bulk rate for the 2019–2020 and/or 2020–2021 school year on PA Coach providing the documentation the District claims it is entitled to by virtue of Act 13 (the “Demanded Documentation”). PA Coach further denies that the District is entitled to a declaration that it may pro-rate the contract price for the bussing services that PA Coach provided during the 2019–2020 school year or to any other declaration it requests. PA Coach denies the remaining allegations contained in Paragraph 2 of the Plaintiff’s Action for Declaratory Judgment.

Parties

- 3. Admitted.
- 4. Admitted.

Jurisdiction and Venue

- 5. Admitted.
- 6. Admitted.

Facts

- 7. Admitted.
- 8. Admitted.
- 9. Admitted.

10. Denied as stated. The yearly bulk rate for PA Coach to provide the District with all of its regular bussing services, as defined in Exhibit A to the Transportation Agreement (the “Regular Bussing Services”), the 2019–2020 school year was \$2,223,487.67. PA Coach fully complied with its obligation to provide the District with all of its requirements for Regular Bussing Services and the District is obligated to pay the full bulk rate of \$2,223,487.67. PA Coach denies the remaining allegations contained in Paragraph 10 of the Plaintiff’s Action for Declaratory Judgment.

11. Admitted.

12. Denied as stated. Exhibit A to the parties’ Transportation Agreement provides that the bulk rate “is based on a 180 day school year or less” and that “[i]f there is ever an extension to the school year, the additional service will be billed at a prorated rate.” (*Id.*)

13. Denied as stated. The Transportation Agreement required PA Coach to provide certain forms, but the Transportation Agreement is silent as to the District’s reimbursement rights and PA Coach is not involved in the reimbursement process. Rather, to the extent the District’s government reimbursement is relevant to this action, the District’s eligibility in this regard is governed by Subsection (1)(2) of Act 13.

14. Admitted. PA Coach provided all of the District’s Regular Bussing Services for the 2019–2020 school year pursuant to the terms of the Transportation Agreement.

15. Admitted in part, denied in part. PA Coach admits only that on or about March 13, 2020, Governor Wolf ordered Pennsylvania’s primary and secondary schools to close temporarily as a COVID-19 mitigating measure. PA Coach denies any suggestion that it did not fully comply with its obligations to provide all of the District’s Regular Bussing Services for the 2019–2020

school year. PA Coach denies the remaining allegations contained in Paragraph 15 of the Plaintiff's Action for Declaratory Judgment.

16. Admitted in part, denied in part. PA Coach admits only that Governor Wolf ordered that Pennsylvania's primary and secondary school would remain closed through April 6, 2020 on or about March 24, 2020. PA Coach denies any suggestion that it did not fully comply with its obligations to provide all of the District's Regular Bussing Services for the 2019–2020 school year. PA Coach denies the remaining allegations contained in Paragraph 16 of the Plaintiff's Action for Declaratory Judgment.

17. Admitted in part, denied in part. PA Coach admits only that Governor Wolf issued an order closing Pennsylvania's primary and secondary schools for the remainder of the 2019–2020 school year on or around April 9, 2020. PA Coach denies any suggestion that it did not fully comply with its obligations to provide all of the District's Regular Bussing Services for the 2019–2020 school year. PA Coach denies the remaining allegations contained in Paragraph 17 of the Plaintiff's Action for Declaratory Judgment.

18. Denied as stated. The District had no Regular Bussing Services needs from March 13, 2020 through the end of the 2019–2020 school year. Accordingly, PA Coach did not provide any bussing services to the District for that period of time. Nevertheless, PA Coach fully upheld its obligation to provide the District with all of its Regular Busing Services needs for the 2019–2020 school year. PA Coach denies the remaining allegations contained in Paragraph 18 of the Plaintiff's Acton for Declaratory Judgment.

19. Denied as stated. PA Coach upheld its obligations to provide Regular Bussing Services to the District for the entire pendency of the 2019–2020 school year.

