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JAMES RIFFIN

PETITIONER

V.

SURFACE TRANSPORTATION BOARD

RESPONDENT

APPEAL OF AN INITIAL ALJ DECISION OF

THE SURFACE TRANSPORTATION BOARD

AB 167 (Sub. No. 1189X)

(Harsimus Branch – Jersey City, NJ)

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Surface Transportation Board

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SUMMARY

Riffin **did not** refuse to provide City an opportunity to 'inspect and copy' any of Riffin's e-mails. Riffin made his e-mails available for 'inspecting and copying' **multiple times.** Montange, by refusing to 'inspect' Riffin's e-mails, has waived any deficiencies that may exist.

Riffin was obligated to comply with ALJ Dring's August 25 Order. The Order **did not** order Riffin to provide City with the Documents specified in City's Request for Documents. The Order required Riffin to provide City with the e-mails **remaining** in Riffin's e-mail account between Riffin and **the LLCs**, **NOT** all e-mails between Riffin and '**agents** of the LLLs,'

Riffin made it clear to both Montange, and to ALJ Dring, that if Montange wanted more than the e-mails between Riffin and Horgan / the Hymans (such as e-mails between Riffin and any 'agents' or 'reps' of the LLCs), then Montange would have to ask ALJ Dring to order Riffin to provide those additional e-mails, pursuant to an **additional** order.

Riffin **did in fact answer** ALJ Dring's **only** question to Riffin. (Why did Riffin say 'if you want more, ask ALJ Dring.')

ALJ Dring's August 25 Order was **deficit**, and **was not in conformity** with case precedent interpreting Rule 34, and Rule 37, for the Order (A) **failed to specify** "The time and place and manner of making the inspection and making of copies." *Rosenblum,*. and (B) ALJ Dring **failed to consider** the criteria that **must be considered before** imposing the sanction of 'dismissal' from a proceeding, and (C) **failed to consider** a sanction **less severe than dismissal**.

Both City's Motion for Sanctions, and ALJ Dring's October 26 Order are **fatally defective**, for **neither** contains the **required** "certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action," as is **mandated** by Rule 37(a)(2) (A) **and** (4)(A). And without the required 'certification,' **no attorney's fees may be awarded.** Rule 37(a)(4)(A).

City has not provided any evidence that City was **prejudiced** by any deficiencies that may exist, for City **has a copy**, and appended to its Motion for Sanctions a copy, of the very e-mails that it complains about. And without a showing of prejudice, dismissal is decidedly **not** a "just" sanction.

ALJ Dring's October 26, 2016 Served Order deprived Riffin of his Due Process Rights.

The STB, in its May 22, 2015 Discovery Decision, Apx 23, **denied** City's requests for similar documents requested from Riffin. Riffin asks that the STB **follow its precedent.**

NOTICE OF APPEAL

1. On **October 26, 2016**, ALJ Dring Served a decision wherein he granted City et al.'s ("**City**")

Motion for Sanctions against Riffin,[1] and imposed sanctions upon Riffin ("**Decision**").[2]

2. Riffin desires to, and intends to, **appeal** (**NOT** 'reopen') ALJ Dring's Decision.

3. This Appeal is being filed pursuant to 49 CFR 1115.2, which states:

> "This category includes the initial decision of an administrative law judge, individual Board Member, or employee of the board.
>
> (a) An appeal of right is permitted.
>
> (b) Appeals must be based on **one** or more of the following grounds:
>
> (1). A necessary finding of fact is omitted, erroneous, or unsupported by substantial evidence of record;
> (2). A necessary legal conclusion, or finding is contrary to law, Board precedent, or policy;
> (3). An important question of law, policy, or discretion is involved which is without governing precedent; **OR**
> (4). Prejudicial error has occurred.
>
> (e) Appeals must be filed within 20 days after the service date of the decision ... .
>
> (f) The timely filing of an appeal to an initial decision **will stay** the effect of the action pending determination of the appeal." Bold added.

BACKGROUND INFORMATION

4. On **August 11, 2014**, City served a "Request for the Production of Documents ... to Consolidated Rail Corporation, Norfolk Southern and CSX." (Together, "**Conrail**.") Appendix ("**Apx**") 510.

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[1] City of Jersey City, Rails to Trails Conservancy and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition.

[2] ALJ Dring served two decisions on October 26, 2016: The first was a decision dismissing Riffin from the 1189X proceeding. This is the decision this Notice applies to. The second decision denied Riffin's Motion to Stay **the issuance [NOT** the **sanction** decision actually served] of ALJ Dring's Sanctions decision. This second decision **is not being appealed**.

5. On **September 3, 2014**, Conrail filed its Reply, Apx 519, wherein Conrail objected to all of City's Requests for Documents, arguing that the Requests were "irrelevant and unlikely to lead [to] the discovery of admissible evidence."

6. On **September 18, 2014**, City filed a Motion to Compel, asking the Surface Transportation Board ("**STB**") to compel Conrail to provide the requested documents. Apx 473.

7. On **September 19, 2014**, City served a "Request for the Production of Documents ... to Intervenors 212 Marin Blvd, LLC, et al, and NJ Funding, LLC." (Together, the "**LLCs**.") Apx 568.

8. On **October 15, 2014**, the LLCs filed their Reply, Apx 577, wherein the LLCs objected to all of City's Requests for Documents, arguing that the Requests were "irrelevant, improper and overbroad."

9. On **October 24, 2014**, City filed a Motion to Compel, asking the STB to compel the LLCs to provide the requested documents. Apx 537.

10. On **May 22, 2015**, the STB Served a decision, Apx 23, wherein the STB **denied** the City's Requests for the following types of documents, holding that the indicated documents were "overly broad and include requests for documents with no apparent relevance to this ongoing proceeding:" (See Apx at 32-45.)

A. Documents regarding transactions between Conrail and the LLCs. Apx 32-33.
B. Conrail's policies regarding its real estate policies. Apx 35.
C. The names and addresses of Conrail's Board of Directors. Apx 36.
D. **All documents relating to the potential sale of the Harsimus for non-railroad uses**. Apx 37.
E. **All persons advising or recommending** actions Conrail or the **LLCs** should take. Apx 38.
F. All documents relating to the rail regulatory status, historic nature, or sale of the Harsimus. Apx 38.

G. All documents showing Conrail's compliance with / objection to NJ's 1st right of refusal. Apx 39.

H. Documents regarding ownership of the LLCs. Apx 41.

I. Documents relating to agreements to toll any statute of limitations defenses. Apx 41.

J. Documents relating to the potential sale of any interests in the Embankment properties. Apx 42.

K. Documents sufficient to identify the names of persons advising Conrail, the LLCs, or Steve Hyman, regarding the Sale of the Harsimus. Apx 42.

L. Documents relating to the demolition of the Embankment properties. Apx 43.

M. Documents relating to offers to donate Embankment fill or stones. Apx 43.

N. Documents relating to any Joint Development agreements. Apx 44.

O. All **communications between CNJ Rail** / Eric Strohmeyer **and the LLCs**, or their agents. Apx 44.

P. All communications between Chicago Title and the LLCs. Apx 44.

Q. Documents relating to any potential claims by the LLCs against Conrail or attorneys. Apx 44.

11, On **March 28, 2016**, City served a "Request for the Production of Documents ... to James Riffin." Apx 211.

12. On **April 29, 2016,** Riffin filed his **first** Reply, Apx 215, wherein Riffin stated:

> "Riffin has not received, nor is he in possession of, any **[relevant]** 'Documents' from the LLCs, Mr. Steve Hyman or Daniel Horgan, other than a 'request for documents' from Mr. Horgan." (The word 'relevant' was inadvertently omitted, to Riffin's eternal regret.)

13. On **May 2, 2016,** City filed its **First** Motion to Compel, asking the STB to compel Riffin to respond to City's Request for Documents. This **First** Motion to Compel **was withdrawn by City on June 7, 2016**, "as moot." (Riffin had responded, **three times, before**

City filed its Motion. Apx 215 (April 29, 2016 Response); Apx 219 (May 3, 2016 Response); Apx 227 (May 12, 2016 Response).

14. City, not content with Riffin's responses, filed its **Second** Motion to Compel against Riffin on **July 5, 2016**, asking Riffin to provide documents **similar** to those **denied** by the STB in its May 22, 2015 Decision. See Apx 32-45.

15. On that same day, **July 5, 2016**, the Director of the Office of Proceedings (**not the full Board**), served a decision, Apx 47, assigning all 1189X discovery issues to ALJ Dring, a Federal Energy Regulatory Commission ("**FERC**") Administrative Law Judge.[3]

16. On **August 5, 2016**, ALJ Dring served a decision, setting August 24, 2016 as an oral-hearing date, to address and consider City's Motion to Compel Riffin to produce Documents.

17. On **August 23, 2016**, the night **before** the August 24, 2016 oral-hearing, Riffin took the initiative: He drove to Washington, D.C., then met with Charles Montange ("**Montange**"), counsel for City et al., **at about 9 pm**, in a restaurant. Apx 72:15-17.

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[3] Pursuant to a Memorandum of Understanding ("**MOU**") between the STB and FERC, Apx 48. Since a copy of the STB - FERC MOU has never been made public, Riffin has no idea just how much authority was delegated to ALJ Dring. ALJ Dring, at the end of the October 24, 2016 hearing stated: "Now, you can appeal this to the full Board, and after that, you can appeal it to the circuit." Apx 78:12-14. So it would appear that ALJ Dring anticipated that any decisions that he rendered, could be appealed to the STB. Since ALJ Dring's appointment was pursuant to a decision rendered by the Director of the Office of Proceedings (whose decisions are 'initial' decisions, even in an 'abandonment and discontinuance proceeding,' such as this one), and since ALJ Dring's October 26, 2016 Served Sanctions Decision has absolutely nothing to do with the primary issue in this 'abandonment and discontinuance' proceeding (does the public convenience and necessity permit Conrail to abandon / Norfolk Southern, CSX to discontinue, service over the Harsimus Branch), it would appear to Riffin that the STB may well have anticipated retaining authority to review any decision rendered by ALJ Dring. Or, the STB may not have anticipated anyone desiring to seek review of an ALJ Dring decision. In any case, Riffin believes that it is a policy decision which the STB needs to address. (And which Riffin has asked the STB to address. See Riffin's October 31, 2016 filed Petition for Other Relief.)

18. At the **August 23, 2016 meeting, Riffin offered Montange an opportunity to inspect and copy** whatever e-mails were remaining in Riffin's e-mail account, between Riffin and the LLCs,[4] Vickie Hyman (the managing member of the LLCs), and Steve Hyman (Vickie Hyman's husband). Apx 72:15-22, 73:1-5.

19. Mr. Montange took a few minutes to inspect a few of Riffin's e-mails:

Mr. Montange: "Now, what has happened most recently is that Mr. Riffin found out that I was coming into town for this, and because – he found out where I was having dinner last night and was there." Apx 72:9-12.

"Mr. Montange: He was there; he was there with his computer. He opened up his computer and displayed to me his e-mails.

Now, he has the same kind of e-mail system I do, Yahoo!.com. Mine is through Frontier; his is direct. And we are both familiar how you do a search on e-mails. So he did a search putting 'Hyman' up at the top and pulled up a whole sequence of e-mails. We went down the list until end of 2015, an e-mail exchange. It looked like it was material that was – I can't remember whether it was material he sent to Hyman or Mr. Hyman sent to him or both, but there was a lot.

And because it was a WiFi connection, it was difficult to open." Apx 72: 9-22, 73: 1-7.

20. Mr. Montange then made the decision **not to continue to inspect** Riffin's e-mails:

> "We would have been there all night. We would have been thrown out of the restaurant had I tried to view them there."[5] Apx 73: 7-9.

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[4] More precisely: Between Daniel Horgan, counsel for the LLCs, and Riffin, since Mr. Horgan has stated to Riffin that none of the LLCs have e-mail accounts.

[5] Since the meeting began at **about 9 pm**, and since the 'hours open' display on the door to the restaurant [Clyde's] says that the restaurant stays open until 2 am, [verifiable by calling Clyde's at (202) 349-3700] and since most restaurants do not 'throw' patrons out immediately after eating their meals, **Montange could have taken 3+ hours to 'inspect and copy' all of the Riffin / Horgan / Hyman e-mails, if he had actually desired to do that** and been out by mid-night. **And this appeal, and the October 24, 2016 hearing, never would have happened.**

21. Riffin then offered to forward to Montange, whatever e-mails remained in Riffin's e-mail account, between Riffin and Horgan and the Hymans.

22. At the **August 24, 2016** hearing before ALJ Dring, the following colloquy occurred:

"Mr. Montange: Now, what Mr. Riffin, I think, agreed to do last night was to forward all that e-mail to me by Friday of this week. So he's going to now make available all those e-mails which we sought."

Presiding Judge: This is correct?

Mr. Riffin: Yes, your Honor, it's correct. **My suggestion to him last night was I will e-mail him a copy of whatever is there,** and I'm also going to send Mr. Horgan a copy so that both of them understand what the other person knows." Apx 73:22, 74:1-12.

Mr. Riffin: Well, I will just tell you, when you delete an e-mail, I don't keep anything, and I've learned you can't print e-mails, at least I can't.

Presiding Judge: **If it's deleted and you can't retrieve it, under the terms of Mr. Montange's suggestion, you would not be obligated to hand it over**. You can't do something that you can't do.

Mr. Riffin: Whatever is in my e-mail account, I have agreed I will give him a copy. I will send a copy to Mr. Jenkins also. He's expressed an interest.

In terms of time, he wants it by Friday. If I get back to a library where I have FIOS, that will speed the process up. He will probably have it on his e-mail account before he gets home.

Presiding Judge: Very good. I will enter an order to that." Apx 76: 5-22. Bold added.

23. On **August 25, 2016**, ALJ Dring served the following order:

"1. Mr. Riffin will provide City, et al. and Consolidated Rail Corporation with all e-mail communications between him and **the LLCs that Mr. Riffin retains in his possession.** Mr. Riffin will also supply City, et al. the docket numbers for three (3) bankruptcy proceedings involving Mr. Riffin. Mr. Riffin shall comply with this order by close of business on Friday, August 26, 2016."

24. On August 26, 2016, Riffin sent a 'Status Report' to ALJ Dring, wherein Riffin stated:

"STATUS REPORT

Per my agreement with Charles Montage, a copy of the e-mails between me and Steve Hyman, Vicki Hyman, and Daniel Horgan, were forwarded to Mr. Montange on August 25, 2016, by 6:30 pm. (All 103 of them.) Likewise, the case numbers for the three bankruptcy proceedings that I participated in, were forwarded to Mr. Montange on August 26, 2016.

COMMENTS

Mr. Montange (misrepresented) to me, and to the Court, that forwarding the e-mails would be simple and would require very little of my time. I spent an hour on August 24, 2016, trying to forward the e-mails to Mr. Montange, as a 'batch.' (Which is how he said he wanted to receive them.) I learned, after an hour of trying, that Yahoo e-mails cannot be forwarded as a 'batch.' Instead, one must 'open' each individual e-mail. Once the e-mail is open, it then can be forwarded. It took me over two hours to 'open' the 103 e-mails Yahoo says have passed between me and Steve Hyman, Vicki Hyman, and Daniel Horgan, then to forward those e-mails to Mr. Montange, Daniel Horgan, Robert Jenkins, Adam Sloane and Eric Strohmeyer.

The Discovery Rules say one must make documents 'available for inspection and copying.' The Rules do not compel the document holder to do the copying for the person seeking the documents. However, it would have taken more time to litigate this 'principle,' than it took me to just e-mail them to Mr. Montange. E-mailing them, versus litigating the issue, also saved the Court a considerable amount of time." Apx 302.

25. After Riffin forwarded **ALL** of the Riffin / Horgan / Hyman e-mails remaining in his e-mail account to Montange, Conrail's counsels, Horgan and Strohmeyer, 15 e-mails were exchanged between Riffin, Montange and Horgan. See Apx 472-B to 472-I. These are discussed below. See ¶¶40 to 43 and 54 to 57.

26. On **September 15, 2016**, Montange, not content with what Riffin had sent to him, and desiring to find a way to oust Riffin from the 1189X proceeding, filed a **Motion for Sanctions**, asking ALJ Dring to sanction Riffin, in in particular, asking that "Riffin should be dismissed" from the 1189X proceeding, Apx 323, 326, and asking that "attorney's fees and costs should be awarded against him." Apx 326.

27. On **September 23, 2016,** Conrail filed a Reply in Partial Support of City's Motion for Sanctions. In its Reply, Conrail stated:

> "Conrail ... takes no position on whether Mr. Riffin's discovery-related conduct supports the imposition of sanctions." Footnote 1 in Conrail's Reply at 2.

28. The main argument in Conrail's Reply, was Conrail's insistence that Riffin be "barred from this proceeding." Reply at 3. **Not because** Riffin violated ALJ Dring's October 26, 2016 Served Decision, but because "in light of his cavalier and cynical abuses of the OFA process here."[6] Reply at 3.

29. On **September 26, 2016**, Riffin moved to Strike all of Conrail's September 23, 2016 Reply, except for Conrail's footnote 1 (Saying Conrail takes no position ... .). Apx 421.

30. On **September 26, 2016**, Riffin filed his Reply to City's Motion for Sanctions. Apx 403.

31. On **October 23, 2016,** Riffin electronically filed [filed in the STB record on October 24, 2016] his 'Written Argument,' in lieu of making oral argument at the **October 24, 2016** Sanctions hearing before ALJ Dring. Apx 429.

32. On **October 25, 2016**, Riffin filed a Motion to Stay, Apx 443, asking ALJ Dring to stay **serving** his decision, until after Riffin received certification from Yahoo.com, that the only e-

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[6] "*See, e.g.,* City et al. Motion at 8 [Apx 313: Riffin's "lawsuit is predicated on the Riffin OFA and Riffin has declared that its chief purpose is to force Conrail and the City to 'settle' with the Hyman interests"], 12-13 [Apx 317-318: "Mr. Riffin has explained that Hyman will compel Conrail to 'accept' Mr. Riffin's proposed ... OFA"], 14-15 [Apx 319-320: "Riffin and Mr. Hyman apparently have abusively positioned Riffin as an OFA applicant to get the Harsimus Branch and other properties in the old Harsimus Cove Yard for non-rail purposes, and are now involved in litigation against Forest City, based on Riffin's abusive OFA ... by holding up redevelopment of a portion of the Harsimus Cove Yard."], Exhibit G [Apx 364: Memo to Bruce Nagel], Exhibit I [Apx 383 - 394: local press releases]."

mails remaining in Riffin's e-mail account on August 25, 2016, between Riffin and Horgan / Hymans, were those noted on the Yahoo e-mail print-outs in the Appendix to Riffin's ALJ Dring Motion to Stay, Apx 452-461, and that the e-mails challenged by Montange as being 'incomplete,' Apx 462-472, were in fact 'identical copies' of what appeared in Riffin's e-mail account.

33. On **October 26, 2016,** ALJ Dring served two decisions:

A. A decision **dismissing Riffin from the 1189X proceeding;** awarding Montange Attorney's fees; and

B. A decision denying Riffin's Motion to Stay the date ALJ Dring served his decision.

DISCOVERY RULES

34. In the STB's May 22, 2015 Served Discovery Decision in this proceeding, the STB stated:

"In Board proceedings, parties generally are entitled to discovery 'regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding.' 49 CFR 1114.21(a)(1). ... **However, discovery is typically disfavored in abandonment cases. Thus, parties seeking discovery in abandonments must demonstrate relevance and need.** *Cent. R.R. of Ind. – Aban Exemption – In Dearborn, Decatur, Franklin, Ripley & Shelby Cntys., Ind.* AB 459 (Sub. No. 2X), STB served April 1, 1998)." Bold added. Apx 26.

35. 49 CFR 1114.30, Production of documents and records, states:

"(a) *Scope.* Any party may serve on any other party a request:
(1) To **produce and permit the party making the request to inspect** any designated documents, ... **or to inspect and copy**, test, or sample any tangible things which are in the **possession, custody, or control** of the party upon whom the request is served ... ." Bold added.

"(b) *Procedure.* Any request filed pursuant to this rule should set forth the items to be inspected either by individual item or by category and descsribe each item and category with reasonable particularity. The request should specify **a reasonable time, place and manner of making the INSPECTION** and performing the related acts." Bold and caps added.

36. 49 CFR 1114.31, Failure to respond to discovery, states:

"(a) *Failure to answer.* If a **deponent** fails to answer or gives an evasive answer or incomplete answer to a question propounded under **§1114.24(a)**, or a party fails to answer or gives evasive or incomplete answers to **written interrogatories** served pursuant to **§1114.26(a)**, the party seeking discovery may apply for an order **compelling an answer** by motion filed with the Board and served on all parties and deponents. Such **motion to compel an answer** must be filed with the Board and served on all parties and deponents. Such motion to compel an answer must be filed with the Board within 10 days after the **failure to obtain a responsive answer upon deposition**, or within 10 days after expiration of the period allowed for submission of **answers to interrogatories**." Bold added.

"(b) *Failure to comply with order.* (1) If a party or other witness refuses **to be sworn** or refuses **to answer any question** after being directed to do so by the Board, such refusal may subject the refusing party or person to action by the Board under 49 U.S.C. 721(c) and (d) to compel appearance and compliance with the Board's order.

(2) If any party or an officer, director, managing agent, or employee of a party or person refuses **to obey an order made under** paragraph (a) of this section requiring him to answer designated questions, or **an order made under §1114.30** requiring him **to produce** any document or other thing **for inspection, copying, testing, sampling, or photographing** or to **permit it to be done**, or to permit entry upon land or other property, the Board may make such orders in regard to the refusal **as are just**, and among others the following:

(i) An order that the matters regarding which questions were asked, or the character or description of the thing or land, or the contents of the paper, or any other designated facts should be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order;

(ii) An order refusing to allow the disobedient party to support or oppose **designated** claims or defenses, or prohibiting him from introducing in evidence **designated** documents or things or items of testimony;

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, **or dismissing** the proceedings or **any party thereof;**

(iv) **In lieu of** any of the foregoing orders, **or in addition thereto**, the Board shall require the party failing to obey the order or the attorney advising that party, or both, to pay the reasonable expenses, including attorney's fees, **caused by the failure**, **unless** the Board finds that the failure was **substantially justified or that other circumstances make an award of expenses unjust**." Bold added.

37. FRCP 34, Production of Documents and Things and entry upon land for inspection and other purposes, states:

"(a) *Scope.* Any party may serve on any other party a request (1) **to produce and permit the party making the request**, or someone acting on the requester's behalf, **to inspect and copy**, any designated documents ... **or to inspect and copy**, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the **possession, custody or control** of the party upon whom the request is served. ... ." Bold added.

"(b) *Procedure.* The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The response shall state, with respect to each item or category, **that inspection** and related activities will be permitted as requested, **unless the request is objected to**, in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or **any failure to permit inspection** as requested.

A party who **produces documents for inspection** shall produce them **as they are kept in the usual course of business** or shall organize and label them to correspond with the categories in the request." Bold added.

38. FRCP 37, Failure to make disclosure or cooperate in discovery: sanctions, states:

"(a) *Motion for Order Compelling Disclosure or Discovery.* A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(2) *Motion.* (A) If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. The motion **must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.**

(B) If ... or if a party ... in response to a request for inspection submitted under Rule 34, **fails to permit inspection** as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling an answer, or a designation, or an order **compelling inspection** in accordance with the request. The motion **must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action.**" Bold added.

(4) *Expenses and Sanctions.* (A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, **unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.**" Bold added.

ARGUMENT

39. ALJ Dring, in his October 26, 2016 Served decision, struck **all** of Riffin's pleadings in this proceeding, and **dismissed Riffin from the proceeding**. Apx 2. ALJ Dring listed the following as the 'basis' for his Decision:

"Based on the foregoing, I am adopting arguments contained in City et al.'s Motion for Sanctions, and City et al.'s October 24, 2016 oral arguments as the rationale for imposing sanctions on Mr. Riffin as ordered, below.

Moreover, based on my observations of Mr. Riffin at the October 24, 2016 oral arguments, I am making a demeanor credibility determination in which I find that Mr. Riffin is **not a reliable witness as to the truth of the matter to which he asserts**. His deportment[7] suggests evasiveness, deliberate obtuseness, **faulty memory**, and **mental reservation**. Footnote 1: Two cases holding that a reviewing court would not normally disturb a credibility determination. End Footnote 1. Mr. Riffin **evaded direct questioning from me several times** and **contradicted himself on several occasions**. He also alleged **faulty memory** as to the status of various emails and **knowledge of certain parties**." Bold added.

RIFFIN'S MEMORY / BRUCE NAGEL

40. At 73, pushing 74, Riffin's memory is no longer what it used to be. There is nothing Riffin can do about that. While a loss of memory would make a witness 'unreliable,' if the witness' recollection of something were critical, such loss of memory should never be the basis for imposing sanctions.

41. In this particular proceeding, the only 'memory' issue for Riffin was: **Who is Bruce Nagel?**

42. City, and ALJ Dring, have made Bruce Nagel a really big issue. City's Motion for Sanctions has **14 pages** devoted to Bruce Nagel. See Apx 312, 319, 364-375. Bruce Nagel's name is mentioned **24 times** in the October 24, 2016 hearing transcript! ALJ Dring's reference to Riffin's 'faulty memory' is about Riffin's inability to remember who Bruce Nagel is /was. A person **seemingly** this important, needs some explanation.

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[7] **Deportment**: demeanor, conduct, behavior. **Demeanor**: conduct, behavior, deportment, facial appearance. **Obtuseness**: not sharp,, acute or pointed; blunt in form, dull in perception, feeling, or **intellect**. **Reservation:** The act of keeping back, withholding, or setting apart. The act of making an exception or qualification. Random House College Dictionary.

43. In October / November, **2015**, Steve Hyman was dissatisfied with his legal representation. (More precisely, he was dissatisfied with the glacial pace of the 1189X litigation.) He frequently would telephone Riffin, then conference in some attorney that he knew, and would ask Riffin to explain to the attorney what the 1189X litigation was about. One of those attorneys was Bruce Nagel, a well-known (in New Jersey) **medical malpractice** attorney. Mr. Nagel asked Riffin to send him a Memo explaining the 1189X litigation. Riffin wrote a Memo, then e-mailed it to Mr. Nagel. Riffin also sent a copy of the Memo to Steve Hyman and to Eric Strohmeyer.

44. Mr. Nagel never responded to Riffin. Mr. Nagel's name was never mentioned again to Riffin. After awhile, Riffin deleted the e-mail that he had sent to Mr. Nagel. (As Riffin routinely does with e-mails that no longer appear to have any relevance to anything Riffin is involved in.)

45. The next time Riffin heard / saw Mr. Nagel's name was **10 months later!** On **August 25, 2016, at 7:34 pm, after** Riffin had forwarded to Montange **all** 103 Horgan / Hyman e-mails remaining in Riffin's e-mail account. Montange sent Riffin an e-mail with this statement:

> "In addition, you evidently corresponded with attorneys (a Mr. **Bruce Nagel** for example) in addition to Mr. Horgan, who worked for the LLCs (Hyman interests)." Bold added.
>
> You in fact told me on August 23 that you received some information from surveyors furnished by the LLCs (Hymans) and at least talked to others. (Mr. Kahn[8] was referenced) whom the LLCs furnished or proposed to furnish to you in connection with your efforts relating to the Harsimus Branch. The **document discovery** sought any documents and emails transmitted to or from you with any such individuals, and was not time limited.' Apx 472-D. Bold added.

46. Riffin responded back, on August 25, 2016 **at 8:55 pm**, Apx 472-E:

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[8] Fritz Kahn, former ICC general counsel.

"You should have received 103 e-mails (by my count). They are e-mails between Riffin and: Steve Hyman, Vicki Hyman and Dan Horgan. Mr. Montange: I do not even remember who **Bruce Nagel** is /was. You asked for Steve, Vicki and Horgan. Are you now asking for Nagel, Fritz and the surveying folks? **The library shuts down its computers in 3 minutes, so I cannot research those entities tonight. (I was lucky the library let me use their computer for 2.5 hours. The time limit is normally only one hour.)**" Bold added.

47. On August 25, 2016, **at 10:00 pm**, Montange sent the following e-mail to Riffin, Apx 472-F, (which Riffin **read the following day**, August 26, 2016, at about 1:30 pm, when Riffin returned to the library):

"The 'agreement' was that you would supply all emails between yourself and **agents or reps of the LLCs.** You have not. You have spent, by your own statement at the end of 100 emails, about two hours sending those out. This is a clerical kind of task. You have so far spent far more time (replying to motions to compel, forcing a hearing, etc.) resisting discovery than in complying. I request that you simply finish sending emails between yourself and **agents of the LLCs**, as our **discovery requests** require. And if you have documents you exchanged outside the emails, those too. I have misrepresented nothing to you. By your own statements to date, a couple more hours should do it. This is hardly burdensome given the information sought, especially for a party voluntarily participating in the proceeding **over the objection of the railroad and the City**, and representing at STB, the Supreme Court, and to me personally that he is doing so as a real estate play on behalf of Mr. Hyman's interests. **That is an abuse of process.** For what it is worth, the City has spent orders of magnitude more time responding to the LLCs repeated OPRA discovery, and I personally have had to spend far more time responding to the LLCs' discovery requests. I think you should **comply with our discovery requests**.

Incidentally, **Nagel** is a name you can type into the email search as easily as Horgan or Hyman. And I am relatively confident that a gentleman of your professed astuteness is able to recall with whom he has corresponded in connection with your machinations with or for Mr. Hyman and the LLCs in connection with the Harsimus Branch." Bold added.

48. On **August 26 2016, at 1:51 pm**, Riffin responded back to Montange's August 25 / 8:55 pm and August 25 / 10:00 pm e-mails, Apx 472-G:

"Per my agreement here are the three bankruptcy numbers: James Riffin: 10-11248; WMS LLC: 11-13085; BRL LLC: 11-15870."

"It is my position that as of now, I have complied with all of my discovery obligations that I stipulated to."

"As for '**Bruce Nagel**:' I did type in 'bruce nagel' into my yahoo search engine. The response given was: "**Nothing found. Try the Web.**" So I tried the Web. There is a Bruce Nagel that is an architect. I have a vague recollection of having a telephone conversation with an architect many months ago. But it is a really vague memory. (Things that have little or no importance to me in the present, or immediate future, my brain quickly 'deletes' from my brain's memory.)

"As for **Fritz Kahn**: He is an attorney. I tried to hire him. Anything that passed between us is privileged."

"As for the '**surveyor**:' I tried to hire a surveyor, to survey the Metro Plaza parcel. His quoted fee was extremely high. After several months of no progress, I 'disengeged' him. (If I ever actually 'engaged' him.) I never actually ever met him. We had a few **telephone conversations,** a year or so ago."

"Mr. Montange: If you want any more,[9] you will have to ask ALJ Dring to order it. I have no idea who the LLCs' may have hired as 'agents.' (Other than Mr. Horgan.) Nor do I have any interest in knowing. Nor do I have any right to learn this information."

