



**GENTRY LOCKE**  
Attorneys

John M. Scheib

311809

scheib@gentrylocke.com

P: 757.916.3511

F: 540.983.9400

ENTERED

Office of Chief Counsel

July 21, 2026

Part of

Public Record

July 21, 2026

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

Re: FD 36447, *Lake Providence Port Commission – Feeder Line Application – Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, LA*

Dear Chief of Case Administration:

Through the letter filed by Applicant, Lake Providence Port Commission (“LPPC”), on July 10, 2026, (Document No. 311765) the Board is now a player in the whack-a-mole game that Delta Southern Railroad, Inc., (“DSRR”) has been playing with LPPC and its witnesses throughout discovery.<sup>1</sup> LPPC’s filings on July 7 and July 10 are the poster children for why the Board should repeal in Ex Parte 790 the rule prohibiting replies to replies.<sup>2</sup> Parties cannot be permitted to raise with impunity issues and make arguments that are contradicted by the record.

Although DSRR would rather not have to keep filing with the Board, LPPC continues to perpetuate arguments of convenience that are contrary to its own actions and representations to governmental entities. DSRR briefly recaps the history of the agreement between LPPC and North Louisiana and Arkansas Railroad (“NLA”) for the Board’s reference.

1. On December 22, 2010, LPPC filed with the Board a redacted version of the First Amended Railway Operating Lease (hereinafter “First Amended Agreement”). Document No. 301387. LPPC represented that “[t]he Lease *sets out the terms and conditions that will govern the expected operation of the Line* beginning of the effective date of the Board’s decision authorizing both LPPC’s acquisition and NL&A’s lease and operation of the additional trackage.” *Id.* at 6 (emphasis added).
2. On December 28, 2020, LPPC filed with the Board the First Amended Railway Operating Lease (hereinafter “First Amended Agreement”). Document No. 301397. Section Three of that agreement provided that LPPC would receive 10% of revenue from car storage.

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<sup>1</sup> The Board has previously been a party to this game with LPPC in other contexts and warned LPPC. Decision No. 51261 at 7.

<sup>2</sup> See Comments of Delta Southern R.R., Inc., *Review of Replies to Replies*, Ex Parte 790 (STB filed June 17, 2026) (Document No. 311650).

3. LPPC represented to the Board that the Agreement is the document that would govern the relationship between it and its proposed rail carrier – NLA. In Decision No. 51875, the Board said in footnote 25:

The Board’s decision conditionally accepting LPPC’s original application . . . directed LPPC to submit a copy of any contract with NLA pertaining to that line as soon as the parties reached an agreement. . . Although the amended application states that LPPC “will extend the lease agreement with NLA to include the additional mileage,” a copy of the referenced agreement was not attached . . .

Decision No. 51875 at n.25 (cleaned up). The Board ordered that “[i]f LPPC files and serves a certificate of service in compliance with 49 C.F.R. § 1151.2(a) and § 1151.3(a)(16), *together with* the described verification and *any agreement between LPPC and NLA pertaining to the Line, by November 30, 2023*, the Board anticipates issuing a decision conditionally accepting the amended application . . .” *Id.* at 16 (emphasis added). Thus, the Board clearly sought the terms of the agreement that would govern the Line if LPPC were successful.

4. On November 30, 2023, LPPC filed the Second Amended Railway Lease Agreement By and Between LPPC and NLA (“Second Amended Agreement”), which was a signed, written amendment entered into by LPPC and NLA, saying it was doing so “to comply with the requirements imposed by the Board in its Decision served November 20, 2023, the following documents have been duly filed with the Board . . . (3) [the Second Amended Agreement].” *See* Document No. 307561. Mr. Gilfoil filed a verified statement in support of this amendment stating that “I am submitting a true copy of the Second Amended Lease that LPPC *has entered into with* [NLA] that includes the additional mileage that LPPC seeks to acquire in this proceeding.” *Id.* at (Verified Statement of Wyly Gilfoil at ¶2)(emphasis added). This filing demonstrates that LPPC knew the Board required the filing of the terms that would govern the operation of the Line. The Second Agreement continued to provide that LPPC would receive 10% of the revenue from car storage.
5. On January 3, 2024, DSRR served discovery separately on LPPC and NLA asking each to produce all agreements between them. Each responded the same and identified only the Second Amended Agreement “filed with the Board on November 30, 2023.” Neither mentioned any alleged amendment. In fact, each affirmed that the applicable agreement was the one filed with the Board on November 30, 2023. Neither supplemented its discovery to disclose the alleged amendment. *See* Document No. 311715 (quoting and attaching the document requests as Attachments A and B).
6. In March 2024, the Louisiana Bond Commission (“Commission”) requested additional information after reviewing LPPC’s application and observing that LPPC had negative revenue for the prior three years and questioned how LPPC could support repayment of \$10,000,000 in debt. LPPC\_001127 (attached hereto). LPPC provided the Commission