20. Denied. The Transportation Agreement provides:

1. **SERVICES.** Contractor does hereby agree to exclusively provide such transportation services as required by the McKeesport Area School District as follows:

A. Regular transportation, grades K thru 12 students, to and from McKeesport Area School District facilities and/or designated non-public school facilities for all resident pupils from their designated residential pick-up points to their designated destinations, and return of such pupils to their drop-off points in the afternoon according to a regular schedule and along regular routes established by the Contractor with the cooperation and approval of the School District.

...

Transportation Agreement at § 1(A). In exchange for the Regular Bussing Services under Section 1(A), the District's **yearly bulk rate** is \$2,223,487.67. Transportation Agreement Ex. A. The bulk rate is not calculable by a daily rate, nor did the parties elect to permit a pro-rated deduction in the yearly bulk rate if the number of school days decreased to below 180. To the contrary the Transportation Agreement specifically states that: "The yearly bulk rate (as defined in Exhibit 'A') is for unlimited student transportation services to any and all schools located within Allegheny County. This rate is based on a 180 day school year or less. If there is ever an *extension* of the school year, the additional service will be billed a prorated rate. . . ." Transportation Agreement Ex. A (emphasis added). In short, the Transportation Agreement is a requirements contract that obligates PA Coach to provide the District with all of its requirements for Regular Bussing Services for the 2019–2020 school year — an obligation it upheld to the fullest. *See* 2 Corbin on Contracts § 65 (2020). The Transportation Agreement does not permit the District to decrease the yearly bulk payment by prorating the services among the number of school days where the school year is fewer than 180 days, as is the case here. By agreeing to a requirements contract, the parties allocated the risk of a shortened school year with decreased bussing requirements. That the District must now bear that risk is no basis for declaratory or other injunctive relief. Accordingly, the District is obligated to pay the full annual bulk rate for the Regular Bussing Services. PA Coach

denies the remaining allegations contained in Paragraphs 20 of the Plaintiff's Declaratory Judgment.

21. Denied as stated. PA Coach has fully complied with its obligation to provide the District with all of its Regular Bussing Services pursuant to the requirements contract between them, *i.e.*, the Transportation Agreement. PA Coach merely seeks that the District reciprocally respect its contractual obligations by paying PA Coach in full. PA Coach denies the remaining allegations contained in Paragraph 21 of the Plaintiff's Action for Declaratory Judgment.

22. Denied. The public's interest would be disserved by altering the terms of the Transportation Agreement, after the fact, as the District attempts to do. The public has an interest in the certainty of contractual obligations through enforcement of their plan terms. Additionally, as described below, Act 13 specifically authorizes funds to be paid to school contractors even when services were not provided. PA Coach denies the remaining allegations contained in Paragraph 22 of the Plaintiff's Action for Declaratory Judgment.

23. Admitted in part and denied in part. PA Coach admits only that Act 13 was enacted on or about March 27, 2020. PA Coach denies that Act 13 is applicable to the parties' obligations at issue under the Transportation Agreement. PA Coach denies the remaining allegations contained in Paragraph 23 of the Plaintiff's Action for Declaratory Judgment.

24. Denied as stated. Act 13 is inapplicable to the parties' obligations under the Transportation Agreement. PA Coach denies the remaining allegations contained in Paragraph 24 of the Plaintiff's Action for Declaratory Judgment.

25. Denied. Subsection (l) of Act 13 is inapplicable to the parties' obligations under the Transportation Agreement. It provides that:

(1) Each school entity *may renegotiate* a contract for school bus transportation services *to ensure contracted personnel and fixed*

costs including administrative and equipment, are maintained during the period of school closure. During the period of school closure, the school bus transportation contractor shall submit weekly documentation to the school entity that its complement levels remain at or above the level on March 13, 2020 in order to continue being paid.

