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Office of Chief Counsel
June 3, 2026
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June 3, 2026

Via E-Filing

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: *Yookel, Inc. and B&J Group, Inc.— Petition for Declaratory Order*, FD No. 36930

Dear Chief of Case Administration:

Attached for filing in the above-referenced docket is CSX Transportation, Inc.'s Reply in Opposition to the Petition for Declaratory Order.

Thank you for your assistance in this matter. Please contact me if you have any questions or need further information.

Respectfully Submitted,

/s/ R. Patrick Dover
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Counsel for CSX Transportation, Inc.

Enclosures

cc: Parties of Record

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 36930

**YOOKEL, INC. AND B&J GROUP, INC.
— PETITION FOR DECLARATORY ORDER**

**REPLY OF CSX TRANSPORTATION, INC.
IN OPPOSITION TO PETITION FOR DECLARATORY ORDER**

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Dated: June 3, 2026

BEFORE THE SURFACE TRANSPORTATION BOARD

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**YOOKEL, INC. AND B&J GROUP, INC.
— PETITION FOR DECLARATORY ORDER**

**REPLY OF CSX TRANSPORTATION, INC.
IN OPPOSITION TO PETITION FOR DECLARATORY ORDER**

CSX Transportation, Inc. (“CSXT”), by its undersigned counsel, respectfully submits this Reply in Opposition to the Petition for Declaratory Order (“Petition”) filed May 14, 2026 by Yookel, Inc. (“Yookel”) and B&J Group, Inc. (“B&J”) (together, “Petitioners”). The Petition should be denied. It is an improper attempt to use the Board’s declaratory-order procedure to re-litigate, in a new forum and years later, issues already resolved by the federal courts and to disturb the settled demurrage framework established by the Board. Petitioners’ claims are foreclosed by prior adjudication, inconsistent with governing regulations, and unsupported as a matter of law.

I. Petitioners’ Claims Lack Merit and are an Impermissible Collateral Attack

As an initial matter, the Petition is an impermissible collateral attack on a final judgment and is, in any event, an inappropriate vehicle for declaratory relief. The Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. Neither is present here. The “controversy” Petitioners describe has already been decided and the supposed “industry-wide” confusion they invoke does not exist.

Petitioners present two claims, neither of which has merit. The first, addressed to 49 C.F.R. § 1333.3, contends that CSXT’s written electronic notice of CSXT Tariff 8100—sent directly to

B&J's designated email address and indisputably received—fails the rule's "actual notice" requirement because the notice does not include a narrative explanation of Consolidated Rail Corporation's ("Conrail") status as CSXT's agent in the Philadelphia/South Jersey Shared Asset Area. That is not what the rule requires; it requires "actual notice of the demurrage tariff," which CSXT provided. Moreover, Tariff 8100 expressly states that it applies "to all transportation services provided by CSXT and all railcars while on our network *and the tracks of Conrail* while under a CSXT waybill." CSXT Tariff 8100 at 3 (emphasis added), *see* Exhibit C to the Petition.

The second claim—that demurrage cannot accrue because the cars are held on tracks within Fairless Yard that are located on real property owned by NorthPoint Development—similarly fails. Conrail's operations at Morrisville and Fairless Yards are conducted for the benefit of CSXT and Norfolk Southern Railway Company ("NS"). *See CSX Corp.—Control—Conrail Inc.*, 3 S.T.B. 196 (1998). The Federal District Court for the Eastern District of Pennsylvania expressly so held in *CSX Transportation, Inc. v. B&J Group, Inc.*, 381 F. Supp. 3d 438 (E.D. Pa. 2019), on materially identical facts. And because Conrail is not separately seeking demurrage, Petitioners cannot complain of a "double-dipping" scenario.

The Board should decline to institute a proceeding or, in the alternative, deny the Petition on the merits. To the extent the Board institutes a proceeding, it should establish a procedural schedule with an appropriate discovery period so that CSXT can fully respond to Petitioners' claims.

II. Background

When a CSXT customer ships to B&J, CSXT transports the car under its waybill to Morrisville Yard, which is operated by Conrail. The Fairless Yard tracks at issue (RA through RA-4) are designated for Conrail operations and are used for staging cars to relieve congestion in Morrisville Yard until the receiver (here, B&J) orders the car in for placement at its facility.

On these exact operating facts, the U.S. District Court for the Eastern District of Pennsylvania granted CSXT summary judgment against B&J for \$89,575 in demurrage, plus late fees, attorney’s fees, and interest, and entered final judgment on January 28, 2020. *CSX Transp., Inc. v. B&J Grp., Inc.*, 381 F. Supp. 3d 438 (E.D. Pa. 2019).¹ The Court held that “CSX is the ‘serving rail carrier’ required under the federal regulations to assess the charges,” *id.* at 441–42; that Morrisville Yard and Fairless Yard are part of the SAA and are “tracks owned or operated by Conrail” for which CSXT has assessment authority, *id.* at 440 & n.26; and that B&J had *actual notice* of CSXT’s tariff because B&J had access to ShipCSX under an account maintained by its Chief Operating Officer, CSXT was identified on the bills of lading, and the charges were disclosed to B&J, *id.* at 442–43. The Court further held that “Conrail is an agent, or affiliate, of CSX,” *id.* at 442, and that CSXT Tariff 8100 (incorporating Tariff 4049) governed demurrage on cars held within the SAA.