"The time you have spent responding to / initiating discovery, have resulted in many 'billable hours.' I have no one to 'bill.' So there is a substantial difference between the hours you spend with this litigation, and the hours that I spend responding to your (unjustified / unreasonable) requests. **But it was less time consuming to just send you the e-mails, as opposed to litigating whether I have a legal obligation to send you the e-mails**. The point that I was making was: Just because you think that doing something is 'easy,' or can be quickly done, does not mean that it in fact will be 'easy.' Or even possible. And you need to be careful what you represent to a judge. Particularly ALJ Dring."

RIFFIN'S 'EVASION OF SEVERAL ALJ DRING'S QUESTIONS'

49. ALJ Dring based his decision, in part, on his **misperception** that Riffin "evaded direct questioning from me several times." The only question ALJ Dring asked Riffin was: "Why would you say 'if you want more, you will have to go to Judge Dring?" Apx 158:13-15; 158:22; 159:1-2; 159:13-15. While ALJ Dring did ask the same question three times, Riffin **did answer his question, immediately after ALJ Dring repeated it the third time:**

"So Mr. Montange is asking for e-mails between me and parties **other than** Mr. Hyman,

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[9] [e-mails, from people **other than** Horgan or the Hymans, then]

Ms. Hyman, Mr. Horgan. If he wants e-mails from someone other than those three people – and those are the only three people that I agreed to provide him e-mails from – then **someone needs to tell me I'm required to give them to him, and that would be you. So far, you haven't said I need to give him e-mails from parties more than the three I just mentioned.**" He wants e-mails between me and, he calls them, agents of the LLCs." Mr. Montange: "Or Reps." Mr. Riffin: "He mentions some guy named Bruce Nagel. When he first mentioned it, I didn't have a clue who Bruce Nagel was. I put Bruce Nagle in my e-mail search thing. Nothing came up. It said 'no Bruce Nagel found. Try the internet.' So I typed in Bruce Nagel in the Internet, who's Bruce Nagel, and it comes up with some architect. I vaguely remember Mr. Hyman told me – I had a conversation with Mr. Hyman's architect a long time ago, and maybe that's what his name was. I didn't remember." Apx 160:6-22; 161:1-9. Also see Riffin's 8/25/16 at 8:55 pm, Apx 472-E, and Riffin's 8/26/16 at 1:51 pm, Apx 472-G, e-mail to Montange.

RIFFIN'S COMPLIANCE WITH ALJ DRING'S AUGUST 25, 2016 ORDER

50. ALJ Dring's August 25, 2016 Order was quite straight forward [though not in conformity with the cases that have interpreted Rule 37]:[10]

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[10] Neither 49 CFR 1114.30, §1114.31 nor FRCP 37 address what must be stated in a Rule 37 Order compelling discovery. However, a number of cases interpreting Rule 37 have stated that the Order **must** state the time, place and manner for inspecting the documents requested, and must state with some precision what documents are to be made available for inspection. See *Rosenblum v. Dingfelder,* 1 FRD 179, 180 (1939, DC NY) ["The time and place and manner of making the inspection and making of copies **are to be specified in the order**."] *See also: SEC v. LA Trust Deed & Mortg Excg,* 24 FRD 460 (1959 DC Cal.) where the court said: "We are aware, of course, that fairness requires sufficient specificity in the subject matter of the discovery proceedings so that orders of the Court may be complied with," *Id.* 463; "Rule 34 is said to be infringed because of failure to specify, **as that rule requires**, the time, place, manner and conditions of the inspection granted; and it is also defective for failure to specify with sufficient particularity the subject matter of the inspection." *Id.* 464. See also 83 A.L.R. 2d 302, §4. **Necessity for specifying time and place,** where it is stated:

"Generally speaking, an order of court ought to be definite as to **where and when** an ordered act is to be performed. It seems apparent that an order requiring a party **to produce documents** in his possession for inspection by an opposing party, or to permit such opposing party to **inspect and copy them**, should specify **the place where and the time or times when** they are to be so produced, inspected, or copied. This would seem necessary, on general principles, even though not expressly required by the underlying statue or rule on which the order was founded.

"1. Mr. Riffin will provide City, et al. and Consolidated Rail Corporation with all e-mail communications between **him and the LLCs** that Mr. Riffin **retains in his possession**. Mr. Riffin will also supply City, et al. the docket number for three (3) bankruptcy proceedings involving Mr. Riffin. Mr. Riffin shall comply with this order by close of business on Friday, August 26, 2016." Apx 50.

51. ALJ Dring's Order **did not** indicate precisely who the "LLCs' were. **Nor did** ALJ Dring's Order indicate **WHERE** Riffin was to provide City et al. with all e-mail communications between **him and the LLCs** that Riffin **retains in his possession**. **Nor did it** indicate **HOW** it was to be determined **WHAT** e-mails were 'remaining,' **whether** 'all remaining e-mails' had in fact been forwarded to Montange, and **whether** the e-mails that were forwarded to Montange, were precisely identical to the e-mails appearing on Riffin's computer monitor.

52. City et al. defined in their Request for Documents, Apx 212, the term "LLCs:"

"The LLCs" shall mean one, more or all of 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Coles Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, 446 Newark Avenue, LLC, and NZ Funding, LLC."

53. Dan Horgan, counsel for the LLCs, has stated to Riffin that **none of the LLCs have e-mail accounts.**

54. Since Riffin knows that the LLCs do not have e-mail accounts, when Riffin agreed to forward to City whatever e-mails were remaining in Riffin's e-mail account, he was agreeing to forward to Montange whatever e-mails that were remaining in Riffin's e-mail account between **Riffin and Daniel Horgan** (counsel for the LLCs), **Riffin and Vickie Hyman** (manager of the LLCs), **and between Riffin and Steve Hyman** (husband of Vickie Hyman). **No more.**

Almost all the cases in this annotation ... may be said to recognize or reflect **the necessity** that such an order **be specific as to time and place for compliance.**" Bold added.

55. Montange has asked for e-mails between Riffin and 'representatives' or 'attorneys' of the LLCs. The only 'representative' of the LLCs that Riffin is aware of, is Mr. Horgan, counsel for the LLCs, and Vickie Hyman, manager of the LLCs. The only 'attorney' for the LLCs that Riffin is aware of, is Mr. Horgan.

56. There is a rule of contract interpretation: Any ambiguities in a contract, are construed against the writer of the contract.

57. Such a rule would seem to be applicable to an order from a judge. Since ALJ Dring wrote his order, and since his order expressly stated "communications between **him and the LLCs** that Mr. Riffin **retains in his possession**," that should be the extent of what Riffin was obligated to comply with. And since "the LLCs" have been expressly defined by City, the definition afforded to that term, should be precisely how the City defined the term.

58. While ALJ Dring's Order **did not** indicate precisely who the "LLCs' were, Riffin understood that to mean: The LLCs' attorney of record, Mr. Dan Horgan, the manager of the LLCs, Ms. Vickie Hyman, and her husband, Mr. Steve Hyman. Riffin would argue that his understanding of the meaning of the term, "LLCs," is / and was, reasonable under the circumstances.

59. Particularly in light of what City has been attempting to establish: That there is a 'conspiracy' between Riffin and Steve Hyman to 'abuse' the OFA process. See, for e.g., City's Motion to Compel where City argues why it 'needs' Riffin's e-mails:

> "If the documents show or suggest a relationship with Hyman as Riffin indicates in his pleadings to the U.S. Supreme Court ... . They demonstrate a scheme on the part not only of Riffin but also of the LLCs to abuse this Board's processes, and specifically to mis-use the OFA remedy. Riffin in his response (Exhibit B) seems to deny that he has a business relationship with the LLCs ... ." Apx 267.
>
> "The two issues are (a) the intentional unlawful abandonment of the Harsimus Branch by

purported transfer by Conrail to the LLCs in order to maximize profits by avoiding historic preservation regulation, and

(b) Riffin's abuse, **on behalf of the LLCs**, of this agency's offer of financial assistance remedy in order to facilitate the LLCs' efforts to convert the rail line into non-rail uses (townhouses and skyscrapers)." Apx 274.

60. Riffin started the e-mail forwarding process on **August 24, 2016**, sometime before 6 pm. (As soon as Riffin arrived back in Baltimore after the August 24, 2016 hearing.) At **6:06 pm** on August 24, 2016, Riffin sent the following e-mail to Montange,:

"I searched and found all of Hyman's e-mails. I checked each box. But there is nothing to click on to forward them as a group. 'Move' is an option. But I am reluctant to try that, since I have never done that before. (Would it work? If done wrong, will it delete everything?) To forward them, **you need to tell me how to do that, since there is no 'forward' icon choice**. (And I thought these would be on your e-mail when you arrived back home.)" Apx 472-C. Bold added.

61. Much later that night, **at 12:48 am**, Montange e-mailed back:

"One option is to call your internet provider and ask for technical support. My provider, which subcontracts to Yahoo, provides it for free. But I suspect the files may be too large to transmit in large mass and may need individual transmission, or as smaller groups."

"We seek emails and docs to or from Steve Hyman, Victoria Hyman, or **any representative of either Hyman or the LLCs,** including Mr. Horgan, and **all other attorneys for either Hyman or the LLCs. All of your communications with any of the stated individuals or reps involve Harsimus."** Apx 472-C.

62. And thus began the first of many disagreements:

A. Montange wanted e-mails between Riffin and Bruce Nagel. Montange Aug. 25 e-ail **at 7:34 pm.** Apx 472-D. And in particular Montange was looking to see if Riffin forwarded to Montange the e-mail that Riffin had sent to Mr. Nagel in November, 2015, which Riffin had long since deleted, and thus it was no longer 'remaining,' and which Montange **already had a copy of, from Eric Strohmeyer!** (And since the Nagel e-mail Montange already had, was the **only** e-mail Riffin had ever sent to Mr.

Nagel, there were **no more Nagel e-mails, ever!)**

B. Montange wanted e-mails between Riffin and Fritz Kahn. **7:34 pm** e-mail. Apx 472- D. (Which would be privileged per attorney-client privilege, since Riffin had attempted to hire Mr. Kahn, who is an attorney.)

C. Montange wanted e-mails between Riffin and whatever surveyors Riffin had communicated with. **7:34 pm** e-mail. Apx 472-D. (Which e-mails Riffin had long since deleted, since prior to November, 2015, Riffin had given up on the surveyors that he had communicated with.)

D. Montange wanted e-mails between Riffin and the owners / developers of the Metro Plaza parcel. **(Which Montange already had a copy of.** Which Riffin had long since deleted, having ceased attempting to communicate with the owners / developers of the Metro Plaza parcel in November, 2015.) Apx 313-314, 395-400.

E. Montantge wanted non-existent e-mails that have never existed. Apx 313, 314, 320. (Montange presumed, **incorrectly**, that Riffin communicates via e-mails. Since Riffin has no internet connection, and does not have an internet-compatible 'Smart-phone,' he communicates the old-fashioned way: with a telephone.)

F. **Importantly**: That Riffin **has NO discovery 'duty' or 'obligation' to provide Montange with a COPY of his e-mails. Riffin's discovery 'duty' is LIMITED TO providing Montange an opportunity TO INSPECT Riffin's e-mail account, where Riffin's regularly keeps his e-mail correspondence: On Riffin's lap-top computer, in Cockeysville, MD.**[11]

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[11] See, for e.g.: 83 A.L.R. 2d 302, in a Treatise Titled: *Time and place ... for inspection and copying of opposing litigant's books, records, and papers,* in §10(a), ***At office of producing party – Generally***, states:

Particularly where the books, records, or papers to be inspected or copied are those of a party's business, and especially where they are **current records in regular use** in carrying on

the business, or for other reasons are such that their removal from the place of business would seriously interfere with the carrying on of the party's business operations, the courts are inclined **to direct that the moving party's inspection and copying** of such business books, records, or paper **should be performed at the producing party's office where such records are normally kept,** so as to interfere as little as possible with the producing party's business operations."

In *Evangelos v. Dachiel,* 553 So. 2d 245, in holding that the proper place for discovery was where the documents were kept (in a storeroom), the court held:

> "When producing documents, the producing party shall either produce them as they are kept in the usual course of business or shall identify them to correspond with the categories in the request. ... Since the records were produced as they were then kept, it was error to order the defendant to reorganize the documents. ... It was also error for the trial court to order Evangelos to transport the thirty boxes of documents at his expense to the offices of plaintiff's counsel."

See also: *Rowlin v. Alabama Dept. Of Public Safety,* 200 F.R.D. 459, 462 (2001) (holding inspecting to occur where documents are kept / provider need not provide copies); *Iiagara Duplicator v. Shackleford,* 160 F. 2d 25, 236 (D.C. Cir. 1947) (inspection to occur where documents are kept / no copying required); *Obiajulu, v. City of Rochester,* 166 F.R.D. 293, 297 (U.S. D.C., W.D. NY, 1996) (inspection at producing counsel's office / no copying required); *Harris v. Sunset Oil Co.,* 2 F.R.D. 93, (USDC WD Washington, 1941) (inspection where documents kept); *Galanos v. U.S.,* 27 F. Supp 298, (USDC D Massachusetts, 1939) (inspect where documents kept / no copying required).

Occasionally, inspection may be ordered in the clerk's office where the action is being tried. See *Floyd v. Victory Sav. Bank,* 189 SE 462 (SC 1937); *Culligan v. Rheaume*, 67 NW 2d 279 (Wis, 1954).

In this proceeding, Riffin repeatedly argued that his only obligation was to offer City et al. an opportunity to inspect his e-mail account, **in Cockeysville, MD, where Riffin keeps his computer**. Riffin decidedly was **not obligated** to "**deliver copies** of the documents requested below **to counsel for City** et al [at] **his address"** in Seattle, Washington.

Riffin **went beyond the bounds** of his Rule 34 (a) / §1114.30(a)(1) obligation "to produce and permit the party making the request to inspect any designated documents." Riffin took the time and effort to **drive to Washington D.C. before** the August 24, hearing, to permit counsel for City et al. to "inspect" Riffin's e-mail account. And offered Montange an additional opportunity to inspect Riffin's e-mail account "in the office of the clerk of the court." (More precisely, in the hearing room where the August 24, 2016 hearing was held.)

G. **And most importantly: That Riffin has provided Montange with MULTIPLE opportunities "to inspect and copy" whatever e-mails are remaining in Riffin's e-mail account, all of which opportunities, Montange has adamantly REFUSED to take advantage of. (Because it was 'too late,' 'would take too long,' because Montange 'would be thrown out of the restaurant that he was in,' and because he did not want to be bothered with such a mundane 'clerical' task (as he described it) while at the FERC building.**

63. **TO CONCLUDE THIS SECTION:** Riffin was ordered to forward to Montange and Conrail all of the e-mails **remaining** in Riffin's e-mail account, between Riffin **and the LLCs**. Riffin did that, **and more**. Any deficiencies, Montange **has waived**, for Montange has been afforded **multiple** opportunities 'to inspect and copy' Riffin's e-mail account, beginning on **August 23, 2016**. The burden to 'inspect and copy' is on the one seeking discovery. The 'place' for inspecting, is where the documents 'are regularly kept,' which in this case, is in Cockeysville, MD.

CITY ET AL.'S REQUEST FOR DOCUMENTS IS FATALLY DEFECTIVE

64. City et al.'s "Request for Documents," is fatally defective. The Request requests that Riffin "deliver copies of the documents requested below to counsel for City et al [at] his address below ... ." Request at 1.

65. Counsel for City et al.'s office is located in Seattle, Washington. Riffin's office is located in Cockeysville, MD, a bit north of Baltimore, Maryland. This 'action' (proceeding) is located in Washington, D.C.

66. The *Time and place ... for inspection and copying of opposing litigant's books, records, and papers,* is ***At office of producing party.*** See the citations in footnote 11, pp. 22-23 *supra*.

CITY ET AL. FAILED TO INSPECT – THEREBY WAIVING OBJECTIONS

67. Riffin afforded City et al. **Two Opportunities** (August 23, 2016, before the August 24, 2016 hearing, and again on August 24, 2016, immediately after the October 24, 2016 hearing) to 'inspect' Riffin's e-mail account, to determine (A) how many e-mails where in Riffin's e-mail account; (B) the nature of the e-mails in Riffin's account (content, text, identification); (C) whether specific e-mails that City et al. had in its possession, were still in Riffin's e-mail account.

68. City et al. **refused to inspect** Riffin's e-mail account, offering no explanation, other than that it was 'inconvenient,' or that counsel for City et al. 'did not feel like it.'

69. Having been given an opportunity to inspect Riffin's e-mail account, City et al. **has waived** any right to object to the quantity or quality (content, text, identification) of the e-mails Riffin forwarded to City et al., and has **waived** any objection to Riffin's failure to forward to City et al. any e-mails already in City et al.'s possession.

RIFFIN FULLY COMPLIED WITH ALJ DRING'S AUGUST 25, 2016 ORDER

70. The record indicates that Riffin forwarded **all** of the Riffin / Hyman - Horgan e-mails remaining in his e-mail account, on August 25, 2016. **Not just** the e-mails between Riffin and counsel for the **LLCs**, as required by ALJ Dring's October 25, 2016 Order. See Apx 452-461, where a copy of **all** of the e-mails remaining in Riffin's e-mail account as of August 25, 2016, between Riffin and either the Hymans or Mr. Horgan, and a copy of **all** of the e-mails forwarded by Riffin to City et al. and to Conrail, on August 25, 2016, are displayed. City et al. admitted, at the October 24, 2016 hearing, that Riffin had provided City et al., on August 26, 2016, with a copy of Riffin's bankruptcy docket numbers.

71. It should be noted:

A. **All** of the e-mails that City et al. alleged were 'deficient,' were between Riffin and Steve Hyman. (ALJ Dring's August 25, 2016 Order **did not require** Riffin to

forward to City et al. **any** of the e-mails between Riffin and Steve Hyman.)

B. It was determined at the October 24 hearing that Steve Hyman **is not a 'party' in this proceeding, nor does he have any legal interest in this proceeding.** Apx 187:12-13, 17, 19-20; 189:10-12; 190:17-22; 191:1;

C. Mr. Horgan has stated that the last time Steve Hyman **had anything to do with the LLCs, was March 2, 2016, some 26 days BEFORE City et al. mailed its Request for Documents to Riffin. It was further determined that Steve Hyman HAS NO PROPERTY INTERESTS in the LLCs. Apx 190:17-21. Vickie Hyman is, and has been, the managing member of the LLCs. Appx 190:22, 191:1. Daniel Horgan is the SOLE person who has authority to 'represent' the LLCs.** Apx 187:6-21. Consequently, any e-mails between Riffin and Steve Hyman **are totally irrelevant and immaterial** in this proceeding, and thus **there can be no 'predudice'** to City if any Steve Hyman e-mail deficiencies exist.

ALJ DRING'S SANCTIONS CONSTITUTE AN 'ABUSE OF DISCRETION'

72. ALJ Dring's October 26, 2016 Served order **dismissed Riffin from the proceeding.**

73. It has been held by numerous courts that:

A. Because dismissal is such a harsh sanction, it should be resorted to only in extreme cases. See: *McCargo v. Hedrick,* 545 F 2d 393,396 (4th Cir. 1976); *Dyotherm Corp. v. Turbo Mach. Co.,* 392 F 2d 146, 149 (3rd Cir. 1968).

B. "There is a strong policy in favor of deciding a case on its merits, and against depriving a party of his day in court." See: *Chrysler Corp. v. Carey,* 186 F 3d 1016, 1020 (8th Cir. 1999).

C. To impose sanctions, a court **must consider and weigh four criteria:**

a. "Whether the non-complying party acted in bad faith;
b. "The amount of prejudice that noncompliance caused the adversary;
c. "The need for deterrence of the particular sort of non-compliance; and
d. "Whether less drastic sanctions would have been effective." *Anderson v. Found. for Advance. Educ.,* 155 F. 3d 500, 504 (4th Cir. 1998); *Fair Housing of Marin v. Combs,* 285 F. 3d 899, 905 (9th Cir. 2002); *Keefer v. Provident Life,* 238 F. 3d 937, 940 (8th Cir. 2000); *Trilogy Comm. v. Times Fiber Comm.,* 109 F. 3d 739, 744 (Fed. Cir. 1997).
ALJ Dring failed to consider the four criteria.

D. "A district court should consider five factors before imposing the sanction of dismissal: ... If the district court **does not explicitly consider** these five factors, we may review the record independently in order to ascertain whether the district court abused its discretion." *Rio Properties v. Rio Intern Interlink,* 284 F. 3d 1007, 1022 (9th Cir. 2002); *Malone v. U.S. Postal Svc.,* 833 F. 2d 128, 130 (9th Cir. 1987). **ALJ Dring failed to consider the five criteria.**

E. "Although we review the district court's discovery decisions for an abuse of discretion, **we more closely scrutinize dismissal** imposed as a discovery sanction because 'the opportunity to be heard is a litigant's most precious right and should be **sparingly denied.**' *Chrysler Corp. v. Carey,* 186 F. 3d 1016, 1020 (8th Cir. 1999). We must determine whether the sanction imposed **is just and specifically related to the claim at issue**. *Baker v. GM Corp.,* 86 F. 3d 811, 817 (8th Cir. 1996). Also, before imposing the sanction of dismissal, fairness **requires** a court to consider whether a lesser sanction is available or appropriate. *Id.* **ALJ Dring failed to consider any lesser sanction than dismissal.**

F. "The provisions of Rule 37 which are here involved must be read in light of the provisions of the Fifth Amendment that no person shall be deprived of property without due process of law, and more particularly against the opinions of this Court in *Hover v. Elliott,* 167 U.S. 409, and *Hammond Packing Co. v. State of Arkansas,* 212 U.S. 322. These decisions establish that there are constitutional limitations upon the power of courts, even in aid of their own valid processes, to

dismiss an action without affording a party the opportunity for a hearing **on the merits of his cause**." *Societe Intern. v. Rogers,* 357 U.S. 197, 209 (1958). **ALJ Dring's dismissal order violated Riffin's 5th Amendment right to due process.**

G. "But this balance also recognizes that in our system of justice the opportunity to be heard is a litigant's most precious right and should be **sparingly denied. Prior to dismissal** or entering a default judgment, fundamental fairness should **require** a district court **to enter an order to show cause** and hold a hearing ... to determine whether assessment of costs and attorney fees or even an attorney's citation for contempt would be a more just and effective sanction. **Dismissal** and entry of a default judgment **should be the rare judicial act**." *Edgar v. Slaughter,* 548 F. 2d 770, 773 (8th Cir. 1977). **ALJ Dring failed to issue a 'show cause' order to determine whether a sanction less than dismissal was just.**

H. "In order to impose sanctions under Rule 37, there **must be** an order compelling discovery, **a willful violation** of that order, **and prejudice** to the other party." *Chrysler Corp. v. Carey,* 186 F. 3d 1016, 1019 (8th Cir. 1999). See also: *Schoffstall v. Henderson,* 223 F. 3d 818, 823 (8th Cir. 2000); *Reizakis v. Loy*, 490 F. 2d 1132, 1135 (4th Cir. 1974). **Riffin's violation (if there was one), was NOT 'willful.' City et al. Were Not Prejudiced. See 'I' below.**

I. "A party's misconduct **is harmless** if it involves an honest mistake, coupled with **sufficient knowledge by the other party of the material that has not been produced**." *Stallworth v. E-Z Serve,* 199 F.R.D. 366, 369 (DC MD Ala. 2001). **The e-mails City et al. complain about, were already in the possession of City et al. Therefore, City et al. WERE NOT PREJUDICED by Riffin's failure to forward to City et al. a copy of what City et al. already possessed.**

J. ALJ Dring Served an Order on **August 5, 2016**, wherein he ordered:

"[T]he parties are strongly encouraged to make intensive, good faith efforts to resolve outstanding discovery disputes without the need for judicial intervention, both prior to the conference and thereafter."

K. Rule 37(a)(2)(A) states:

"(A) If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. The motion **must include a certification that the movant has in good faith conferred or attempted to confer** with the party not making the disclosure in an effort **to secure the disclosure without court action**."

L. City et al. **failed to make** the 'good faith conferred' certification **required by** Rule 37(a)(2)(A). (And **failed to make any effort** to "secure disclosure without court action.") ALJ Dring **failed to find** that City et al. had made a 'good faith effort' 'to resolve outstanding discovery disputes without the need for judicial intervention,' as **required by** ALJ Dring's August 5, 2016 order. **These failures are fatal defects in ALJ Dring's October 26, 2016 Sanction Order.**

M. City et al. **Lied to ALJ Dring** when City said Riffin had "failed to include emails prior to 2015." Sanctions at 6-7. See Apx 453, last e-mail (2014) / Apx 459, first Horgan e-mail (2014); See Apx 458, last e-mail (2014 Steve e-mail) / Apx 460, first e-mail under "Match 1." These e-mails clearly show that two 2014 e-mails (12/8/14 and 12/24/14) were forwarded to City on August 25.

CONCLUSION

74. Riffin **did not** refuse to provide City an opportunity to 'inspect and copy' any of Riffin's e-mails. Riffin made his e-mails available for 'inspecting and copying' **multiple times.** Montange, by refusing to 'inspect' Riffin's e-mails, has waived any deficiencies that may exist.

75. Riffin was obligated to comply with ALJ Dring's August 25 Order. The Order **did not** order Riffin to provide City with the Documents specified in City's March 29, 2016 Request for Documents. The Order required Riffin to provide City with the e-mails **remaining** in Riffin's e-mail account between Riffin and **the LLCs, NOT** all e-mails between Riffin and '**agents** of the LLLs,' Apx 160:17; 213 and **'Reps'** of the LLCs, Apx 160:18; 213.

76. Riffin made it clear to both Montange, and to ALJ Dring, Apx 160:6-15, that if Montange wanted more than the e-mails between Riffin and Horgan / the Hymans (such as e-mails between Riffin and any 'agents' or 'reps' of the LLCs), then Montange would have to ask

ALJ Dring to order Riffin to provide those additional e-mails, pursuant to an **additional** order.

77. Riffin **did in fact answer** ALJ Dring's **only** question to Riffin. (Why did Riffin say 'if you want more, ask ALJ Dring.') Apx 160:6-15.

78. ALJ Dring's August 25 Order was **deficit**, and **was not in conformity** with case precedent interpreting Rule 34, and Rule 37, for the Order (A) **failed to specify** "The time and place and manner of making the inspection and making of copies." *Rosenblum, op. cit.* at p. 18. and (B) ALJ Dring **failed to consider** the four / five criteria that **must be considered before** imposing the sanction of 'dismissal' from a proceeding, and (C) **failed to consider** a sanction **less severe than dismissal**.

79. Both City's Motion for Sanctions, and ALJ Dring's October 26 Order are **fatally defective**, for **neither** contains the **required** "certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action," as is **mandated** by Rule 37(a)(2) (A) **and** (4)(A).

80. And without the required "certification," **no attorney's fees** may be awarded. Rule (4)(A)

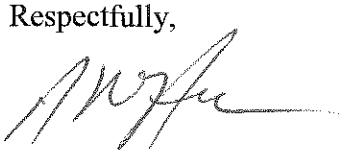
81. City has not provided any evidence that City was **prejudiced** by any deficiencies that may exist, for City **has a copy**, and appended to its Motion for Sanctions a copy, of the very e-mails that it complains about. And without a showing of prejudice, dismissal is decidedly **not** a "just" sanction.

82. ALJ Dring's October 26, 2016 Served Order deprived Riffin of his Due Process Rights.

83. The STB, in its May 22, 2015 Discovery Decision, Apx 23, **denied** City's requests for similar documents requested from Riffin. Riffin asks that the STB **follow its precedent.**

84. WHEREFORE, Riffin prays that the STB **vacate** ALJ Dring's October 26, 2016 Served decision in AB 167 (Sub. No. 1189X), and for such other and further relief as would be just.

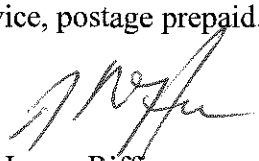
Respectfully,



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

CERTIFICATE OF SERVICE

I hereby certify that on the 14th Day of November, 2016, a copy of the foregoing James Riffin's Notice of Appeal, and the Appendix thereto, was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid.



James Riffin

JAMES RIFFIN

PETITIONER

V.

SURFACE TRANSPORTATION BOARD

RESPONDENT

APPEAL OF AN INITIAL ALJ DECISION OF

THE SURFACE TRANSPORTATION BOARD

AB 167 (Sub. No. 1189X)

(Harsimus Branch – Jersey City, NJ)

RECORD EXTRACT

VOLUME ONE – DECISIONS AND TRANSCRIPTS

PP. 1 - 207

Submitted by: **James Riffin, Petitioner,** ***pro se***
P. O. Box 4044
Timonium, MD 21094
(443) 414-6210

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45538
ALJ

SERVICE DATE – LATE RELEASE OCTOBER 26, 2016

10/26/16
SANCTION
DECISION

SURFACE TRANSPORTATION BOARD

ORDER OF PRESIDING ADMINISTRATIVE LAW JUDGE ON MOTION FOR SANCTIONS AND ESTABLISHING DISCOVERY DEADLINES

Docket No. AB 167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Decided: October 24, 2016

On September 15, 2016, the City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, City et al.) filed a Motion to Compel 212 Marin Boulevard, LLC, et al., (LLCs) to Answer Interrogatories, Make Admissions, and Provide Responsive Documents to Pending Document Requests (Motion to Compel) and a Motion for Sanctions Against James Riffin for Failure to Respond to Discovery Requests (Motion for Sanctions). The Motion to Compel requests an order directing the LLCs to respond fully and completely to certain document requests. The Motion for Sanctions requests discovery sanctions against Mr. Riffin pursuant to 49 C.F.R. 1114.31(b) (2016).

On September 23, 2016, Consolidated Rail Corporation (Conrail) filed a reply in partial support of City et al.'s Motion for Sanctions. On September 26, 2016, Mr. Riffin filed a reply in opposition to the Motion for Sanctions and a Motion to Strike Conrail's Reply in Partial Support of City et al.'s Motion for Sanctions (Motion to Strike). On September 26, 2016, Conrail filed a reply in opposition to Mr. Riffin's Motion to Strike. On September 27, 2016, Mr. Riffin filed a clarification to his Motion to Strike.

On October 5, 2016, the LLCs filed replies in opposition to the Motion for Sanctions and the Motion to Compel filed by City et al. Additionally, the LLCs filed concurrently, in reply in opposition to the Motion to Compel, a Cross-Motion for Sanctions pursuant to 49 C.F.R. § 1114.21(c) (Cross-Motion for Sanctions).

On October 13, 2016, as corrected on October 14, 2016, the LLCs filed a reply to Mr. Riffin's Motion to Strike. On October 20, 2016, City et al. filed a reply to the LLC's Cross-Motion for Sanctions. On October 24, 2016, Mr. Riffin filed the arguments he stated he would say at the discovery hearing.

On October 24, 2016, oral arguments were held to address all of the motions and replies filed prior to October 24, 2016 that related to City et al.'s outstanding Motion to Compel, Motion for Sanctions, and related motions.