(2) Notwithstanding any other provision of this act, if a school entity continues to pay a school bus transportation contract or operates its own school bus transportation, the school entity shall be eligible for reimbursement from the Department of Education at a rate the school entity would have received had the pandemic of 2020 not occurred, had the minimum instruction days requirement not been waived under subsection (b)(1) or had the Secretary of Education not taken action under subsection (b)(2).

24 P.S. § 1501.8(1) (emphasis added). Subsection (1) of Act 13 authorizes school districts, such as the District, to renegotiate transportation agreements only for the limited purpose of ensuring that personnel and costs “are maintained during the period of school closure.” Because the Transportation Agreement between the parties is a requirements contract, the District was independently obligated to pay PA Coach in full for the yearly bulk rate for Regular Bussing Services, *i.e.*, maintaining its transportation costs during the period of school closure. Therefore, Act 13 did not provide the District with authority to renegotiate the Transportation Agreement between the parties, much less dictate new conditions of payment or contract rates. Even if it did provide such authority, the District did not utilize it because the parties did not renegotiate the Transportation Agreement. Act 13 is inapplicable in this instance. PA Coach denies the remaining allegations contained in Paragraph 25 of the Plaintiff’s Action for Declaratory Judgment.

26. Denied. Subsection (1) of Act 13 is inapplicable to the Transportation Agreement between the parties for the reasons set forth above. The District misconstrues the language of subsection (1)(1) in Paragraph 26 of its Action for Declaratory Judgment that “During the period of school closure, the school bus transportation contractor shall submit weekly documentation to

the school entity that its complement levels remain at or above the level on March 13, 2020 in order to continue being paid” as a categorical mandate that all school districts who pay bus transportation contractors during the period of school closures must require the Demanded Documentation as a condition of payment. Such an interpretation is inherently flawed as it completely ignores the context in which the legislature passed Act 13, including the language immediately preceding it in the School Code. The quoted language immediately follows the statement that school districts *may renegotiate* for the limited purpose of maintaining fixed costs, a permissive standard. When read with the preceding language of subsection (l)(1), the directive to school districts to require the Demanded Documentation as a condition of payment is clearly meant to apply *only* to school districts that chose to renegotiate bus transportation agreements to ensure fixed costs through the school closure under subsection (l)(1). For the reasons set forth above, Act 13 did not authorize the District to renegotiate its Transportation Agreement in this instance because it was independently obligated to maintain its payments of the yearly bulk rate to PA Coach. Even if it did, the District did not renegotiate its Transportation Agreement. Accordingly, the District is not authorized or required by subsection (l)(1) to condition its payments on receipt of the Demanded Documents; the District has cited no applicable authority that permits it to renegotiate or impose additional unilateral requirements on the PA Coach as it so attempts to do. PA Coach denies the remaining allegations contained in Paragraph 26 of the Plaintiff’s Action for Declaratory Judgment.

27. Admitted in part, denied in part. PA Coach denies that the District’s reimbursable transportation costs from the government is relevant to its contractual obligation under the Transportation Agreement to pay PA Coach for the yearly bulk rate for all of its Regular Bussing Services needs for the 2019–2020 school year, which PA Coach provided in full. PA Coach

admits, however, that Subsection (1)(2) of Act 13 allows the District to receive reimbursement from the government for its transportation costs provided that it makes its contractually required payments to PA Coach. PA Coach denies the remaining allegations contained in Paragraph 27 of the Plaintiff's Action for Declaratory Judgment.

28. The statement of Representative Jesse Topper referenced in Paragraph 28 of the Plaintiff's Action for Declaratory Judgment speaks for itself. Furthermore, Representative Topper's statement speaks to his interpretation of the purpose of Act 13. It is not a statement of authority and it should not be treated as such.

29. Denied as stated. On several occasions, the District communicated its *post hoc* demands for documentation as a condition of payment under the Transportation Agreement, something not required by Act 13.

