

**Before the
Surface Transportation Board**

JR - 2

242175

STB FINANCE DOCKET NO. 36078

ENTERED
Office of Proceedings
December 1, 2016
Part of
Public Record

PETITION FOR A DECLARATORY ORDER

(Hudson Street Industrial Track / Harsimus Branch

(Jersey City, Hudson County, NJ)

SUPPLEMENT TO PETITION FOR DECLARATORY ORDER

ADDITIONAL REASON WHY THE PETITION SHOULD BE GRANTED

1. Comes now your Petitioner, James Riffin (“**Riffin**”), who herewith Supplements the Petition for Declaratory Order that he filed on **October 14, 2016**, and in supplement states:

2. The U.S. District Court for the District of New Jersey, Newark Division, on **November 17, 2016**, in a proceeding docketed 16 - cv - 04433 - ES - JAD, gave an additional reason why the Surface Transportation Board (“**STB**”) should grant Riffin’s Petition for Declaratory Order, to wit:

3. The District Court dismissed Riffin’s Complaint for a Declaratory Order, **without prejudice to refile the Complaint within six months, if the STB fails to provide Riffin with a satisfactory remedy.**

BACKGROUND INFORMATION

4. On **July 20, 2016**, Riffin filed a Complaint in the U.S. District Court for the District of New Jersey, Newark Division, which was docketed 16 - cv - 04433 - ES - JAD.

5. In the Complaint, Riffin asked the District Court to determine the proper classification for the track segments that traversed the Metro Plaza parcel.¹ In the event that the District Court determined that Conrail **used** one or more of the track segments that traversed the Metro Plaza parcel for **through traffic**, Riffin further asked the Court:

A. To find that Conrail's **use** of a track segment for **thru traffic**, would cause / did cause that track segment **to become** a 'line of railroad,' (whether conveyed to Conrail as a line of railroad, or conveyed to Conrail as 49 USC 10906 excepted track);

B. To order that the *status quo*, as it existed on **June 8, 2016**, the date that Riffin filed his Notice of Intent to File an Offer of Financial Assistance ("**Notice**" / "**OFA**") in AB 167 (Sub. No. 1189X) ("**1189X**") / as it existed on **March 19, 2009** [the date that Jersey City and CNJ Rail filed their Notices of Intent to File an OFA in 1189X / as it existed on **January 6, 2009**, the date that Conrail filed its Notice of Exemption ("**NOE**") in 1189X, seeking authority to abandon the Harsimus Branch, **be maintained**, until the OFA process in 1189X concluded.

6. The Defendants in the Complaint, the owners / re-developers of the Metro Plaza parcel, filed a Motion to Dismiss Riffin's Complaint arguing:

A. That pursuant to the Interstate Commerce Commission Termination Act ("**ICCTA**") the STB has **exclusive** jurisdiction to determine the proper classification of track

¹ The Metro Plaza parcel was built on a portion of the portion of the Harsimus Cove Yard that was conveyed to Conrail via the Final System Plan ("**FSP**"). The Metro Plaza parcel is **immediately East** of the **East end** of the portion of the Harsimus Branch known as the Embankment. [The east end of the Embankment portion ends on the West side of Marin Blvd (formerly Henderson Street). The Metro Plaza parcel is located on the East side of Marin Blvd.]

segments (and that the ICCTA overrode, and superceded, prior Supreme Court / Fifth and Seventh Circuit decisions² holding that a District Court was the proper forum to determine the proper classification for track segments);

B. That under the Doctrine of Primary Jurisdiction, a court **MAY** refer questions to an administrative agency, such as the STB.³ And **should** make such a referral, when the agency's expertise is needed to address complex issues / collateral regulatory issues. However, when no specialized expertise is needed, there is no need to refer an issue to an agency.

C. That Riffin did not have Article III Standing.

THE NOVEMBER 17, 2016 HEARING

7. At the November 17, 2016 hearing in the District Court, Riffin advised the Court that Riffin had filed a Petition for Declaratory Order with the STB, and further advised the Court that Riffin's STB Petition for Declaratory Order sought essentially the same relief that Riffin sought in the District Court.

8. Riffin suggested to the District Court that the District Court hold Riffin's Complaint in abeyance until the STB ruled on Riffin's STB Petition for Declaratory Order.