with a copy of the First Amended Agreement,<sup>3</sup> which was filed with the Board in 2020 and showed that LPPC received 10% of car storage revenue.<sup>4</sup> LPPC did not mention an alleged unwritten amendment. In fact, Mr. Gilfoil confirmed that LPPC's answers to the Commission were an "Excellent Summary!" and did not mention an alleged amendment he had entered into. LPPC\_001125. LPPC also provided incorrect financial information containing a formula error that attributed 100% of revenue from car storage to LPPC despite the fact that the First Amended Agreement and Second Amended Agreement provided that LPPC would receive only 10% of that revenue. That error inflated LPPC's estimated revenue over 30 years from the correct amount of \$5,261,100 to the erroneous amount of \$34,826,160. LPPC had submitted the same erroneous financial information to another state agency in a grant application on March 1, 2024.

7. In the June 30, 2026, deposition of LPPC's Executive Director, Bryant Killen, Mr. Killen confirmed that he had worked on the financial information provided to the Commission and in the grant application, that he was listed on the cover of the grant application that included the erroneous calculations, that he was not aware of any amendments to the Second Amended Agreement, that LPPC's calculations of revenues from car storage had been miscalculated based on the language of the First Amended Agreement and the Second Amended Agreement, and that LPPC had submitted the erroneous calculations to obtain grant funding and bonding authority.<sup>5</sup>
8. Reacting to the deposition, LPPC filed with the Board on July 1, 2026, an unsupported letter from counsel claiming that there had been an alleged, undisclosed, unwritten, undated amendment to the Second Amended Agreement more than two years prior that it had not shared with the Board or DSRR. *See* Document No. 311703. LPPC claims Mr. Gilfoil and Mr. Robbins entered into this alleged oral amendment. Neither of the individuals who are alleged to have been involved in the amendment and who have already been deposed filed a verified statement. LPPC claimed the existence of this alleged amendment even though there is no record in the minutes of LPPC's Board meetings that it had approved such an amendment. Document No. 311715 at n.2. LPPC claimed that alleged amendment entitled LPPC to 100% of the revenue from car storage in contradiction of the First Amended Agreement and the Second Amended Agreement.
9. DSRR responded on July 6, 2026, that it doubted the existence of the amendment given the history above and that LPPC had sprung it on both DSRR and the Board on the last business day before discovery closed despite the fact that DSRR had requested in discovery "all agreements between LPPC and any rail carrier" and that LPPC had failed to disclose the alleged amendment in response. Document No. 311715. DSRR provided

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<sup>3</sup> DSRR does not know why LPPC sent the Commission the First Amended Agreement when it had filed the Second Amended Agreement with the Board. Of course, both provided LPPC would receive only 10% of the revenue from car storage. In all events, LPPC did not mention an alleged amendment.

<sup>4</sup> LPPC\_001124-26 (LPPC\_001124 explains answers were forwarded to Commission and LPPC\_001126 shows the answers) (attached hereto).

<sup>5</sup> The deposition transcript is not finalized, but DSRR will file it with the Board when it is.

the testimony of Mr. Gilfoil and Mr. Robbins discussing the fact that LPPC was entitled to 10% of car storage revenue. *Id.* (Attachments C and D).