30. Admitted. PA Coach denies that the allegations contained in Paragraph 30 are relevant or have any bearing on this dispute whatsoever.

31. Denied as stated. Act 13 does not require PA Coach to provide documentation to the District under these circumstances.

32. Paragraph 32 is a legal conclusion to which no response is necessary; to the extent one is required, denied. PA Coach denies that the allegations contained in Paragraph 32 are relevant or have any bearing on this dispute whatsoever.

33. Denied. Furthermore, the averments contained in Paragraph 33 are vexatious and intended to harm the image of PA Coach as an upstanding employer that continues to contribute to the economy of Western Pennsylvania, especially during this turbulent time.

34. Denied. PA Coach has fully complied with its obligations to provide the District with its bussing needs pursuant to the Transportation Agreement for the 2019–2020 school year.

PA Coach merely seeks that the District reciprocally respect and comply with its contractual obligation to pay PA Coach the bulk rate under the Transportation Agreement.

35. Denied. PA Coach has fully complied with its obligations to provide the District with its bussing needs pursuant to the Transportation Agreement for the 2019–2020 school year. PA Coach merely seeks that the District reciprocally respect and comply with its contractual obligation to pay PA Coach the bulk rate under the Transportation Agreement.

36. Admitted.

37. Denied as stated. PA Coach merely seeks that the District reciprocally respect and comply with its contractual obligation to pay PA Coach the bulk rate as contracted and to continue their relationship, including continuing to provide bussing services as required by the District for the 2020–2021 school year. After review of various business considerations, PA Coach has no present intention to cease providing the District with bussing services consistent with the Transportation Agreement.

38. PA Coach is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 38; to the extent a further response is required, denied. PA Coach has no present intention to cease providing the District with bussing services consistent with the Transportation Agreement. The District is not at risk of imminent irreparable harm.

39. Denied. The District does not need to find another school bussing services as PA Coach seeks to continue to provide bussing services to the District for the 2020–2021 school year consistent with the Transportation Agreement. Furthermore, the District is contractually obligated to receive its requirements for bussing services from PA Coach; accordingly, any contract with another bussing service would be a material breach of the Transportation Agreement with PA Coach.

40. Denied as stated. The District has filed the instant action seeking relief in the form of a declaratory judgment and preliminary and permanent injunctive relief. For the above-mentioned reasons, including that Act 13 is inapplicable to the parties' contractual obligations and that PA Coach fully intends to continue to perform its obligations consistent with the Transportation Agreement and merely asks for reciprocal treatment from the District, there is no imminent harm and there are no non-economic damages to predicate the *extraordinary* remedy of an injunction, much less a permanent injunction.

Count I – Declaratory Judgment
(Plaintiff v. Defendant)

41. PA Coach incorporates its responses to the preceding paragraphs of the District's Action for Declaratory Judgment as if they were fully set forth herein.

42. Admitted in part and denied in part. PA Coach admits only that the District filed this action seeking a declaratory judgement under 42 Pa. C.S. § 7531, *et seq.*, regarding the parties' respective rights under the Transportation Agreement. PA Coach denies that the District is entitled to renegotiate the Transportation Agreement through litigation, including imposing unilateral conditions on PA Coach or altering the parties' consideration in a *post hoc* manner.

43. Admitted in part and denied in part. PA Coach admits only that the District filed this action seeking a declaratory judgement under 42 Pa. C.S. § 7531, *et seq.*, regarding the parties' respective rights under the Transportation Agreement. PA Coach denies that the District is entitled to renegotiate the Transportation Agreement through litigation, including imposing unilateral conditions on PA Coach or altering the parties' consideration in a *post hoc* manner.

44. Denied.

45. Admitted.

46. Denied.

Count II – Injunctive Relief
(Plaintiff v. Defendant)

47. PA Coach incorporates its responses to the preceding paragraphs of the District's Action for Declaratory Judgment as if they were fully set forth herein.