² The Supreme Court, in *U.S. v. Idaho*, 298 U.S. 105 (1936), the 5th Circuit in *New Orleans Terminal v. Spencer*, 366 F.2d 160 (5th Cir. 1966), *cert denied*, 386 U.S. 942 (1967), and the 7th Circuit, in *Illinois Commerce Commission v. U.S.*, 779 F.2d 1270 (7th Cir. 1985), have **all held** that the proper forum for determining the proper classification of track segments, **is in a court, NOT before the STB.**

³ In *Wheeler v. Material Recovery of Erie, Inc.*, 398 F.3d 786 (3d Cir. 2010), *citing Union Pacific R. Co. v. Ametek, Inc.*, 104 F.3d 558, 561 (3d Cir. 1997), the 3rd Cir. said: "Pursuant to the doctrine of primary jurisdiction, the District Court referred the matter to the STB in March 2007. See 28 U.S.C. § 1336(b); *Union Pacific R. Co. v. Ametek, Inc.*, 104 F.3d 558, 561 (3d Cir. 1997) (explaining that a district court **may** refer issues to the STB for determination when the question falls within the STB's primary jurisdiction)." Bold added.

9. The District Court countered that the same result could be obtained by dismissing Riffin's Complaint, without prejudice. Dismissing Riffin's Complaint, without prejudice, would provide the Court with an additional benefit: It would take Riffin's Complaint off of the Court's 'Docket.' (At least for awhile.) And it would provide Riffin with an additional benefit: It would permit Riffin to consolidate all of his post-complaint pleadings into one Complaint pleading, thereby reducing / eliminating the 'clutter' that has accumulated since Riffin filed his Complaint. Riffin agreed with the Court's reasoning, and consented. The Defendants (reluctantly, since the Defendants did not really have much choice, the Court having intimated that it had already made its decision) consented.

10. The Court made it clear: The dismissal was **without prejudice**. Riffin could re-file his Complaint any time within the next six months, if the STB did not provide Riffin with a remedy to Riffin's satisfaction. Any statute of limitations would be tolled.

THE 'EFFECT' OF ALL THIS

11. Effectively, the Court has 'referred' the issues to the STB for the STB's initial determination. In the event that the STB elects **not to exercise** its jurisdiction, then Riffin can return to the District Court, where the District Court will address the issues.

12. The Defendants got what they asked for: A change in the forum.

13. The STB gets an opportunity to exercise its jurisdiction, if it so desires.

14. Riffin gets the added benefits of:

A. 'Cleaning up his Complaint.'

B. Addressing more issues than he originally sought to address.

15. The Defendants get an ‘initial’ (not official, but a first reading), on the issue of Riffin’s Article III standing: Riffin has Article III standing. (If he did not, the Court easily could have used that as the justification for dismissing Riffin’s Complaint **with** prejudice.)

16. The STB has been afforded an opportunity to weigh in on the issues, if it wants to. But it is not obligated to. (As it would be obligated to do, had the matter been ‘referred’ to the STB by the Court.)

17. Riffin would suggest that due to the multiple issues involved, it would be appropriate for the STB to grant Riffin’s Petition for Declaratory Order. That way the world will learn what the STB’s position is. And the STB will be able to ‘protect’ its turf.

18. Riffin will reiterate: Before the STB (and before the District Court), Riffin only seeks a determination of what track segments **Conrail used** for through traffic (and thus, what track segments would be ‘lines of railroad’ subject to the 1189X OFA process).

19. Were Riffin to go to the Special Court, he would be asking the Special Court to determine what lines of railroad were **conveyed** to Conrail via the FSP. Which would broaden the inquiry to **all** of the track segments that traversed the Harsimus Cove Yard, including the track segments that traversed where present-day 6th Street is located, the track segments that went to the car floats at the end of the pier at the end of 6th Street, the track segments that went to the car floats immediately to the east of the Metro Plaza parcel, the track segments that were used to deliver traffic to shippers located along Provost street, the track segments that were used to deliver traffic to the multiple shippers located immediately west of Marin Blvd., and even the track segment which connected the Harsimus Branch with the Docks Branch / connected the Harsimus Branch to the small yard that was located adjacent to present day Jewel Electric. In effect, all of the track segments formerly used by the Pennsylvania Railroad.