The Second Circuit, in turn, rejected Yookel’s parallel state-law theory against U.S. Steel—including Yookel’s argument that it could not have known demurrage would apply—explaining that “demurrage fees are governed by federal laws and regulations to which Yookel had ready access.” *Yookel, Inc. v. U.S. Steel Corp.*, No. 20-CV-4513 (KAM) (CLP), 2023 U.S. App. LEXIS 9562, at *8 (2d Cir. Apr. 21, 2023) (citing 49 C.F.R. § 1333.3).²

¹ True and correct copies of the District Court’s decision and final judgment are collectively attached hereto as Exhibit A.

² A true and correct copy of the Second Circuit’s summary order is attached hereto as Exhibit B.

III. Argument

A. The Petition Is an Impermissible Collateral Attack on a Final Federal Judgment and Does Not Warrant the Exercise of the Board's Discretion.

The Board's authority to issue declaratory orders is discretionary. 5 U.S.C. § 554(e); 49 U.S.C. § 1321. The Board considers, among other factors, ripeness, significance, and the existence of alternative remedies. *Delegation of Authority—Declaratory Order Proceedings*, 5 I.C.C.2d 675, 767 (1989). None of those factors favors institution here.

The dispute is not ripe; it is past. The “controversy” Petitioners describe—whether CSXT may assess demurrage on B&J for private cars held on Conrail-operated track within the Philadelphia/South Jersey SAA pending B&J's order-in—has already been adjudicated. Petitioners' attempt to frame later invoices as a “different time period” fails to cure their ripeness issue, because the regulatory and contractual framework, the parties, and the operating realities are identical.

With respect to significance, the SAA framework has been in place for more than 25 years. The only entity that has ever asserted “Conrail confusion” with respect to demurrage at this location is B&J—and only after litigating the issue fully in federal court. Petitioners cannot credibly claim confusion when (i) they have access to track every car on ShipCSX under a CSXT login, (ii) the bills of lading identify CSXT as the line-haul carrier, (iii) Tariff 8100 expressly applies to all railcars on Conrail tracks under a CSXT waybill, and (iv) they have been unsuccessfully litigating this exact issue with CSXT and others for years.

Adequate remedies exist and have been used. Petitioners had—and used—federal-court remedies, both as a defendant (B&J) and as a plaintiff (Yookel). The declaratory-order process is not a vehicle for unsuccessful litigants to obtain a do-over.

Res judicata and collateral estoppel bar B&J's claims. As to B&J, the elements of issue preclusion are satisfied: the questions of (i) CSXT's status as the serving carrier within the SAA,

(ii) Conrail's role as CSXT's agent, (iii) the adequacy of CSXT's notice, and (iv) the applicability of CSXT Tariffs 8100 and 4049 to cars held at Morrisville and Fairless Yards were all actually litigated and necessarily decided in *CSX v. B&J Group*. Petitioners' purported distinctions—that the Board has independent authority over its demurrage rule, that NS and Conrail were not parties, and that different invoices are at issue—are unavailing. The Board's independent regulatory authority does not undo a federal-court judgment; the absence of NS and Conrail is irrelevant because CSXT was a party; and the operative legal rule, operating facts, and parties' relationship are identical.

B. CSXT Is the “Serving Rail Carrier” Under 49 C.F.R. § 1333.2, and Its Direct Written Notice to B&J Satisfied 49 C.F.R. § 1333.3.

49 C.F.R. § 1333.2 provides that “[d]emurrage shall be assessed by the serving rail carrier, *i.e.*, the rail carrier providing rail cars to a shipper at an origin point or delivering them to a receiver at an end-point or intermediate destination.” The Board itself has determined—and the courts have affirmed—that within the SAAs, CSXT is that carrier and Conrail's deliveries are made “as agent” for CSXT. *Conrail Control Decision*, 3 S.T.B. at 226, 228; *B&J*, 381 F. Supp. 3d at 441–42.

49 C.F.R. § 1333.3 requires that “the carrier ha[ve] provided that person with actual notice of the demurrage tariff providing for such liability prior to the placement of the rail cars” and that “[t]he notice required by this section shall be in written or electronic form.” 49 C.F.R. § 1333.3. CSXT plainly satisfied that requirement. Petitioners argue that the notice was inadequate because it did not “mention Conrail.” That is not the rule. Section 1333.3 requires notice “of the demurrage tariff.” In any event, Section 1.1 of CSXT Tariff 8100 clearly states that “[t]he Terms and Conditions of Service published here apply to all transportation services provided by CSXT and all railcars while on our network *and the tracks of Conrail* while under a CSXT waybill.” CSXT Tariff 8100 at 3 (emphasis added), attached as Exhibit C to the Petition.