10. LPPC responded on July 8, 2026, that (i) LPPC and NLA have an unwritten amendment to the Second Amended Agreement that it did not file with the Board although it allegedly existing for two years, (ii) LPPC did not think the alleged amendment needed to be written down or filed with the Board, and (iii) that DSRR just does not understand. Document No. 311745.
11. DSRR informed the Board on July 10, 2026, that Section Twenty of the executed and signed copy of the Second Amended Agreement that LPPC had filed at the Board's direction on November 30, 2023, does not permit any amendment other than one in writing. Document No. 311761.
12. On July 10, 2026, LPPC ignored the fact that the Board had ordered the filing of the applicable agreement and ignored its failure to disclose the alleged amendment in discovery. It claimed as a new defense that "[t]he [Second Amended Agreement], filed herein on November 30, 2023, has not taken effect, and will not do so unless and until the Board grants LPPC's Amended Application, filed herein on January 4, 2023." Document No. 311765.

LPPC's newest excuse articulated in its July 10, 2026, letter, is that the Agreement "has not taken effect," which supplements its argument that it did not think it had to reduce an amendment to writing or file it with the Board.

As the timeline above shows, LPPC's prior actions and reliance on the written agreement with NLA belie its arguments. LPPC has filed and relied on its written agreement with NLA to comply with the Board's requirement in Decision No. 51875. Indeed, LPPC entered into written, signed amendments and filed them with the Board previously – the First Amended Agreement and the Second Amended Agreement. *See* Document Nos. 301397 and 307561. The reason the agreement and all relevant terms, including financial terms, had to be filed with the Board is because the Board needs to know those terms.<sup>6</sup>

Additionally, LPPC relied on the First Amended Agreement, including in March 2024, to justify its applications for grant funding and bond applications. When the Commission noted that LPPC did not have the revenues to cover the debt level that LPPC requested, LPPC sent the Commission the First Amended Agreement that included the provision that provides for LPPC to earn 10% of the revenue from car storage – the same language that is in the Second Amended Agreement. LPPC\_001126. LPPC did not disclose to the Commission or rely on any alleged unwritten amendment to attempt to overcome its poor finances. That LPPC filed that agreement

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<sup>6</sup> *Squaw Creek S. R.R., Inc. – Lease and Operation Exemption – C. of Ga. R.R. Co.*, FD No. 35134, 2008 STB LEXIS 257 at \*2 (STB Decided May 12, 2008) ("To assist the Board in assessing SCS's assertions and understanding the terms of the Lease, SCS will be directed to file with the Board, under seal, a full, unredacted copy of the Lease by May 16, 2008. . . A final signed agreement should be filed. However, if the parties have not signed a final agreement, then a draft agreement should be filed containing the significant terms of the Lease, including the rental payments and related credits and fees.").

with the Commission shows that LPPC was relying upon the written agreement – even though LPPC’s spreadsheets got the math wrong. Despite claiming to the Board the new existence of an alleged, unwritten, unsigned, and unapproved amendment to cover for its math error, LPPC did not contemporaneously disclose the alleged amendment to these other governmental agencies. Moreover, in contrast to telling the Board the written, signed agreement should be disregarded because it is not in effect, LPPC relied on the written, signed agreement that it had “entered into with NLA” and that it represented to the Board “will govern the expected operation of the Line” to justify its grant and bond applications.

Had LPPC timely disclosed the alleged amendment to the Board or provided it in response to DSRR’s discovery requests, DSRR would have explored in discovery relevant issues around at least (1) LPPC’s failure to file the alleged amendment with the Board despite the Board order in Decision No. 51875; (2) LPPC’s failure to get its board to approve the alleged amendment despite Mr. Killen’s testimony that such approval was required; (3) LPPC’s failure to mention or rely on the alleged amendment in its dealings with the Commission; (4) the magical appearance of the alleged amendment after the revelation of LPPC’s erroneous calculations that juiced its estimates of its potential revenue for applications for grant and bond authority; (5) how the shift in revenue from NLA to LPPC from the alleged amendment would adversely affect NLA’s finances; (6) whether NLA disclosed this amendment to OmniTRAX as part of that transaction (which would have made NLA show less future revenue and may have affected OmniTRAX’s willingness to purchase NLA); and (7) the difference in LPPC’s representations about the applicable agreement terms to the Board and to other governmental agencies.<sup>7</sup>