Based on the foregoing, I am adopting arguments contained in City et al.'s Motion for Sanctions, and City et al.'s October 24, 2016 oral arguments as the rationale for imposing sanctions on Mr. Riffin as ordered, below.

Moreover, based on my observations of Mr. Riffin at the October 24, 2016 oral arguments, I am making a demeanor credibility determination in which I find that Mr. Riffin is not a reliable witness as to the truth of the matter to which he asserts. His deportment suggests evasiveness, deliberate obtuseness, faulty memory, and mental reservation.[1] Mr. Riffin evaded direct questioning from me several times and contradicted himself on several occasions. He also alleged faulty memory as to the status of various emails and knowledge of certain parties.

It is ordered:

1. Mr. Riffin is prohibited from introducing anything further into evidence in the above-referenced dockets.

2. Mr. Riffin's pleadings are stricken from the proceedings in all three dockets.[2]

3. Mr. Riffin is dismissed from the proceedings in all three dockets, and prohibited from further participation in them.

4. Mr. Riffin is directed to pay City et al.'s counsel fees.[3]

5. The discovery proceedings in these three dockets will terminate no later than December 30, 2016. Accordingly, all discovery requests must be submitted no later than December 15, 2016.

---

[1] *See Thomas v. Sullivan*, 801 F. Supp. 65, 71 (N.D. Ill. 1992) (Court stated that a reviewing court would not disturb a credibility determination in which an ALJ assigned no credibility to a witness whose behavior gave an impression of evasiveness, deliberate obtuseness, or faulty memory). *See also Anderson v. Bessemer City,* 470 U.S. 564, 575 (1985) (holding that "only the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said.").

[2] This includes Mr. Riffin's notice of intent to file an Offer of Financial Assistance.

[3] City et al.'s counsel will supply an accounting of all costs incurred through the October 24, 2016 oral arguments, but the accounting will not contain costs associated with deposing the LLCs.

6. This decision is effective on the date of service.

By the Board, John P. Dring, Administrative Law Judge.

Surface Transportation Board

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New Search

Date	Docket #	ID	Deciding Body	Type	Case Title
10/26/2016	AB_167_1189_X	45539	Administrative Law Judge	Decision	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSON COUNTY, N.J.
10/26/2016	AB_167_1189_X	45538	Administrative Law Judge	Decision	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSON COUNTY, N.J.
10/12/2016	AB_167_1189_X	45515	Administrative Law Judge	Decision	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSON COUNTY, N.J.
10/7/2016	AB_167_1189_X	45500	Administrative Law Judge	Decision	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSON COUNTY, N.J.
8/25/2016	AB_167_1189_X	45408	Administrative Law Judge	Decision	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSON COUNTY, N.J.
8/5/2016	AB_167_1189_X	45368	Administrative Law Judge	Decision	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSON COUNTY, N.J.
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					COUNTY, N.J.
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9/24/2014	AB_167_1189_X	44030	Director Of Proceedings	Decision	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSON COUNTY, N.J.
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11/4/2016	AB_167_1189_X	241967	City Of Jersey City	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
11/4/2016	AB_167_1189_X	241970	Ace Federal Reporters	Transcript Of Oral Argument	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
11/3/2016	AB_167_1189_X	241949	Llc Intervenors	Letter	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
10/31/2016	AB_167_1189_X	241930	James Riffin	Petition	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
10/25/2016	AB_167_1189_X	241855	City Of Jersey City, Rails To Trails Conservancy,	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
10/25/2016	AB_167_1189_X	241862	City Of Jersey City, Rails To Trails Conservancy,	Correction	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
10/25/2016	AB_167_1189_X	241852	James Riffin	Amend/Modify/Supplement Prior Filing Or The Record	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
10/25/2016	AB_167_1189_X	241845	James Riffin	Petition For Stay	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
10/24/2016	AB_167_1189_X	241833	James Riffin	Argument	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
10/20/2016	AB_167_1189_X	241819	City Of Jersey City, Pennsylvania Railroad Harsimus Stem Embankment Preservation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.

(9)

			Coalition, And Rails To Trails Conservancy		
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10/5/2016	AB_167_1189_X	241672	Llc Intervenors	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
9/27/2016	AB_167_1189_X	241588	James Riffin	Amend/Modify/Supplement Prior Filing Or The Record	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
9/26/2016	AB_167_1189_X	241581	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
9/26/2016	AB_167_1189_X	241570	James Riffin	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
9/26/2016	AB_167_1189_X	241571	James Riffin	Motion To Strike	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
9/23/2016	AB_167_1189_X	241563	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
9/15/2016	AB_167_1189_X	241506	City Of Jersey City, Rails To Trails Conservancy,	Motion To Compel	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
9/15/2016	AB_167_1189_X	241503	City Of Jersey City, Rails To Trails Conservancy,	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
7/28/2016	AB_167_1189_X	241203	James Riffin	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
7/25/2016	AB_167_1189_X	241153	Llc Intervenors	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
7/5/2016	AB_167_1189_X	241042	City Of Jersey City, Rails To Trails	Motion To Compel	CONSOLIDATED RAIL CORPORATION--ABANDONMENT

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			Conservancy,		EXEMPTION--IN HUDS(COUNTY, N.J.
7/1/2016	AB_167_1189_X	241037	Llc Intervenors	Exhibits	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/27/2016	AB_167_1189_X	240988	City Of Jersey City, Rails To Trails Conservancy,	Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/7/2016	AB_167_1189_X	240873	James Riffin	Motion To Strike	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/7/2016	AB_167_1189_X	240869	City Of Jersey City, Rails To Trails Conservancy,	Motion To Withdraw	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
5/31/2016	AB_167_1189_X	240818	Llc Intervenors	Amend/Modify/Supplement Prior Filing Or The Record	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
5/27/2016	AB_167_1189_X	240803	Cnj Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
5/24/2016	AB_167_1189_X	240742	Llc Intervenors	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
5/20/2016	AB_167_1189_X	240732	James Riffin	Amend/Modify/Supplement Prior Filing Or The Record	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
5/19/2016	AB_167_1189_X	240724	James Riffin	Amend/Modify/Supplement Prior Filing Or The Record	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
5/19/2016	AB_167_1189_X	240720	James Riffin	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
5/17/2016	AB_167_1189_X	240673	Rails To Trails Conservancy	Request For Extension Of Time	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
5/12/2016	AB_167_1189_X	240655	James Riffin	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
5/3/2016	AB_167_1189_X	240594	James Riffin	Motion To Strike	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
5/2/2016	AB_167_1189_X	240584	Cnj Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(

					COUNTY, N.J.
5/2/2016	AB_167_1189_X	240586	City Of Jersey City, Rails To Trails Conservancy,	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/11/2016	AB_167_1189_X	239861	City Of Jersey City, Rails To Trails Conservancy,	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
12/23/2015	AB_167_1189_X	239790	Intervenors Llc	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
12/22/2015	AB_167_1189_X	239787	Intervenors Llc	Letter	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
12/9/2015	AB_167_1189_X	239695	Cnj Rail Corporation	Errata Sheet	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
12/9/2015	AB_167_1189_X	239688	Cnj Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
12/1/2015	AB_167_1189_X	239642	City Of Jersey City, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, And Rails To Trails Conservancy	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
11/17/2015	AB_167_1189_X	239560	Intervenors Llc	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
11/6/2015	AB_167_1189_X	239509	Llc Intervenors	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
11/3/2015	AB_167_1189_X	239488	City Of Jersey City, Rails To Trails Conservancy,	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
10/5/2015	AB_167_1189_X	239297	James Riffin	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
9/14/2015	AB_167_1189_X	239195	City Of Jersey City, Rails To Trails Conservancy,	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
9/4/2015	AB_167_1189_X	239149	James Riffin (12)	Amend/Modify/Supplement Prior Filing Or The Record	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
9/4/2015	AB_167_1189_X	238829	James Riffin	Reply	CONSOLIDATED RAIL

					CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
9/4/2015	AB_167_1189_X	239142	James Riffin	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
9/4/2015	AB_167_1189_X	239146	James Riffin	Amend/Modify/Supplement Prior Filing Or The Record	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
9/4/2015	AB_167_1189_X	239138	James Riffin	Amend/Modify/Supplement Prior Filing Or The Record	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
7/27/2015	AB_167_1189_X	238917	James Riffin	Certificate Of Service	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/25/2015	AB_167_1189_X	238704	City Of Jersey City, Rails To Trails Conservancy,	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/11/2015	AB_167_1189_X	238596	James Riffin	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/11/2015	AB_167_1189_X	238616	Cnj Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/11/2015	AB_167_1189_X	238594	Llc Intervenors	Letter	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/11/2015	AB_167_1189_X	238591	Llc Intervenors	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/10/2015	AB_167_1189_X	238581	City Of Jersey City	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/9/2015	AB_167_1189_X	238575	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/8/2015	AB_167_1189_X	238562	James Riffin	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/8/2015	AB_167_1189_X	238556	James Riffin	Notice Of Intent To Participate (Without Comment)	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/8/2015	AB_167_1189_X	238559	James Riffin	Ofa - Notice Of Intent To File Ofa	CONSOLIDATED RAIL CORPORATION--

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					ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/1/2015	AB_167_1189_X	238515	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/30/2015	AB_167_1189_X	238298	Cnj Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/28/2015	AB_167_1189_X	238273	City Of Jersey City	Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/10/2015	AB_167_1189_X	238187	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/7/2015	AB_167_1189_X	238136	City Of Jersey City	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/7/2015	AB_167_1189_X	238130	City Of Jersey City, Rails To Trails Conservancy,	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
3/18/2015	AB_167_1189_X	237994	212 Marin Boulevard, Llc	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
3/4/2015	AB_167_1189_X	237884	212 Marin Boulevard, Llc	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
3/3/2015	AB_167_1189_X	237858	212 Marin Boulevard, Llc, 247 Manila Avenue, Llc, 280 Erie Street, Llc, 317 Jersey Avenue, Llc, 354 Coles Street, Llc, 389 Monmouth Street, Llc, 415 Brunswick Street, Llc, And 446 Newark Avenue, Llc	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
3/2/2015	AB_167_1189_X	237836	City Of Jersey City	Motion To Strike	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
2/10/2015	AB_167_1189_X	237717	Llc Intervenors	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
2/6/2015	AB_167_1189_X	237696	City Of Jersey City	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(

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					COUNTY, N.J.
1/26/2015	AB_167_1189_X	237622	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/21/2015	AB_167_1189_X	237586	City Of Jersey City	Errata Sheet	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/20/2015	AB_167_1189_X	237549	City Of Jersey City	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/14/2015	AB_167_1189_X	237464	212 Marin Boulevard, Llc	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/12/2015	AB_167_1189_X	237441	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/8/2015	AB_167_1189_X	237414	Honorable Brian P. Stack	Support Statement	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
12/29/2014	AB_167_1189_X	237340	City Of Jersey City, Rails To Trails Conservancy,	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
12/23/2014	AB_167_1189_X	237319	City Of Jersey City	Motion To Compel	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
12/19/2014	AB_167_1189_X	237286	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
12/18/2014	AB_167_1189_X	237280	New Jersey General Assembly	Support Statement	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
12/18/2014	AB_167_1189_X	237279	City Of Jersey City	Support Statement	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
12/16/2014	AB_167_1189_X	237244	Assemblyman Raj Mukherji	Support Statement	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
12/8/2014	AB_167_1189_X	237180	212 Marin Boulevard, Llc,247 Manila Avenue, Llc, 280 Erie Street, Llc, 317 Jersey Avenue, Llc, 354 Cole Street, Llc, 389 Monmouth Street, Llc 415 Brunswick (15)	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.

			Street, Llc, 446 Newark Avenue, Llc Limited Liability Companies Of New Jersey		
11/13/2014	AB_167_1189_X	237047	212 Marin Boulevard, Llc	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
10/24/2014	AB_167_1189_X	236893	City Of Jersey City, Rails To Trails Conservancy,	Motion To Compel	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
10/16/2014	AB_167_1189_X	236834	212 Marin Boulevard, Llc, 247 Manila Avenue, Llc, 280 Erie Street, Llc, 317 Jersey Avenue, Llc, 354 Coles Street, Llc, 389 Monmouth Street, Llc, 415 Brunswick Street, Llc, And 446 Newark Avenue, Llc	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
10/15/2014	AB_167_1189_X	236818	Consolidated Rail Corporation, Csx Transportation, Inc. And Norfolk Southern Railway Company	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
10/7/2014	AB_167_1189_X	236773	Consolidated Rail Corporation, Csx Transportation, Inc. And Norfolk Southern Railway Company	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
9/25/2014	AB_167_1189_X	236734	City Of Jersey City, Rails To Trails Conservancy,	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
9/25/2014	AB_167_1189_X	236736	City Of Jersey City, Rails To Trails Conservancy,	Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
9/18/2014	AB_167_1189_X	236696	City Of Jersey City	Motion To Compel	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
9/18/2014	AB_167_1189_X	236702	212 Marin Boulevard, Llc	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
9/15/2014	AB_167_1189_X	236672	Cnj Rail Corporation	Motion For Protective Order	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
9/3/2014	AB_167_1189_X	236573	City Of Jersey City (16)	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.

8/21/2014	AB_167_1189_X	236484	Consolidated Rail Corp	Environmental Materials	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
8/5/2014	AB_167_1189_X	236406	City Of Jersey City, Rails To Trails Conservancy,	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
7/18/2014	AB_167_1189_X	236333	Intervenors	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
7/7/2014	AB_167_1189_X	236286	212 Marin Boulevard, Llc	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
7/3/2014	AB_167_1189_X	236280	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/17/2014	AB_167_1189_X	236196	City Of Jersey City	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/3/2014	AB_167_1189_X	236148	City Of Jersey City, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, And Rails To Trails Conservancy	Letter	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
5/29/2014	AB_167_1189_X	236122	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
5/28/2014	AB_167_1189_X	236116	City Of Jersey City	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
5/28/2014	AB_167_1189_X	236113	212 Marin Boulevard, Llc	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
5/22/2014	AB_167_1189_X	236078	City Of Jersey City, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, And Rails To Trails Conservancy	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
2/26/2014	AB_167_1189_X	235529	212 Marin Boulevard, Llc	Petition To Intervene	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
2/21/2014	AB_167_1189_X	235517	212 Marin Boulevard, Llc	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--

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					ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/14/2014	AB_167_1189_X	235297	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/14/2014	AB_167_1189_X	235294	212 Marin Boulevard, Llc	Letter	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/10/2014	AB_167_1189_X	235274	City Of New Jersey	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/3/2014	AB_167_1189_X	235256	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
12/31/2013	AB_167_1189_X	235250	City Of Jersey City	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
12/11/2013	AB_167_1189_X	235172	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
12/11/2013	AB_167_1189_X	235167	212 Marin Boulevard, Llc, 247 Manila Avenue, Llc, 280 Erie Street, Llc, 317 Jersey Avenue, Llc, 354 Coles Street, Llc, 389 Monmouth Street, Llc, 415 Brunswick Street, Llc, And 446 Newark Avenue, Llc	Notice Of Intent To Participate (With Comment)	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
11/22/2013	AB_167_1189_X	235110	Rails To Trails Conservancy	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
7/6/2009	AB_167_1189_X	225335	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
6/15/2009	AB_167_1189_X	225261	City Of Jersey City	Appeal	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
5/26/2009	AB_167_1189_X	225165	City Of Jersey City	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
5/20/2009	AB_167_1189_X	225141	City Of Jersey City	Environmental Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(

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					COUNTY, N.J.
5/18/2009	AB_167_1189_X	225118	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
5/15/2009	AB_167_1189_X	225129	New Jersey Department Of Environmental Protection	Environmental Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
5/7/2009	AB_167_1189_X	225077	City Of Jersey City	Petition To Reopen/Reconsider	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
5/7/2009	AB_167_1189_X	225068	City Of Jersey City	Environmental Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
5/7/2009	AB_167_1189_X	225070	Consolidated Rail Corporation	Environmental Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
5/6/2009	AB_167_1189_X	225055	East Coast Greenway Allliance	Trail Use Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
5/5/2009	AB_167_1189_X	225051	Consolidated Rail Corporation	Motion To Strike	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
4/28/2009	AB_167_1189_X	225008	Conrail	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
4/24/2009	AB_167_1189_X	224987	City Of Jersey City	Verified Statement/Support Statement	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
4/22/2009	AB_167_1189_X	224933	City Of Jersey City	Amend/Modify/Supplement Prior Filing Or The Record	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
4/21/2009	AB_167_1189_X	224929	City Of Jersey City	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
4/9/2009	AB_167_1189_X	224850	Rails To Trails Conservancy	Petition For Reconsideration	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
4/9/2009	AB_167_1189_X	224846	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.
4/7/2009	AB_167_1189_X	224829	City Of Jersey City	Request For Extension Of Time	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDSO COUNTY, N.J.

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4/7/2009	AB_167_1189_X	224830	City Of Jersey City	Request For Extension Of Time	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/1/2009	AB_167_1189_X	224798	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/1/2009	AB_167_1189_X	224801	Consolidated Rail Corporation	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/1/2009	AB_167_1189_X	224804	Ny/Nj Baykeeper	Environmental Materials	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
3/30/2009	AB_167_1189_X	224769	Embankment Preservation Coaition	Request For Extension Of Time	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
3/27/2009	AB_167_1189_X	224764	City Of Jersey City	Ofa - Notice Of Intent To File Ofa	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
3/27/2009	AB_167_1189_X	224765	Cnj Rail Corporation	Ofa - Notice Of Intent To File Ofa	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
3/18/2009	AB_167_1189_X	224705	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
3/13/2009	AB_167_1189_X	224678	City Of Jersey City	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
2/26/2009	AB_167_1189_X	224608	Consolidated Rail Corporation	Notice Of Exemption	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
2/3/2009	AB_167_1189_X	224461	County Of Hudson	Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/30/2009	AB_167_1189_X	224454	Ny/Nj Baykeeper	Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/26/2009	AB_167_1189_X	224434	Hamilton Park Neighborhood Association	Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/26/2009	AB_167_1189_X	224433	Harsimus Cove Association	Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.

1/26/2009	AB_167_1189_X	224411	Jersey City Landmarks Conservancy Inc	Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/26/2009	AB_167_1189_X	224402	Preservation New Jersey Incorporated	Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/26/2009	AB_167_1189_X	224408	Village Neighborhood Association	Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/26/2009	AB_167_1189_X	224414	State Of New Jersey Department Of Environmental Protection	Comment - Fax Copy	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/26/2009	AB_167_1189_X	224405	East Coast Greenway Allliance	Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/21/2009	AB_167_1189_X	224371	City Of Jersey City	Letter	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/21/2009	AB_167_1189_X	224372	City Of Jersey City	Exhibits	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/15/2009	AB_167_1189_X	224352	City Of Jersey City	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/6/2009	AB_167_1189_X	224298	Consolidated Rail Corporation	Notice Of Exemption	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/6/2009	AB_167_1189_X	224301	Consolidated Rail Corporation	Petition For Stay	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
1/6/2009	AB_167_1189_X	224304	Consolidated Rail Corporation	Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/30/2008	AB_167_1189_X	222221	Consolidated Rail Corporation	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/28/2008	AB_167_1189_X	222197	Jersey City Landmarks Conservancy	Motion/Petition/Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/28/2008	AB_167_1189_X	222196	City Of Jersey City	Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.

4/17/2008	AB_167_1189_X	222115	Consolidated Rail Corporation	Letter	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/11/2008	AB_167_1189_X	222049	Hudson County	Reply	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/7/2008	AB_167_1189_X	222019	Friends Of Liberty State Park	Public Use Condition Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/7/2008	AB_167_1189_X	222018	Ny/Nj Baykeeper	Comment	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/7/2008	AB_167_1189_X	222017	Pennsylvania Railroad Harsimus Stem Embankment Coalition	Amend/Modify/Supplement Prior Filing Or The Record	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/4/2008	AB_167_1189_X	221994	Preservation New Jersey Incorporated	Environmental Materials	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/2/2008	AB_167_1189_X	222013	Civic Jc	Public Use Condition Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/2/2008	AB_167_1189_X	222014	Harsimus Cove Association	Public Use Condition Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/2/2008	AB_167_1189_X	222012	Jersey City Landmarks Conservancy Inc	Public Use Condition Request	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
4/1/2008	AB_167_1189_X	221956	East Coast Greenway Allliance	Notice Of Intent To Participate (Without Comment)	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
3/21/2008	AB_167_1189_X	221863	Pennsylvania Railroad Harsimus Stem Embankment Coalition	Notice Of Intent To Participate (Without Comment)	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.
3/12/2008	AB_167_1189_X	221808	Consolidated Rail Corporation	Notice Of Intent To Initiate Case	CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN HUDS(COUNTY, N.J.

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5/22/15

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Digest:[1] This decision: (1) grants in part, and denies in part, a motion of the City of Jersey City (the City), Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, City Parties) to compel discovery from Consolidated Rail Corporation (Conrail), Norfolk Southern Railway, and CSX Transportation, Inc.; (2) grants in part, and denies in part, the City Parties' motion to compel discovery from a group of limited liability companies (LLCs) that intervened in this proceeding; (3) denies the LLCs' motion to compel responses to requests for admissions from the City Parties and Conrail; (4) grants the City Parties' motion to compel offer of financial assistance valuation information from Conrail; (5) denies the City Parties' motion for leave to file a reply; (6) denies the City Parties' motion to strike; (7) denies the LLCs' motion to require the City to provide an original or color copies of a parcel map; and (8) defers ruling on the LLCs' motion to unseal until the Board sets a due date for offers of financial assistance.

Decided: May 21, 2015

[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

BACKGROUND

This proceeding involves a request to abandon an approximately 1.36-mile portion of a line of railroad, known as the Harsimus Branch, located in an urban area of Jersey City, N.J. Among the pleadings filed by the parties in this matter are a series of requests for discovery. This decision addresses those requests.

In January 2006, the City of Jersey City (the City), Rails to Trails Conservancy, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, City Parties), and New Jersey Assemblyman Louis M. Manzo asked the Board for a declaratory order finding that the Harsimus Branch was a line of railroad subject to the Board's abandonment authority, rather than a spur exempt from Board licensing under 49 U.S.C. § 10906. In 2007, the Board found that the Harsimus Branch is a line of railroad subject to its abandonment authority. City of Jersey City—Pet. for Declaratory Order, FD 34818, slip op. at 1 (STB served Aug. 9, 2007).[2] The courts ultimately agreed. Consol. Rail Corp. v. STB, 571 F.3d 13, 19 (D.C. Cir. 2009) (sending case to district court for a determination of the status of the Harsimus Branch); City of Jersey City v. Consol. Rail Corp., 968 F. Supp. 2d 302 (D.D.C. 2013), aff'd, No. 13-7175 (D.C. Cir. Feb. 19, 2014) (Harsimus Branch was conveyed as a line of railroad in 1976).

Following the Board's 2007 finding that the Harsimus Branch is a line of railroad, Consolidated Rail Corporation (Conrail) filed a notice of exemption to abandon the Harsimus Branch (Harsimus Abandonment Proceeding).[3] Although an Environmental Assessment was issued for public review and comment, the Board subsequently issued a decision holding the proceeding in abeyance while the federal court litigation went forward.[4] The Board vacated the abeyance order and reinstituted the Harsimus Abandonment Proceeding in an August 11, 2014 decision, after the courts had found that the Harsimus Branch is a line of railroad subject to the Board's abandonment authority.[5] That decision also granted the request of a group of limited

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[2] The Board reaffirmed this decision in December 2007 in response to a petition for reconsideration. City of Jersey City—Pet. for Declaratory Order, FD 34818, slip op. at 1 (STB served Dec. 19, 2007).

[3] Consol. Rail Corp.—Aban. Exemption—in Hudson Cnty., N.J., AB 167 (Sub-No. 1189X); CSX Transp., Inc.—Discontinuance of Serv. Exemption—in Hudson Cnty., N.J., AB 55 (Sub-No. 686X); Norfolk S. Ry.—Discontinuance of Serv. Exemption—in Hudson Cnty., N.J., AB 290 (Sub-No. 306X) (STB served Mar. 18, 2009). Collectively, these three dockets are referred to in this decision as Harsimus Abandonment Proceeding, and all decisions under these three dockets will be titled as such.

[4] Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X), et al., (STB served Apr. 20, 2010).

[5] Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X), et al., (STB served Aug. 11, 2014).

liability companies (the LLCs)[6] to intervene and discussed the limited scope of the ongoing Board proceeding (i.e., completion of the environmental review process through preparation of a Supplemental and Final Environmental Assessment by the Board's Office of Environmental Analysis, the conclusion of the review process under section 306108 of the National Historic Preservation Act (NHPA), and a decision on whether to allow Conrail's notice of exemption to become effective).[7]

After the Board reinstituted this abandonment proceeding, the parties filed multiple motions seeking discovery. This decision addresses motions to compel and other motions related to discovery filed by the City Parties and the LLCs.

The City Parties have filed two motions seeking to compel responses to document requests. The first of the City Parties' motions was filed on September 18, 2014, and requests that the Board compel Conrail, Norfolk Southern Railway (NSR), and CSX Transportation, Inc. (CSXT) to respond to requests for production of documents. Conrail, NSR, and CSXT filed a reply in opposition on October 7, 2014. Then, on October 24, 2014, the City Parties filed a motion seeking a Board order to compel responses to document requests served on the LLCs. On November 13, 2014, the LLCs filed a reply in opposition.

The LLCs filed a motion on December 8, 2014, seeking a Board order to compel responses to the requests for admissions served on the City Parties and Conrail. Conrail replied in opposition on December 19, 2014, and the City Parties replied in opposition on December 29, 2014.

The City Parties also filed a motion on December 23, 2014, seeking a Board order compelling the production of valuation information from Conrail pursuant to the Board's rules regarding offers of financial assistance (OFAs). Conrail filed a reply in opposition on January 12, 2015. The City Parties then filed a Motion for Leave to file a Reply and a Motion to Strike.

On March 4, 2015, the LLCs filed a motion requesting that the City be required to file an original or accurate color copy of a parcel map it attached as an exhibit to a filing. The City filed a reply in opposition on April 7, 2015.

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[6] The LLCs are described as: 212 Marin Boulevard, LLC; 247 Manila Avenue, LLC; 280 Erie Street, LLC; 317 Jersey Avenue, LLC; 354 Cole Street, LLC; 389 Monmouth Street, LLC; 415 Brunswick Street, LLC; and 446 Newark Avenue, LLC. The LLCs have an ownership interest in a set of properties along the Harsimus Branch (collectively, the Embankment).

[7] Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X), et al., slip op. at 6-7 (STB served Aug. 11, 2014).

On March 18, 2015, the LLCs filed a motion asking the Board to unseal a document that was filed as a sealed attachment to the City Parties' motion to compel valuation information. The City Parties filed a reply in opposition on April 7, 2015.

DISCUSSION AND CONCLUSIONS

In Board proceedings, parties generally are entitled to discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding." 49 C.F.R. § 1114.21(a)(1). Further, it "is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Id. § 1114.21(a)(2). However, discovery is typically disfavored in abandonment cases. Thus, parties seeking discovery in abandonments must demonstrate relevance and need. Cent. R.R. of Ind.—Aban. Exemption—in Dearborn, Decatur, Franklin, Ripley, & Shelby Cntys., Ind. (Dearborn), AB 459 (Sub-No. 2X) (STB served Apr. 1, 1998).

The City Parties' Motions to Compel Documents. On September 18, 2014, the City Parties filed a motion asking the Board to compel Conrail, NSR, and CSXT to respond to document requests.[8] The document requests seek the production of a broad range of documents, including documents relating to the sale or potential sale of the Harsimus Branch; documents relating to any contract or agreement between Conrail and the LLCs; documents relating to Conrail's real estate policies for a 12-year period; Conrail board member and advisor identification and contact information; certain communications with the New Jersey Department of Transportation; documents relating to the legal status of the Harsimus Branch; and documents relating to compliance with laws in other states for a 12-year period.[9] Conrail did not produce any of the documents requested and, instead, raised various objections to all of the requests.[10]

The City Parties then filed a similar motion on October 24, 2014, asking the Board to compel the LLCs to respond to document requests.[11] The City Parties are seeking: documents relating to the sale or potential sale of the Harsimus Branch; certain communications with the New Jersey Department of Transportation; documents relating to the legal status of the Harsimus Branch; documents relating to the ownership of the LLCs; documents identifying advisors to the LLCs on the purchase of the Embankment; documents relating to the demolition of the

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[8] See City Parties' Mot. to Compel Conrail to Respond to Discovery (Document) Requests (City Parties' Mot. to Compel Conrail).

[9] See City Parties' Mot. to Compel, Ex. A.

[10] See City Parties' Mot. to Compel, Ex. B.

[11] See City Parties' Mot. to Compel LLCs to Respond to Discovery (Document) Requests (City Parties' Mot. to Compel LLCs).

Embankment; communications with Chicago Title Company; and documents relating to claims made by the LLCs against Conrail. The LLCs objected to the City Parties' document requests.[12]

In both motions to compel, the City Parties argue that they are entitled to the requested documents because they relate to the claim that Conrail and NSR and/or CSXT intended to avoid the requirements of section 306108 of the NHPA.[13]

Again, the Board does not typically permit discovery in abandonment cases, and most of the document requests made by the parties are overly broad and seek documents not relevant to the issues in this proceeding. Nevertheless, the circumstances presented here are unique due to the history of the Harsimus Branch and the procedural history of this proceeding, and some of the information sought is potentially relevant to the City Parties' claims regarding alleged violations of the NHPA process. The Board will therefore permit reasonable discovery of potentially relevant information where the information requested would not be overly broad. See Dearborn, slip op. at 4. The Board will grant, in part, the City Parties' motion to compel documents from Conrail, NSR, and CSXT, as provided in Appendix A to this decision. The Board will also grant, in part, the City Parties' motion to compel documents from the LLCs, as set out in Appendix B.

The LLCs' Motion to Clarify/Compel Admissions. In a motion filed on December 8, 2014, the LLCs seek to compel responses to requests for admission served on the City Parties and Conrail. The requests for admission relate to the sale of, deed for, use of, location of, and abandonment of the Harsimus Branch and the Hudson Industrial Track.[14] The City Parties objected to all of the requests for admission, but nevertheless did respond to some of them.[15]

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[12] See City Parties' Mot. to Compel LLCs, Ex. B.

[13] The NHPA provides, in relevant part, that a federal "agency will not grant a . . . license . . . to an applicant who, with intent to avoid the requirements of section 306108 of this Act, has intentionally significantly adversely affected a historic property." 54 U.S.C. § 306113. Section 306108 requires that the Board take into account the effect of an abandonment on any historic property. Id. § 306108.

[14] Conrail's 2008 initial notice of intent to initiate abandonment proceedings stated that Conrail intended to file a notice of exemption to abandon the lines that constituted line code 1440 (the Hudson Street Industrial Track) and line code 1420 (the Harsimus Branch). See Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X), Notice of Intent (filed March 12, 2008). Conrail later notified the Board that it would only seek abandonment authority for the Harsimus Branch and its subsequent Notice of Exemption only applied to that trackage. Id., Comments of Conrail (filed January 7, 2009); id., Verified Notice of Exemption (filed Feb. 26, 2009).