48. Admitted in part, denied in part. PA Coach admits only that the District is seeking injunctive relief in this action. PA Coach denies that the District is entitled to injunctive relief, including because PA Coach fully intends to continue to perform its obligations consistent with the Transportation Agreements and merely asks for reciprocal treatment from the District. There is no imminent harm and there are no non-economic damages to predicate the *extraordinary* remedy of an injunction, much less a permanent injunction.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

WHEREFORE, Defendant Pennsylvania Coach Lines, Inc. respectfully requests that this Court deny the request of the Plaintiff, McKeesport Area School District, for an injunction, and award any other such relief as this Court deems just and proper.

PA Coach's Counterclaim for Breach of Contract

The District's Obligations Under the Transportation Agreement

1. PA Coach and the District are parties to a Transportation Agreement dated December 5, 2018. (See Exhibit A to Declaratory Judgment Action.)

2. Pursuant to Section 2 and Exhibit A of the Transportation Agreement, the District agreed to pay PA Coach a yearly bulk rate for all transportation services, with payments to be made in equal amounts over the course of ten (10) months each year. (*Id.*)

3. Exhibit A to the Transportation Agreement provides the annual bulk rate to be paid “for unlimited student transportation services to any and all schools located within Allegheny County.” (*Id.* at Exhibit A.)

4. Bulk rate contracts are typical in the school bus transportation industry, the idea being that the District pays one set rate for its transportation needs, regardless of whether its needs vary, except and unless the agreement expressly provides otherwise.

5. Exhibit A to the parties’ Transportation Agreement provides that the bulk rate “is based on a 180 day school year or less” and that “[i]f there is ever an extension to the school year, the additional service will be billed at a prorated rate.” (*Id.*)

6. Exhibit A also provides that:

If the District fails to adhere to the [bulk rate] guidelines, and as a result, additional vehicles need to be added, the District will be charged for said vehicles. However, there will be no cost for additional vehicles billed under the conditions of the Bulk Rate Guidelines . . . unless, or until, the total number of vehicles exceeds the number of vehicles provided in the 2018-2019 school year, with the “Exceptions” of additional vehicles that fail to adhere to the bulk rate conditions.

(*Id.*) According to the pricing matrix agreed to by the parties in Exhibit A, the additional charges for the 2020-2021 school year are \$299.82 for each additional school bus, and \$225.57 for each additional school van. (*Id.*)

7. Additionally, the parties agreed in Exhibit A that “special transportation requests made by the District will be billed separately from the bulk rate,” and that such requests “include but are not limited to: exclusive ride requirements due to physical and/or mental health problems,

behavioral issues, parental concerns or unspecified District requests,” or from “road closures or detours.” (*Id.*)

8. The Transportation Agreement contains no corollary provisions regarding decreased needs of the District, such as a shortened school year.

9. The bulk rate for the 2019-2020 school year was \$2,223,487.67. (*Id.*)

10. The parties negotiated certain contractual provisions requiring the District to share in the cost of certain fuel price increases. (See Exhibit A, Section 21.)

The District Breaches the Transportation Agreement by Failing to Make Payments

11. For the 2019-2020 school year, the District made its required monthly payments, based on the bulk rate, from September 2019 through March 2020.

12. However, the District failed to make its required monthly payments for April, May, and June 2020, creating an outstanding balance owed to PA Coach of \$667,046.31.

13. Even though PA Coach did not provide its typical transportation services to the District in Spring 2020 as a result of the Governor’s Order, PA Coach remained ready and willing to perform under the contract.

14. In fact, PA Coach reasonably believed, until April 9, 2020 when Governor Wolf closed the schools for the remainder of the school year, that the District would call upon it to resume services at any moment; as a result, it maintained its personnel and equipment at the ready.

15. PA Coach demanded payment of the \$667,046.31 from the District on several occasions, but the District refused.

16. The District receives reimbursement from the Commonwealth for its transportation costs, so there is no reason for the District to withhold payment from PA Coach.