20. Riffin will remind potential parties to this proceeding: The STB, in its August 9, 2007 Decision in FD 34818, at slip op. 10, has already determined that many of the track segments

mentioned above, were **used by the PRR** for through traffic.

21. And Riffin will reiterate his goal: To resolve the controversies / uncertainties associated with Conrail's failure to at least give the ICC / STB an opportunity to weigh in on what Conrail sought to do (sell the real property underlying its lines of railroad), **before** Conrail unilaterally acted. (Much like what is done in all *State of Maine* proceedings: Pass it by the STB first. If the STB does not find that its jurisdiction is invoked, then the STB will so state, thereby eliminating all uncertainty.)

ADDITIONAL INFORMATION

22. The above was written on November 27, 2016. Riffin intended to file the above on November 28, 2016. However, Riffin desired to include a copy of the Newark District Court's written order, which had not been filed as of November 28, 2016. While Riffin was waiting for the District Court to file its written order, on November 29, 2016, counsel for the Defendants sent a letter to MJ Dickson, seeking to shorten the time (from six months to 90 days, from November 17, 2016), within which Riffin could refile his Complaint in the District Court. (A copy of the letter is appended.)

23. On November 30, 2016 Riffin mailed his reply to the Defendants' November 29, 2016 letter request. (A copy of Riffin's Reply is appended.)

24. As of December 1, 2016, the District Court has not filed its written order, nor has the District Court addressed the Defendants' November 29, 2016 letter request.

25. WHEREFORE, for the reasons stated by Riffin in his Petition for Declaratory Order, and in this Supplement to his Petition for Declaratory Order, Riffin respectfully prays that the STB institute a Declaratory Order Proceeding, to determine what track segments Conrail **used** for through traffic, to determine what track segments need abandonment authority, and for such other and further relief as would be appropriate.

Respectfully,

James Riffin
P. O. Box 4044
Timonium, MD 21094
(443) 414-6210

CERTIFICATE OF SERVICE

I hereby certify that on the 1st Day of December, 2016, a copy of the foregoing Supplement to Petition for Declaratory Order, was served on the following entities by e-mail: Charles Montange, counsel for City et al.; Daniel Horgan, counsel for the LLCs; Robert Jenkins, Adam Sloane, and Jonathan Broder, counsel for Conrail; Brendan Judge, counsel for the owners / developers of the Metro Plaza parcel; Eric Strohmeier, COO of CNJ Rail.

James Riffin



Connell Foley LLP
One Newark Center
1085 Raymond Blvd., 19th Floor
Newark, New Jersey 07102
P 973.436.5800 F 973.436.5801

Brendan Judge
Partner
BJudge@connellfoley.com

November 29, 2016

Via ECF and Regular Mail

Honorable Joseph A. Dickson, U.S.M.J.
United States District Court
District of New Jersey
M.L. King Jr. Federal Building & Courthouse
50 Walnut Street
Newark, New Jersey 07102

**Re: Riffin v. Forest City Ratner Companies, G&S Investors et al.
Civil Action No. 16-cv-04433**

Dear Magistrate Judge Dickson:

This firm represents the Defendants in this matter. As Your Honor will recall, on November 17, 2016, Your Honor decided to terminate this matter without prejudice while Plaintiff, James Riffin, pursued certain relief before the Surface Transportation Board (the "STB") pursuant to a Petition for Declaratory Order that Mr. Riffin filed on the eve of last week's hearing. During the hearing, we discussed the appropriate time period during which Mr. Riffin could file a new Complaint with this Court.

At the time I was unfamiliar with the STB's procedures, so I was unable to assist Your Honor in determining what length of time would be appropriate. After some discussion, Your Honor set the time period at six months during which Mr. Riffin could either file a new Complaint or seek an extension.

I have since learned that the STB's decision whether or not to accept a Petition for consideration is discretionary. That is, the mere filing does not give the Petitioner the right to have his or her grievance heard. Additionally, any opposition to the Petition before the STB is due on December 6, 2016. No reply submissions are permitted. Therefore, Mr. Riffin's Petition will be ripe for decision as soon as December 6, 2016.

Consequently, Defendants respectfully request that the time frame during which Mr. Riffin can file a Complaint in this Court be limited to 90-days from the November 17, 2016 hearing.