[15] See LLCs' Mot. to Clarify Response to Requests for Admission & to Otherwise Compel Proper Responses (LLCs' Mot. to Clarify/Compel Admissions), Ex. A.

Conrail objected to all of the requests and declined to admit or deny any of them.[16] The LLCs argue that the status and location of the Harsimus Branch the Hudson Street Industrial Track are unresolved and that it is unclear what trackage Conrail is seeking to abandon.[17]

Both the Board and the courts have already found that the Harsimus Branch is a rail line subject to the Board's abandonment authority, so the issue as to the status of the relevant property has been addressed and resolved. See 212 Marin Boulevard, LLC—Pet. for Declaratory Order, FD 35825 (STB served Apr. 24, 2015). Moreover, the record shows that Conrail is seeking abandonment authority for the Harsimus Branch in this proceeding and not the Hudson Street Industrial Track, so requests associated with the latter are clearly beyond the scope of issues here. Accordingly, the requests do not seek information that is relevant to this ongoing proceeding, and will therefore be denied.

The City Parties' Motion to Compel Valuation Information. On December 23, 2014, the City Parties filed a motion asking the Board to compel Conrail to provide valuation information pursuant to 49 C.F.R. § 1152.27(a), which would supply the City Parties with the information they argue is necessary to file an OFA. The City Parties state that a shipper has approached them "with an urgent need for service."[18] Conrail responded by arguing that the City Parties will be unable to meet the criteria for a successful OFA.[19]

Pursuant to our regulations, an abandoning railroad must provide, upon request, to a party considering an OFA, the information enumerated in 49 C.F.R. §§ 1152.27(a), (d); see also Norfolk S. Ry.—Pet. for Exemption—in Balt. City & Balt. Cnty., Md., AB 290 (Sub-No. 311X), slip op. at 4 (STB served Mar. 22, 2010). Conrail's claim that the City Parties will be unable to submit a successful OFA may ultimately prove correct, but the Board's determination of whether to grant a request for an OFA occurs after the valuation information has been provided and an OFA is filed. Thus, the Board typically does not consider or address the factors necessary to determine whether an OFA might be granted until the offeror receives the valuation information in 49 C.F.R. §§ 1152.27(a) and (d) (which is in the abandoning railroad's possession) and files an OFA. Accordingly, we will grant the City Parties' motion to compel Conrail to produce the valuation information described in 49 C.F.R. §§1152.27(a), (d) limited to the operation of and property comprising the Harsimus Branch only. Conrail must provide this valuation information to the City Parties no later than June 1, 2015. Normally, in class exemption cases, OFAs are due 30 days after the Federal Register publication of the notice, and, if a formal expression of intent

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[16] See LLCs' Mot. to Clarify/Compel Admissions, Ex. B.

[17] See generally LLCs' Mot. to Clarify/Compel Admissions.

[18] City Parties' Mot. to Compel Conrail Immediately to Supply Valuation Information Required Pursuant to 49 C.F.R. § 1152.27(a) (City Parties' Motion to Compel Valuation Information) at 2.

[19] See Conrail's Reply to City Parties' Mot. to Compel Valuation Information at 3-4.

to file an OFA is filed, the effective date of the exemption is postponed until 40 days after the notice is published. 49 C.F.R. § 1152.27(c)(2)(i). Here, because of the unique circumstances of this case, the Board will decide whether to make the notice of exemption effective and will set a due date for OFAs in a future decision.[20]

Motions Related to the Motion to Compel Valuation Information.[21] In their Motion to Compel Valuation Information from Conrail, the City Parties assert that they have a shipper with a need for rail service.[22] They also attach letters of support from the Mayor of the City of Jersey City and several New Jersey state assembly members and senators.[23] In reply, the LLCs and Conrail challenge the veracity of the City Parties' assertion regarding a shipper's interest.[24] The LLCs also imply that the letters from the state politicians were ghost-written by the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition.[25]

The City Parties' filed a Motion for Leave to File a Reply to the replies by the LLCs and Conrail. We will deny the City Parties' motion because a reply to a reply is not permitted under our rules, nor is one necessary here to complete the record. See 49 C.F.R. § 1104.13(c). As noted, our decision to grant the City Parties' Motion to Compel Valuation Information is based on the Board's consistent application of the OFA rules. As such, arguments about matters such as whether there is actually a potential shipper are not relevant to our determination that Conrail should provide the valuation information required by the Board's regulations.

Additionally, on February 10, 2015, the LLCs filed a reply to the City Parties' Motion for Leave to File a Reply, to which the City responded with a Motion to Strike. As stated, our rules do not permit replies to replies. See 49 C.F.R. § 1104.13(c). However, the LLCs' February 10, 2015 reply is a response to the City Parties' *Motion* for Leave to File a Reply. Accordingly, the February 10, 2015 reply is an appropriate reply to a motion, and we will deny the City Parties' Motion to Strike.

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[20] Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X), et al., slip op. at 7 (STB served Aug. 11, 2014).

[21] There is an outstanding motion filed by the LLCs' asking that the Board hold that a document filed as confidential by the City Parties does not meet Board standards for a confidential designation. The time for replying to this motion has not yet passed and, because it is not yet ripe for our review, it is not addressed here.

[22] City Parties' Mot. to Compel Valuation Information at 2.

[23] See City Parties' Mot. to Compel Valuation Information, Exs. C, D.

[24] See generally Conrail's Reply to City Parties' Mot. to Compel Valuation Information; LLCs' Reply to City Parties' Mot. to Compel Valuation Information.

[25] LLCs' Reply to City Parties' Mot. to Compel Valuation Information at 7-8.

Finally, the LLCs filed a motion on March 18, 2015, asking that the Board unseal a document filed by the City Parties as an attachment to their motion to compel valuation information. Specifically, to support their claim of need for the valuation information in the Board OFA regulations, the City Parties filed a statement under seal from the proposed shipper who they state has approached them.[26] The LLCs argue that the information in the shipper statement does not qualify as "Confidential" or "Highly Confidential" under the Board's September 24, 2014 protective order and that, therefore, it should be unsealed. Because the shipper letter may be relevant to our consideration of any OFA that may be filed, we will rule on the LLCs' motion when we address the due date for the filing of OFAs.

Motion to Provide Original or Color Copy of Map. On March 4, 2015, the LLCs filed a motion asking the Board to require the City to file an original or a fully accurate color copy of the "Parcel Map" that was attached as an exhibit to the City Parties' January 20, 2015 Motion for Leave to File a Reply. Because the requested map relates to the LLCs' argument relating to whether the Board retains jurisdiction over the Harsimus Branch, an issue that already has been addressed and resolved by the Board and the courts,[27] the map has no relevance to the issues currently before the Board. Therefore, this motion will be denied.

The Board recognizes the lengthy history of this proceeding and the complex and controversial issues that have been presented. That is why the Board is permitting a reasonable amount of discovery in this proceeding, notwithstanding the normal practice of limiting discovery in abandonment proceedings. We note, however, that the record has become voluminous and, in our opinion, needlessly so. Although the Board cannot limit the filings submitted by the parties in the future, we expect the parties to exercise sound judgment when weighing the need for future motions or objections.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The City Parties' Motion to Compel Conrail to Respond to Discovery (Document) Requests is granted in part and denied in part as set forth in Appendix A.

2. The City Parties' Motion to Compel the LLCs to Respond to Discovery (Document) Requests is granted in part and denied in part as set forth in Appendix B.

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[26] City Parties' Mot. to Compel Valuation Information at 2, Ex. D.

[27] See 212 Marin Boulevard, LLC—Pet. for Declaratory Order, FD 35825 (STB served Apr. 24, 2015).

3. The LLCs' Motion to Clarify Responses to Requests for Admission and to Otherwise Compel Proper Responses to Requests for Admissions is denied.

4. The City Parties' Motion to Compel Valuation Information from Conrail is granted. Conrail must produce valuation information described in 49 C.F.R. §§ 1152.27(a), and (d) pertaining to the Harsimus Branch by June 1, 2015.

5. The City Parties' Motion to File a Reply is denied.

6. The City Parties' Motion to Strike is denied.

7. The LLCs' Motion to Compel Provision of a Map is denied.

8. This decision is effective on its date of service.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.

Appendix A
Specific rulings on the City Parties' Motion to Compel Conrail to Respond to Discovery (Document) Requests

Req. No.	City Parties' Request	Decision	Modification, if relevant[28]
Email Req. No. 1[29]	[A]ll documents . . . bearing upon or relating to sales or transfers, or projected sales or transfers, of property interests of Consolidated Rail Corporation to any interest controlled or owned by Steve Hyman or Victoria Hyman, or the Port Authority of New York and New Jersey (PATH), or any other party (a) in or near the former Waldo Yard in Jersey City, (b) between any portion of the former Waldo Yard in Jersey City and the Harsimus Branch, (c) along the former Pennsylvania Railroad mainline between Journal Square and Newark Avenue in Jersey City, and/or (d) along the former River Line (or connections thereto from National Docks Secondary or the Harsimus Branch) between the Bergen Arches Cut and CP Waldo in Jersey City from January 1, 2006 to the date of response. Conrail is specifically requested to produce all maps relating to such sales or transfers, or projected sales or transfers, in	Denied. This request is overly broad and seeks documents with no apparent relevance to this ongoing proceeding involving the Harsimus Branch.	

[28] Strikethrough text indicates that this language is cut from the original request; underlined text indicates that this language is added to the original request.

[29] The City includes two unnumbered requests in its letter to Conrail.

	its custody or control.		
Email Req. No. 2	[A]ll documents . . . constituting, reflecting, or arising out of proposed transactions between Conrail and (a) Victoria Hyman, (b) Steve Hyman, or (c) any company owned or controlled by Victoria or Steve Hyman involving (i) any portion of the Harsimus Branch or (ii) any property in Jersey City owned or controlled by Conrail from January 1, 2003, to the date of response.	Denied. This request is overly broad and seeks documents with no apparent relevance to this proceeding. Documents relating to "proposed" transactions, transactions other than those involving the Harsimus Branch, and documents related to transactions not close in time to the sale of the Embankment are among those requested that are not relevant to either allegations of a violation of 54 U.S.C. § 306113 or the other issues to be addressed in the Supplemental and Final Environmental Assessment.	
1	All versions of the following documents as referenced in the Memorandum of Understanding executed by "Conrail," SLH Holding Company, and "the LLCs" signed October 12, 2007 by Jonathan Broder and a person believed to be S. Hyman, which Memorandum of Understanding was filed by the LLCs as document 94-02 (filed 11/08/12) in U.S.D.C. 09-1900: (a) "Agreement of Sale dated June 24, 2003" (b) "letters dated September 22, 2003, May 7, 2004, and September 15, 2004"	Granted in part as modified. This request as written is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	Final or executed ~~All~~ versions of the following documents as referenced in the Memorandum of Understanding executed by "Conrail," SLH Holding Company, and "the LLCs" signed October 12, 2007 by Jonathan Broder and a person believed to be S. Hyman, which Memorandum of Understanding was filed by the LLCs as document 94-02 (filed 11/08/12) in U.S.D.C.

	(c) "Amendment of Agreement of Sale dated October 27, 2004" (d) All writings that relate in any way to the foregoing (a), (b), or (c). (e) Any other amendments or modifications to any agreement for the sale of any portion of the Harsimus Branch to any interest owned or controlled, directly or indirectly, by Victoria or Steve Hyman.		09-1900: (a) "Agreement of Sale dated June 24, 2003" (b) "letters dated September 22, 2003, May 7, 2004, September 15, 2004" (c) "Amendment of Agreement of Sale dated October 27, 2004" ~~(d) All writings that relate in any way to the foregoing (a), (b), or (c).~~ (e) Any other amendments or modifications to any agreement for the sale of any portion of the Harsimus Branch to any interest owned or controlled, directly or indirectly, by Victoria or Steve Hyman.
2	All versions of the Memorandum of Understanding signed or dated October 12, 2007, by Broder and Hyman as referenced above, and any other agreements or documents reflecting written or oral understandings between one or more of Conrail, the LLCs, or SLH Holding Company "to maintain the benefit of the 2005 sale" of portions of the Harsimus Branch to SLH Holding Company or the LLCs.	Granted in part as modified. This request as written is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	Final or executed versions ~~All versions~~ of the Memorandum of Understanding signed or dated October 12, 2007, by Broder and Hyman as referenced above, and any other agreements ~~or documents reflecting written or oral understandings~~ between one or more of Conrail, the LLCs, or SLH Holding Company "to maintain the benefit of the 2005 sale" of portions of the

			Harsimus Branch to SLH Holding Company or the LLCs.
3	Documents sufficient to show any policy of Conrail for approval by officers and/or the board of directors of Conrail for real estate, including but not limited to the Harsimus Branch, applicable from 2002 to the date of this document request, including but not limited to any requirements for board approval for sales exceeding certain valuations.	Denied This request is ambiguous; it is unclear what a policy "for real estate" is and how a "real estate" policy has any relevance to this ongoing proceeding.	
4	All documents, including but not limited to, corporate minutes and communications with, to, from or concerning the board of directors of Conrail, including presentations to the board of directors of Conrail, concerning the sale of any portion of the Harsimus Branch to SLH Holding Company or "the LLCs," including but not limited to any documents relating to approval or to withholding of approval of sales agreements, or amendments of sales agreement, relating to any portion of the Harsimus Branch.	Granted in part as modified. Portions of this request are denied as overly broad and seeking documents with no apparent relevance to this proceeding Specifically, this request seeks documents that are outside the time period relevant to allegations of a potential violation of 54 U.S.C. § 306113 and that are not otherwise relevant to the issues to be addressed in the Supplemental and Final Environmental Assessment. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	~~All documents, including but not limited to,~~Corporate minutes from January 1, 2003 until January 1, 2005 containing ~~and communications with, to, from or concerning the board of directors of Conrail, including~~ presentations to the board of directors of Conrail concerning the sale of any portion of the Harsimus Branch to SLH Holding Company or "the LLCs," ~~including but not limited to any documents relating to approval or to withholding of approval of sales agreements, or amendments of sales agreement, relating to any portion of the Harsimus Branch.~~
5	All documents, including but	Granted in part as	~~All documents,~~

	not limited to, corporate minutes and communications with, to, from or concerning the board of directors of Conrail, including presentations to the board of directors of Conrail, concerning the Memorandum of Understanding signed October 12, 2007 by Broder and Hyman as referenced above.	modified. Portions of the request that are denied are overly broad and seek documents with no apparent relevance to this proceeding. Specifically, this request seeks documents that are outside the time period relevant to allegations of a potential violation of 54 U.S.C. § 306113 and that are not otherwise relevant to the issues to be addressed in the Supplemental and Final Environmental Assessment. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	~~including but not limited to,~~ Corporate minutes from January 1, 2003 until January 1, 2008 containing ~~and communications with, to, from or concerning the board of directors of Conrail, including~~ presentations to the board of directors of Conrail, concerning the Memorandum of Understanding signed October 12, 2007 by Broder and Hyman as referenced above.
6	Documents sufficient to set forth the name and current business address of members of the Conrail board of directors 2002 to the date of this document request (or a list with relevant dates of service, names and business addresses).	Denied. ~~This~~ request is overly broad and seeks documents with no apparent relevance to this ongoing proceeding.	
7	All documents relating to agreements or understandings purporting to toll any statute of limitations defense that may be asserted by Conrail or an attorney representing any party (including but not limited to Conrail) to the Agreement of Sale dated June 24, 2003, as later amended.	Denied. ~~This~~ request seeks documents with no apparent relevance to this ongoing proceeding.	
8	All documents relating to any communication to or from the	Granted in part as modified.	~~All documents relating to~~ Any communication

	New Jersey Department of Transportation concerning sale or purported sale of the Harsimus Branch or the need for regulatory action by the Surface Transportation Board concerning same, other than pleadings filed on behalf of the New Jersey Department of Transportation or the attorney general of New Jersey in U.S.D.C. 09-1900.	This request is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	between January 1, 2003 and January 1, 2005 to or from the New Jersey Department of Transportation concerning sale or purported sale of the Harsimus Branch or the need for regulatory action by the Surface Transportation Board concerning same, other than pleadings filed on behalf of the New Jersey Department of Transportation or the attorney general of New Jersey in U.S.D.C. 09-1900.
9	All documents relating to sale or potential sale of land or interests in land containing the portion of the Harsimus Branch between CP Waldo and the portion of the Harsimus Branch purportedly sold to SLH Holding Company and/or the LLCs, including but not limited to proposed sales, proposed brokerage agreements, or any other proposal that might result in non-railroad use of that portion of the Harsimus Branch.	Denied. This request is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding.	
10	Documents sufficient to identify (by name, current business address and position during all relevant times at the railroads) all persons advising or taking action for Conrail or recommending action by Conrail in connection with the sale of any portion of the	Denied. This request is overly broad and seeks documents with no apparent relevance to this ongoing proceeding.	

	Harsimus Branch from 2000 to date.		
11	Documents sufficient to identify (by name, current business address and position during all relevant times at SLH Holding Company or the LLCS) all persons advising or taking action for SLH Holding Company or the LLCs in connection with the sale of the Harsimus Branch from 2000 to date.	Denied. This request is overly broad and seeks documents with no apparent relevance to this ongoing proceeding.	
12	All documents reflecting any inquiry by Conrail employee Ryan or Conrail attorney Fiorilla or any other employee or agent of Conrail directed to any other person employed by, retained by, or acting as an agent for Conrail, CSX or NS concerning whether the Harsimus Branch was a line of railroad requiring STB abandonment authorization prior to sale to SLH Holding Company or the LLCs, and all documents responsive thereto.	Granted in part as modified. This request is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding. Specifically, this request seeks documents that are outside the time period relevant to allegations of a potential violation of 54 U.S.C. § 306113 and that are not otherwise relevant to the issues to be addressed in the Supplemental and Final Environmental Assessment. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible ~~evidence~~.	All documents recording ~~reflecting~~ any inquiry, or response thereto, prior to January 1, 2005 ~~Conrail employee Ryan or Conrail attorney Fiorilla or any other employee or agent of Conrail directed to any other person employed by, retained by, or acting as an agent for Conrail, CSX or NS~~ concerning whether the Harsimus Branch was a line of railroad requiring STB abandonment authorization prior to sale to SLH Holding Company or the LLCs, ~~and all documents responsive thereto~~.
13	All documents in the files of CSX or NS, including the files of their attorneys, consultants, agents, employees, officers and board members, relating to the	Denied. This request is overly broad and includes requests for documents with no apparent relevance to this	

	rail regulatory status, historic nature, or sale of Harsimus Branch from 2000 to date other than pleadings in F.D. 34818, U.S.D.C. 09-1900, or appeals or petitions for review therefrom, or pleadings in this abandonment proceeding.	ongoing proceeding. To the extent that this request includes a request for potentially relevant documents, those documents would be responsive to other requests.	
14	All documents (other than pleadings prepared by Conrail seeking to contest the constitutionality of N.J.S.A. 48:12-125.1) showing NS, CSX or Conrail compliance with, or objection to, any state law that creates a preferential purchase right for public agencies in connection with railroad lines that are subject to STB abandonment proceedings, including but not limited to N.H. Rev. Stat. 228:60-b; Vermont Stat. Ann. § 3404; Mass. Gen., Law, chap 161C, § 7; Conn. Stat. 13b-36(c); New York's Transportation Law § 20.	Denied. This request is overly broad and seeks documents with no apparent relevance to this ongoing proceeding.	

Appendix B
Specific rulings on the City Parties' Motion to Compel the LLCs to Respond to Discovery (Document) Requests

Req. No.	Request	Decision	Modification, if relevant[30]
1	All versions of the following documents as referenced in the Memorandum of Understanding executed by "Conrail," SLH Holding Company, and "the LLCs" signed October 12, 2007 by Jonathan Broder and a person believed to be S. Hyman, which Memorandum of Understanding was filed by the LLCs as document 94-02 (filed 11/08/12) in U.S.D.C. 09-1900: (a) "Agreement of Sale dated June 24, 2003" (b) "letters dated September 22, 2003, May 7, 2004, September 15, 2004" (c) "Amendment of Agreement of Sale dated October 27, 2004" (d) All writings that relate in any way to the foregoing (a), (b), or (c). (e) Any other amendments or modifications to any agreement for the sale of any portion of the Harsimus Branch to any interest owned or controlled, directly or indirectly, by Victoria or Steve Hyman.	Granted in part as modified. This request is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	Final or executed ~~All~~ versions of the following documents as referenced in the Memorandum of Understanding executed by "Conrail," SLH Holding Company, and "the LLCs" signed October 12, 2007 by Jonathan Broder and a person believed to be S. Hyman, which Memorandum of Understanding was filed by the LLCs as document 94-02 (filed 11/08/12) in U.S.D.C. 09-1900: (a) "Agreement of Sale dated June 24, 2003" (b) "letters dated September 22, 2003, May 7, 2004, September 15, 2004" (c) "Amendment of Agreement of Sale dated October 27, 2004" ~~(d) All writings that relate in any way to the~~

[30] Strikethrough text indicates that this language is cut from the original request; underlined text indicates that this language is added to the original request.

			~~foregoing (a), (b), or (c).~~ (e) Any other amendments or modifications to any agreement for the sale of any portion of the Harsimus Branch to any interest owned or controlled, directly or indirectly, by Victoria or Steve Hyman.
2	All versions of the Memorandum of Understanding signed or dated October 12, 2007, by Broder and Hyman as referenced above, and any other agreements or documents reflecting written or oral understandings between one or more of Conrail, the LLCs, or SLH Holding Company "to maintain the benefit of the 2005 sale" of portions of the Harsimus Branch to SLH Holding Company or the LLCs.	Granted in part as modified. This request is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	Final or executed versions ~~All versions~~ of the Memorandum of Understanding signed or dated October 12, 2007, by Broder and Hyman as referenced above, and any other agreements ~~or documents reflecting written or oral understandings~~ between one or more of Conrail, the LLCs, or SLH Holding Company "to maintain the benefit of the 2005 sale" of portions of the Harsimus Branch to SLH Holding Company or the LLCs.
3	Documents sufficient to show the ownership of the LLCs and NZ and any changes in ownership from 2003 to date.	Denied. ~~This~~ request is overly broad and seeks documents with no apparent relevance to this ongoing proceeding.	
4	All documents relating to agreements or understandings purporting to toll any statute of limitations defense that may be asserted by Conrail or an attorney	Denied. This request seeks documents with no apparent relevance to this ongoing proceeding.	

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	representing any party (including but not limited to Conrail) to the Agreement of Sale dated June 24, 2003, as later amended.		
5	All documents relating to any communication to or from the New Jersey Department of Transportation concerning sale or purported sale of the Harsimus Branch or the need for regulatory action by the Surface Transportation Board concerning same, other than pleadings filed on behalf of the New Jersey Department of Transportation or the attorney general of New Jersey in U.S.D.C. 09-1900.	Denied. This request seeks documents with no apparent relevance to this ongoing proceeding.	
6	All documents relating to sale or potential sale of land or interests in land containing the portion of the Harsimus Branch between CP Waldo and the portion of the Harsimus Branch purportedly sold to SLH Holding Company and/or the LLCs, including but not limited to proposed sales, proposed brokerage agreements, or any other proposal that might result in non-railroad use of that portion of the Harsimus Branch.	Denied. This request is overly broad and seeks documents with no apparent relevance to this ongoing proceeding.	
7	Documents sufficient to identify (by name, current business address and position during all relevant times at the railroads) all persons advising or taking action for Conrail or recommending action by Conrail connection with the sale of any portion of the Harsimus Branch from 2000 to date.	Denied. This request is overly broad and seeks documents with no apparent relevance to this ongoing proceeding.	
8	Documents sufficient to identify (by name, current business address and position during all	Denied. This request is overly broad and seeks documents	

	relevant times at SLH Holding Company or the LLCs) all persons advising or taking action for SLH Holding Company or the LLCs or NZ in connection with the sale of the Harsimus Branch from 2000 to date.	with no apparent relevance to this ongoing proceeding.	
9	All documents reflecting any inquiry any representative of the LLCs or SLH Holding Company prior to acquisition of any portion of the Harsimus Branch by SLH or the LLCs concerning whether the Harsimus Branch was a line of railroad requiring STB abandonment authorization prior to sale to SLH Holding Company or the LLCs, and all documents responsive thereto.	Granted in part as modified. This request is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	All documents that were provided to or were provided by Conrail and which record ~~reflecting~~ any inquiry, or response thereto, ~~any representative of the LLCs or SLH Holding Company prior to acquisition of any portion of the Harsimus Branch by SLH or the LLCs inquiries~~ concerning whether the Harsimus Branch was a line of railroad requiring STB abandonment authorization prior to sale to SLH Holding Company or the LLCs~~, and all documents responsive thereto~~.
10	All documents relating to demolition of the Harsimus Embankment by or on behalf of the LLCs.	Denied. This request is overly broad and requests documents with no apparent relevance to this ongoing proceeding.	
11	All documents relating to offers to donate the Harsimus Embankment as fill to Hoboken or any other entity or individual.	Denied. This request seeks documents with no apparent relevance to this ongoing proceeding. To the extent that relevant	

		documents may be included in this request, those documents would also be responsive to other document requests.	
12	All documents relating to any sale or exchange or joint development agreement or similar transaction, or any proposed sale or exchange or joint development agreement or similar transaction, of any portion of the Harsimus Branch by the LLCs (or NZ) and any entity or individual other than Conrail or the City of Jersey City.	Denied. This request seeks documents with no apparent relevance to this ongoing proceeding.	
13	All documents embodying or discussing communications, oral or in writing, by the LLCs and/or NZ with CNJ Rail Corporation, or any agent or representative of same, relating to the Harsimus Branch or litigation concerning the Harsimus Branch.	Denied. This request is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding.	
14	All documents embodying or discussions communications, oral or in writing, with Chicago Title Company, or any agent or representative of same, relating to the parcels the Harsimus Branch purportedly acquired by the LLCs or NZ, or litigation relating to those parcels.	Granted in part as modified. This request is overly broad and includes requests for documents with no apparent relevance to this ongoing proceeding. As modified herein, the request is limited to documents reasonably calculated to lead to the discovery of admissible evidence.	All ~~documents embodying or discussions~~ communications~~, oral or in writing, with~~ to or from Chicago Title Company~~, or any agent or representative of same,~~ relating to the regulatory status of the parcels the Harsimus Branch purportedly acquired by the LLCs or NZ if shared with Conrail~~, or litigation relating to those parcels~~.
15	All documents embodying claims, or reservation of claims,	Denied. This request is overly	

	made by the LLCs or NZ against attorneys, Consolidated Rail Corporation, or other individuals or entities arising from fraudulent or negligent misrepresentation of the regulatory status of the Harsimus Branch to the LLCs.	broad and includes requests for documents with no apparent relevance to this ongoing proceeding. To the extent that this request includes potentially relevant documents, those documents would be responsive to other requests.	

45242
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SERVICE DATE – JULY 5, 2016

7/5/16

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Decided: July 5, 2016

This proceeding involves a request to abandon an approximately 1.36-mile portion of a line of railroad, known as the Harsimus Branch, located in the City of Jersey City, N.J. Consolidated Rail Corporation (Conrail) filed a notice of exemption in this proceeding to abandon the Harsimus Branch (Harsimus Abandonment Proceeding)[1] following the Board's 2007 decision finding that the Harsimus Branch is a line of railroad subject to its abandonment authority. (City of Jersey City—Pet. for Declaratory Order, FD 34818, slip op. at 1 (STB served Dec. 19, 2007).) The Harsimus Abandonment Proceeding was held in abeyance while the related proceeding was being litigated in Federal court.[2] The Board lifted the abeyance order and reinstituted the Harsimus Abandonment Proceeding on August 11, 2014.

[1] Consol. Rail Corp.—Aban. Exemption—in Hudson Cty., N.J., AB 167 (Sub-No. 1189X); CSX Transp., Inc.—Discontinuance of Serv. Exemption—in Hudson Cty., N.J., AB 55 (Sub-No. 686X); Norfolk S. Ry.—Discontinuance of Serv. Exemption—in Hudson Cty., N.J., AB 290 (Sub-No. 306X) (STB served Mar. 18, 2009). Collectively, these three dockets are referred to as Harsimus Abandonment Proceeding.

[2] The courts ultimately agreed that the Harsimus Branch is a line of railroad. Consol. Rail Corp. v. STB, 571 F.3d 13, 19 (D.C. Cir. 2009) (sending case to district court for a determination of the status of the Harsimus Branch); City of Jersey City v. Consol. Rail Corp., 968 F. Supp. 2d 302 (D.D.C. 2013), aff'd, No. 13-7175 (D.C. Cir. Feb. 19, 2014) (Harsimus Branch was conveyed as a line of railroad in 1976).

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In a decision served May 22, 2015, the Board addressed several discovery-related motions filed by the parties. (Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X), et al. (STB served May 22, 2015) (May 2015 Decision).)[3] The Board reminded the parties to "exercise sound judgment" in filing motions before the Board. (May 2015 Decision, slip op. at 8). Nonetheless, the parties have brought new discovery-related disputes to the Board for resolution.

The Board has signed a Memorandum of Understanding with the Federal Energy Regulatory Commission (FERC) to employ the services of FERC administrative law judges (ALJs) on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes between parties in cases pending before the Board. The Board hereby assigns and authorizes Administrative Law Judge John P. Dring to entertain and rule upon pending discovery matters and to resolve all future disputes concerning discovery in this proceeding. The parties are directed to send copies of all their pending and future discovery-related filings in this proceeding to Judge Dring at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426.

It is ordered:

1. This proceeding is assigned to Administrative Law Judge John P. Dring for handling of all discovery matters and initial resolution of all discovery disputes.

2. Each party in this proceeding must send a copy of its filings to Judge Dring at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426.

3. Judge Dring will be added to the service list in this proceeding, and a copy of this decision will be served upon him.

4. A copy of this decision will be served on the United States Office of Personnel Management (OPM), at Human Resources Solutions, ALJ Program Office, 1900 E Street NW, Room 2458, Washington, DC 20414-9400. Judge Dring shall send a copy of the notice or order that constitutes the final disposition of his assignment of this case to OPM at the above address.

5. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

[3] The Board addressed further discovery disputes in decisions served November 2, 2015, and July 1, 2016.

8/25/16

45408 SERVICE DATE – LATE RELEASE AUGUST 25, 2016
ALJ

SURFACE TRANSPORTATION BOARD

ORDER OF PRESIDING ADMINISTRATIVE LAW JUDGE CONFIRMING ORDER TO REQUIRE JAMES RIFFIN TO RESPOND TO CERTAIN DISCOVERY REQUESTS

Docket No. AB 167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Decided: August 24, 2016

On July 5, 2016, the City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, City, et al.) filed a Second Motion to Compel James Riffin to Respond to Discovery (Document) Requests (Second Motion to Compel). The Second Motion to Compel requested an order directing Mr. James Riffin to respond fully and completely to certain document requests.