17. Act 13 specifically provides that, with respect to the 2019-2020 school year, the District would be reimbursed at its regular rate if it continued to pay PA Coach pursuant to the parties' contract. 24 Pa. Stat. § 15-1501.8(1)(2).

18. Upon information and belief, the District received over \$1.8 million in funding from the CARES Act's Education Stabilization Fund and the Elementary and Secondary School Emergency Relief (ESSER) Fund in return for agreeing, under the CARES Act, to continue to paying its contractors during any school closure to the greatest extent practicable.

19. Moreover, as PA Coach reminded the District to no avail, the District accepted the risk of its transportation needs decreasing—even to zero—by agreeing to a bulk rate in the contract.

20. Unlike certain provisions requiring the District to make additional payments if its needs *increase*, the Transportation Agreement contains no provisions excusing the District from making the continued bulk rate payments if its needs *decrease*.

The District Threatens Additional Imminent Breach with its New Demands

21. On August 14, 2020, the same day the District filed its Motion for Preliminary Injunction claiming, *inter alia*, that PA Coach must provide certain documents to the District in the face of the District's outstanding balance of \$667,046.31, the District notified PA Coach of another breach of the Transportation Agreement.

22. Specifically, the District changed the fundamental nature of the parties' contract by demanding that PA Coach *double* its transportation services for the upcoming 2020-2021 school year, as a result of purported social distancing requirements.

23. The District is requiring PA Coach to provide double busing services for two separate school sessions each day.

24. Upon information and belief, doubling the transportation requirements is not required by the Commonwealth; it is a choice made by the District.

25. Providing the services now demanded by the District will nearly double PA Coach's costs for driver pay, fuel, mechanic services, logistics and operational support, and more.

26. The District refuses to pay for these new and increased services.

27. The parties negotiated terms in the Transportation Agreement requiring additional payment to PA Coach when the District requires more services, such as when "additional vehicles need to be added" and "the total number of vehicles exceeds the number of vehicles provided in the 2018-2019 school year," "special transportation requests made by the District will be billed separately from the bulk rate," and "[i]f there is ever an extension to the school year, the additional service will be billed at a prorated rate." (*See* Exhibit A to Exhibit A to the Declaratory Judgment Action.)

28. A demand to provide double the busing is a special transportation request for which the District expressly agreed to pay a separate and additional rate from the bulk rate, *i.e.*, \$299.82 for each additional school bus, and \$225.57 for each additional school van. (*Id.*)

29. This fundamental change in the District's needs is *not* one that the parties contemplated when they allocated risk in agreeing to a bulk rate—it is not about changes in the number of students in the district requiring transportation, the school calendar, or the like.

30. The District's sudden, additional demands are a *choice* to implement measures—announced, interestingly, very day it filed litigation papers against PA Coach—that change the very basis of the Agreement.

31. Exhibit A of the parties' Transportation Agreement specifically contemplates the District paying a set price for additional buses and services, *i.e.*, if additional vehicles need to be

added and the total number of vehicles exceeds that provided in the 2018-2019 school year, the District will be charged for said vehicles. (*Id.*)

32. Without these additional payments, doubling the costs and work for one party, without any attendant burden on the other party, is simply untenable.

33. Upon information and belief, the District will be eligible for reimbursement from the Commonwealth at the typical percentage, based on the annual bulk rate, making the situation even more impracticable.

34. Moreover, the District's actions have a perverse effect: if it does not pay the outstanding \$667,046.31 balance, and causes PA Coach's costs to double in a few weeks without providing additional payment for these additional services, PA Coach's business will be unable to survive.

35. As the District conceded in its Declaratory Judgment Action, it is unable to contract with another service provider before the start of the 2020-2021 school year. (Declaratory Judgment Action, para. 39.)