Petitioners argue that Conrail is a “common carrier” under 45 U.S.C. § 741(b) and therefore must itself provide § 1333.3 notice. That argument conflates two distinct concepts. Conrail is a statutory rail carrier subject to the Board’s jurisdiction, but within the SAAs Conrail does not hold itself out for hire to shippers and does not maintain a public tariff. *Conrail Control Decision*, 3 S.T.B. at 226. The Board has reaffirmed this repeatedly. *See, e.g., Conrail Abandonment of the Weehawken Branch—in Hudson Cty., N.J.*, AB-167 (Sub-No. 1067N), slip op. at 5 (STB served Mar. 12, 2001) (Conrail “generally owns and maintains the lines within the SAAs for the exclusive benefit of NS and CSXT and, as contemplated by the SAA Agreements, provides rail service to most customers within the SAAs as NS’ and CSXT’s agent.”). Because Conrail acts only as CSXT’s agent for CSXT-account traffic at this location, notice provided by the principal (CSXT) is notice from “the carrier” within the meaning of § 1333.3.

C. Demurrage and Private-Car Storage Charges Are Properly Assessed for Private Cars Held at Morrisville and Fairless Yards Pending B&J’s Order-In.

The governing principle from *Ex Parte 707* is that demurrage applies to private cars “when such privately owned cars are held on railroad property.” *Demurrage Liability*, EP 707, slip op. at 15 (STB served Apr. 11, 2014). The Board explained that the rationale is the railroad’s “use of its assets (i.e., the space on its track or at its yards).” *Id.* That standard is fully satisfied here. The relevant Fairless Yard tracks (RA through RA-4) are operated by Conrail. Conrail’s operating rights make those tracks railroad-operated assets for purposes of *Ex Parte 707* and § 1333.2. *See B&J Group*, 381 F. Supp. 3d at 441–42 (finding that Fairless Yard tracks are part of the SAA, and CSXT—through the SAA framework—has the right to assess demurrage on cars held there).

Petitioners invoke *R.R. Salvage & Restoration, Inc.*, NOR 42102 (STB served July 19, 2010), and *Indiana Harbor Belt R.R. Co. v. Jacob Stern & Sons*, 37 F. Supp. 690 (N.D. Ill. 1941), for the proposition that demurrage cannot be assessed on private cars on private track. That

principle has no application here. The relevant tracks in Fairless Yard are operated by Conrail for railroad purposes—staging, classification, and switching of cars to and from the Class I network. NorthPoint’s ownership of the underlying real estate is irrelevant. As the Board made clear in Ex Parte 707, the operative inquiry is whether the railroad is being deprived of the use of its operational assets—and here, every minute B&J leaves a car on the relevant tracks in the Fairless Yard is a minute Conrail (acting as agent for CSXT) cannot use that yard track for other staging and switching for other CSXT and NS customers. That is the precise harm demurrage is designed to address. *See N. Am. Freight Car Ass’n v. STB*, 529 F.3d 1166, 1176 (D.C. Cir. 2008). Petitioners’ “common area” maintenance payments do not change the analysis; those payments cover costs of maintaining rail infrastructure; they do not grant an operational interest in the track. The operational interest belongs to Conrail.

IV. Conclusion

For the foregoing reasons, CSXT respectfully requests that the Board (i) decline to institute a declaratory-order proceeding on the grounds that the controversy has already been adjudicated, alternative remedies were available and used, and the issues are not of systemic significance; and (ii) in the alternative, deny the Petition on the merits and confirm that (a) CSXT is the “serving rail carrier” under 49 C.F.R. § 1333.2 for traffic moving for its account within the Philadelphia/South Jersey SAA; (b) CSXT’s direct written electronic notice of CSXT Tariff 8100, sent to B&J’s designated email address, satisfies the “actual notice” requirement of 49 C.F.R. § 1333.3 without any requirement to describe agency relationships among carriers; and (c) demurrage and private-car storage charges properly accrue on private cars held at Morrisville and Fairless Yards pending order-in by B&J, where Conrail operates the tracks.

Respectfully submitted,

/s/ R. Patrick Dover

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Counsel for CSX Transportation, Inc.

Dated: June 3, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing *Reply of CSX Transportation, Inc. in Opposition to Petition for Declaratory Order* to be served electronically or by first-class mail, postage pre-paid, on counsel for Petitioners and counsel for the additional rail carriers named in the Petition, at the following addresses:

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/s/ R. Patrick Dover

R. Patrick Dover

Counsel for CSX Transportation, Inc.

June 3, 2026

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CSX TRANSPORTATION, INC.

Plaintiff,

v.

B&J GROUP, INC.

Defendant.

CIVIL ACTION NO. 17-5296

JUDGMENT ORDER

AND NOW, this 28th day of January 2020, it is hereby **ORDERED** that the **Judgment is entered in favor of** Plaintiff CSX Transportation, Inc., and **against** Defendant B&J Group, Inc., in the following amounts:

\$ 89,575.00 in the principal balance owed
\$ 8,957.50 in late fees
\$ 24,102.56 in finance charges
\$227,430.00 in attorneys' fees
\$ 3,914.63 in costs

for a total Judgment of **\$353,979.69**.