On July 25, 2016, the LLC Intervenors (LLCs)[1] filed a reply opposing the Second Motion to Compel. On July 28, 2016, Mr. Riffin filed a reply opposing the Second Motion to Compel. By order, decided August 8, 2016, oral arguments on the Second Motion to Compel were scheduled for Wednesday, August 24, 2016.

During the August 24, 2016 oral arguments, City, et al. and James Riffin entered an agreement into the record that would dispose of the Second Motion to Compel. The Presiding Administrative Law Judge ordered compliance with the agreement, and the record reflects that order. No participant objected to memorializing the agreement. This order confirms the Presiding Administrative Law Judge's order during oral arguments, and a summary of the agreement is set forth below.

[1] The LLCs consist of 212 Marin Boulevard, LLC; 247 Manila Avenue, LLC; 280 Erie Street, LLC; 317 Jersey Avenue, LLC; 354 Cole Street, LLC; 389 Monmouth Street, LLC; 415 Brunswick Street, LLC; and 446 Newark Avenue, LLC.

It is ordered:

1. Mr. Riffin will provide City, et al. and Consolidated Rail Corporation with all e-mail communications between him and the LLCs that Mr. Riffin retains in his possession. Mr. Riffin will also supply City, et al. the docket numbers for three (3) bankruptcy proceedings involving Mr. Riffin. Mr. Riffin shall comply with this order by close of business on Friday, August 26, 2016.

2. This decision is effective on its service date.

By the Board, John P. Dring, Administrative Law Judge.

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10/5/16

45368 SERVICE DATE – LATE RELEASE AUGUST 5, 2016
ALJ

SURFACE TRANSPORTATION BOARD

ORDER OF PRESIDING ADMINISTRATIVE LAW JUDGE SCHEDULING ORAL ARGUMENTS ON SECOND MOTION TO COMPEL JAMES RIFFIN TO RESPOND TO DISCOVERY (DOCUMENT) REQUESTS

Docket No. AB 167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Decided: August 5, 2016

On July 5, 2016, the City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, City, et al.) filed a Second Motion to Compel James Riffin to Respond to Discovery (Document) Requests (Second Motion to Compel). The Second Motion to Compel requests an order directing James Riffin to respond fully and completely to certain document requests.

On July 25, 2016, the LLC Intervenors (LLCs)[1] filed a reply opposing the Second Motion to Compel. On July 28, 2016, James Riffin filed a reply opposing the Second Motion to Compel.

The Board has signed a Memorandum of Understanding with the Federal Energy Regulatory Commission (FERC) to employ the services of FERC administrative law judges (ALJs) on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes between parties in cases pending before the Board.

By a decision served on July 5, 2016, the Board assigned and authorized Administrative Law Judge John P. Dring of the FERC to entertain and rule upon discovery matters and to resolve all disputes concerning discovery in these proceedings.

[1]The LLCs consist of 212 Marin Boulevard, LLC; 247 Manila Avenue, LLC; 280 Erie Street, LLC; 317 Jersey Avenue, LLC; 354 Cole Street, LLC; 389 Monmouth Street, LLC; 415 Brunswick Street, LLC; and 446 Newark Avenue, LLC.

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Notwithstanding the scheduling of the discovery conference ordered below, the parties are strongly encouraged to make intensive, good faith efforts to resolve outstanding discovery disputes without the need for judicial intervention, both prior to the conference and thereafter. Any questions pertaining to this discovery proceeding should be direct to Judge Dring's law clerk, Michael Kellermann, who may be contacted at (202) 502-8341 or michael.kellermann@ferc.gov.

It is ordered:

1. An oral argument on City, et al.'s Second Motion to Compel is scheduled for Wednesday, August 24, 2016, beginning at 10:00 a.m. in a hearing room to be designated at the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. This oral argument will be held on the record. All parties to this dispute are directed to attend.

By the Board, John P. Dring, Administrative Law Judge.

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45500 SERVICE DATE – LATE RELEASE OCTOBER 7, 2016 10/7/16
ALJ

SURFACE TRANSPORTATION BOARD

ORDER OF PRESIDING ADMINISTRATIVE LAW JUDGE SCHEDULING ORAL ARGUMENTS ON MOTION TO COMPEL, MOTION FOR SANCTIONS, AND MOTION TO STRIKE

Docket No. AB 167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Decided: October 7, 2016

On September 15, 2016, the City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, City et al.) filed a Motion to Compel 212 Marin Boulevard, LLC, et al., (LLCs) to Answer Interrogatories, Make Admissions, and Provide Responsive Documents to Pending Document Requests (Motion to Compel) and a Motion for Sanctions Against James Riffin for Failure to Respond to Discovery Requests (Motion for Sanctions). The Motion to Compel requests an order directing the LLCs to respond fully and completely to certain document requests. The Motion for Sanctions requests discovery sanctions against James Riffin pursuant to 49 C.F.R. § 1114.31(b) (2016).

On September 23, 2016, Consolidated Rail Corporation (Conrail) filed a reply in partial support of City et al.'s Motion for Sanctions. On September 26, 2016, James Riffin filed a reply in opposition to the Motion for Sanctions and a Motion to Strike Conrail's Reply in Partial Support of City et al.'s Motion for Sanctions (Motion to Strike). On September 26, 2016, Conrail filed a reply in opposition to James Riffin's Motion to Strike. On September 27, 2016, James Riffin filed a clarification to his Motion to Strike.

The Board has signed a Memorandum of Understanding with the Federal Energy Regulatory Commission (FERC) to employ the services of FERC administrative law judges (ALJs) on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes between parties in cases pending before the Board.

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By a decision served on July 5, 2016, the Board assigned and authorized Administrative Law Judge John P. Dring of the FERC to entertain and rule upon discovery matters and to resolve all disputes concerning discovery in these proceedings.

Notwithstanding the scheduling of the oral arguments ordered below, the parties are strongly encouraged to make intensive, good faith efforts to resolve outstanding discovery disputes without the need for judicial intervention, both prior to the conference and thereafter. Any questions pertaining to this discovery proceeding should be direct to Judge Dring's law clerk, Carlos Clemente, who may be contacted at (202) 502-8392 or Carlos.Clemente@ferc.gov.

It is ordered:

1. Oral arguments on City, et al.'s Motion to Compel and Motion for Sanctions and James Riffin's Motion to Strike are scheduled for Monday, October 24, 2016, beginning at 10:00 a.m. in a hearing room to be designated at the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. This oral argument will be held on the record. All parties to this dispute are directed to attend.

2. This decision is effective on its service date.

By the Board, John P. Dring, Administrative Law Judge.

10/12/16

45515 SERVICE DATE – LATE RELEASE OCTOBER 12, 2016
ALJ

SURFACE TRANSPORTATION BOARD

ORDER OF PRESIDING ADMINISTRATIVE LAW JUDGE REGARDING DISCOVERY

Docket No. AB 167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Decided: October 11, 2016

On October 5, 2016, the LLC Intervenors[1] (LLCs) filed replies in opposition to the Motion for Sanctions Against James Riffin for Failure to Respond to Discovery (Document) Requests (Motion for Sanctions) and the Motion to Compel Discovery from the LLCs (Motion to Compel) filed by the City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, City et al.). Additionally, the LLCs filed concurrently, in its reply in opposition to the Motion to Compel, a Cross-Motion for Sanctions pursuant to 49 C.F.R. § 1114.21(c) (Cross-Motion for Sanctions).

The Board has signed a Memorandum of Understanding with the Federal Energy Regulatory Commission (FERC) to employ the services of FERC administrative law judges (ALJs) on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes between parties in cases pending before the Board.

By a decision served on July 5, 2016, the Board assigned and authorized Administrative Law Judge John P. Dring of the FERC to entertain and rule upon discovery matters and to resolve all disputes concerning discovery in these proceedings. Any questions pertaining to this

[1] The LLC Intervenors are 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Cole Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, and 446 Newark Avenue, LLC.

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discovery proceeding should be direct to Judge Dring's law clerk, Carlos Clemente, who may be contacted at (202) 502-8392 or Carlos.Clemente@ferc.gov.

It is ordered:

1. The oral arguments scheduled for October 24, 2016 will address LLCs' replies to the Motion to Compel and Motion for Sanctions and LLC's Cross-Motion for Sanctions. Additionally, any motion or reply filed prior to October 24, 2016 that may relate to City et al.'s outstanding Motion to Compel and related motions will also be considered. It is reiterated that the oral arguments are scheduled for Monday, October 24, 2016, beginning at 10:00 a.m. in a hearing room to be designated at the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The oral arguments will be held on the record. All parties to this dispute are directed to attend.

2. This decision is effective on its service date.

By the Board, John P. Dring, Administrative Law Judge.

45539 SERVICE DATE – LATE RELEASE OCTOBER 26, 2016 10/26/16
ALJ

STAY DECISION

SURFACE TRANSPORTATION BOARD

ORDER OF PRESIDING ADMINISTRATIVE LAW JUDGE ON JAMES RIFFIN'S MOTION TO STAY

Docket No. AB 167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Decided: October 26, 2016

On October 25, 2016, James Riffin filed a Motion to Stay, which seeks to stay the issuance of an order memorializing the bench ruling made at the October 24, 2016 oral arguments. Later on the same day, the City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, City et al.) submitted a reply in opposition to Mr. Riffin's Motion to Stay.

I am adopting arguments contained in City et al.'s reply in opposition to Mr. Riffin's Motion to Stay as the rationale for striking Mr. Riffin's Motion to Stay as ordered, below.

The Board follows standard federal practice in addressing motions to stay.[1] The standard treatment requires the party seeking a stay to show: (1) a likelihood that it will prevail on the merits of any challenge to the action sought to be stayed; (2) that it will suffer irreparable harm in the absence of a stay; (3) other interested parties will not be substantially harmed by a stay; and (4) that the public interest supports the granting of the stay.[2]

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[1] Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977).

[2] Eighteen Thirty Group, LLC—Acquis. Exemption—In Allegany Cty., Md., FD 35438 et al., slip op. at 2 (STB served Nov. 17, 2010).

Mr. Riffin does not purport to make any of these showings. Mr. Riffin predicates his motion for a stay on his desire for delay while he attempts to assemble more evidence which, even if assembled, does not address the multiple grounds I articulated to dismiss Mr. Riffin from the proceedings in the above-referenced dockets.

With City et al.'s Second Motion to Compel Discovery Against Mr. Riffin being filed on July 5, 2016, and the subsequent issuance of the order requiring Mr. Riffin to respond fully to City et al.'s discovery request being issued on August, 25 2016, Mr. Riffin had ample time to comply in good faith with City et al.'s discovery request. This last-ditch effort, purporting to comply with the discovery request in order remain in these proceedings, is unacceptable.

Additionally, Mr. Riffin's Motion to Stay violates the bench ruling made at the October 24, 2016 oral arguments, which explicitly prohibited Mr. Riffin from submitting any further pleading into evidence.

The bench ruling remains unaffected. Accordingly, Mr. Riffin is reminded that his remaining alternative to continue in these proceedings is to seek reconsideration from the Board as noted by City et al.

It is ordered:

1. Mr. Riffin's Motion to Stay is hereby stricken from the proceedings in the above-referenced dockets.

2. This decision is effective on its service date.

By the Board, John P. Dring, Administrative Law Judge.

Date: August 24, 2016

Case: Consolidated Rail Corporation, Abandonment Exemption, Hudson County, New Jersey

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BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation,	:	Docket Number
Abandonment Exemption,	:	AB 167
Hudson County, New Jersey.	:	
CSX Transportation,	:	Docket Number
Discontinuation of Service,	:	AB 55
Hudson County, New Jersey.	:	
Norfolk Southern,	:	Docket Number
Discontinuation of Service,	:	AB 290
Hudson County, New Jersey.	:	

STATUS CONFERENCE

Washington, D.C.

Wednesday, August 24, 2016

BEFORE:

HONORABLE JOHN P. DRING

ADMINISTRATIVE LAW JUDGE

REPORTED BY:

SARA A. WICK, RPR, CRR

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Status conference on Wednesday, August 25, 2016, before Honorable John P. Dring, in Washington, D.C., at the offices of the Federal Energy Regulatory Commission, 888 First Street Northeast, Hearing Room 1, at 10:00 a.m., when were present on behalf of the respective parties:

CHARLES H. MONTANGE, ESQ.
426 NW 162nd Street
Seattle, Washington 98177
206-546-1936
On behalf of City of Jersey City,
Pennsylvania Railroad Harsimus Stem
Embankment Preservation Coalition, and
Rails to Trails Conservancy

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On behalf of Rails to Trails Conservancy

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-- continued --

APPEARANCES (continued):

DANIEL E. HORGAN, ESQ.
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Secaucus, New Jersey 07096
201-330-7453; dehorgan@lawwmm.com
On behalf of 212 Marin Boulevard, LLC

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On behalf of Consolidated Rail Corporation

-- continued --

APPEARANCES (continued):

ERIC S. STROHMEYER
CNJ Rail Corporation
191 North Avenue, Suite 238
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On behalf of CNJ Rail Corporation

JAMES RIFFIN, pro se

P R O C E E D I N G S

PRESIDING JUDGE: Good morning. My name is Administrative Law Judge John Dring, and I have been appointed by decision served July 5th, 2016, by the Surface Transportation Board to entertain and rule on discovery matters and resolve all disputes concerning discovery in Docket Number AB 167, Consolidated Rail Corporation, Abandonment Exemption in Hudson County, New Jersey, et al.

At this point would counsels, please, enter their appearances.

MR. MONTANGE: Good morning, Judge Dring. My names is Charles Montange. I'm counsel for the City of Jersey City, the Rails to Trails Conservancy, and the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition.

This is Andrea Ferster, general counsel for Rails to Trails Conservancy, with me today.

MS. FERSTER: Good morning, your Honor.

PRESIDING JUDGE: Thank you. Good morning.

MR. HORGAN: Your Honor, my name is

Daniel E. Horgan. The firm is Waters, McPherson, McNeill. And I am counsel for 212 Marin Boulevard, LLC, and then seven additional LLCs. They're in the record. I don't think I need to repeat them.

PRESIDING JUDGE: Yes, sir. Thank you very much. I appreciate that.

And Mr. Riffin is not here, I see. All right. No one having claimed to be Mr. Riffin, I have to assume he is not here.

Yes, Mr. Montange, do you have something to say?

MR. MONTANGE: Your Honor, I'm kind of nonplus because I know Mr. Riffin was in town as of 11:00 p.m. last night.

PRESIDING JUDGE: He's not an indispensable party to this proceeding.

MR. MONTANGE: So I don't quite know how to deal with this situation.

PRESIDING JUDGE: That's all right, sir. I do. If you have a suggestion, I will entertain it, but I am perfectly capable of taking charge of this matter.

MR. MONTANGE: There he is now.

PRESIDING JUDGE: All right. Better late than never. Mr. Riffin, I presume?

MR. RIFFIN: Yes. Where do you want me to sit, your Honor?

PRESIDING JUDGE: Well, if you're more comfortable with the LLCs, you may sit over there after you've put your jacket on, sir. Thank you. We were concerned about you. All right.

We are here to entertain City's second motion to compel discovery filed on Mr. Riffin, and I think the nub of the matter here today concerns the relevance. Mr. Riffin has filed a response in which he has stated that he did not think, in effect, that a motion to compel discovery on his financial data that would be supposedly used in some later filing of an OFA would be relevant at this point.

Mr. Riffin, I just want to confirm for the record, you have not filed an OFA in this proceeding yet?

MR. RIFFIN: Your Honor, no one has filed

an OFA, and if that ever happens, it won't happen until -- there's a Section 106 historic proceeding going on right now, and until that concludes, the OFA process can't even begin. And there's a lot of things that have to happen before the Board actually says okay, parties, you now have 10 days to file an OFA. And that could be a long time in the future.

PRESIDING JUDGE: All right. I understand that. I just wanted to make sure that you have not filed an OFA.

MR. RIFFIN: I haven't filed one. Nobody has. We're not allowed to.

PRESIDING JUDGE: Fine.

MR. RIFFIN: Mr. Montange has asked multiple times can we speed it up, and the Board's -- they stay silent, but the end result is, they're not permitted to do anything.

Since I was a little late, and I do apologize for being late, has Mr. Montange indicated to you that we had a meeting last night and we've resolved some of our issues?

PRESIDING JUDGE: No. He said he saw you

so knew you were in town. He did not know where he were. He expressed some concern for your safety. I suppose that's a fair paraphrase.

Who would like to discuss that?

MR. MONTANGE: Since we are the moving party, your Honor, I would like to at least begin by setting some stage, and then maybe we can foreshorten the hearing.

PRESIDING JUDGE: Very well. Thank you.

MR. MONTANGE: Again, I represent City, et al., and I will refer to them generically as "City," just to safe the mouthful of all my clients.

PRESIDING JUDGE: Yes, sir.

MR. MONTANGE: I begin by saying for the record that the Harsimus Branch is the last underutilized transportation quarter that links downtown Jersey City with the fast-growing Journal Square and also provides a corridor which, in addition to other corridors that are underutilized, could reach Secaucus, which is a transportation hub in Northern Jersey City.

PRESIDING JUDGE: Yes, Mr. Montange. I have read everything that's been filed in this record. And although that is background, I think that anyone who is interested in reading the record at this point understands what the Harsimus Stem Embankment is. And I would appreciate it if you would attempt to address as much as possible the issue before us today.

MR. MONTANGE: Okay.

PRESIDING JUDGE: Thank you.

MR. MONTANGE: Your Honor, in general, the law presumes that parties will cooperate with each other in discovery.

We have learned, through a number of sources, that Mr. Riffin has had extensive correspondence and document exchange with the LLCs, their management past and present. There's some confusion on our part now on who is managing and who is the agent, who is directing the LLCs' activities, whether it's Mr. Hyman or his wife, Victoria. We've been told recently that Mr. Hyman no longer is manager of the LLCs because of health issues and

that he's resigned, that Victoria Hyman is now the manager, perhaps with someone else. We don't know what the facts are, for sure.

But there's been extensive e-mail and, perhaps, other correspondence going on between Mr. Riffin and the LLCs. Mr. Riffin has represented not only to the Surface Transportation Board but to the United States Supreme Court, in pleadings that he's provided me in another case, that he views himself as a backstop for Mr. Hyman to secure control of the embankment properties that are in dispute with the Harsimus Branch and, perhaps, other properties in Jersey City.

Any deal that exists or any prospective deal, for that matter, that exists between the developer who wishes to secure the Harsimus Branch in order to convert it to nonrail use -- high-rises, skyscrapers is what he evidently now intends -- any deal between him and an OFA applicant arguably, I think it's very relevant to the proceeding, is subverting a remedy that the Surface Transportation Board is supposed to afford shippers and communities

seeking to secure a transportation corridor for continued rail use and other allowed public purposes.

So it's relevant, and it certainly fits the mode for any kind of discovery request where it could lead to the introduction of admissible evidence.

The Surface Transportation Board, your Honor, has a doctrine that discovery is disfavored in abandonment proceedings, but as Mr. Riffin has said -- and I don't agree with everything he just said, but he has indicated that this is a proceeding that is unique, I think, to the annals of the Surface Transportation Board. I have been at this case now for 11 long years.

PRESIDING JUDGE: If it didn't start as a unique proceeding, it certainly could be categorized as unique by this point.

MR. MONTANGE: Yes. So it's very prolonged. We don't have any schedule in the proceeding for STB decisionmaking. Discovery at this point does not interfere with any STB activity.

And in fact, the longer the proceeding goes on, the more of this kind of stuff comes out.

And in order to represent my clients, knowing that there are communications going on between Mr. Riffin in which he's trying to align himself to the purposes of Mr. Hyman or the LLCs or some combination thereof, I would be derelict not to seek that information.

Now, what has happened most recently is that Mr. Riffin found out that I was coming into town for this, and because -- he found out where I was having dinner last night and was there.

PRESIDING JUDGE: The fame has spread to Ithaca, as they said.

MR. MONTANGE: He was there; he was there with his computer. He opened up his computer and displayed to me his e-mails.

Now, he has the same kind of e-mail system I do, Yahoo!.com. Mine is through Frontier; his is direct. And we are both familiar how you do a search on e-mails. So he did a search putting "Hyman" up at the top and pulled up a whole

sequence of e-mails. We went down the list until end of 2015, an e-mail exchange. It looked like it was material that was -- I can't remember whether it was material he sent to Hyman or Mr. Hyman sent to him or both, but there was a lot.

And because it was a WiFi connection, it was difficult to open. We would have been there all night. We would have been thrown out of the restaurant had I tried to view them there.

I imagine that -- he acknowledged to me that he has an e-mail exchange with Victoria Hyman as well. He probably has documents from Mr. Horgan. He probably has documents -- I'm certain he has documents with other attorneys that have been forwarded to him, either by the Hymans or that he's corresponded with directly by e-mail.

So the information exists, notwithstanding any representations to the contrary. I've seen it. Mr. Strohmeyer was there with me, who has come in a little late. Eric Strohmeyer is with CNJ Railroad. He was there. He saw it, too.

Now, what Mr. Riffin, I think, agreed to

do last night was to forward all that e-mail to me by Friday of this week. So he's going to now make available all those e-mails which we sought.

PRESIDING JUDGE: And this is correct, Mr. Riffin?

MR. RIFFIN: I beg your pardon?

PRESIDING JUDGE: This is correct?

MR. RIFFIN: Yes, your Honor, it's correct. My suggestion to him last night was I will e-mail him a copy of whatever is there, and I'm also going to send Mr. Horgan a copy so that both of them understand what the other person knows.

PRESIDING JUDGE: All right.

MR. RIFFIN: The only question I would have -- I was going to ask Mr. Horgan, but I will ask your Honor while I'm here -- would it be appropriate for me to send it to any of the other parties? Does anybody else want to see them? Do I need to send them to anybody else? At the moment, just Mr. Montange and Mr. Horgan --

PRESIDING JUDGE: I think that's sufficient. Who do we have here? Someone rising.

Who is this?

MR. JENKINS: My name is Robert Jenkins. I'm counsel for Conrail. If it is of no concern to the other parties, we would be happy to have a copy as well of the e-mails.

PRESIDING JUDGE: All right.

Mr. Montange, proceed, please. Sorry for the interruption. It's all very interesting.

MR. MONTANGE: Yes, it is indeed, your Honor.

It is difficult to conduct an orderly proceeding and to engage in discovery when one is confronted with situations like this.

On the other hand, he has committed to providing this information by Friday. In thinking about possible outcomes for this hearing today, it occurs to me that it would be helpful, I think, to us if your Honor were to enter an order providing that, by consent of the parties, Mr. Riffin is obligated to do what he has stated here in open court that he will do in connection with his e-mail correspondence, including, as I understand it, all

attachments to the e-mail. And if you have deleted any e-mails but you have preserved documents, I would hope that you could provide those as well.

Is that agreeable to you?

MR. RIFFIN: Well, I will just tell you, when you delete an e-mail, I don't keep anything, and I've learned you can't print e-mails, at least I can't.

PRESIDING JUDGE: If it's deleted and you can't retrieve it, under the terms of Mr. Montange's suggestion, you would not be obligated to hand it over. You can't do something that you can't do.

MR. RIFFIN: Whatever is in my e-mail account, I have agreed I will give him a copy. I will send a copy to Mr. Jenkins also. He's expressed an interest.

In terms of time, he wants it by Friday. If I get back to a library where I have FiOS, that will speed the process up. He will probably have it on his e-mail account before he gets home.

PRESIDING JUDGE: Very good. I will enter an order to that.

MR. RIFFIN: I don't object if your Honor wants to enter an order. I don't think it's necessary. If you want to --

PRESIDING JUDGE: I will do it.

Let me just digress a bit here. I do not intend to spend anymore time on this case than is absolutely necessary, and that is, time entertaining arguments on discovery.

As anyone knows, in the Federal Energy Regulatory Commission practice, I am very used to having my orders complied with fully by parties, and in the rare instances where parties have not complied, I have issued sanctions.

And I would certainly entertain the notion in this case of sanctioning anyone who does not comply fully and on a timely basis with any order that I will issue in this case. And my idea of sanctions -- you probably know, Mr. Riffin, under the regulations what the sanctions are, and I'm not limiting myself to one. I may issue all of the sanctions.

So just keep that in mind, when you agree

to do something and I order you to do something, it's going to be done, or there are consequences.

Mr. Montange, did you have something else?

MR. MONTANGE: Your Honor, the conversations that I had with Mr. Riffin last evening were essentially limited to the e-mails, the correspondence that he's had with Mr. Riffin -- between Riffin and the Hyman interests, let me say.

One other aspect of the discovery we sought was into Mr. Riffin's bankruptcy proceedings. And in that, he said that anything would be in records of courts.

I guess that -- there have been several Riffin bankruptcies. I've attempted to find the records, the final orders in those bankruptcies.

PRESIDING JUDGE: He referred to a program called PACER. Is that what you're referring to?

MR. MONTANGE: Yes, he referred to PACER ECF. You have to kind of -- it seems like you have to know the docket numbers and so on, and I think I've gotten all of the docket numbers, but I'm not sure.

And it would be at least helpful if we had sufficient documents to indicate -- from him that would indicate that I've got the relevant dockets. And if I could just get the final orders from him in his bankruptcy proceedings, discharge orders or whatever, that would allow us to examine those files.

PRESIDING JUDGE: I read these arguments in the written pleadings, Mr. Riffin, and it did make sense to me, as Mr. Montange explained in writing, that while he can go into PACER and obtain documents, he's not certain and there can be no certainty that he can obtain all of them through PACER.

Can you help him with that?

MR. RIFFIN: He's listed two cases. I believe he listed a 10 -- I don't remember what the number is, but it's under James Riffin. That's my primary case. He listed another case. I think that was the WMS case, and I believe there's a BRL case. I don't remember what the numbers are.

PRESIDING JUDGE: All right.

MR. RIFFIN: I don't have a problem with telling him what the numbers are, although I think it's his duty to go find it. But I will verify the two numbers he has indicated in one of his pleadings, yes, they are two of the three numbers. I believe there were three.

PRESIDING JUDGE: All right.

MR. RIFFIN: So if he wants me to verify numbers, I will do that. They're public documents. So he has the right to go to them. But I still don't think they're relevant.

PRESIDING JUDGE: Well, I understand the relevance argument, and if we want to get into that, we can. But given that he has -- that these are public documents and he has two of the three, I would think it would probably be in everyone's interest to give him the third number.

MR. RIFFIN: I have no objection to looking it up when I get home.

PRESIDING JUDGE: Would you do that, please.

MR. RIFFIN: Yes. I just have to look in

my computer and see what the number was.

PRESIDING JUDGE: All right. I will enter that agreement as well in my order. Thank you very much.

MR. RIFFIN: I will tell him the three numbers for the three bankruptcy cases. My goal and my desire is to try to limit how much time you have to spend doing what we're doing today.

PRESIDING JUDGE: That's very good. I think you just saved us all a lot of time with regard to the relevance arguments. I was fully prepared to go into that. It may have been enlightening for a lot of people. But if we don't have to do it, this is not my purpose, to teach here.

Mr. Montange?

MR. MONTANGE: Your Honor, with those agreements, I'm content to be satisfied. And Mr. Horgan is rising.

PRESIDING JUDGE: Mr. Horgan?

MR. HORGAN: Yes, your Honor. On behalf of the LLCs, we have no problem certainly with their

voluntary agreement. If Mr. Riffin wants to give Mr. Montange or everybody whatever he wants to give, that's up to him, and we have no objection to that, per se.

The objection we raised in this case concerned what you just mentioned, which was relevance. I understand you're going to enter an order. The order is based on a voluntary agreement.

My only concern is that that order then not be used in any proceeding before the STB as the basis to argue that those documents are relevant because you're making a finding.

PRESIDING JUDGE: I would not anticipate that that would be the case.

Mr. Montange, I think I hear you saying that you will be satisfied with getting these documents, and we will see where they lead. Is that correct?

MR. MONTANGE: That is correct, your Honor.

PRESIDING JUDGE: So you need not worry about entering any of these documents into the STB

proceeding before the Board right now. You may want to do that later if you can --

MR. MONTANGE: I have no idea what the documents -- I have a glimmer of what some of the documents should say, because I have received copies through discovery against CNJ Railroad of some documents. That's why I know they exist.

I view them as potentially relevant on issues in the case --

PRESIDING JUDGE: Not necessarily with regard to an OFA that may at some point be filed, Mr. Riffin may file. This is a tangled web here. I trust you're looking for these documents for other purposes, multiple purposes?

MR. MONTANGE: I'm looking for them for multiple purposes. There have been allegations of fraudulent misrepresentations and all sorts of --

PRESIDING JUDGE: Yes, I know. It looks like one of my wife's soap operas.

MR. MONTANGE: Sorry, your Honor.

PRESIDING JUDGE: I'm well versed, at least with the written summaries, of the intrigue

that's been going on in this case and some of the personal history of some of the participants.

MR. MONTANGE: If we get documents that we feel are relevant to an issue in the case, ordinarily what happens in STB practice is they get attached to a pleading. And then the other side may contest the relevance or not contest the relevance, and STB can decide to do what it wishes in terms of whether it considers the issue or not.

All we are about is -- or we view these kinds of things, the inquiry into possible fraudulent use of STB procedures or abuse of STB procedures, as a relevant issue.

And I might add, I believe that Conrail and the LLCs likewise view abuse of STB processes or remedies as a relevant issue.

And I believe the STB itself takes the view that an abuse of its processes or abuse of its jurisdiction or abuse of its remedies should not be allowed.

PRESIDING JUDGE: It would be axiomatic. An administrative body working against itself cannot

stand, to paraphrase the Bible.

MR. MONTANGE: Thank you, your Honor.

MR. HORGAN: Your Honor, I think there's one additional issue that is raised not in what is immediately before you but from your comment.

I have three separate discovery requests that have been served on the LLCs by Mr. Montange. The deadline to respond to two of them is this Saturday, and some of those discovery requests and questions are, I think, exactly what Mr. Riffin and Mr. Montange have agreed to and are talking about.

PRESIDING JUDGE: Shall we winnow that down based on today's proceeding? Is that what you suggest now? Why don't we do that?

MR. HORGAN: If we can do that --

PRESIDING JUDGE: Yes, we can, if it's all right with Mr. Montange, because there is a procedural deadline here, and I don't want this to be construed as somehow prejudicing his use of time in some way. If he wants to do that, we can.

MR. MONTANGE: I'm not sure what the request is, your Honor. I will say this about the

general discovery: Mr. Riffin had previously represented to me that he did not have e-mails that were in accessible form, although he had exchanged e-mails. And in fact, I think Mr. Horgan has acknowledged the e-mail exchanges. And also, Mr. Riffin is uncertain what he has deleted and not deleted. But they exist.

There may be documents on the computers of the Hymans, the LLCs, attorneys for the LLCs that relate to correspondence between Mr. Riffin and Mr. Hyman.

We view those as relevant and needed in the proceeding. Whether they appear -- if they've been deleted or if Mr. Riffin no longer has them, we would like to see them from these guys.

And they -- again, I would be derelict not to go after these things after I've been told they exist.