In all events, the Board only has the Second Amended Agreement to rely upon. LPPC provided no verified statement or any other support that the alleged amendment ever existed, the date it was entered into, or any other details. All the Board has is an unsupported lawyer’s letter (and now filings) that are undermined by the facts and LPPC’s prior actions. The Board cannot rely on an unsupported letter that asserts that an alleged amendment has long existed that LPPC did not file with the Board for two years in violation of Decision No. 51875 and did not rely on in its dealings with other governmental agencies.

Respectfully submitted,

*/s/ John M. Scheib*

John M. Scheib  
Counsel for Delta Southern Railroad, Inc

cc: Parties of Record/ALJ Soulikias

Attachment

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<sup>7</sup> DSRR did not need to probe the First Amended Agreement versus the Second Amended Agreement in depositions because the financial terms did not change. The change between agreements was the amount of track to be leased.

ATTACHMENT

**From:** Brennan Black <[BBlack@foleyjudell.com](mailto:BBlack@foleyjudell.com)>  
**Sent:** Tuesday, May 5, 2026 11:23 AM  
**To:** Richard Streeter <[rhstreeter@gmail.com](mailto:rhstreeter@gmail.com)>  
**Cc:** Bryant Killen <[bryantkillen@gmail.com](mailto:bryantkillen@gmail.com)>  
**Subject:** FW: App # L24-115 SBC Application - Lake Providence Port Commission

**Brennan K. Black**  
Foley & Judell, L.L.P.  
Tel: (504) 568-1249  
Cell: (504) 206-8061



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**From:** Brennan Black  
**Sent:** Thursday, April 23, 2026 1:04 PM  
**To:** Bryant Killen <[bryantkillen@gmail.com](mailto:bryantkillen@gmail.com)>  
**Cc:** Winn Nettles <[winn.nettles@gmail.com](mailto:winn.nettles@gmail.com)>  
**Subject:** FW: App # L24-115 SBC Application - Lake Providence Port Commission

See below. Regarding revenues, it appears we just forwarded those exhibits to State Bond Commission.

Thanks,

**Brennan K. Black**  
Foley & Judell, L.L.P.  
Tel: (504) 568-1249  
Cell: (504) 206-8061



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**From:** Brennan Black

**Sent:** Wednesday, March 27, 2024 1:54 PM

**To:** Wyly Gilfoil <[wyly\\_gilfoil@msn.com](mailto:wyly_gilfoil@msn.com)>; Bryant Killen <[bryantkillen@gmail.com](mailto:bryantkillen@gmail.com)>

**Subject:** RE: App # L24-115 SBC Application - Lake Providence Port Commission

Thanks, Wyly. I will forward to State Bond Commission and will let you know if they have any follow-up questions.

Best,

**Brennan K. Black**

Foley & Judell, L.L.P.

Tel: (504) 568-1249

Cell: (504) 206-8061

E-mail: [bblack@foleyjudell.com](mailto:bblack@foleyjudell.com)



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**From:** Wyly Gilfoil <[wyly\\_gilfoil@msn.com](mailto:wyly_gilfoil@msn.com)>

**Sent:** Wednesday, March 27, 2024 1:36 PM

**To:** Brennan Black <[BBlack@foleyjudell.com](mailto:BBlack@foleyjudell.com)>; Bryant Killen <[bryantkillen@gmail.com](mailto:bryantkillen@gmail.com)>

**Subject:** Re: App # L24-115 SBC Application - Lake Providence Port Commission

Excellent summary! I have no additions or changes.

Thanks,

Wyly

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**From:** Brennan Black <[BBlack@foleyjudell.com](mailto:BBlack@foleyjudell.com)>

**Sent:** Wednesday, March 27, 2024 1:01 PM

**To:** Wyly Gilfoil <[wyly\\_gilfoil@msn.com](mailto:wyly_gilfoil@msn.com)>; Bryant Killen <[bryantkillen@gmail.com](mailto:bryantkillen@gmail.com)>

**Subject:** FW: App # L24-115 SBC Application - Lake Providence Port Commission

Wyly/Bryant,

See proposed responses below as discussed. Please let me know if you have any suggestions or changes.