It is further **ORDERED** that the Clerk is directed to **CLOSE** the case.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CSX TRANSPORTATION, INC.

Plaintiff,

v.

B&J GROUP, INC.

Defendant.

CIVIL ACTION NO. 17-5296

MEMORANDUM OPINION

Rufe, J.

May 31, 2019

Plaintiff CSX Transportation Inc., an interstate rail common carrier, has sued Defendant B&J Group, Inc., which operates a warehouse at which it receives rail cars containing freight for storage by its clients. The parties have filed cross-motions for summary judgment on the issue of whether CSX has the authority to charge B&J Group demurrage fees associated with the storage of private railroad cars on railroad property.¹ B&J Group does not dispute the accuracy of the charges, only whether CSX can impose them. For the reasons explained below, the Court will grant CSX's motion and deny that of B&J Group.

I. LEGAL STANDARD

A court will award summary judgment on a claim or part of a claim where there is “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”² A fact is “material” if resolving the dispute over the fact “might affect the outcome of the

¹ Demurrage fees are “penalties assessed by railroads when shippers or recipients of freight do not timely return railcars to service after loading or unloading.” *CSX Transp. Co. v. Novolog Bucks Cty.*, 502 F.3d 247, 250 (3d Cir. 2007). The charge of demurrage fees “both compensates rail carriers for the expenses incurred when rail cars are detained beyond a specified period of time (i.e., free time) for loading or unloading, and serves as a penalty for undue car detention to encourage the efficient use of rail cars in the rail network.” 49 C.F.R. § 1333.1.

² Fed. R. Civ. P. 56(a).

suit under the governing [substantive] law.”³ A dispute is “genuine” if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.”⁴

In evaluating a summary judgment motion, a court “must view the facts in the light most favorable to the non-moving party,” and make every reasonable inference in that party’s favor.⁵ Further, a court may not weigh the evidence or make credibility determinations.⁶ Nevertheless, the party opposing summary judgment must support each essential element of the opposition with concrete evidence in the record.⁷ “If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.”⁸ This requirement upholds the “underlying purpose of summary judgment [which] is to avoid a pointless trial in cases where it is unnecessary and would only cause delay and expense.”⁹ Therefore, if, after making all reasonable inferences in favor of the non-moving party, the court determines that there is no genuine dispute as to any material fact, summary judgment is appropriate.¹⁰

The rule is no different where there are cross-motions for summary judgment.¹¹ As stated by the Third Circuit, “[c]ross-motions are no more than a claim by each side that it alone is entitled to summary judgment, and the making of such inherently contradictory claims does not constitute an agreement that if one is rejected the other is necessarily justified or that the

³ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

⁴ *Id.*

⁵ *Hugh v. Butler Cty. Family YMCA*, 418 F.3d 265, 267 (3d Cir. 2005) (citation omitted).

⁶ *Boyle v. Cty. of Allegheny, Pa.*, 139 F.3d 386, 393 (3d Cir. 1998).

⁷ *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986).

⁸ *Anderson*, 477 U.S. at 249–50 (internal citations omitted).

⁹ *Walden v. Saint Gobain Corp.*, 323 F. Supp. 2d 637, 641 (E.D. Pa. 2004) (citing *Goodman v. Mead Johnson & Co.*, 534 F.2d 566, 573 (3d Cir. 1976)).

¹⁰ *Wisniewski v. Johns–Manville Corp.*, 812 F.2d 81, 83 (3d Cir. 1987).

¹¹ *Lawrence v. City of Phila.*, 527 F.3d 299, 310 (3d Cir. 2008).

losing party waives judicial consideration and determination whether genuine issues of material fact exist.”¹²

II. DISCUSSION

Interstate rail carriers “shall compute demurrage charges, and establish rules related to those charges.”¹³ The applicable federal regulations establish who may charge demurrage and who is subject to the charges. As to the former, “[d]emurrage shall be assessed by the serving rail carrier, i.e., the rail carrier providing rail cars to a shipper at an origin point or delivering them to a receiver at an end-point or intermediate destination.”¹⁴ For the latter, “[a]ny person receiving rail cars from a rail carrier for loading or unloading who detains the cars beyond the period of free time set forth in the governing demurrage tariff may be held liable for demurrage if the carrier has provided that person with actual notice of the demurrage tariff providing for such liability prior to the placement of the rail cars.”¹⁵ The carrier and its customers “may enter into contracts pertaining to demurrage, but in the absence of such contracts, demurrage will be governed by the demurrage tariff of the serving carrier.”¹⁶

B&J Group operates within the Morrisville Yard, a private rail facility owned by U.S. Steel Corporation. After cars are delivered to the Morrisville Yard, Consolidated Rail Corporation (“Conrail”) may move the cars to a nearby serving yard, Fairless Yard, to alleviate

¹² *Id.* (internal quotation omitted).