The reason Defendants are making this request is that there is considerable urgency from Defendants' perspective to bring certainty to its massive redevelopment project. As the

Roseland

Jersey City

Newark

New York

Cherry Hill

Philadelphia

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November 29, 2016

Page 2

Mayor of Jersey City acknowledged in his February 18, 2015 letter to the New Jersey Economic Development Agency, a copy of which is attached hereto as Exhibit A, the "project is one of [the Mayor's] administration's highest economic development priorities and represents the first phase of a landmark redevelopment at Harsimus Cove that will redefine that area for years to come." As the Mayor explained:

The Harsimus Cove Redevelopment project will benefit the City in numerous and significant ways. First, this project is the critical first step in the broader Harsimus Cove Redevelopment Plan, which envisions thousands of residential units, over 300,000 square feet of retail, and 2.5 acres of open space as it will redevelop what is now an underutilized big box retail site into a vibrant 24/7 live, work and play environment and will reconnect this section of our waterfront to the City's existing street grid, second and very important of our administration, Forest City has committed to reserve 20% of its residential units in this first phase for workforce (moderate income) housing, a critical group of Jersey City residents for whom affordable housing options are scarce. Finally the Harsimus Cove project will be a significant economic development engine, both during construction and in its continued operations. The \$200+ million project is expected to produce 300 on-site construction jobs and over 15 permanent jobs from property management.

As they pursue this critical redevelopment project, Defendants are entitled to be free as soon as possible from the specter of Mr. Riffin's vexatious and frivolous lawsuit and from his threat to have construction enjoined.

Therefore, Defendants respectfully request that Mr. Riffin be given only **90-days from the November 17, 2016 hearing** to return to this Court to file a Complaint or seek an extension.

Your Honor's attention to this matter is appreciated.

Respectfully submitted,



Brendan Judge

cc: Mr. James Riffin (via e-mail and regular mail)
Kevin J. Coakley, Esq.

EXHIBIT A



STEVEN M. FULOP
MAYOR OF JERSEY CITY

CITY OF JERSEY CITY
OFFICE OF THE MAYOR

CITY HALL | 280 GROVE STREET | JERSEY CITY, NJ 07302
P: 201 547 5500 | F: 201 547 5442



STEVEN M. FULOP
MAYOR OF JERSEY CITY

February 18, 2015

Mr. Timothy Lizura
President & COO
New Jersey Economic Development Authority
P.O. Box 990
Trenton, NJ 08625

Reference: Forest City, 430 Marin Boulevard, Jersey City, NJ

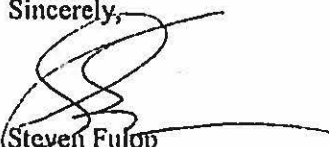
Dear Mr. Lizura:

I am writing in support of Forest City's application for a residential Economic Redevelopment and Growth (ERG) grant (applicant "GS FC Jersey City Pep I, LLC") for the first phase of its Harsimus Cove (aka Hudson Exchange West) Redevelopment. This project is one of our administration's highest economic development priorities and represents the first phase of a landmark redevelopment at Harsimus Cove that will redefine that area for years to come.

The Harsimus Cove Redevelopment project will benefit the City in numerous and significant ways. First, this project is the critical first step in the broader Harsimus Cove Redevelopment Plan, which envisions thousands of residential units, over 300,000 square feet of retail, and 2.5 acres of open space as it will redevelop what is now an underutilized big box retail site into a vibrant 24/7 live, work, and play environment and will reconnect this section of our waterfront to the City's existing street grid, second and very important for our administration, Forest City has committed to reserve 20% of its residential units in this first phase for workforce (moderate income) housing, a critical group of Jersey City residents for whom affordable housing options are scarce. Finally, the Harsimus Cove project will be a significant economic development engine, both during construction and in its continued operations. The \$200+ million project is expected to produce 300 on-site construction jobs and over 15 permanent jobs from property management.

Our Administration is in active conversation with Forest City regarding the project. The residential ERG grant will play a critical role in bridging the current financing gap of this important project. Please do not hesitate to contact me for any follow-up related to our support for the Harsimus Cove project. We look forward to the NJ EDA's favorable review of Forest City's application and to seeing this catalytic project proceed.

Sincerely,



Steven Fulop
MAYOR

IN THE U. S. DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY
NEWARK DIVISION

JAMES RIFFIN

*

V.