Best,

**Brennan K. Black**

Foley & Judell, L.L.P.

Tel: (504) 568-1249

Cell: (504) 206-8061

E-mail: [bblack@foleyjudell.com](mailto:bblack@foleyjudell.com)



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**From:** SBC-Application <[SBC-Application@treasury.la.gov](mailto:SBC-Application@treasury.la.gov)>

**Sent:** Friday, March 22, 2024 4:11 PM

**To:** Brennan Black <[BBlack@foleyjudell.com](mailto:BBlack@foleyjudell.com)>; Jean Kaufmann <[JKaufmann@foleyjudell.com](mailto:JKaufmann@foleyjudell.com)>

**Subject:** RE: App # L24-115 SBC Application - Lake Providence Port Commission

Good afternoon,

Hi Brennan, I tried calling earlier today to discuss this application, as it may be easier to explain over the phone. Feel free to call back anytime. Upon initial review of this application, there are a few items to be addressed below. Our 10-day working deadline for the April SBC meeting is April 3<sup>rd</sup>, but because we will likely have follow-up questions, please provide a response to the following items by **COB Wednesday, March 27, 2024**.

Please provide the following information/documents:

1. A summary of the project and what bond proceeds will be used for. **The project includes the acquisition and rehabilitation of 28 miles of rail. These 28 miles comprise a portion of 36.2 miles of railway (the "Railway") to be leased to North Louisiana & Arkansas Railroad, Inc. (the "Lessee") pursuant to the attached First Amended Railway Lease Agreement (the "Lease Agreement"). Under the Lease Agreement, the Lessee will be responsible for all costs and expenses of maintaining the railway.**
2. What is the reason for the debt to be issued as taxable, as was indicated on the application form? **Private use of the Railway by virtue of the Lease Agreement**
3. Bond production report (referenced on page 4 of the app form), showing the proposed debt at maximum parameters. **Attached**
4. Combined debt service schedule for the Commission, including outstanding debt and the proposed debt. **Attached**
5. Based on the security of excess revenue, is there a coverage calculation that shows how the debt will be paid, since my preliminary review does not show excess? Attached is my financial breakdown for your reference.

It appears you are looking only at operating income. All excess revenues of the Commission are pledged to the bonds, including non-operating revenues. This will increase your net income calculations in (a) and (c) below.

The Commission has made application for DOTD Port Priority funds in the amount of \$15M. There is a 10% match requirement, which the Commission intends to find federal or other funding for, resulting in 100% financing for the project. The bond issue will provide a source for project funding in the interim. The Commission is optimistic that it will receive Port Priority funds next year and intends to immediately use these funds to pay off any amount it has drawn on the bonds.

It should also be noted that the Lease Agreement referenced above is expected to provide annual revenues of \$1,438,650, which is in excess of maximum annual debt service on all bonds of the Commission, including the proposed bonds. See Exhibits 6 and 7 attached which were part of the Port Priority application. As noted above, the Lessee is responsible for all maintenance expenses, so the Commission will not have additional annual expenses associated with the Railway.

In addition to increased revenues, future expenses will be lower. Recent fiscal years include non-recurring expenditures for professional fees related to the acquisition of the Railway. In 2022 these were \$418,312 and in 2023 these were \$382,624. After the acquisition is complete, the Commission expects professional fees to reduce to approximately \$50k/year which is in line with 2019 amounts. It should also be noted that in 2023 the Commission incurred costs of repairs and maintenance of the dock which was built in the mid-1970s. The 2023 cost of repairs and maintenance of \$305,803 is atypical and is much higher than prior years. These expenses are non-recurring as these dock repairs are one of the few costs not passed along to tenants, and costs in future years should revert to the \$20-30k range.