¹³ 49 U.S.C. § 10746.

¹⁴ 49 C.F.R. § 1333.2.

¹⁵ *Id.* § 1333.3.

¹⁶ *Id.* § 1333.2.

congestion at Morrisville Yard.¹⁷ B&J Group contends that CSX has no authority to charge B&J demurrage fees because CSX itself does not own or lease the relevant railroad tracks, which are either owned by Conrail or owned by U.S. Steel and leased to Conrail. CSX maintains that it has obtained the right to assess demurrage on tracks owned or operated by Conrail. The Court agrees with CSX.

In 1998, the Surface Transportation Board approved the acquisition of Conrail by CSX and Norfolk Southern Railway Company (“Norfolk”).¹⁸ In pertinent part, the decision stated:

Shared Assets Areas [“SAAs”] and Operating Agreements. Both [CSX and Norfolk] will be permitted to serve shipper facilities located within the three SAAs (the North Jersey SAA, the South Jersey/Philadelphia SAA, and the Detroit SAA), which will be owned, operated, and maintained by Conrail for the exclusive benefit of [CSX and Norfolk]. [CSX and Norfolk] will enter into an SAA Operating Agreement with [Conrail] in connection with each of the SAAs, and [Conrail] will grant to [CSX and Norfolk] the right to operate their respective trains, with their own crews and equipment and at their own expense, over any tracks included in the SAAs. [CSX and Norfolk] will each have exclusive and independent authority to establish all rates, charges, service terms, routes, and divisions, and to collect all freight revenues, relating to freight traffic transported for its account within the SAAs. Other carriers that previously had access to points within the SAAs will continue to have the same access as before.¹⁹

Once established, the SAAs were to be “used, enjoyed, and operated as fully by [CSX and Norfolk] as if each of them were Conrail.”²⁰ The SAA Operating Agreement dated June 1, 1999, among Conrail, CSX, and Norfolk provides that “the Shared Assets shall be owned,

¹⁷ Decl. of Jonathan Broder, Plff.’s Ex. S [Doc. No. 46-1] at ¶ 10.

¹⁸ *CSX Corp. & CSX Transp., Inc.*, 3 S.T.B. 196, 1998 WL 456510 at *17 (1998).

¹⁹ *Id.* at *14.

²⁰ *Id.* at *16.

operated and maintained by [Conrail] and used by or for the exclusive benefit” of CSX and Norfolk.²¹ The decision further provided that:

Switching Yard Services and other services performed by [Conrail] for either Operator under this Agreement shall be performed as agent for, and for the account of, such Operator. All freight traffic and Railcars handled within the Shared Assets Area, including traffic and Railcars handled by [CSX or Norfolk] . . . and traffic and Railcars handled by [Conrail] [including Switching and Yard Services] shall at all times remain in the waybill, car hire and revenue accounts of either [CSX or Norfolk].²²

Under the SAA Operating Agreement, Conrail has the responsibility to “control the dispatching, scheduling and movement of, and Switching and Yard Services for, all trains”²³ but “shall not participate or appear in any rates, routes or divisions relating to any freight traffic whatsoever to, from and within the [SAA], and shall not be entitled to or responsible for any freight charges relating to such freight traffic.”²⁴ Conrail “shall not quote or establish any rate or service terms applicable to freight transportation services . . . enter into transportation contracts . . . or undertake to perform any for-hire transportation series directly.”²⁵

The Shared Assets are defined in relevant part as all tracks that Conrail “owns, leases or otherwise has the right to operate over” and uses for railway purposes in the SAA.²⁶ The upshot

²¹ Shared Assets Area Operating Agreement for South Jersey/Philadelphia [Doc. 44] at 1.

²² *Id.* at 13.

²³ *Id.* at 14.

²⁴ *Id.* at 13-14.

²⁵ *Id.* at 14.

²⁶ *Id.* at 6. The definition in full states:

“Shared Assets” means all tracks, lands, easements, rights of way, structures, facilities, appurtenances and rights related thereto, which CRC owns leases or otherwise has the right to operate over (including those segments over which CRC or an Operator possess operating rights pursuant to *Section 3(c)*), and which are used for railway purposes in the Shared Assets Area, including the properties, rights, equipment, inventory and supplies, whether owned or leased,

of these agreements is that in the area in question, CSX is the “serving rail carrier” required under the federal regulations to assess the charges.²⁷ Thus, if there is a contract between the parties or applicable tariffs of which B&J Group had notice, then B&J Group is responsible for paying the assessed charges.

There is no contract for demurrage between the parties here, but CSX has two relevant tariffs — a general one (CSX Tariff 8100), and a more specific one that applies to hazardous materials (CSX Tariff 4049).²⁸ The tariffs reference each other and must be considered together.²⁹ Tariff 4049 states that it applies to “CSX Transportation, Inc., and its rail subsidiaries and affiliates.” As discussed above, Conrail is an agent, or affiliate, of CSX. Tariff 8100, as in effect at the relevant time, provided that fees “are applied to Private Cars waiting on a railroad’s tracks; usually for leading, unloading or Shipment Instructions,”³⁰ and that it applied “to all transportation services provided by [CSX] and all railcars while on our network. If your shipment involves interline services, the rules, terms, and conditions of service published by each

described or referred to in Item 3A of Schedule [unclear] (including Attachments I and II) of the Transaction Agreement , but excluding Operator’s Facilities.