*

Case No.: 16 - CV - 04433 - ES

FOREST CITY RATNER COMPANIES, et. al

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Return Date: November 24, 2016

* * * * *

MOTION FOR LEAVE TO FILE

A REPLY TO

DEFENDANTS' NOVEMBER 29, 2016 LETTER TO JUDGE DICKSON

1. Comes now your Plaintiff, James Riffin (“**Riffin**”), who respectfully **seeks leave of the Court** to File this Motion for Leave to File a Reply to the Defendants’ November 29, 2016 Letter to Judge Dickson (“**Letter**”), wherein the Defendants:

“[R]equest that the time frame during which Mr. Riffin can file a Complaint in this Court be limited to 90-days from the November 17, 2016 hearing.” Letter at 1.

2. On **October 27, 2016**, MJ Dickson issued an Order prohibiting the parties in this proceeding from filing any further pleadings without express leave of the Court.

3, On **November 17, 2016**, the Court issued an oral order dismissing, without prejudice, Plaintiff’s Complaint, and further ordering that (A) Plaintiff could re-file his Complaint within six months of November 17, 2016; (B) any statute of limits would be tolled during the six-month period; (C) Plaintiff could seek an extension of the six month period if the Surface Transportation Board (“**STB**”) failed to provide Plaintiff with the remedies Plaintiff seeks: A determination of whether any of the track segments that traversed the Metro Plaza parcel are

unabandoned, lines of railroad.

4. Once again, Defendants seek to file an additional motion, **without requesting leave of the Court**, asking the Court to amend the oral order rendered on November 17, 2016.

PLAINTIFF'S REPLY

5. In the event the Court grants Plaintiff leave to file this Reply, Plaintiff respectfully replies:

6. The Defendants correctly note:

A. Whether the STB will grant Plaintiff's Petition for Declaratory Order (STB FD 36078), is discretionary; (That is, the STB is **not required** to institute a declaratory order proceeding.¹)

B. Any opposition is due on December 6, 2016.

7. The Defendants **incorrectly surmise** that the STB Declaratory Order proceeding would be "ripe for decision as soon as December 6, 2016." Letter at 1.

8. The sequence of events will be as follows:

A. Sometime after December 6, 2016, the STB will decide whether it will institute a declaratory order proceeding.

¹ There are two potential reasons why the STB would not institute a Declaratory Order proceeding: (A) There is no 'controversy' or 'uncertainty,' and / or the STB is unable to resolve the controversy or uncertainty. (B) The STB does not have the requisite jurisdiction to address the underlying issue. [The STB may determine that the controversy should be addressed by, and resolved by, the Special Court (D.C. D.C.), which has the exclusive jurisdiction to determine which track segments, if any, were **conveyed** to Conrail as lines of railroad. The STB's jurisdiction is limited to determining whether Conrail **used** any of the track segments as lines of railroad.]

B. **IF** the STB institutes a declaratory order proceeding, the STB will set a procedural schedule.

C. **IF** the STB **declines** to institute a declaratory order proceeding, Riffin will then file a Complaint in the Special Court, asking the Special Court to determine what was **conveyed** to Conrail. The Special Court then will set a procedural schedule.

9. Riffin expects much litigation. Riffin does not expect that the issues will be decided any time soon.

10. Jersey City filed a similar declaratory order request on **January 12, 2006**.² See STB FD 34818. The STB instituted the Jersey City declaratory order proceeding on **February 8, 2006**. The STB served its decision in that proceeding on **August 9, 2009**. Then the issue was taken to the Special Court, which rendered its final decision on **September 30, 2013**.

11. While it is reasonable to expect the STB to render a decision either granting, or denying, Riffin's request for a declaratory order proceeding within a week or two after December 6, 2016, (the FD 34818 decision was rendered in less than 30 days) it is totally **unreasonable** to expect that the issues will be resolved within 90 days. [It took seven years to resolve the FD 34818 issue (ultimately holding that the Embankment portion of the Harsimus was **conveyed** to Conrail as a line of railroad).]