PRESIDING JUDGE: Well, Mr. Horgan, would this be an administrative burden for you to produce -- assuming you are going to produce such e-mails, for you to produce e-mails that are

duplicative of what Mr. Riffin has agreed to and will produce?

MR. HORGAN: I don't know what he's going to produce, but I can assume from the discussion that of course, if he's sending e-mails --

PRESIDING JUDGE: Why don't you wait and take a look, then?

MR. HORGAN: Well, I can't, because I have a deadline. There's two issues, your Honor, actually.

One is, quite frankly, we have the same relevance issues, and it would be a burden because this is not a large company. This is an individually owned business, and there could be thousands of these things, number 1.

Number 2, Mr. Riffin, while he's got one computer, there have been numerous attorneys representing the LLCs since the beginning of this. There might be 10 or 12 different lawyers. It would be all over the lot.

But that's only some of the discovery request. Our intent, so I can be completely

forthright about this, is we have objections to all of the discovery requests which we would otherwise serve in a timely fashion, at the end of the week, except one. I guess we have objection to that. Which is simply that Mr. Hyman is no longer the manager because of health reasons, what Mr. Montange has already acknowledged.

But we have some serious concerns that this is going to, quite frankly, take this soap opera into additional seasons and reruns, and that's what we're concerned about, quite frankly.

PRESIDING JUDGE: Go ahead.

MR. MONTANGE: Your Honor, if I might, the document request, which would encompass the e-mails, are not due until September 2nd, as I recall.

MR. HORGAN: That's right.

MR. MONTANGE: We had an e-mail exchange, and I tendered some requests for admissions and interrogatories, mainly to find out who is managing the LLCs so we could determine, on seeing these e-mails back and forth, who is making representations for the LLCs, who is making -- what

the relationship is. It's hard to know what's going on over there.

PRESIDING JUDGE: It seems to me that this whole discussion is a bit premature, because Mr. Horgan, you have stated that you will respond to Mr. Montange's requests with objections. And typically, what would happen in that situation, the two of you would discuss your objections, and if these requests are overly broad or unduly burdensome, perhaps Mr. Montange can winnow them down or provide additional granularity that will reduce the burden on you.

Typically, counsels work together on these things and only come before the judge with a discovery dispute when you can't work it out. I have seen nothing so far to suggest that this is impossible for the two of you to work out.

MR. HORGAN: I don't disagree with that, your Honor. We've tried to address this. We've been working on this in different ways trying to reach stipulations and so forth. And maybe with today's proceedings and maybe with the materials he

gets from Mr. Riffin, positions will change. I don't know.

PRESIDING JUDGE: Well, why don't we just wait and see.

MR. HORGAN: That's fine, your Honor.

PRESIDING JUDGE: I feel it's inappropriate for me to act on this right now. At first, I thought perhaps I might be of some assistance, but I think it's better for the two of you to work it out and see where we go with it.

MR. HORGAN: Your Honor, my only purpose of raising this is to put it on the record so that if we do wind up back here, you are not saying to me or to him or to all of us why didn't you tell me about this.

PRESIDING JUDGE: I appreciate that. That suggests to me that you've been before judges with less rational approaches to life than mine, but that's all right. I can understand that.

MR. HORGAN: If I may not respond to that --

PRESIDING JUDGE: Excellent, Mr. Horgan,

excellent.

MR. HORGAN: Thank you.

MR. RIFFIN: Your Honor, if I might make a point.

PRESIDING JUDGE: Yes.

MR. RIFFIN: Mr. Horgan is sort of dancing around it, but he hasn't directly asked you. So I will make the suggestion, maybe perhaps on his behalf.

He's indicated he's got a deadline of Saturday. It's going to take a little while for all this to happen. I might suggest that the parties sort of agree to extend that deadline maybe a week or so.

PRESIDING JUDGE: Well, that's the Board's decision, isn't it? That's a Board deadline.

MR. MONTANGE: The deadline for the document discovery is not this Saturday. It is September 2nd, I believe, which will give you some time to look. And I've said that I would give a courtesy extension.

MR. HORGAN: You're correct on that. The

other two items --

MR. MONTANGE: The interrogatories and requests for admission, yes.

MR. HORGAN: -- are this Saturday. You're correct about documents for September 2nd.

MR. MONTANGE: They are by and large independent of giving the documents, I think.

PRESIDING JUDGE: That's fine. I see no reason to entertain changing the date.

MR. MONTANGE: Your Honor, just for the record, I would note that I do not believe that a Section 106 compliance in any way slows down STB's administration of the OFA remedy. In past proceedings, the OFA remedy has been pursuant to a time schedule that has its own course and supplants --

PRESIDING JUDGE: I've seen that, yes.

MR. MONTANGE: Very good. Thank you.

PRESIDING JUDGE: Do we have anything else to discuss today? Mr. Riffin?

MR. RIFFIN: I haven't heard Mr. Montange discuss the other request he had of me. He wanted

all my financial records, presumably to see if I had enough cash to actually buy this in the event it actually became available to buy.

PRESIDING JUDGE: Let me -- I wasn't going to get into this necessarily, but you've opened the door. Since I will be on this case for discovery purposes until you don't have anymore discovery disputes, let me at least give you my understanding of the financial responsibility component of the OFA process.

Now, Mr. Riffin, I don't need for you to respond to any of this, but the record shows that you have an understanding or a belief that $23,000 will stand you in good stead in meeting the requirements for financial responsibility, and you've said you have it in the bank and you can take people to the bank and see it.

That's all well and good. However, I think that the Board would be interested in a balance of accounts approach to that. I mean, you may have $23,000 in the bank, but you may owe $1 million, in which case the $23,000 really won't help

you very much.

The other factor in this process is, in determining financial responsibility, the Board does anticipate a real estate assessment. Now, there is record evidence or supposition at least expressed in the record that the six blocks in Jersey City, New Jersey, may have a market value of $60 million.

And if that's the case, I think that this presents a strong suggestion that even a clear and free $23,000 in the bank would not be sufficient to meet the requirements that the Board would have to show financial responsibility.

Now, I say this only because if you do file an OFA and Mr. Montange or anyone else questions the sufficiency of that, we may be back here before me to try to determine what information may be relevant. And in that context, I think that your financials would certainly be relevant, all of your financials.

I don't think that that requires any comment on your part, because I'm talking about my view of the regulations and how I would conduct any

proceeding that -- any additional further discovery dispute that involves the support you may file for an OFA.

All right. You have something to say.

MR. RIFFIN: My response would be, your Honor, on June 1, pursuant to an order of the Board, Conrail was required to disclose to the Board and the parties what the purchase price would be for the entirety of the Harsimus branch. And Conrail responded on page 5 of that, and if you would like --

PRESIDING JUDGE: They responded zero, I believe.

MR. RIFFIN: The total price for the entirety to the end of the line, mile post 1.34, is $22,109.51.

PRESIDING JUDGE: All right.

MR. RIFFIN: And if Conrail says this is what the net liquidation value is, that's what it is.

PRESIDING JUDGE: Okay. Well, Mr. Riffin, we do engage in substantial financial discussions

here at the FERC, and in my experience, nothing is as simple as what you've just stated. I didn't just fall off the turnip truck. So I'm not going to accept your $23,000 statement.

All I'm telling you is how I'm going to probably view these issues, should they arise. And I'm doing that gratuitously as a favor to you and everybody else so you don't create more problems for yourself than you need to.

All right. You don't have to say anything about that. I'm explaining it to you.

Mr. Montange, do you have anything else to say before we leave here today?

MR. MONTANGE: Your Honor, other than to state that Mr. Riffin only speaks for himself, I'm not going to try to join issue on what's required for OFAs or not. We look forward to your order.

PRESIDING JUDGE: We escaped that today, didn't we?

MR. MONTANGE: We did, and I'm happy to have done so. And hopefully, this will conclude the discovery disputes in the proceeding. I will

discuss with Mr. Horgan concerning the pending stuff to see if we can work out something. And if we can't, unfortunately, we may have to visit you again.

PRESIDING JUDGE: I would like to agree with you, although I'm reminded of the little boy that has the shovel and he's digging through the pile of excrement because he's looking for his pony.

Having said that, are we finished for today?

MR. HORGAN: Yes, your Honor. We have nothing further.

MR. RIFFIN: Nothing further.

MR. MONTANGE: Thank you.

PRESIDING JUDGE: Thank you very much for attending, and it's been a pleasure to meet you all. We are off the record.

(Whereupon, at 10:38 a.m., the status conference was concluded.)

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, SARA WICK, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

Commission Expires: NOVEMBER 14, 2017

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Date: October 24, 2016

Case: Consolidated Rail Corporation, Abandonment Exemption, Hudon County, New Jersey

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BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation,	:	Docket Number
Abandonment Exemption,	:	AB 167
Hudson County, New Jersey.	:	
CSX Transportation,	:	Docket Number
Discontinuation of Service,	:	AB 55
Hudson County, New Jersey.	:	
Norfolk Southern,	:	Docket Number
Discontinuation of Service,	:	AB 290
Hudson County, New Jersey.	:	

ORAL ARGUMENT

Washington, D.C.

Monday, October 24, 2016

BEFORE:

HONORABLE JOHN P. DRING

ADMINISTRATIVE LAW JUDGE

REPORTED BY:

SARA A. WICK, RPR, CRR

Oral argument on Monday, October 24, 2016, before Honorable John P. Dring, in Washington, D.C., at the offices of the Federal Energy Regulatory Commission, 888 First Street Northeast, Hearing Room 1, at 10:01 a.m., when were present on behalf of the respective parties:

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P R O C E E D I N G S

PRESIDING JUDGE: Good morning. My name is Administrative Law Judge John Dring. Today, we are here for oral arguments on a motion to sanction and also other sundry motions in Surface Transportation Board Docket Number AB 167, Conrail Abandonment Exemption in Hudson County, New Jersey.

I appreciate the filings that the parties have made in this docket so far and Mr. Montange. Today, we are going to address the sanctions motion first and the other motions after that. And I am going to also impose a deadline for discovery. This is coming to an end fairly soon.

The way I would like to proceed, Mr. Montange, on your motion is to have you go through each point and then have Mr. Riffin explain why you're wrong, and if I have additional questions, I will ask you.

MR. MONTANGE: Surely.

PRESIDING JUDGE: Do you understand?

MR. RIFFIN: Yes, sir.

PRESIDING JUDGE: Why don't you proceed,

Mr. Montange.

MR. MONTANGE: Your Honor, the motion for sanctions, the only motion for sanctions at least that I'm acquainted with is the motion filed by the LLCs against City, et al. That motion basically asks for no discovery. And the substance of the argument or the gravamen of the argument as reflected in the motion itself is that the discovery is based upon unsubstantiated allegations of conspiracy.

PRESIDING JUDGE: Let me cut through something here. I guess I wasn't specific enough with you, Mr. Montange.

I don't care about the conspiracy right now. You alleged that following my August order, that Mr. Riffin produced e-mails, and you allege he did not follow my instructions.

MR. MONTANGE: Yes.

PRESIDING JUDGE: That's what I care about. I care less about what you are attempting to talk about. What I do care about is the integrity of --

MR. MONTANGE: Yes, your Honor.

PRESIDING JUDGE: -- the judicial function here. If any party was ordered to do something and didn't do it, I don't appreciate that, and that's what the sanctions would be about, not about a conspiracy.

MR. MONTANGE: Yes, your Honor. Thank you.

I'm sorry that I misunderstood, your Honor. The issue, then, is the motions to compel against Mr. Riffin and Mr. Riffin's objections thereto.

To back up just a little bit, in response to the second motion to compel filed by the City, Mr. Riffin showed up at my -- while I was thinking I was going to dinner, unannounced, the evening before a hearing before your Honor which resulted in this motion or your order that compelled him to make discovery. And he offered at that point to make discovery, to actually show me e-mails, to make available his computer. It was unclear there was even a WiFi connection at the restaurant we were at,

and I was there to eat, not to look at his computer.

The next day, however, he said that he would make available the discovery, and that's what your Honor entered as an order. He said he would make available -- my understanding is that he represents that his records are basically on his e-mail system and that he would make those available to me.

He said that he would send copies. That, I thought, was agreement at that time.

On the date of the entry of the order, which was August 25th, he did -- according to his e-mail statements to the parties, at least to me, said that he went to a library. Evidently, he doesn't have an e-mail or Internet connection at his own home or where he works.

So he went to a library, and he spent approximately two hours at the library forwarding e-mails, and he also prepared a letter to your Honor during that time, which he sent making some arguments. And I got a version of the letter also from him the next day.

I think it was the next day. It may have been that evening, August 25th. Anyway, it was during the period of August 25th or 26th.

Immediately upon receipt of an e-mail from him saying that he had concluded whatever discovery he was going to make, I raised some questions about whether the discovery response was, in fact, complete, because I have documents from other sources which indicate there should be other things out there.

I received a response from him indicating that if I wanted anything more, I should go see Judge Dring. It wasn't what I wanted to hear, but I tire of the chase. So that, in fact, is what we have done.

We filed a motion to compel, and in the motion for sanctions I list deficiencies that we perceive in the discovery to date. I would -- when I look at a discovery request, I view it from the point of view of the municipality I primarily represent, and when we are faced with discovery, we make a good-faith response.

The LLCs take their discovery from us under an Open Public Records Act that applies in New Jersey, and they have to. I mean, the City has to. Everything they've got gets turned over except for a few attorney-client privileged things.

MR. HYMAN: Your Honor, I can't hear very well.

PRESIDING JUDGE: Why don't you sit at the table.

MR. MONTANGE: Perhaps he should go sit on his own side. This is Mr. Hyman.

PRESIDING JUDGE: Let's see if he will be able to hear well enough over here.

Continue, please.

MR. MONTANGE: And I think under the federal rules, which are generally what we were supposed to comply with in STB, a party is supposed to make a good-faith response. It's not a cat-and-mouse game. The cat-and-mouse game started at the first motion to compel when I got no response at all, filed a motion, and on that day he then responds with objections.

Second motion to compel, I file that, and on the night before the hearing, he shows up with his computer at around 8:00 p.m., 9:00 p.m. at night and says here, have a look if the WiFi operates.

Well, it took him two hours at the library, he said, to produce 100 e-mails. I suspect I would have been past closing time at the restaurant if the WiFi operated, and that would have been if I weren't eating or trying to get ready to prepare for the hearing the next day. That's not a discovery response, your Honor.

When I received, then, the -- and he had been denying that he had any responsive documents to begin with. Then that changed the night before the last hearing, the second motion to compel.

Now one of his things is he's given me all of the responsive documents in the two hours, which he said was all the time that he had at the library. The library was closing, and he had to leave. So he was going to stop, that was enough, it was burdensome.

The entire tenor of the remarks I'm

receiving from him is this is an annoyance for him, he's going to give me whatever he chooses to give me and then leave.

We have documents, as I detail in my motion, that indicate there should be more out there. I happen to also have a Yahoo! e-mail system as Mr. Riffin does.

PRESIDING JUDGE: Let me interrupt. As you make points, you have the option of allowing Mr. Riffin to refute them or comment.

Mr. Riffin, do you have any comments yet?

MR. RIFFIN: I think it might be more appropriate to just let him finish.

PRESIDING JUDGE: That's fine.

MR. RIFFIN: And then I will respond.

PRESIDING JUDGE: That would be fine.

MR. RIFFIN: That way we're not talking back and forth.

PRESIDING JUDGE: All right. I wanted to give you that option.

MR. RIFFIN: I appreciate it. I'm listening, and I'm making mental notes. When he

finishes, then I will respond appropriately.

PRESIDING JUDGE: That's fine.

MR. MONTANGE: So the whole tenor of his approach -- and this is what we lay out, too, in our motions for sanctions, is one of cat and mouse. And the cost of pursuing any kind of discovery in those circumstances becomes intolerable.

And the burden on the system, the burden on STB and the burden on your Honor, if a good-faith response is not made, then I have to make a motion, and you have to hear the motion. It's frustrating to you, and it's at least as frustrating to me at this point, because I've been in this now for a decade on behalf of the City.

I detail in the papers where we find deficiencies. I would only add that I have a Yahoo! mail system myself.

He says he's shown me what's on his screen. If there's an original e-mail -- the way my Yahoo! system works, it's conversational.

What appears on your screen will be the last e-mail in the sequence. You have to hit

another button, you have to click on another line, and then you get the rest, or you get the next e-mail down the chain.

Click on another button, you will get the next e-mail down the chain. Click on another button, you will get the next e-mail, and attachments may then be available to you, and those are on the e-mail system.

If he just copies me on the chain, which is what he's now represented in his last response, if he just copies me what's on his screen, that doesn't give me the chain. That doesn't mean the chain doesn't exist. I asked for what was on the e-mail system, not what was on his little laptop computer screen at any given time.

If he's saying that he has no longer any e-mails that, that he's removed all e-mails, then my response is that's an abuse, because once we filed our discovery against him in March, we asked for the documents that he had. He was obligated to preserve those documents and make them available and not just throw them out at any given time in the future.

And in addition, as I read STB's regulations, they say discovery obligations are continuing. If he continues to get any documents after March, if he continues to get any after July, if he continues to get any after this date, it's a continuing obligation that he make them available. And he can't say well, this is all I have, and I just -- I got rid of everything else, or I expurgated my system.

One of his statements is -- and I will go through this in a little bit more detail when I go through his individual objections. But one of his statements is he's deleting any e-mails that he finds are not material to himself or his use at the time. He'll just get rid of them now.

Well, if he's doing now and they're documents I've requested, that's a breach of the continuing obligation to make discovery. So what am I to do? Just take this kind of stuff? Or complain to the STB, which is what I have done, that I'm not receiving a legitimate, cooperative discovery response.

Now, let me back up and add one more thing before I get into his 15 objections in detail. I've got some notes on those, and we can go through them, which is what I understood you to request.

PRESIDING JUDGE: Yes.

MR. MONTANGE: The gravamen as I understand it of the objection to discovery by both Mr. Riffin and now the LLCs is that the City, et al. -- or Montange in particular because they try to personalize this to me, because I represent three clients. Believe me, I would rather not be here, but I took the job, and so I am.

The gravamen of their complaint against me is that there is some kind of unsubstantiated conspiracy that I'm trying to pursue. What's happened in this 11-year dispute over the Harsimus branch can be boiled down to a nutshell.

City, et al., wants to preserve the last remaining transportation corridor going into downtown Jersey City. It's not rocket science that that makes sense from an urban planning point of view. If you take a trip to Jersey City --

PRESIDING JUDGE: Mr. Montange, do we need to get into this?

MR. MONTANGE: They're contesting --

PRESIDING JUDGE: That's later, isn't it? What we are doing right now is seeing if Mr. Riffin complied with my order; is that not correct?

MR. MONTANGE: Okay.

PRESIDING JUDGE: I'm asking you a question.

MR. MONTANGE: One of his objections goes to relevancy, and I like to hit --

PRESIDING JUDGE: I don't care about his objections to relevancy.

MR. MONTANGE: Okay.

PRESIDING JUDGE: If he had an objection to relevancy, he should have brought it to me. This is not a self-help forum.

If you've got a problem with an order, you bring it to me. You don't help yourself.

MR. MONTANGE: All right. Let me just go through Mr. Riffin's objections and try to get through this. Mr. Riffin's reply to motions for

sanctions is where his last set of objections are.

PRESIDING JUDGE: Are we looking at his objections or your statements?

MR. MONTANGE: This is Jim Riffin's reply to City, et al., motion for sanctions. His first objection is I didn't paginate my motion.

PRESIDING JUDGE: I don't care about that.

MR. MONTANGE: Okay. I thought your Honor would share that view with me.

Second objection, he says there that he was ordered to forward a copy of whatever he retains in his possession, and it's a little confusing, but as I understand this objection, he seems to be intimating that he doesn't have any more in his possession.

What I am suggesting to your Honor is if you review our papers, you will see documents that he should have in his possession, unless he's destroyed them. If he did destroy them after March 28th when I filed the interrogatory -- the document request, then that would be a breach of the -- his obligation to make discovery.

And in addition, there are -- there's this problem of, if you have a Yahoo! e-mail system, you have to hit buttons to get the whole e-mail chain. In many instances, of which I've indicated a few, it appears that he has provided me with one e-mail in a chain, but there must have been more beyond that.

PRESIDING JUDGE: Let me just tell you, I do not intend to spend any time whatsoever parsing the meaning of the word "retain."

MR. MONTANGE: The third objection, he says that he only has to make available documents to inspect or copy, and he seems to be saying in the third objection that I should go to Cockeysville, Maryland, or accept whatever he gives me when he shows up here and he makes available his computer here.

I think discovery is -- your order suggested he had to -- it stated to me that he had to make it available and not ask me to look at his computer here or --

PRESIDING JUDGE: This is not some overly complicated formulaic process. We're using words as

they're commonly understood, and Mr. Riffin was ordered to produce documents for you, his e-mails.

Again, I don't care about these overly convoluted arguments about what words mean. We're beyond that.

MR. MONTANGE: Okay. Your Honor, again --

PRESIDING JUDGE: I'm just telling you. I know this is not offending you. I'm just telling you how things are right now.

MR. MONTANGE: Okay. His fourth objection, he claims that he sent me his screenshots. Again, my statement is --

PRESIDING JUDGE: A screenshot is not an e-mail. A screenshot is a screenshot. Is that correct?

MR. MONTANGE: He says it's what showed up on his computer monitor, which is what I call -- okay.

The fifth objection, again, the fifth objection is --

PRESIDING JUDGE: You know, I will not accept arguments based on mental reservation. When

you take an oath, if you ever have the misfortune of joining the federal service, you take an oath, and part of that oath says that it's taken without mental reservation. That actually means something around here.

Do you understand that, Mr. Riffin?

MR. RIFFIN: I do.

PRESIDING JUDGE: All right. Proceed.

MR. MONTANGE: The fifth objection is he says he has -- the document request, when I tender it to a party that is a corporation, such as the LLCs, always indicates that they have to -- or to an individual dealing with a corporation, a corporation is not some disembodied ghost that exists out there that operates through agents and representatives. So documents in its possession will be in possession of its attorneys, its agent, anyone representing it. Anyone purportedly speaking -- a consultant who is working for the LLCs, for example, and communicating with Mr. Riffin would be a representative of -- representing that party.

Mr. Riffin states in his fifth objection

that he's only obligated to provide me with e-mails from Mr. Horgan or Steve or Vicki Hyman, and he doesn't have to provide them from anyone else. That's how I read the fifth objection. And that is not in compliance with what the document request sought, and it is a exclusion of communications that he would have with -- he admits later in his objections that Mr. Hyman has operated through other attorneys and that there are other people working for Mr. Hyman, and he excludes all of them from his e-mail response.

So that's a limitation that --

PRESIDING JUDGE: That's not what I had contemplated either.

MR. MONTANGE: Nor I.

The sixth objection, this deals with Mr. Nagel. Mr. Nagel --

PRESIDING JUDGE: Yes, I saw that.

MR. MONTANGE: He claimed he doesn't know who Mr. Nagel is, he said he heard of an architect. But in the same objection, he says that Mr. Horgan is the LLC's attorney, works for Mr. Hyman, and

Mr. Hyman is sometimes upset with Mr. Horgan and consults with other attorneys. He acknowledges one was Mr. Nagel, he says he did send Nagel some material.

PRESIDING JUDGE: His memory was refreshed after you provided the documentation.

MR. MONTANGE: Well, his memory was refreshed even, it seems, as he go through his objection. At first, he seems to be denying that he knew, and then he seems to remember, and he can't deny it after I provided him with the document.

But I don't see how that's an objection. He's stating it as an objection, and it makes no sense to me.

The seventh objection, the seventh and, I think, the 11th objection both deal with this Forest City matter. He doesn't wish to make available any documents he has relating to -- or any of his e-mail exchanges that he has dealing with Forest City. And he says that that's irrelevant to this proceeding.

PRESIDING JUDGE: I'm looking at page 10, and he says "relating in any fashion to the Harsimus

branch."

I would think that the development of that Metro Plaza parcel -- that's what you're talking about?

MR. MONTANGE: Yes.

PRESIDING JUDGE: Is related in some fashion, quite distinct fashion, to the Harsimus branch.

MR. MONTANGE: Absolutely, your Honor.

PRESIDING JUDGE: Again, Mr. Riffin, it appears to me that you're parsing words very, very carefully and not entirely logically, that you've got your own intellectual construct for operating as you answer questions.

Now, that seems to me to be mental reservation. It could be other things. But it's not -- it doesn't seem to me to be appropriate as you make some attempt to comply with my order for discovery.

Continue, please.

MR. MONTANGE: The eighth objection, in the eighth objection, he says that my document

request is limited to all documents that may have been authored by consultants -- copied, received or authored or retained, maintained, by consultants, officers, employees, negotiators, board members, attorneys, otherwise working on behalf of any party, who has filed a pleading in AB 167, the 1189 X. And he says that he's not an attorney, board member, negotiator, employee, officer, or consultant.

PRESIDING JUDGE: You think he's not a negotiator?

MR. MONTANGE: Oh, I think he's a party.

PRESIDING JUDGE: He's filed an intent to file an OFA, and if that's sufficient to give you a property right in federal court in New Jersey, it's probably sufficient to make you at least very significantly involved in this case.

MR. MONTANGE: It makes you a party in spades, your Honor. So that objection is a nonstarter.

PRESIDING JUDGE: I agree with that.

MR. MONTANGE: Now, the ninth objection isn't so much to my discovery as it is to an

objection that I made to his, quote, status report that he sent to you, and the status report which he sent to you -- this was a part of this e-mail letter that he did on the same day he made discovery.

PRESIDING JUDGE: Yeah.

MR. MONTANGE: And he didn't serve it on the parties. He's under two orders from the STB to serve his pleadings on parties. I view that as making substantive argument.

He never served it. He just sent it out.

He's sent e-mail copies, I think, to the people in the OFA proceeding. That's the limit of the service.

There are probably 15 or 16 more parties. He's been ordered twice.

PRESIDING JUDGE: I agree with that, and parenthetically, I've got a problem -- well, maybe some others have operated within the letter of the regulations. STB, my law clerk did some research. At FERC, our ex parte communication regulations are different than those at the Board, and I think the Board allows a little bit of latitude there.

But suffice to say that, perhaps, some of the communications I've received that weren't filed with the Board were well-intended. They were meant to inform me as to positions of the parties' arguments.

Frankly, I found them to be intellectually insulting, suggests that I'm not following the docket, that I have not read enough materials. I have read everything that's been filed in these documents.

And I don't -- for your future reference, not that we're going to have much more to do with one another, but I don't appreciate it.

Continue, please.

MR. MONTANGE: If I've been a party to any of that, I apologize.

PRESIDING JUDGE: I didn't mention any names.

MR. MONTANGE: The 10th objection, your Honor, is he says -- he complained that I said that he terminated discovery, which I read his e-mail to do. But he said there were no more relevant e-mails

to send.

If he, in fact, had no more -- I believe that he has more relevant e-mails to send. From everything he said, he's failed to make available documents relating to his litigation dealing with the Metro plaza project.

PRESIDING JUDGE: It seems like he just got tired.

MR. MONTANGE: Yes, he just got tired. That's the implication I got.

PRESIDING JUDGE: That's what I got out of it. Oh, bother.

MR. MONTANGE: Yes. What was very irritating is at the same time he didn't want to spend more than two hours checking his own files, and he was busily filing -- he's filed, I think, two amended complaints against Forest City in the interval.

PRESIDING JUDGE: It seems like this is Mr. Riffin prioritizing his time, as most good businesspeople do, and he waited because obligation to respond to this discovery, perhaps with not

enough gravamen as he might have. He made a business decision to spend two hours on this and more time on doing other things.

We all make these decisions. Sometimes we make mistakes doing it.

MR. MONTANGE: Your Honor, I concur in all your statements. I feel that it was more than a mistake. I think it was intentional and his way of doing business.

PRESIDING JUDGE: Even if it's not, you know, it shows poor judgment.

MR. MONTANGE: And Mr. Riffin, one would have to say he's had quite a bit of experience in STB proceedings, and one would think that he should know his way around the block.

PRESIDING JUDGE: He seems to be a sophisticated litigator.

MR. MONTANGE: Yes, in many, many, many proceedings.

The 11th objection, he says that I've imputed ill motive to him because several of his e-mails appear to be in response to an undisclosed

e-mail. He says that he telephones people sometimes asking for information and that then he gets an e-mail response from Mr. or Mrs. Hyman back.

And that may be the case, your Honor, but it appears to us that some of these e-mails are a part of a conversational chain and that he, in fact, has simply omitted the earlier e-mails in the chain.

In any event, that doesn't account for all of the problems. Maybe one or two.

The 12th objection, he complains about a lack of -- he says I complain -- this is, again -- the 12th objection is another one about Forest City. He think we already discussed that.

He denies -- he acknowledges that he went to the office of -- when I use the term Forest City, Forest City, G&S, there's a conglomeration. It's a bunch of developers who have grouped together.

I call them Forest City only because that's the first name on his complaint. G&S is actually doing a lot of -- apparently doing a lot of the legwork or at least is the one that Mr. Hyman has been in contact with on this, according to the

affidavits filed.

And he is saying that he went to the office of Mr. Wasser to hand a courtesy copy of Riffin's complaint. He's trying to disavow any kind of agreement, but I think then that goes to the affidavit saying that he acknowledged an agreement with Mr. Hyman at the meeting with Mr. Wasser.

And that being the case -- it's not really a legitimate objection anyway, but what I'm saying is, he appears to be hiding the ball in his addressing it by insinuating there's no agreement when he states that there is an agreement to Mr. Wasser.

It's like the 13th chime of a clock. When I see things like this from either of my counterparties which seem to me to be contrary to what I'm hearing in the field where they say one thing to the STB, they say another thing to Jersey City and they say another thing to the Forest City people, I never know who is on first.

It's the 13th chime. It calls into question everything they've said; it calls into

question everything they say in the future. You just don't know what the true facts are.

I'm willing to impute -- or I'm willing to credit Mr. Wasser. He has no bone to pick in this proceeding. He didn't want to participate.

But because he saw issues with this, he supplied an affidavit, a verified statement, stating that he has been told there's an agreement. And this was evidently in the presence of the two gentlemen -- not Mr. Horgan, but the two gentlemen on each side of him, Mr. Hyman --

MR. RIFFIN: I'm going to object at this time. Any statement Mr. Wasser may have made, because Mr. Wasser is not here, I'm going to object.

They're not relevant. They're not material. And in addition, they're hearsay.

Mr. Wasser had an opportunity to be here. If he wanted to put testimony on from Mr. Wasser, he should have asked Mr. Wasser to show up, is what I would be objecting to, your Honor.

MR. MONTANGE: Your Honor, the easiest way for me to respond to that is the LLCs objected to

anyone providing testimony here at this hearing. We're trying to do that. We supplied Mr. Wasser's statement as a legitimate response to the motion for sanctions filed against me, my clients, and it's a part of the record.

PRESIDING JUDGE: I will let it stand. That's fine.