Id. at 6-7. B&J Group argues that Section 3(c) does not include the tracks at issue here. But the reference to Section 3(c) is on emphasizing inclusion; it does not exclude other areas, and the Morrisville Yard and Fairless Yard are part of the Shared Assets. *See CSX Transp. Co. v. Novolog Bucks Cty.*, No. 04-4018, 2006 WL 1451280 at *4, 6 (E.D. Pa. May 24, 2006) (discussing CSX and demurrage charges associated with the Fairless Yard and the Morrisville Yard).

²⁷ *See Norfolk S. Ry. Co. v. Port Elizabeth Terminal & Warehouse Corp.*, No. 17-1819, 2019 WL 1399555, at *2 (D.N.J. Mar. 27, 2019) (rejecting a similar argument and holding that Conrail was acting as agent to NS).

²⁸ CSX contends, and B&J Group does not dispute, that all the shipments at issue in this case were classified as hazardous materials.

²⁹ CSX acknowledges that Tariff 8100 did not explicitly incorporate Tariff 4049 until January 1, 2015, and previously incorporated CSX’s other rules generally. CSX seeks \$3,900 that accrued before January 1, 2015. Pl.’s Reply Br. [Doc. No. 53] at 4 n.2.

³⁰ Pl.’s Ex. J [Doc. No. 41.12] at § 2.

other participating Carrier apply once your shipment enters its network.”³¹ Tariff 8100 also stated that the charges are accepted when a customer arranges for services with CSX.³²

CSX has established that B&J Group received notices of the tariffs and the placement of the cars through access to the CSX website, ShipCSX, for which the Chief Operating Officer of B&J Group, Tilghman B. Frey, has an account.³³ CSX is identified on the bills of lading, and the charges were disclosed to B&J Group.³⁴ Therefore, CSX is entitled to summary judgment in the amount sought, \$89,575, plus late fees and interest.³⁵ An appropriate order will be entered.

³¹ Def.’s App. Publication CSXT 8100 [Doc. No. 45-2] at § 4. B&J Group argues that this language in Tariff 8100 does not apply to Conrail, because on January 1, 2019, after the events relevant to this litigation, CSX revised the tariff to provide that it applies “to all transportation services provided by [CSX] and all railcars while on our network and the tracks of Conrail while under a [CSX] waybill.” Def.’s App. CSTX Changes [Doc. No. 45-2]. However, even if the amended language were interpreted to mean that Conrail was not previously included in Tariff 8100, Tariff 4049, with its language including CSX’s affiliates, still applies to the shipments of B&J Group.

³² Pl.’s Ex. J. [Doc. No. 41-12] at § 4.

³³ Pl.’s Ex. I, Dep. of Tilghman B. Frey [Doc. No. 41-11] at 7; Pl.’s Ex. A, Dep. of Joseph Fleischman [Doc. No. 41-3] at 46.

³⁴ Pl.’s Ex. I, Dep. of Tilghman B. Frey [Doc. No. 41-11] at 13.

³⁵ The calculations are summarized in Plaintiff’s Statement of Material Facts and reference the tariffs and bills of lading. See Pl.’s Statement of Facts [Doc. No. 41-2].

Exhibit B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of April, two thousand twenty-three.

PRESENT:

BARRINGTON D. PARKER,
DENNY CHIN,
RICHARD J. SULLIVAN,
Circuit Judges.

YOOKEL, INC.,

Plaintiff-Appellant,

v.

No. 22-655

UNITED STATES STEEL CORPORATION,

*Defendant-Appellee.**

* The Clerk of Court is respectfully directed to amend the official case caption as set forth above.

For Plaintiff-Appellant:

NICHOLAS VELIKY (Avery S. Mehlman, Shivani Poddar, *on the brief*), Herrick, Feinstein LLP, New York, NY.

For Defendant-Appellee:

CHRISTOPHER J. POTTMEYER, Jones Day, Pittsburgh, PA (Roy A. Powell, Jones Day, Dallas, TX, *on the brief*).

Appeal from a judgment of the United States District Court for the Eastern District of New York (Kiyoo A. Matsumoto, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Yookel, Inc. (“Yookel”) appeals from the district court’s grant of a motion for judgment on the pleadings after finding that Yookel did not plausibly allege claims for breach of contract, declaratory judgment, unjust enrichment, and fraudulent inducement against United States Steel Corporation (“U.S. Steel”). Yookel alleges that U.S. Steel fraudulently induced Yookel to enter into two agreements (the “Real Estate Agreement” and “Rail Easement”), which give Yookel access to a railroad system that services industrial warehouses at the Keystone Industrial Port Complex (“KIPC”), by failing to disclose that Yookel and its lessee could be subject to demurrage fees charged by railyard operator

Consolidated Rail Corporation (“Conrail”) and its parent company, CSX Transportation, Inc. (“CSX”). On appeal, Yookel principally argues that its allegations were sufficiently plausible to survive U.S. Steel’s motion and that the court’s issuance of a judgment on the pleadings *with prejudice* improperly deprived Yookel of its right to amend its complaint. We assume the parties’ familiarity with the underlying facts, procedural history, and issues on appeal.