² Jersey City limited its declaratory order proceeding to that portion of the Harsimus Branch that lies **West** of Marin Blvd. Riffin's declaratory order proceeding addresses the portion of the Harsimus that lies **East** of Marin Blvd, and addresses the Hudson Street Industrial Track, which lies **East** of Marin Blvd. (From a point within the Metro Plaza parcel, south down Hudson Street, then east along Essex street to its terminus. Had Jersey City included the portion of the Harsimus Branch that lies **East** of Marin Blvd, there would be no need for Riffin's declaratory order proceeding. It all would have been sorted out several years ago. So any 'uncertainty' is solely due to Jersey City's decision to limit its inquiry to the portion of the Harsimus that lies **West** of Marin Blvd.

12. Riffin **does not expect** his declaratory order proceeding to take very long to resolve:

- A. All of the discovery (or at least most of it) has already been completed. (Riffin will be using the same material in his declaratory order proceeding that was adduced in the FD 34818 proceeding.)
- B. Jersey City has advocated both in its FD 34818 proceeding, and in the 1189X proceedings, that there is a 'line of railroad' traversing the Metro Plaza parcel:

"Conrail should have obtained authority from ICC or STB to abandon that portion of the **Harsimus Cove facility** which was **through track** ... as a 'line of railroad.' " Jersey City's Opening Statement in FD 34818 at 36.

"City has no objection if Conrail in response to this Board's ruling in this case decides to seek an abandonment authorization, encompassing the **through line** from MP 1.3 to MP 1.0 **in the Cove**. In general, Conrail should bring itself into compliance with applicable law." Jersey City Opening Statement in FD 34818 at 36-37.

"Based on inquiry to STB, yard track in general is subject to STB jurisdiction, but is exempt from STB abandonment approval, **except for the last through track in a yard**, per 49 USC 10906. Conrail could thus lawfully sell off the yard, **except the last through track**. City et al.'s November 4, 2016 Reply at p. 37 - 38, to Riffin's October 31, 2016 Petition for Other Relief in 1189X.

13. Since most, if not all, of the discovery has been completed, and since Jersey City has **already admitted** to the STB that there is **at least one line of railroad traversing the Metro Plaza parcel**, the pace of the proceeding should be much accelerated. However, given the intensity of the litigation that Riffin is expecting, it still will take some time to resolve the issue of how many unabandoned lines of railroad traverse the Metro Plaza parcel.

14. While Riffin is hopeful that a final determination can be obtained within six months, it is **highly unlikely** that a final determination will be obtained within 90 days.

15. Riffin appreciates the uncertainty that the Defendants feel. However, the uncertainty is of the Defendants own making: The Defendants bought real property known to have been used

extensively for through rail traffic.³ The Defendants failed to intervene in the FD 34818 proceeding. Had the Defendants intervened in the FD 34818 proceeding (or had the Defendants instituted their own declaratory order proceeding some years ago), the Defendants would have already learned whether unabandoned lines of railroad traverse the Metro Plaza parcel.

16. And given the intensity, and notoriety, of the litigation associated with the adjacent, Embankment portion of the Harsimus Branch, the Defendants were on notice, quite some years ago, that there was a very high probability that unabandoned lines of railroad traversed the Metro Plaza parcel. (After all, the Harsimus quite obviously did not abruptly terminate on the West side of Marin Blvd, some fifteen feet up in the air. And had the Defendants done even a modest amount of historical research before acquiring the Metro Plaza parcel, the Defendants would have known that the Colgate Palmolive company occupied a substantial part of Jersey City next to the water front, south of present day Columbus Blvd, for decades, and that thousands of rail cars traversed the Metro Plaza parcel en route to the Colgate Palmolive company, and to other industries / shippers located along Hudson and Essex streets. Which would make the track segments traversing the Metro Plaza parcel ‘lines of railroad.’

17. In *City of Jersey City v. 212 Marin Blvd. et al.*, Superior Court of New Jersey, Appellate Division, Docket No. A-2207-13T1, decided August 28, 2015, the court held:

“On July 12, 2005, the LLCs purchased the Embankment properties from Conrail. ... At the time the sale took place in 2005, Conrail had not petitioned the STB for abandonment. Although the record is not entirely settled about whether the LLCs were **actually aware** of the abandonment requirement, the federal statute’s clear mandate **makes this point irrelevant**. **ALL** of the parties to this transaction **were constructively on notice of this and any other relevant legal requirement** related to the purchase of this property.” *Id.* at 7. Underline in original. Bold and caps added.