MR. MONTANGE: Okay. Now, the 13th objection, this really isn't to the discovery so much as he objects to my calling his OFA, his intent to file an OFA, an abuse of the OFA process.

PRESIDING JUDGE: That's outside the scope of my order.

MR. MONTANGE: Okay. It goes into defense. We have another view, of course.

PRESIDING JUDGE: I don't care. It's outside the scope.

MR. MONTANGE: The 14th objection, he objects to my inspection his e-mail account a second time, and this is making me dizzy. First, I show up at the last hearing, and he shows up at my restaurant unannounced at 8:00 p.m. or 9:00 p.m. at

night offering to let me inspect, which was impossible. We didn't even know if there would be a WiFi connection there.

And then the next day, he says he will make them available, which is then embodied in an order. And then he says he's not going to do any more.

And then again now he says -- what I said in my motion for sanctions against him is I -- basically at this point, it's the 13th chime of the clock. I do not feel that one can get a reliable response out of him, and someone needs to inspect his e-mail system and see what's going on in there, because I don't think that he --

PRESIDING JUDGE: Is this a part of his failure to respond to my order?

MR. MONTANGE: No. It's really his response to a remedy that I sought.

PRESIDING JUDGE: That's fine. I don't want to hear it.

MR. MONTANGE: All right. And the 15th objection is he -- again, it's an objection against

one of the remedies that I seek, and that is attorney's fees.

And as I understand the objection, he's says he's objecting to the position of the apostrophe in attorney's fees. There's only one attorney --

PRESIDING JUDGE: Fine. I don't care about that.

MR. MONTANGE: Then the final one he's called miscellaneous. He's got just a ticktack, ticktack of different objections to me.

I don't know if this is where he complains I threw a tantrum or something. I've not thrown any tantrums. I've tried to be as succinct as I possibly could.

PRESIDING JUDGE: Is there anything relevant in these miscellaneous? I don't care how vigorously you or anyone else advocates your positions. I really don't.

MR. MONTANGE: There's nothing in here that is a legitimate objection to the discovery requests that I've made. To the extent he makes a

substantive point, we reserve on that.

PRESIDING JUDGE: If Mr. Riffin wants to raise these miscellaneous items, I can review them in seriatim.

MR. MONTANGE: Your Honor, I think that that concludes my response to his objections. We just thought there were none with any merit.

I would note if Mr. Riffin is excluded from the OFA part of the proceeding, if he's barred from issuing an OFA, then it will dramatically curtail the need for my discovery against the LLCs, because documents relating to their agreement with Mr. Riffin will presumably be irrelevant because he will be out of the proceeding, and their agreement will be moot. That will address many of the issues I have with them.

If he remains in the proceeding, and because it's unclear -- because we just don't think he's making available the documents, then I have to ask the LLCs for the same kinds of things that we have requested of him.

PRESIDING JUDGE: I understand. Thank

you.

Mr. Riffin, you have the floor.

MR. RIFFIN: Thank you, your Honor. I start off with the discovery rules and what I'm required to do. It's my understanding, having read them, my obligation is to make them available for inspection.

And some cases I have read have indicated that the place of inspection is where the files are kept. I realize that Mr. Montange's office is a long ways away from where I keep my records.

Prior to this last meeting, I made an effort to go to Mr. Montange, as he indicated. I appeared at a restaurant and waited for him to show up. It's not his restaurant. I actually was there first.

I offered Mr. Montange an opportunity to look at my e-mails. I brought my computer with me. I got a WiFi code, accessed my e-mail account, put it in front of him, and said you've asked to inspect my e-mails, here they are, help yourself.

We reached an agreement. The agreement

was I was to forward to him whatever e-mails were remaining in my e-mail account that involved communications, electronic communications, between me, Mr. Steve Hyman, and Ms. Vicki Hyman and the LLCs. The LLCs, because they're legal entities, I take that to mean any e-mails between me and Mr. Horgan.

At the restaurant, he indicated to me what he wanted me to do. He said "what I want you to do is you type in the name, Hyman, into the search box. Whatever comes up, send me a copy of whatever you see." And that is precisely what I did.

I did not start this process saying I'm going to give myself two hours to do it. I started the process to complete the task. At the restaurant, he indicated to me "this shouldn't take you very long, you just do a couple clicks, and you send a batch."

I'm not too computer-literate. I'm too old to do that. I just didn't learn it.

I don't do social media. I rarely do e-mails.

I don't like them. I don't trust them. I just don't do it.

So I'm not very conversant at it. But that doesn't mean I'm not willing to learn how to do it, so long as someone helps me a little bit.

I appeared in your court, and I agreed I would send him whatever is in my e-mail account, whatever remains is the words that were used, and that's the words that appear in your order. Whatever is there, I'm going to send it to him, and I'm not going to be fussy about is it relevant.

He's just spent a few minutes talking about Metro Plaza. In discovery, we begin with how does the party who is trying to do discovery define the terms that he's using.

In this particular case, Mr. Montange has defined the term "Harsimus branch." And he defines that term as being between control point Waldo and the west side of Marin Boulevard.

That's his definition. I didn't pick it.

In my definition, the Harsimus branch is from CP Waldo all the way to the very end, and

that's considerably beyond the west side of Marin Boulevard. The west side of Marin Boulevard is milepost point 88. According to Conrail, the line ends at milepost 136.

I don't make the definitions. I respond to what you define.

You define the Harsimus branch to the west side of Marin. You have asked me for any documents between three particular persons for that portion of that line.

I construed it much broader than that, as it turns out. I literally gave Mr. Montange a copy of every e-mail that I've either sent or received from Steve Hyman, Vicki Hyman, Mr. Horgan, that's still in my e-mail account, whether it related to the Harsimus as he defined it, whether it related to the Harsimus in its entirety, whether it was totally unrelated. I just sent him everything.

MR. MONTANGE: Your Honor, I hate to interrupt, but might I just read what I defined the "Harsimus branch" to be?

PRESIDING JUDGE: All right.

MR. MONTANGE: I said Harsimus branch shall mean any portion of the line of railroad between CP Waldo and Marin Boulevard in Jersey City transferred to line code 1420, which line of railroad is the subject of abandonment proceeding bearing STB Docket AB 167 and 1189 X.

And my position is we asked for anything relating to any portion of that line.

PRESIDING JUDGE: Thank you.

Mr. Riffin?

MR. RIFFIN: To continue, I did not limit what e-mails I sent to him. I literally gave him every one I had.

I put Mr. Hyman's name in. He actually comes up twice because he has two different e-mail accounts.

I picked the first one, and I literally -- first of all, I had to learn you can't send a batch. I can't just say send them all.

No, you have to click on each and every one of them, and you actually have to open it. You have to be looking at it.

And it took me a little while to figure that out. It took 30 minutes for me to figure out how do you do this. But I took the time.

And then I proceeded to click on each and every e-mail that came up on my computer system, on my e-mail account. And I forward a copy to Mr. Montange, to Mr. Horgan, to Robert Jenkins.

I think I sent to John Broder. He's the attorney for Conrail also.

And I sent a copy to Mr. Strohmeyer. So I sent a copy to everyone who is actively participating in this proceeding before you.

After I did all of the e-mails that were for one of Mr. Hyman's account, I did the e-mails that were in his second account. It didn't matter if they were coming to me or going back. Whatever came up, I forwarded it.

I did the same thing for Ms. Hyman. I did the same thing for Dan Horgan.

It took me a little over two hours to do that, and I noted when I came in, I noted when I left, and I just made the observation this wasn't

quick and easy, this was actually time-consuming. It wasn't what I was expecting.

I'm not complaining. I'm just letting you know this took a lot longer than what I was led to believe it would take me.

However, I sent you everything I had, and then I counted them. I counted everything that was on my screen. I count 103, and I send a e-mail, and I say you should have received 103, because that's what I sent, and if you didn't get 103, let me know. We will figure out which one didn't show up at your place.

Not all e-mails actually show up, I've learned. So I've done what it is he's requested.

In your order, you indicated that the parties need to make an attempt to resolve whatever disputes we might have before we show up. On the desk that's in front of you is a copy of an e-mail that I sent to Mr. Montange a week or so ago, and the e-mail says to Mr. Montange "if you would like, I will show you my computer again a second time. I will let you look at my e-mail account so that you

can verify that every e-mail that's sitting on here, you've got it."

I offered to let him look at it yesterday. He arrived yesterday.

I offered to let him look at it this morning before this hearing. Mr. Montange has declined all offers to look at my computer.

And one of the pleadings that I filed in this court, I said if we're going to have a sanction hearing, I would at least like to have the opportunity to bring my computer, which I have done, open it up, and let your Honor look at my e-mail account. You can verify.

PRESIDING JUDGE: I can verify what's on it now. I couldn't verify what was in there in August or in March or any other time.

Thank you, but no thank you.

MR. RIFFIN: The decision was, and the agreement was, whatever was in my e-mail account I would send to you if it was there. I did not make an agreement to send him e-mails that were long since deleted. I delete e-mails.

However, since that August 24 hearing, I have not deleted any e-mails between me, Mr. Hyman, and Ms. Hyman. I actually have had no e-mails with Ms. Hyman.

Horgan sends me copies of pleadings that he filed. The discovery request says pleadings that are filed is not included in what I need to send him a copy of.

I offered several weeks ago, "Mr. Montange, Mr. Hyman has sent me some e-mails" in the last -- "since our last hearing in August." They have absolutely nothing to do with the Harsimus.

One e-mail was about the political picture in Jersey City. It had to do with major -- Fulop. According to the article, he's no longer going to be running for governor of New Jersey.

PRESIDING JUDGE: Mr. Riffin, I don't care. Please continue. Try to stay on point.

MR. RIFFIN: So I offer Mr. Montange -- I ask Mr. Montange, "Mr. Hyman has sent me some e-mails. They don't relate to the Harsimus in any shape or form, but if I would like a copy, I will

send you a copy."

And he replied I don't want them.

MR. MONTANGE: Your Honor, I object. I did not reply that. I said "I don't play games," Mr. Riffin.

PRESIDING JUDGE: That's fine. Thank you.

MR. RIFFIN: I agree. He didn't say I don't want them. He said "I don't play games."

But that doesn't answer my question. Do you want them or not? If you want them, here they are. I will let you look at them.

PRESIDING JUDGE: All right.

MR. RIFFIN: As I just said, I am aware that discovery requires me to continue to give him e-mails if they are ongoing, which is why I asked the question. Mr. Hyman has sent me some e-mails --

PRESIDING JUDGE: I'm not even concerned about the ongoing at this point. If you can justify your having turned over the e-mails I ordered as of August, I would be quite satisfied with that, but I don't see you doing that.

Now you're arguing about since August. I

don't care about since August, Mr. Riffin. I care about the e-mails I ordered you to turn over to Mr. Montange.

So please stay on cue there and address that issue for me.

MR. RIFFIN: Your Honor, you ordered me to send to him a copy of every e-mail --

PRESIDING JUDGE: I know it's a continuing -- look, you've got more problems than that.

MR. RIFFIN: I sent your Honor a status report, and in that status report, I said, I have sent to Mr. Montange and the other parties -- I have forwarded a copy of each and every e-mail that is remaining in my e-mail account as of August 24. Actually, it was August 25th, because that was the day I was doing it.

That's all there are. Now Mr. Montange says -- he's accustomed, evidently, to looking at multiple e-mails going back and forth, what he calls a chain.

I don't e-mail. I don't have chains.

In one particular case, he says Ms. Hyman sent you an e-mail with Nancy Bider's, telephone number. I don't see an e-mail from me to her saying would you, please, send me Nancy Bider's telephone number.

That's because I didn't send her an e-mail. I called her on the phone and asked "do you happen to know what Nancy Bider's phone number is?"

She said "I will look it up and call you back." She didn't call me back; she just e-mailed it to me.

I don't do what normal people do today with e-mails. I don't do e-mails.

For me, it's very difficult to do, because I don't have e-mail access at my house. If I want to use the Internet, I have to go to a library, or I have to go to McDonald's get on WiFi. That's very inconvenient, and I personally just don't like e-mails.

PRESIDING JUDGE: Mr. Riffin --

MR. RIFFIN: So I just don't do it.

PRESIDING JUDGE: Mr. Riffin.

MR. RIFFIN: Yes.

PRESIDING JUDGE: I'm looking at Mr. Montange's motion here on page 6, "Deficiencies." Let's just go through these, shall we?

MR. RIFFIN: Yes.

PRESIDING JUDGE: "Number 1, Riffin appears to have deleted all identification of the recipients of the e-mails, example in Exhibit D, other than himself or text and attachments. So he has not furnished such e-mails in their totality."

Please address that.

MR. RIFFIN: It took me a little while to figure out -- I'm not quite sure if I actually understand what he's trying to say. What I did, I took the e-mail --

PRESIDING JUDGE: Let's look at D. Let's look at Exhibit D.

He says that's an example of the problem. So let's just take a look at it.

MR. RIFFIN: If you told me what page you're looking at, I will look at it. Did you

number your pages?

PRESIDING JUDGE: No.

MR. RIFFIN: Give me some hint of what you're looking at.

PRESIDING JUDGE: Exhibit D.

MR. RIFFIN: Exhibit E.

PRESIDING JUDGE: Delta.

MR. HORGAN: Your Honor, I will show him my copy so we can move on.

PRESIDING JUDGE: Thank you.

MR. RIFFIN: As an example, he gives -- I'm looking at an e-mail that says Thursday, August 25, at 2:11 p.m. And it says that on "February 18th, Steve Hyman wrote," and there's no indication that he wrote anything. It turns out he didn't.

PRESIDING JUDGE: Oh, so it was just a mistake? It's not an omission of text; it's just a mistake? If you send an e-mail with nothing in it, I trust that most --

MR. RIFFIN: Sometimes it does that. I can ask Mr. Hyman.

PRESIDING JUDGE: Continue.

MR. RIFFIN: Let me tell you what I did, your Honor. I took each and every copy of e-mail that Mr. Montange placed in his sanction document.

I went to the library. I called up my e-mail.

I looked at my screen, and I compared what I see on my screen with what's on his piece of paper. And I want to see, is there anything on my screen that is not on his piece of paper.

It turns out they're exactly identical. What you received is what I have. It's all I have.

I haven't touched it. I sent you what I have, and I verified, by having a photocopy of what he received, that what Yahoo! sent to him is precisely what is sitting in front of me.

So I verified each and every one. You have an exact copy of precisely the same thing that I have.

I can't do more than that, because there isn't any more. It just isn't there.

PRESIDING JUDGE: All right. So --

MR. RIFFIN: Which is why I've offered

multiple times to Mr. Montange, look at my computer, look at my e-mail account, verify it for yourself. I have given you everything there is. There just isn't any more. Now, you may find it hard to believe that there isn't any more, but I'm sorry, it's not there.

If Ms. Hyman sends me an e-mail with a phone and you're wondering why did she do that, and you're looking for an e-mail from me to her, I didn't ask her the question with an e-mail. I called her on the telephone.

I use telephones. I don't use e-mails.

Quite frequently, Mr. Hyman just sends me stuff. He thinks it's interesting.

Most of the time, it is. Not necessarily relevant to this proceeding or the 1189 proceeding.

It is interesting. He just sends it.

Sometimes people send him things and he just forwards it on to me, no comment. It's just there. It sometimes takes me a few minutes to figure out why did you send me this, because there's no message with it.

PRESIDING JUDGE: Hold on a second. We don't need to flog that one anymore.

Let me ask you something. You stated on the record that you spent two hours retrieving e-mails, and you decided that that was enough and that if Mr. Montange --

MR. RIFFIN: I didn't decide --

PRESIDING JUDGE: -- wanted more, he would have to go to me to get that? You said that?

MR. RIFFIN: Your Honor, I didn't decide it was enough. I was at the bottom of the list. There weren't any more.

PRESIDING JUDGE: Then why would you say "if you want more, you will have to go to Judge Dring"?

MR. RIFFIN: Mr. Montange has asked that I provide him with e-mails between me and the agent of the LLCs. I don't have a clue who the agents might be. I know that Mr. Horgan --

PRESIDING JUDGE: That's not responsive to my question. That's not responsive to my question.

I asked you, why would you tell

Mr. Montange if he wanted more, he would have to come to me with an order?

MR. RIFFIN: Because he wasn't satisfied with what I gave him. He said "you only have 103? You should have more than that."

Well, I'm sorry, I don't.

He said "I have copies of e-mails" from me to somebody else, or somebody else to me, I don't know which way it went, but he said I have a copies of e-mails with my name and somebody else's name on it.

PRESIDING JUDGE: You seem otherwise articulate. What on earth could have possessed you to say "if you want more, you have to go to Judge Dring"?

MR. RIFFIN: He indicated he has copies of e-mails, I think they're from me to somebody else or somebody else to me, I don't remember which one it was, but he said "I have copies of e-mails with your name on it. You didn't send me a copy of this particular e-mail."

And my response is "I don't have it." The

e-mail was sent a long time ago. It wasn't relevant. I didn't have any reason to keep it.

PRESIDING JUDGE: All right. If you don't want to answer my question, let's move on.

Go ahead. What's your next point?

MR. RIFFIN: So Mr. Montange is asking for e-mails between me and parties other than Mr. Hyman, Ms. Hyman, Mr. Horgan. If he wants e-mails from someone other than those three people -- and those are the only three people that I agreed to provide him e-mails from -- then someone needs to tell me I'm required to give them to him, and that would be you. So far, you haven't said I need to give him e-mails from parties more than the three I just mentioned.

He wants e-mails between me and, he calls them, agents of the LLCs.

MR. MONTANGE: Or reps.

MR. RIFFIN: He mentions some guy named Bruce Nagel. When he first mentioned it, I didn't have a clue who Bruce Nagel was.

I put Bruce Nagel in my e-mail search

thing. Nothing came up.

It said "no Bruce Nagel found. Try the Internet."

So I typed in Bruce Nagel in the Internet, who's Bruce Nagel, and it comes up with some architect. I vaguely remember Mr. Hyman told me -- I had a conversation with Mr. Hyman's architect a long time ago, and maybe that's what his name was. I didn't remember.

As it turns out, someplace along this line, I think I actually saw a copy of an e-mail that I sent to a Bruce Nagel, and once I saw the e-mail, then I said oh, that's who Bruce Nagel is. Bruce Nagel, as it turns out -- some time ago, Mr. Hyman was looking for other lawyers to represent him. He wasn't pleased with the progress in the 1189 proceeding.

And what he would tend to do was he would tend to either call me, we would talk, he would think of some lawyer that he knows, and he would say well, let me call this lawyer, and he would call them, put him on the phone, and we would have a

three-way conversation. And he would ask me, "tell whoever this lawyer is what this case is about."

And so I would tell the lawyer what the case was about from my perspective. Then I would never hear from the lawyer again ever.

In the case of Bruce Nagel, Mr. Hyman, we had a three-way conversation with Bruce Nagel, Mr. Hyman, and me. It lasted for probably a good 30 minutes.

Bruce Nagel said "send me something in writing." So I typed up something, and I sent it to him, and I never heard from him again.

After a number of months, I deleted it. I think this was in 2015. It was long before Mr. Montange is starting to ask for e-mails.

I totally forgot, who is Bruce Nagel. I only talked to the man once. And if you don't communicate back with me, I'm not going to remember who you are.

And I presume the reason they don't communicate back with me is because I'm not their client. I'm not trying to hire them.

Mr. Hyman is thinking about hiring them. He did that with a considerable number of lawyers and other professionals.

So have I had conversations with many people because of Mr. Hyman? Yes. Most of the conversations were on a telephone.

Did I occasionally send these individuals an e-mail with an outline of what this 1189 case is about? Yes.

Did I keep the e-mail? No, because after three or four months I don't have a reason to keep it.

I'm not like most people. Some people have got 20-, 30,000 e-mails in their e-mail account.

I don't think I have a thousand. I make a point of not having them.

I don't want them. I don't believe in collecting them.

I told you at the very beginning, I don't like the Internet. I don't trust it. So I don't like leaving stuff out there in the Internet.

Now, the agreement was, and your order was, I am to provide him with all the e-mails between me, Steve Hyman, Vicki Hyman, Dan Horgan. I read your order three or four times to make sure I, in fact, read it correctly. Remaining in my account. I sent him every one in my account.

After finishing that task, I then noted what time it was, and I thought that took two hours. It actually took a little over a minute for each and every one of them, and I thought that was a lot more time than I thought.

But I still did it. It was easier, quicker, more efficient just to send it to him than it was to argue with him before you and have you rule yes, you have to send him this, no, you don't have to send him that. That's an argument you're going to hear shortly between these two gentlemen.

I took the less difficult path. If you want it, here it is.

I don't have an objection to you seeing whatever you want to see. I'm not trying to hold anything back from you, which is why I brought my

computer with me today, which is why I have continually offered to Mr. Montange, "if you want to see my e-mails, here's my computer, I'll open it up, I'll put it on my e-mail account, do what you want, you know how to do it, I don't. You can look at it to your heart's content."

And he doesn't want to verify that that's all there is, because he keeps thinking there ought to be more. Well, there just isn't. I don't do things like people today in this electronic age do.

I just -- I don't. I'm sorry.

PRESIDING JUDGE: We've now heard that argument --

MR. RIFFIN: Half a dozen times.

PRESIDING JUDGE: I was only going to say three or fewer times. Do you have anything else to provide in your defense?

MR. RIFFIN: Mr. Montange is looking for chains, as he calls it. I understand what a chain is because on that desk for your Honor's benefit, if your Honor wants it, is a set of e-mails between Mr. Montange and Mr. Horgan, and there's probably

half a dozen of them there, and I presume that's what he means by "chain." Okay.

At least I know what a chain is now. I don't do that, or rarely do that.

I've offered Mr. Montange the opportunity to inspect. Under the discovery rules, that is my duty. I have to offer you the opportunity to inspect whatever it is you would like to see that's relevant.

PRESIDING JUDGE: Your duty is to comply with my order.

MR. RIFFIN: Now let's talk about Metro Plaza.

PRESIDING JUDGE: Let me explain something to you. This might help you in the future.

If you think that a judge gives you an order that is incorrect, all you have to do is seek interlocutory appeal. That's the way to do it.

MR. RIFFIN: I didn't think your order was incorrect.

PRESIDING JUDGE: Well, you've cited the discovery rules, what you had to do, and suggested

that what I ordered you to do was beyond the discovery rules.

All I'm saying is if you think that's true, take interlocutory appeal.

MR. RIFFIN: I don't. While what you ordered is beyond -- but you only ordered it because I agreed to it. If I agree to do more than what I'm obligated to do --

PRESIDING JUDGE: All right. Let's --

MR. RIFFIN: I agreed to providing it.

PRESIDING JUDGE: All right. That's the extent of my trying to help. Please continue.

MR. RIFFIN: He makes mention of a Greg Wasser visit. In his mind, there's no distinction between Forest City and Greg Wasser, who is G&S Investors.

In my mind, there's a very big distinction. Totally different entities.

Their offices are in different parts of New York. One is in Brooklyn. One is in Manhattan.

If you say "I have a report that you went to the offices of Forest City," I've never been to

Forest City's offices. I know where they're at, but I've never been there.

I've been to the front of the building, but they wouldn't let me go to the office. I couldn't get past security. All of this is past August 24th, by the way, your Honor.

Your Honor's order and my agreement was I would provide him with everything that I had left before August 24th. I did that. I've offered Mr. Montange multiple opportunities to verify that, and he chooses not to verify it.

All he does is wants to speculate that I probably didn't because he's expecting more. Well, I don't know what you're expecting.

All I can do is give you what I have, and I gave him everything that I had, and I didn't time-limit it. I didn't look at my watch and say oh, I've been here two hours, I'm going to quit.

No, I quit when I was at the very last one. There weren't any more. That's an appropriate time to quit.

Your Honor has indicated you don't have a

high interest in what has happened post-August 25, but Mr. Montange has spent some time talking about post-August 25. Would your Honor want to hear some more about Forest City and Metro Plaza?

PRESIDING JUDGE: If you think that will help your case, by all means. Don't just talk to me about things that aren't relevant to what we are trying to accomplish here today.

MR. RIFFIN: It is my understanding that the litigation between me, Forest City, G&S Investors, has absolutely nothing to do with the proceeding that we are here for, which is 1189. That is a totally separate proceeding. The only party in that proceeding that is also a party in this proceeding happens to be me.

I indicated to Mr. Montange when we met at that restaurant, I am following in the steps of Mr. Montange. I am imitating him.

Mr. Montange asked the STB to determine what's the proper classification for the track segments that were on the embankment. They're lines of railroad.

And after a considerable amount of litigation that went on for six years or so -- it was a long time -- it was ultimately determined they're lines of railroad. Unfortunately, Mr. Montange limited his query to the track segment between CP Waldo and Marin Boulevard. Part of the reason for that, I would assume, is because that's the only segment that Jersey City has a desire to acquire with the OFA process.

My notice of intent to file an offer of financial assistance extends to the west side of the light-rail line. That's another 1,500 feet. That is on the east side of what's called Metro Plaza.

It has not been determined that the track segments that go across there are, in fact, lines of railroad. Conrail, in their abandonment exemption, indicate "it's been determined it is a line of railroad to Marin Boulevard; it has not been determined if it's a line of railroad beyond there, east of there, to where it looks like this line used to end at milepost 1.36. However," Conrail says, "out of an abundance of caution, we are

seeking abandonment authority for the rest of it if we need to."

And the ultimate question is, is it a line of railroad. If it's a line of railroad, they need abandonment authority.

If it's not, they don't need authority. They can do whatever they want with it.

Because I have an interest in another 1,500 feet of this track segment, I need to determine is that a line of railroad. If it's a line of railroad, then I have a right to make an attempt to acquire it with the OFA process.

If it's not a line of railroad, I don't have that right. You can only use the OFA process to acquire a line of railroad.

The U.S. Supreme Court, U.S. v. Idaho, the Fifth Circuit, New Orleans Terminal Company, the Seventh Circuit, Illinois Commerce Commission, have all ruled the most appropriate place to determine the classification for a class segment is in a court. Based on those rulings, I went to a court, the appropriate court, the U.S. District Court in

Newark, which sits five, seven miles from where the track segment is.

PRESIDING JUDGE: I read your pleadings.

MR. RIFFIN: I am asking that court to make a determination, the track segments that went across Metro Plaza, are they lines of railroad.

PRESIDING JUDGE: Remind me again when we're discussing this when we're trying to determine whether you followed my --

MR. RIFFIN: Because Mr. Montange seems to think that any communications between me and Metro Plaza, any documents that has anything to do with this complaint in Jersey City are relevant to this proceeding, and he wants a copy of them.

PRESIDING JUDGE: I understand. Your point is well-taken.

MR. RIFFIN: And I am arguing --

PRESIDING JUDGE: Your point is well-taken. Thank you very much. Why don't we talk about something else.

MR. RIFFIN: We get back to, did I violate your order. I don't think I did. I tried very hard

to comply with it.

In fact, another aspect of that order was I was required to provide Mr. Montange with the bankruptcy docket numbers for my three bankruptcy cases. As it turns out, on the 25th, I didn't have the numbers at the time that I completed sending the e-mails. But your order said I had until close of business on the 26th.

So I found the docket numbers, and on the 26th, I sent Mr. Montange and everybody else an additional e-mail, and I said by the way, here's the three docket numbers for my three bankruptcy proceedings, and your status in the status report letter that I sent to your Honor, I typed it up on the 25th. Not knowing that I wasn't going to be able to complete all of my tasks.

PRESIDING JUDGE: I don't think that's at issue here. That's not at issue here.

MR. RIFFIN: Actually, Mr. Montange made it a big issue. He said "I want an exact copy of what" I sent to your Honor.

I said all you have to do is take your

copy, line out the 25 and write in 26. You will have an exact copy.

PRESIDING JUDGE: Mr. Montange, did Mr. Riffin send you the bankruptcy numbers?

MR. MONTANGE: We acknowledge he sent us the bankruptcy numbers.

PRESIDING JUDGE: Let's not talk about the bankruptcies anymore.

MR. RIFFIN: Okay. Mr. Montange alleges to this court, speculates to this court that there's more.

I'm sorry. I gave you everything I have.

I'm offering you the opportunity to verify what it is I have. He chooses not to take advantage of that.

I don't see where there's anything that I might even remotely possibly do more than what I've already done. I can't do any more. I can't think of anything more.

If he wants communications, documents between me and parties other than the Hymans and Mr. Horgan, I would like your Honor to

say "Mr. Riffin, you need to provide Mr. Montange with documents between individuals, entities other than those three," because as far as I can tell, those are the only three that are relevant to this proceeding. But if your Honor says I have to provide Mr. Montange with documents from the LLCs' agents, my question is, how do I find out who their agents are? I could ask Mr. Horgan, but I don't think Mr. Horgan has to tell me.

And if he doesn't tell me, how do I comply with your Honor's order that I have to provide him with communications between me and their agents if I don't know who their agents are and if nobody verifies they're the LLCs' agents? When I spoke with Bruce Nagel, was he an agent of the LLCs? I don't think so.

I don't know, but I don't get that impression. It's my impression that Mr. Hyman called Mr. Nagel on the telephone, did not retain him as lawyer.

He just talked to him as a friend. He knows him.

It's not my impression that Mr. Hyman has ever hired Mr. Nagel. If the LLCs haven't hired Mr. Nagel, he's not their agent.

But how am I to know that? I'm not privy to this information. And that's where I have problems.

What Mr. Montange is asking for, I'm not privy to. It's not my information, and I can't compel Mr. Horgan to provide it to me.

Your Honor probably could, but I can't do it. I can ask nicely, but that's all I can do.

And Mr. Horgan has indicated it's none of my business, and I'm inclined to agree with him. It's not my business.

I can provide Mr. Montange with communications between people that I communicate with. If I control it, I can give it to you, so long as I still have it.

I'm making a point of not deleting any e-mails between these parties and me just in case he wants to see them. Which is why I asked him, "do you want them? I will give them to you. But if you

don't want them, I'm not going to take the time to send you something you've indicated you have no interest in looking at, particularly when it looks like it doesn't relate to this proceeding."

The politics in Jersey City doesn't have anything to do with this proceeding, I don't think, "but if you want it, I will send it to you." I'm not trying to hide or withhold anything.

I believe in full disclosure. That's just what I believe in.

I give people things that people tell me you shouldn't have gave them that. I do it anyway. I don't try to hide anything.

And I especially make it a point of complying with judge's orders, and I made a particular point of complying with yours, because you made it very clear, you don't comply with your orders, there are going to be consequences, and they won't be pleasant. So I'm very cognizant of what your Honor said.

That's why I read your Honor's order multiple times, to make sure that I was in full

compliance. That's why I took it to heart.

Your Honor said make an effort to resolve your differences before you show up today. I did, but I can't force Mr. Montange to do something he doesn't choose to do.

I can offer. That's all I can do.

Thank you, your Honor.

PRESIDING JUDGE: Thank you.

Mr. Montange?

MR. MONTANGE: I will be very brief, I hope, your Honor, because I would like to catch a plane.