“We review de novo a district court’s decision to grant a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c).” *Lively v. WAFRA Inv. Advisory Grp., Inc.*, 6 F.4th 293, 301 (2d Cir. 2021) (internal quotation marks omitted). On a Rule 12(c) motion, “we draw all reasonable inferences in the plaintiff’s favor” to determine whether the plaintiff’s complaint “contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.* (internal quotation marks omitted).

We agree with the district court that Yookel’s claims cannot withstand U.S. Steel’s Rule 12(c) challenge.¹ Starting with the breach-of-contract claim, we note that Pennsylvania law is clear that when a contract is unambiguous – meaning “it

¹ For the reasons discussed in the district court’s thorough and well-reasoned opinion, we are governed by New York’s choice-of-law rules, and therefore apply Pennsylvania substantive law to Yookel’s breach-of-contract and declaratory-judgment claims and New York substantive law to Yookel’s fraudulent-inducement and unjust-enrichment claims. Sp. App’x at 7–11.

is [not] reasonably susceptible of different constructions and capable of being understood in more than one sense,” *Hutchison v. Sunbeam Coal Corp.*, 519 A.2d 385, 390 (Pa. 1986) – “the intent of the parties is to be ascertained from the document itself,” *Kripp v. Kripp*, 849 A.2d 1159, 1163 (Pa. 2004).

Here, the Real Estate Agreement and Rail Easement are unambiguous and lend themselves to only one reasonable interpretation. Under the express terms of the agreements, U.S. Steel granted Yookel “irrevocable, non-exclusive rights for rail access[] and railroad staging,” App’x at 481 (Real Estate Agreement § 1.01), “subject to [the] rights of other owners, tenants[,] and occupants at the KIPC, and to [U.S. Steel’s] rights and [those of U.S. Steel’s] agents, assignees, carriers, contractors[,] and all other persons lawfully using the Ancillary Rights,” *id.* at 482 (Real Estate Agreement § 1.01(A)). As part of this arrangement, Yookel agreed to pay an annual maintenance fee. *Id.* at 482 (Real Estate Agreement § 1.01(B)). In return, U.S. Steel agreed to “maintain the Common Area Rail Lines that service the Premises,” *id.*, and to keep the rails in “good working condition,” *id.* at 239 (Rail Easement § 1(D)(c)). In other words, the quid pro quo was straightforward: Yookel agreed to pay an annual maintenance fee and U.S. Steel promised to maintain the Common Area Rails.

Yookel alleges that U.S. Steel breached the maintenance-fee provision of the Real Estate Agreement because CSX assessed demurrage fees against Yookel's lessee. According to Yookel, it is entitled to reimbursement of the demurrage fees because "Yookel . . . understood that it was only required to pay [U.S.] Steel the Maintenance Fee in connection with its use of the Common Area Rails[] and was not responsible for any other fees." *Id.* at 55 ¶ 45. We disagree.

It is undisputed that section 1.01 of the Real Estate Agreement covers fees for maintenance services only, and makes no reference to the myriad fees that Yookel and its lessee might otherwise incur. Yookel would have us transform the maintenance-fee provision into an insurance policy for any and all fees that Yookel and its lessee might be charged, or a representation or warranty from U.S. Steel that no other fees would apply to Yookel's use of the Common Area Rails. But Yookel never bargained for these contractual protections. Pennsylvania courts have repeatedly and consistently held that when – as here – "a contract fails to provide for a specific contingency, it is silent, not ambiguous[,] [and] [i]n such circumstances, we will not read into the contract a term, . . . which clearly it does not contain." *Seven Springs Farm, Inc. v. Croker*, 748 A.2d 740, 744 (Pa. Super. Ct. 2000) (citation omitted), *aff'd*, 801 A.2d 1212 (Pa. 2002); *see also Steuart v. McChesney*,

444 A.2d 659, 662 (Pa. 1982). Accordingly, we agree with the district court that “the plain language of the Real Estate Agreement does not entitle Yookel to recoup demurrage fees from U.S. Steel” and that “[j]udgment on the pleadings [was] thus appropriately granted to U.S. Steel on Yookel’s breach[-]of[-]contract claim.” Sp. App’x at 19.