³ The STB held, in its **August 9 2007** decision in FD 34818, that the Harsimus Branch had been **used** as a line of railroad **since its inception**. The STB further held that the Embankment portion of the Harsimus was **conveyed** to Conrail as a line of railroad. While the Circuit Court vacated the STB’s decision on jurisdictional grounds, the Special Court ultimately agreed with the STB’s findings.

18. Riffin agrees with the Defendants: There is a pressing need to as-quickly-as-possible, determine whether unabandoned lines of railroad traverse the Metro Plaza parcel. For if there are unabandoned lines of railroad that traverse the Metro Plaza parcel, the Defendants' title to their parcels is decidedly less than fee simple.

19. However, Riffin does not control how quickly the process will play out.

20. WHEREFORE, Riffin respectfully seeks leave of the Court:

A. To file this Motion for Leave to File a Reply to the Defendants' November 29, 2016 Letter (Motion) to modify the Court's November 17, 2016 oral order;

B. To file the above Reply to the Defendants' November 29, 2016 Letter (Motion);

C. **And** in addition to the relief noted above, Riffin prays that the Court **leave its order as stated from the bench**;

D. And for such other and further relief as would be appropriate.

Respectfully,

James Riffin
P. O. Box 4044
Timonium, MD 21094
(443) 414-6210

CERTIFICATE OF SERVICE

I hereby certify that on or before the 30th Day of November, 2016, a copy of the Foregoing Motion for Leave to Reply to Defendants' November 29, 2016 Letter Request, was e-mailed to bjudge@connellfoley.com, and a paper copy was mailed, via First Class Mail, to Brendan Judge, Connell Foley, 1085 Raymond Blvd., 19th Floor, Newark, NJ 07102.

James Riffin

**IN THE U. S. DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY
NEWARK DIVISION**

JAMES RIFFIN

*

V.

*

Case No.: 16 - CV - 04433 - ES

FOREST CITY RATNER COMPANIES, et. al

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* * * * *

**ORDER GRANTING
PLAINTIFF'S MOTION FOR LEAVE TO FILE A REPLY
TO THE DEFENDANTS' NOVEMBER 29, 2016 LETTER TO MJ DICKSON**

This matter, having come before the Court upon the motion of James Riffin, Plaintiff, for the entry of an order granting Plaintiff Leave to File a Reply to the Defendants' November 29, 2016 Letter to the Honorable Magistrate Judge Dickson, and the Court having considered the within application, and any opposition thereto, and having heard oral argument, if ordered, and for good and sufficient cause having been shown;

IT IS ON THIS _____ day of _____, 2016,

ORDERED that the Plaintiff's Motion for Leave to File a Reply to the Defendants' November 29, 2016 Letter to the Honorable Magistrate Judge Dickson, is hereby **GRANTED**, and it is further

ORDERED that Plaintiff's Motion for Leave to File, and Plaintiff's Reply to the Defendants' November 29, 2016 Letter to the Honorable Magistrate Judge Dickson, is hereby **ACCEPTED** into the Record in this proceeding.

Joseph A. Dickson, U.S.M.J.

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JAMES RIFFIN,

Plaintiff,

v.

**FOREST CITY RATNER COMPANIES,
et al.,**

Defendants.

Civil Action No. 16-4433 (ES) (JAD)

ORDER

SALAS, District Judge

This matter comes before the Court following the hearing held on November 17, 2016 before the Honorable Joseph A. Dickson, U.S.M.J. Upon careful consideration of the Parties' filings to date, and for the reasons discussed at the hearing, and for good cause shown;

IT IS on this 1st day of December 2016,

ORDERED that for the reasons stated on the record on November 17, 2016, Plaintiff's Complaint (ECF No. 1) is hereby administratively terminated without prejudice to Plaintiff's right to file a new complaint upon the conclusion of any administrative proceeding currently pending before the U.S. Department of Transportation Surface Transportation Board ("STB"); and it is further

ORDERED that any applicable statute of limitations available to Defendants in this action is tolled pending further Order of the Court; and it is further

ORDERED that Plaintiff shall submit a status letter to the Court on or before February 18, 2017; and it is further

ORDERED that the Clerk of the Court shall terminate the case.

SO ORDERED.

s/Esther Salas
Esther Salas, U.S.D.J.

cc: Hon. Joseph A Dickson, U.S.M.J.