36. The District's stated refusal to pay for the additional bussing it is now demanding will not only breach the Transportation Agreement, but they will put PA Coach out of business and the District's children will not have transportation to school.

37. Unless the District's actions are enjoined, PA Coach will suffer irreparable harm and injury to its business that cannot be compensated by monetary damages.

38. Greater injury will result to PA Coach (and the District's students) than to the District, if an injunction is not granted.

39. An injunction would properly restore the parties to the status they enjoyed immediately before the District's plan of requiring PA Coach to provide double the service.

40. An injunction preventing the District from requiring double services without any additional payment to PA Coach is reasonably suited to abate the District's conduct.

Count I – Breach of Contract
Pennsylvania Coach Lines, Inc. v. McKeesport Area School District

41. PA Coach incorporates by reference all of the preceding paragraphs of this Counterclaim as if fully set forth herein.

42. The Transportation Agreement is a valid, binding contract between the parties.

43. The District breached the Transportation Agreement by failing to make the required bulk rate payments for April, May, and June 2020, creating an outstanding balance owed to PA Coach of \$667,046.31.

44. The District will imminently breach the Transportation Agreement in several weeks by changing the fundamental nature of the Transportation Agreement by demanding double the services but refusing to pay PA Coach for such additional services, including the \$299.82 per-bus payment and the \$225.57 per-van payment outlined in Exhibit A to the parties' contract.

45. PA Coach has been harmed by the District's failure to pay the \$667,046.31 balance owed to PA Coach from Spring 2020.

46. PA Coach will be irreparably harmed by the District's requirement that it provide double the service and incur nearly double the costs for the upcoming 2020-2021 school year, because requiring PA Coach to perform under such circumstances will put it out of business.

47. A preliminary injunction ordering the District to pay for the extra services it requests for the 2020-2021 school year, *i.e.*, \$299.82 for each additional school bus, and \$225.57 for each additional school van, is the narrowest relief that prevents irreparable harm to PA Coach.

48. Such preliminary injunctive relief is necessary to preserve the status quo that existed prior to the District's unilateral, fundamental change to the Transportation Agreement.

49. PA Coach has no adequate remedy at law for the aforementioned conduct by District.

WHEREFORE, PA Coach respectfully requests that this Court enter judgment in its favor on its breach of contract claim against the District, (i) awarding PA Coach monetary damages in the amount of \$667,046.31 for the District's breach of the parties' Transportation Agreement, and (ii) issuing a preliminary injunction requiring that the District pay for the extra services it requests for the 2020-2021 school year, *i.e.*, \$299.82 for each additional school bus, and \$225.57 for each additional school van, in addition to the bulk rate agreed to in the parties' Transportation Agreement, and grant any other such relief as this Court deems just and proper.

Respectfully submitted,

ECKERT SEAMANS CHERIN & MELLOTT,
LLC

By: /s/ Ray F. Middleman

Ray F. Middleman, Esq.
Pa. I.D. No. 40999
Lindsey Conrad Kennedy, Esq.
Pa. I.D. No. 318318

600 Grant Street, 44th Floor
Pittsburgh, Pennsylvania 15219
(412) 566-6000
rmiddleman@eckertseamans.com
lkennedy@eckertseamans.com

*Counsel for Defendant, Pennsylvania Coach Lines,
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant's Response to Declaratory Judgment Action and Counterclaim for Damages and Preliminary Injunctive Relief was served by email on this 17th day of August, 2020, upon the following:

Krisha A. DiMascio, Esq.
Joseph R. Dalfonso, Esq.
Dodaro, Matta and Cambest, P.C.
Southpointe Town Center
1900 Main Street, Suite 207
Canonsburg, PA 15317
kdimascio@law-dmc.com
jdalfonso@law-dmc.com

/s/ Ray F. Middleman
Ray F. Middleman

*Counsel for Defendant, Pennsylvania Coach
Lines, Inc.*