For largely the same reasons, Yookel also fails to allege a plausible declaratory-judgment claim. Yookel first seeks a declaration – based on the silence of the Real Estate Agreement and Rail Easement as to nonmaintenance fees – that U.S. Steel is obliged to reimburse Yookel for demurrage fees. But once again, under Pennsylvania law, we cannot transform silence into an affirmative obligation on U.S. Steel’s part to pay these nonmaintenance fees. *See Seven Springs Farm*, 748 A.2d at 744; *Steuart*, 444 A.2d at 662. Yookel also seeks a declaration announcing that it need not pay the maintenance fee in light of U.S. Steel’s breach of the Real Estate Agreement. But because we find that U.S. Steel has fully performed under the Real Estate Agreement, we discern no material breach of the contract that would justify a declaration absolving Yookel of its obligation to pay the agreed-upon maintenance fee. *See McCausland v. Wagner*, 78 A.3d 1093, 1101 (Pa. Super. Ct. 2013) (explaining that “the non-breaching party is relieved from

any obligation to perform” only “[i]f a breach constitutes a material failure of performance”).

Yookel’s unjust-enrichment claim is likewise untenable. Under New York law, an unjust-enrichment claim lies where a “defendant has obtained a benefit [that] in equity and good conscience should be paid to the plaintiff.” *Corsello v. Verizon N.Y., Inc.*, 18 N.Y.3d 777, 790 (2012) (internal quotation marks omitted). “[B]ut unjust enrichment is not a catchall cause of action to be used when others fail,” nor is it “available where it simply duplicates, or replaces, a conventional contract . . . claim.” *Id.* (citations omitted). Here, Yookel’s unjust-enrichment claim merely asserts that “[U.S.] Steel was enriched at Yookel’s expense by avoiding payment of the Demurrage Fees.” App’x at 66 ¶ 117. It is therefore entirely duplicative of Yookel’s contract claim.

Yookel has also failed to plausibly allege a viable claim for fraudulent inducement. Yookel’s main argument here is that U.S. Steel fraudulently “induce[d] Yookel to enter into the Real Estate Agreement,” Yookel Br. at 26, through its “intentional omission of information concerning its relationship with Conrail,” *id.* at 27. In particular, Yookel claims that it “had no way of learning about the full extent of [U.S.] Steel’s relationship with Conrail outside of disclosure

from either [U.S.] Steel or Conrail,” *id.* at 26–27, and that “Yookel had no reason to believe that demurrage fees would apply to the privately held [rail yard at KIPC],” *id.* at 27. But an omission is actionable only if there is a duty to disclose, either because a fiduciary relationship exists or because “one party possesses superior knowledge, not readily available to the other.” *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, 13 F.4th 247, 263 (2d Cir. 2021) (internal quotation marks omitted); *accord Jana L. v. W. 129th St. Realty Corp.*, 802 N.Y.S.2d 132, 134–35 (1st Dep’t 2005). Neither of those situations is implicated here.

First, Yookel pleads no facts alleging that U.S. Steel and Yookel had a fiduciary relationship, which is not “normally present” in an “arm’s[-]length business transaction[].” *Oddo Asset Mgmt. v. Barclays Bank PLC*, 19 N.Y.3d 584, 592–93 (2012) (internal quotation marks omitted). Second, while Yookel invokes the essential-facts doctrine, the possibility that Conrail would charge demurrage fees was not “peculiarly within the knowledge” of U.S. Steel and, in any event, “could have been discovered . . . through the exercise of ordinary intelligence.” *Jana*, 802 N.Y.S.2d at 135 (alteration and internal quotation marks omitted). Indeed, demurrage fees are governed by federal laws and regulations to which Yookel had ready access. *See, e.g.*, 49 C.F.R. § 1333.3. Yookel also knew that it was

required to use U.S. Steel's designated "switching carrier," App'x at 481 (Real Estate Agreement § 1.01), and that Conrail was responsible for "keep[ing] and maintain[ing] the Rail System in unobstructed, good working condition" for U.S. Steel pursuant to an operating agreement, *id.* at 239 (Rail Easement § 1(D)(c)). Lastly, Yookel was aware that its rights to the Common Area Rails were subject to the rights of others. *See id.* at 482 (Real Estate Agreement § 1.01). Accordingly, because U.S. Steel had no duty to disclose the details of the arrangements between U.S. Steel and Conrail, Yookel has not alleged a plausible fraudulent-inducement claim.

Yookel finally argues that it was reversible error for the district court to grant judgment on the pleadings *with prejudice*, thereby depriving Yookel of the opportunity to amend its complaint. But Yookel never moved to amend its complaint, and "no court can be said to have erred in failing to grant a request that was not made." *Gallop v. Cheney*, 642 F.3d 364, 369 (2d Cir. 2011). Further, our precedent is clear that "[a] plaintiff need not be given leave to amend if it fails to specify either to the district court or to the court of appeals how amendment would cure the pleading deficiencies in its complaint." *TechnoMarine SA v. Giftports, Inc.*, 758 F.3d 493, 505 (2d Cir. 2014). Here, both in the district court and on appeal,

Yookel has offered “no new facts or arguments that could lead the court to find that” Yookel plausibly alleges claims for breach of contract, declaratory judgment, unjust enrichment, or fraudulent inducement. Sp. App’x at 28–29.

For these reasons, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court