- a. Looking at the latest audit from 2022, I am not able to find funds available for debt service. After adding back interest expense and depreciation to net income, I still show a deficit (\$35,403) available for debt service in 2022.
  - b. The 2023 interim income statement doesn't show depreciation and has a deficit of (\$267,032). The statement does not break out operating and nonoperating expenses.
  - c. The 2024 budget only shows a surplus of \$12,775, but a net income loss of (\$81,063)
6. The 2024 budget does not have a signature on the signature line. Can you confirm whether or not this was adopted? Signed copy attached

Thank you,



**Brandon Rinaudo**  
State Debt Analyst | State Bond  
Commission  
Office of State Treasurer John Fleming, MD  
**Phone** 225-342-0062  
**Email** [brinaudo@treasury.la.gov](mailto:brinaudo@treasury.la.gov)

**From:** Jean Kaufmann <[JKaufmann@foleyjudell.com](mailto:JKaufmann@foleyjudell.com)>  
**Sent:** Wednesday, March 20, 2024 10:01 AM  
**To:** SBC-Application <[SBC-Application@treasury.la.gov](mailto:SBC-Application@treasury.la.gov)>  
**Cc:** Brennan Black <[bblack@foleyjudell.com](mailto:bblack@foleyjudell.com)>; Conner Berthelot  
<[cpberthelot@treasury.la.gov](mailto:cpberthelot@treasury.la.gov)>  
**Subject:** RE: App # L24-115 SBC Application - Lake Providence Port Commission

Good morning,

Please find the executed resolution attached that was adopted this morning.

**Thanks,**

**Jean Kaufmann**

Legal Assistant/Transaction Coordinator

Foley & Judell, L.L.P.

Tel: (504) 568-1249



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LPPC\_001128

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**From:** SBC-Application <[SBC-Application@treasury.la.gov](mailto:SBC-Application@treasury.la.gov)>  
**Sent:** Tuesday, March 19, 2024 3:08 PM  
**To:** Jean Kaufmann <[JKaufmann@foleyjudell.com](mailto:JKaufmann@foleyjudell.com)>; SBC-Application <[SBC-Application@treasury.la.gov](mailto:SBC-Application@treasury.la.gov)>  
**Cc:** Brennan Black <[BBlack@foleyjudell.com](mailto:BBlack@foleyjudell.com)>  
**Subject:** App # L24-115 SBC Application - Lake Providence Port Commission

We acknowledge receipt of the application to be placed on the agenda for approval at the **April 18, 2024**, State Bond Commission meeting. The request is complete and has been entered into our tracking system and assigned the SBC number of **L24-115**. All future correspondence and documentation regarding this application must reference that SBC number.

Once the assigned analyst reviews all documentation submitted for the application, they will contact you if additional information is needed.



**Conner Berthelot**  
State Debt Analyst | State Bond  
Commission  
Office of State Treasurer John Fleming, MD  
**Phone** 225-342-6165  
**Email** [cpberthelot@treasury.la.gov](mailto:cpberthelot@treasury.la.gov)

**From:** Jean Kaufmann <[JKaufmann@foleyjudell.com](mailto:JKaufmann@foleyjudell.com)>  
**Sent:** Tuesday, March 19, 2024 1:37 PM  
**To:** SBC-Application <[SBC-Application@treasury.la.gov](mailto:SBC-Application@treasury.la.gov)>  
**Cc:** Brennan Black <[bblack@foleyjudell.com](mailto:bblack@foleyjudell.com)>  
**Subject:** SBC Application - Lake Providence Port Commission

Good afternoon,

Please find attached the SBC application for Lake Providence Port Commission requesting to be placed on the April 18<sup>th</sup> agenda. We kindly request a waiver for submission of the

adopted preliminary resolution, which is scheduled to be adopted tomorrow, March 20<sup>th</sup>. The check will arrive via FedEx delivery.

**Thanks,**

**Jean Kaufmann**

Legal Assistant/Transaction Coordinator

Foley & Judell, L.L.P.

365 Canal Street, Suite 2600

New Orleans, LA 70130

Tel: (504) 568-1249

Fax: (504) 565-3900

E-mail: [jkaufmann@foleyjudell.com](mailto:jkaufmann@foleyjudell.com)



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