In response to my first set of document requests, Mr. Riffin -- the document requests were March 28. In response to a motion when I finally filed my first motion to compel, then he responded with objections. In his objections, he asserts that he reads and then discards e-mails immediately.

When we filed our second motion to compel, then he suddenly discovered that he had over 100 e-mails. Again, this is the 13th chime of the clock problem.

On my second motion to compel, I attached a verified statement from Eric Strohmeyer, CNJ railroad. Mr. Strohmeyer says he's familiar with Mr. Riffin's habits and that Mr. Riffin stores stuff on his computer basically.

So we had that going on. The e-mail from Mr. Strohmeyer, he said he had seen Mr. Riffin's e-mail account shortly before his July 1st, 2016, July 1st, 2016, verified statement, and it had e-mails on it.

If there were e-mails on that that were not revealed to me and they're no longer in existence, then that's a destruction of evidence that's germane to the proceeding, highly germane to the proceeding. He was under an obligation after March 28 not to destroy anything. Mr. Strohmeyer said he had stuff on there, and he obviously did, because he downloaded --

MR. RIFFIN: Your Honor, I'm going to object. Mr. Strohmeyer is in the room. If we want testimony from Mr. Strohmeyer, put him on the stand. I want to cross-examine him.

MR. MONTANGE: Your Honor, if I might continue. In Mr. Riffin's e-mail exchange with me on August 25th when he said he was done, I stated that the agreement that he had was to supply information -- all e-mails between himself and the LLCs.

That's what your Honor's order says, LLCs. It doesn't say Mr. and Mrs. Hyman and Mr. Horgan and you.

It says the LLCs. The definition of LLCs includes any of their reps or agents, anyone that's working for them.

When I received this information, I said what about these other guys, like Nagel, and he responded that "are you now asking for Nagel and the surveying folks? The library shuts down its computers in a few minutes, so I cannot research those entities tonight. If lucky, they may let me do it tomorrow." But then he later says if I want any more I have to see you.

It seems to me he's acknowledging on August 25th that there were at least those other

reps out there. And I have evidence that -- even though he said in his objections that he discards --

MR. RIFFIN: Once again, your Honor, I'm going to object. If he has evidence, present it.

MR. MONTANGE: The evidence is in your own typography. You said in your objections you discarded stuff immediately upon receipt. You proved that that's false by supplying 103 e-mails, by your count, to us that are responsive --

MR. RIFFIN: And I have testified --

PRESIDING JUDGE: All right, all right, all right. That's enough out of both of you. I am going to adopt Mr. Montange's arguments that he filed in the motion to impose sanctions and his oral arguments today.

In addition to relying on the written evidence in this case and Mr. Montange's testimony, there is a line of cases out of the Fourth Circuit -- the other circuits have not, to my knowledge, addressed the issues. But that line of cases has to do with demeanor credibility assessments made by U.S. administrative law judges.

Under that line of cases, I am making the determination that, Mr. Riffin, I do not find you to be a credible witness. I find that you appear to have mental reservations and are not -- not constrained, apparently not sufficiently constrained, in telling the truth all the time. I don't appreciate the way you've deported yourself, and your deportment suggests that Mr. Montange is correct and that you are not correct in what you have testified to.

As a remedy, I am going to strike your -- all of your pleadings from the dockets that are before us today in the Harsimus branch proceeding. I am going to prohibit you from participating further, from introducing in evidence any other documentation, documents or evidence in these dockets. I'm dismissing you from the proceedings, and I'm awarding Mr. Montange the attorney's fees that he requested in his motion.

MR. RIFFIN: Your Honor?

PRESIDING JUDGE: Yes.

MR. RIFFIN: I would like an accounting of

what his attorney's fees are. He makes it very clear that when he computed that he was computing it and including within that a considerable number of hours that he spent dealing with the LLCs. And I would ask you to clarify, when you say you're dismissing me from this proceeding, are we talking about this discovery proceeding or from 1189?

PRESIDING JUDGE: 1189. I'm dismissing you from the entire proceeding and striking all of your pleadings, which includes your intent to file an OFA. They're all stricken from the docket.

Now, you can appeal this to the full Board, and after that, you can appeal it to the circuit. You can appeal it as far up as you want, but that's my ruling today.

Mr. Montange, as to your fees?

MR. MONTANGE: As to my fees, your Honor, I tried to exclude anything dealing with the LLCs. They were all devoted to the discovery against Mr. Riffin. That was my primary -- the only reason I ultimately filed anything against the LLCs was because it became obvious that Mr. Riffin was not

being candid. But the --

MR. RIFFIN: Your Honor?

PRESIDING JUDGE: Yes.

MR. RIFFIN: I would argue that he was at this proceeding the last time not just because of me. He was here also because of the LLCs.

I shouldn't be chargeable for his travel expenses to come to that hearing. Anything that doesn't relate directly to me, I should not be chargeable for.

And I would ask your Honor to order Mr. Montange to provide the Court and me with a complete accounting as to what expenses were directly related to me and what expenses -- and exclude any expenses that have no direct relation exclusively to me. If he had incurred an expense and it has anything to do with the LLCs, I shouldn't be responsible for those expenses.

PRESIDING JUDGE: That's reasonable.

MR. MONTANGE: Your Honor, if I am to provide an accounting, then I would like to include all expenses up to and through today.

PRESIDING JUDGE: Yes.

MR. MONTANGE: And I suspect that Mr. Riffin will end up further -- with a further charge beyond what's in the current amount that's lying before him.

PRESIDING JUDGE: Let's provide that accounting.

MR. MONTANGE: I will do so.

PRESIDING JUDGE: Enter it into the record.

MR. MONTANGE: I will do so, your Honor.

PRESIDING JUDGE: And then I will issue an order after I see it in the record.

MR. MONTANGE: Fine, your Honor.

PRESIDING JUDGE: Just don't include the LLCs.

MR. MONTANGE: Nothing with the LLCs.

PRESIDING JUDGE: Costs excluded -- your travel.

Mr. Riffin?

MR. RIFFIN: That's what I want.

PRESIDING JUDGE: Mr. Riffin, thank you

for your participation today. I am issuing an order concurrent with the order that I stated I'm issuing on Mr. Riffin's participation, or lack thereof in the future, an order ending discovery in this case. Further discovery requests will be served no later than December 15th, and replies will be no later than December 30th of this year.

Now, as to Mr. Horgan's motion against you, do you have anything else that you need from the LLCs?

MR. MONTANGE: Your Honor, once Mr. -- as I said at the very inception, once Mr. Riffin is out -- if he's out of the proceeding, then that moots much of the discovery against them.

PRESIDING JUDGE: How about all of the discovery against them?

MR. MONTANGE: The only remaining question we have is who is the agent, who is the management of the LLCs. We do have evidence now that Mr. Hyman --

PRESIDING JUDGE: Can we clear that up without much ado? It doesn't sound like it would be

too difficult.

MR. HORGAN: Yes, your Honor, we can clear that up. All right?

PRESIDING JUDGE: Yes.

MR. HORGAN: There's several points. First, I'm the attorney of record in 1189.

PRESIDING JUDGE: Yes.

MR. HORGAN: And I have been that for some time.

PRESIDING JUDGE: Yes.

MR. HORGAN: I continue in that capacity. The LLCs, these eight limited liability companies, are New Jersey LLCs owned by Victoria Hyman, who is present in the room. At the time these proceedings began, you know, 10, 11 years ago, Mr. Hyman, who is sitting -- the gentleman here on my right, was managing those affairs. He is no longer doing that.

PRESIDING JUDGE: All right.

MR. HORGAN: And he does not speak for the LLCs in these matters.

PRESIDING JUDGE: All right.

MR. HORGAN: We have disclaimed any

involvement with Mr. Riffin. We have said we're against dual OFAs, and we have been entirely consistent throughout.

If I might, your Honor, to clear this up, because I think this is helpful, direct your attention back to the May 22nd, 2015, decision in this matter where the City of Jersey City and those parties asked for similar kinds of information from both the LLCs and from Conrail, and the Board said no, you don't need to go beyond that. But I have told Mr. Montange --

PRESIDING JUDGE: Would you stop that.

MR. MONTANGE: Sorry, your Honor.

MR. HORGAN: There's no question about it. And I have told that to Mr. Montange in discovery, as a matter of fact. We do have that. It's one of the few things we did respond to, because we thought we could resolve some of the problem.

That's the way it is. That's the way it will continue to be.

PRESIDING JUDGE: Thank you.

Mr. Montange, what do you have to say to

that?

MR. MONTANGE: Your Honor, the disturbing thing for us, the City, et al., in dealing with the LLCs is a denial on the one hand that there's any agreement between them and Mr. Riffin, but then evidence of an agreement between them and Mr. Riffin in which we're told that Mr. Hyman is -- appears to be operating on behalf of the LLCs as their agent and rep.

Mr. Horgan says, I guess, as I understand it now, that he is not rep or agent of the LLCs?

MR. HORGAN: That is absolutely correct.

PRESIDING JUDGE: That's what he said.

MR. MONTANGE: Okay. So Mr. Hyman's involvement now on the record is no longer on behalf of the LLCs, and he does not represent them in conversations with others, he's not a representative of them in conversations of others, and that's a condition which will not change unless you, Mr. Horgan, advise the City, et al., otherwise in writing? Will you agree to that?

PRESIDING JUDGE: It sounds fair.

MR. HORGAN: I will be happy to do that.

PRESIDING JUDGE: All right.

MR. HORGAN: My concern here, quite frankly, is that the whole exercise with Mr. Riffin's suit, which I assume now goes away, too, by the way --

PRESIDING JUDGE: It does. Well, that's not up to me, but it wouldn't appear that he has a property right with no OFA.

MR. HORGAN: That's why I said I assume, and I didn't mean to imply otherwise.

But my only concern here is that if Mr. Hyman, who has been involved in this for 15 years, wants to talk to somebody about it, that's not a representation. I'm making that clear. We're all making that clear. The business of the LLCs --

PRESIDING JUDGE: He's a property owner, isn't it?

MR. HORGAN: No.

PRESIDING JUDGE: He has no property right, no property interest?

MR. HORGAN: Victoria Hyman is in the room

and is the sole member of the LLCs.

PRESIDING JUDGE: All right.

MR. HORGAN: That's my client. She's been my client since 2009.

PRESIDING JUDGE: Okay.

MR. HORGAN: If there's a problem, I will advise Mr. Montange. I would like the reciprocal courtesy of getting a call, an inquiry to me if they think there's a problem so I can deal with it.

PRESIDING JUDGE: I think that's reasonable.

MR. MONTANGE: Your Honor, if we find that Mr. Hyman is making representations to anyone within the City government, the embankment coalition, Rails-to-Trails, or any other party, we will notify Mr. Horgan so he can disavow that, hopefully in writing, on behalf of the LLC.

PRESIDING JUDGE: That sounds fine.

MR. HORGAN: We're done.

MR. HYMAN: Your Honor, I don't mean to be an interloper, but would you --

PRESIDING JUDGE: Yes, please.

MR. HYMAN: I told Mr. Horgan I wouldn't take part in this, and part of the reason I am here instead of being a member of the LLCs is that I have a serious medical problem.

PRESIDING JUDGE: Yes, sir.

MR. HYMAN: I have to deal with it in certain ways, and I don't know if your Honor knows about it.

PRESIDING JUDGE: That's fine, sir. What can I do for you?

MR. HYMAN: This is a minutia of what Mr. Montange has done for the last 12, 15 years. Mr. Montange and the City of Jersey City and the embankment coalition, they are suffering from buyer's remorse.

PRESIDING JUDGE: Sir, I read the entire record. I know very well what the history of this proceeding is.

MR. HYMAN: Okay.

PRESIDING JUDGE: Today, we are here for pronounced reasons, and that was to deal with Mr. Riffin's problems and then to deal with

Mr. Horgan's problems, which we have done to my satisfaction.

Is there something I'm missing here?

MR. HYMAN: No. I'm satisfied with what you're doing. I'm just trying to -- as long as there's time here, I'm saving a lot of judicial problems.

PRESIDING JUDGE: How?

MR. HYMAN: By giving you a timeline.

PRESIDING JUDGE: I don't need the timeline, sir. As of December 30th, I will be out of this case.

I've been charged with handling discovery disputes on behalf -- by the Board on behalf of the Board. And I believe I have now finished with that unless someone has discovery that they file by December 15th. After December 30th, if you have anything else that you need to say on the record, you say it to the Board.

MR. HYMAN: Okay.

PRESIDING JUDGE: This is back in the Board's hands.

MR. HYMAN: Today, I can't say anything anymore.

PRESIDING JUDGE: Sir, we're addressing specific discovery issues today. This is not the forum for addressing broader issues.

MR. HYMAN: Okay. I'm sorry.

PRESIDING JUDGE: Listen, you don't have to be sorry. I'm just trying to explain it to you, that I understand what your concerns are, and I understand the history of the case. It's just that my charge is very limited here, and that is to handle discovery disputes for the Board, which I have done here today.

MR. HYMAN: And you did a good job. Thank you.

PRESIDING JUDGE: Thank you. Thank you, sir, for your attendance and your participation. I appreciate that.

MR. HYMAN: Thank you. I was just here to help my wife through.

PRESIDING JUDGE: I understand. Thank you, and good luck to you.

MR. HYMAN: Thank you. You, too.

PRESIDING JUDGE: Anything else? I hope not to see any of you again. We are off the record.

(Whereupon, at 11:40 a.m., the oral argument was concluded.)

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, SARA WICK, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

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JAMES RIFFIN

PETITIONER

V.

SURFACE TRANSPORTATION BOARD

RESPONDENT

APPEAL OF AN INITIAL ALJ DECISION OF

THE SURFACE TRANSPORTATION BOARD

AB 167 (Sub. No. 1189X)

(Harsimus Branch – Jersey City, NJ)

RECORD EXTRACT

VOLUME TWO– PLEADINGS / MOTION FOR SANCTIONS

PP. 211 - 402

Submitted by: **James Riffin, Petitioner,** ***pro se***
P. O. Box 4044
Timonium, MD 21094
(443) 414-6210

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BEFORE THE SURFACE TRANSPORTATION BOARD

3/28/16

Consolidated Rail Corporation – Abandonment Exemption – In Hudson County, NJ) AB 167 (Sub-no. 1189X)

And related discontinuance proceedings AB 55 (Sub no. 686X)(CSX Transportation, Inc.) and AB 290 (Sub-no. 306X) (Norfolk Southern Railway Company)

Request for the Production of Documents
Interveners City et al to James Riffin

Pursuant to 49 C.F.R. 1114.30 and other applicable authority, interveners City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition hereby request that James Riffin ("Riffin") deliver copies of the documents requested below to counsel for City et al his address below on or before that date pursuant to reasonable terms for payment for costs of duplication and delivery agreed to in writing with CNJ. To save time and money, scans may be forwarded by email attachment to the email address provided in the signature block, provided originals will be available upon request.

Definitions. For purposes of this Request, document shall mean any writing, notation, or record, regardless of form, and including but limited to both electronic and non-electronic media, including emails, diaries, business records, and all documents maintained, retained, authored, copied on, or received by consultants, officers, employees, negotiators, board members,

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attorneys otherwise working for or on behalf of any party (including without limitation railroad, corporation, limited liability corporation, or individual) who has filed a pleading in AB 167-1189X.

Harsimus Branch shall mean any portion of the line of railroad between CP Waldo and Marin Boulevard in Jersey City transferred to Conrail as line code 1420, which line of railroad is the subject of the abandonment proceeding bearing STB docket AB 167 (Sub-no. 1189X).

"The LLCs" shall mean one, more or all of 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Coles Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, 446 Newark Avenue, LLC, and NZ Funding, LLC.

Additional instructions. If Riffin claims privilege against disclosure of one or more documents, such as an attorney client privilege, then please identify the document by providing its author, the persons to whom it was directed, the persons who received copies of it, its date, its basic subject matter, the document request to which it is responsive, and the basis for the claim of privilege.

City et al request a response as soon as reasonably practicable, and no later than Tuesday, April 19, 2016.

These requests are continuing. If the recipient becomes aware of additional responsive material after making his response to these requests, that responsive material must be made available to City et al as provided above within three (3) business days of Riffin's receipt of the additional responsive material.

Document requests. All the following documents are hereby requested pursuant to the foregoing definitions and conditions:

1. All documents received or possessed by Riffin or any representative of Riffin from the LLCs or any person acting on behalf of the LLCs [including but not limited to the manager of the LLCs (Mr. Steve Hyman) or attorneys for the LLCs], relating in any fashion to the Harsimus Branch, including but not limited to disposition of property in the Harsimus Branch and legal or regulatory disputes concerning the Harsimus Branch, or relating to AB 167 (Sub-no. 1189X).

2. All documents (not otherwise provided pursuant to doc. Req. 1) sent or received by Riffin or on his behalf to or from (a) the LLCs (or any officer, employee, attorney or representative thereof) or (b) Consolidated Rail Corporation (or any officer, employee, attorney, or representative thereof) relating to the Harsimus Branch, other than legal pleadings filed with the Surface Transportation Board.

3. All documents relating to Riffin's financial responsibility for purposes of making an "offer of financial assistance" in AB 167 (Sub-no. 1189X), including applications for loans or any line of credit, or solicitations for co-investors.

4. All petitions (including amendments thereto) in bankruptcy proceedings and all final orders in bankruptcy proceedings of James Riffin which orders involve the discharge or partial discharge of debts owed by said Riffin, including but not limited to petitions and orders in bankruptcy proceedings referenced by the Surface Transportation Board in its Decision served March 24, 2016 in Finance Docket 35873 at p. 2 footnote 2.

Respectfully submitted,

/s/

Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
206-546-1936
Fax: -3739
Email: c.montange@frontier.com
for Interveners City et al

Certificate of Service

I hereby certify service on 28 March 2016 of these document requests by email attachment addressed to jimriffin@yahoo.com and by US Mail, postage pre-paid, Express (next day delivery), to James Riffin, P.O. Box 4044, Timonium, MD 20094.

/s/

Charles H. Montange

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Before the
Surface Transportation Board

4/29/16

STB DOCKET NO. AB-167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-55 (Sub-No. 686X)

CSX TRANSPORTATION, INC. – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

JAMES RIFFIN'S REPLY TO JERSEY CITY'S, ET. AL.'S

MARCH 28, 2016 REQUEST FOR DOCUMENTS

James Riffin ("**Riffin**") herewith replies to Jersey City's, et. al.'s, March 28, 2016 Request for Documents.

1. **Request:** "All documents received or possessed by Riffin or any representative of Riffin from the LLCs or any person acting on behalf of the LLCs [including but not limited to the manager of the LLCs (Mr. Steve Hyman) or attorneys for the LLCs], relating in any fashion to the Harsimus Branch, including but not limited to disposition of property in the Harsimus Branch and legal or regulatory disputes concerning the Harsimus Branch, or relating to AB 167 (Sub-No. 1189X)."

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Reply: Riffin has not received, nor is he in possession of, any "documents" from the LLCs, Mr. Steve Hyman or Daniel Horgan, other than a 'request for documents' from Mr. Horgan. [Which request for documents Riffin declined to provide.] Riffin does not routinely receive, nor send, e-mails. Any e-mails Riffin receives are looked at (if from someone Riffin knows), then discarded. (Riffin's computer is not connected to the Internet. Riffin does not have Internet service at his house. To use the Internet, Riffin must go to a library, or to a McDonalds, for Internet service. Riffin only looks at his e-mail account if and when someone telephones Riffin and tells Riffin to look at his e-mail account.)

The only 'disposition of property' discussions Riffin has had with Mr. Hyman, have been to advocate that (A) Mr. Hyman should have filed to Acquire and Operate the Embankment portion of the Harsimus (which request was summarily rejected by Mr. Horgan), (B) Mr. Hyman should support Riffin's efforts to acquire the Harsimus via the OFA process (which Mr. Horgan has summarily rejected), and (C) that Mr. Hyman, Conrail and Jersey City should reach a settlement agreement wherein Conrail gives Mr. Hyman a sum of money, and the property west and north of Newark Avenue, Mr. Hyman grants Jersey City the use of three Embankment Tops, to be used for 'parks,' and Mr. Hyman creates a 30-foot wide by 30-foot high easement for 'rail / trail' purposes and Jersey City grants to Mr. Hyman development rights on the three remaining Embankment parcels, and on Conrail's parcel west and north of Newark Avenue. To date, Conrail has not indicated that it has any desire to reach a settlement with Mr. Hyman; nor has Jersey City.

2. **Request:** "All documents (not otherwise provided pursuant to doc. Req. 1) sent or received by Riffin or on his behalf to or from (a) the LLCs (or any officer, employee, attorney or representative thereof) or (b) Consolidated Rail Corporation (or any officer, employee, attorney or representative thereof) relating to the Harsimus Branch, other than legal pleadings filed with the Surface Transportation Board."

Reply: The only 'documents' that Riffin has sent to Mr. Hyman, Mr. Horgan or to Robert Jenkins, other than copies of Riffin's STB pleadings, were Confidential 'Suggested Settlement Terms.' Being Confidential, they are privileged, and are not subject to a Document Request. They also were summarily rejected.

3. **Request:** "All documents relating to Riffin's financial responsibility for purposes of making an 'offer of financial assistance' in AB 167 (Sub-no. 1189X), including applications for loans or any line of credit, or solicitations for co-investors."

Reply: All such documents are confidential, privileged and are not subject to a document request. In addition, any such 'financial responsibility' documents are not relevant, nor material at this point in time, since no OFA process has begun. As the STB stated in AB 1071 (served December 12, 2012):

> "It would be inappropriate for the Board, in effect, to rule formally on the sufficiency of Riffin's evidence in the abstract, before Riffin's OFA, if any, has been filed. The Board notes that it is the OFA offeror's oblibation to provide accurate information sufficient to show, **when the offer is filed**, that the offeror has or will have the means to carry out its offer." Bold added.

In the event that Riffin does file an OFA at some time in the future, Riffin will provide a copy of his then current Personal Financial Statement.

4. **Request:** "All petitions (including amendments thereto) in bankruptcy proceedings and all final orders in bankruptcy proceedings of James Riffin which orders involve the discharge or partial discharge of debts owed by said Riffin, including but not limited to petitions and orders in bankruptcy proceedings referenced by the Surface Transportation Board in its Decision served March 24, 2016 in Finance Docket 35873 at p. 2 footnote 2."

Reply: All such petitions and final orders are public documents, and may be obtained from the bankruptcy court via PACER. Such petitions and final orders are irrelevant and immaterial to the AB 167 / 1189X proceeding, since they were filed / rendered some five plus years ago.

Respectfully,

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

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Before the
Surface Transportation Board

ENTERED
Office of Proceedings
May 3, 2016
Part of
Public Record

JR - 12

5/3/16

STB DOCKET NO. AB-167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-55 (Sub-No. 686X)

CSX TRANSPORTATION, INC. – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

JAMES RIFFIN'S MOTION TO STRIKE THE CITY'S, ET. AL'S MAY 2, 2016 MOTION TO COMPEL RIFFIN TO RESPOND TO THE CITY'S, ET. AL.'S MARCH 28, 2016 DISCOVERY REQUEST

1. Comes now James Riffin, who herewith files his Motion to Strike the Motion to Compel that was filed by Charles Montange, counsel for the City of Jersey City, the Rails to Trails Conservancy, and the Pennsylvaia Railroad Harsimus Stem Embankment Preservation Coalition (collectively "**Montange**"), and in support hereof states:

2. 49 CFR 1104.8 states that the Surface Transportation Board ("**STB**") "may order that any redundant, irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document."

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3. Riffin argues that the entirety of Montange's May 2, 2016 Motion to Compel ("**Motion to Compel**") should be stricken, for the entirety of the Motion to Compel is "redundant, irrelevant, immaterial, impertinent, or scandalous," and was filed for "improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." FRCP Rule 11(b)(1).

4. In a decision served on **May 22, 2015**, at p. 8, the STB admonished the parties **not to file** any 'unnecessary' pleadings.

5. Montange has filed two 'unnecessary' pleadings so far in 2016: A premature Petition for Review, and the current Motion to Compel.

6. The Petition for Review clearly was 'frivolous:'

A. Montange sought review of the STB's **November 2, 2015** decision which stated, at pp. 3-4, that if Montange files an Offer of Financial Assistance ("**OFA**") at some future date (if and when the STB permits OFAs to be filed), then Montange's OFA must address the four criteria set out in the STB's **May 26, 2009** decision at p. 2-3. (Shipper support; feasibility; profitability; community support.)

B. The STB's **November 2, 2015** order **was not** a 'final order.' (It did not conclude this proceeding.)

C. Montange failed to offer **any argument** to justify filing his Petition for Review of an interlocutory order.

D. Riffin argues that it was Montange's **failure to offer any argument** in support of his Petition for Review of an interlocutory order, that caused his Petition for Review to become a frivolous pleading. (Patently meritless, no colorable claim, no *reasonable basis* for believing that the claims would generate an issue of fact for the fact finder, not an innovative or tenuous legal theory that was not embraced by the court.)

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E. Montange's Petition for Review caused both the STB, and the LLCs, considerable expense, all for naught.

7. Riffin elected not to enter that fray. Riffin has assiduously tried not to attack any of Mr. Montange's filings (other than when Montange attacks any of Riffin's filings).

8. The Motion to Compel was also clearly frivolous:

A. Montange e-mailed his discovery request to Riffin on March 28, 2016. Montange also sent a hard copy to Riffin via first class mail, which arrived April 2, 2016.

B. Montange quite arbitrarily picked April 19, 2016, as the date by which he wanted a response.

C. On March 30, 2016, Riffin acknowledged receipt of Montange's discovery request. Riffin cautioned Montange that Daniel Horgan, counsel for the LLCs ("**Horgan**"), could seek similar discovery from Montange, if Montange persisted with his discovery request. Riffin further indicated that he would formally reply by Montange's April 19, 2016 date.

D. Riffin totally forgot about Montange's discovery request. (Such is what happens when one gets past 70, and Riffin is past 70.)

E. On April 20, 2016, Montange sent Riffin an e-mail, **trying** to remind Riffin that Riffin's response was due on April 19, 2016. On April 26, Montange sent Riffin another e-mail, **trying** to remind Riffin that Riffin's response was overdue. Riffin actually saw these two e-mails on **April 28, 2016**. (Eric Strohmeyer telephoned Riffin on April 28, 2016, and told Riffin that Montange was getting agitated since Montange had not received Riffin's response. That was when Riffin remembered about Montange's discovery request.)

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F. Riffin has told the world, in multiple filings, that Riffin does not have internet service at his residence, and that Riffin only looks at his e-mail if someone telephones Riffin and tells Riffin that he needs to look at his e-mail. (Riffin does not have, nor does he ever want to have, a 'Smart Phone,' which is capable of sending and receiving e-mail, or a telephone which is capable of 'texting,' or engaging in any other form of 'social media.')

G. On Thursday, April 28, 2016, at 2:11 pm EDT, Riffin e-mailed Montange. Riffin thanked Montange for reminding him about Montange's discovery request, and indicated that Riffin would try to respond by Friday, April 29, 2016.

H. Riffin typed his discovery request. After finishing his response, Riffin remembered that Montange had complained to the STB about Riffin e-mailing Riffin's pleadings to Montange. See Montange's **September 14, 2015** Motion to Strike at pp. 2-3, where Montange stated:

> "City et al **have never** consented to email **service** on City et al by Riffin or any other party to this proceeding. To the contrary, City et al **have requested service of paper copies**." Bold aded.

Having remembered how adamant Montange was about getting paper copies via first class mail, Riffin placed his response into an envelope, put postage on the envelope, then placed the envelope into a mail box.

I. On the following Monday, May 2, 2016, at about 4 pm, Riffin had occasion to visit a local library. While there, he took the time to look at his e-mail. He noted he had an e-mail from Mr. Strohmeyer, which had an attachment. The attachment was a copy of Mr. Strohmeyer's pleading supporting Montange's Motion to Compel. There was no e-mail copy of Montange's Motion to Compel. Montange's Motion to Compel was not posted on the STB's web site. So Riffin called Mr. Strohmeyer, and asked Mr. Strohmeyer to read to Riffin, Montange's Motion to Compel, which he did.

9. Since Riffin in fact mailed his response on **April 29, 2016** (when he placed his envelope addressed to Montange into a USPS mail box), the very same day that he said he would send it, there is **no basis whatsoever** for Montange's **May 2, 2016** Motion to Compel.

10. The Motion to Compel asks the STB to compel Riffin to respond. **Riffin responded BEFORE the Motion to Compel was even filed.** The requested 'remedy' (compel Riffin to respond), is not a remedy that the STB can provide. In a court, that would be automatic grounds to dismiss a complaint. It likewise should be automatic grounds to dismiss Montange's Motion to Compel.

11. If Montange feels that Riffin's response was not to Montange's satisfaction, then Montange could, if he so desired, file a new Motion to Compel, detailing precisely why he is entitled to more information than Riffin has provided.

CONFIDENTIAL INFORMATION

12. Some time ago, Pace Glass executed a Verified Statement wherein Pace Glass indicated that it desired rail service in Jersey City. The Pace Glass Verified Statement was submitted to the STB under seal. A protective order was issued. Horgan attempted to lift the protective order. The STB held that the name of the shipper, and the quantity of material the shipper desired to ship, were 'confidential,' and should not / could not be disclosed, or used, in any other proceedings, unless submitted under seal.

13. Riffin participated in Norfolk Southern's ("**NS**") FD 35873 proceeding. (NS sought, and received, authority to acquire 282 miles of Delaware and Hudson line.) Riffin filed, in the Third Circuit, a Petition for Review of the STB's FD 35873 decision. The STB challenged Riffin's right to file his Petition for Review in the Third Circuit. The STB argued that Riffin had no 'business interests' in the Third Circuit.

14. Riffin responded, by detailing his 'business interests' in New Jersey and in Pennsylvania. In his pleading, Riffin discussed Pace Glass' desire for freight rail service.

15. Riffin attempted to submit his pleading 'under seal.' His pleading was clearly marked: "Confidential." Riffin asked for a protective order, to keep his pleading 'sealed.'

16. On **February 4, 2016**, the Third Circuit issued its Order, wherein it:

A. Transferred Riffin's Petition for Review to the D.C. Circuit; and

B. **Denied** Riffin's request for a protective order, holding that the information in Riffin's confidential pleading, **did not meet** the criteria for 'confidential' material.

17. On Tuesday, **March 29**, 2016, at 12:22 pm (a bit past noon), Riffin **filed** a Petition for Writ of Certiorari in the Supreme Court, asking the Supreme Court to review the Third Circuit's order transferring Riffin's Petition for Review to the D.C. Circuit. Riffin's Petition was **docketed** on **March 30, 2016.**

18. Included in the Appendix of Riffin's Petition for Certiorari, was a copy of Riffin's Confidential Third Circuit pleading.

19. Riffin sent a courtesy copy of his Petition for Certiorari to Charles Montange.

20. Charles Montange photocopied several pages from Riffin's Petition for Certiorari, then appended those pages to his Motion to Compel.

21. Charles Montange attempted to redact Pace Glass' name from what he submitted.

22. Charles Montange missed one: In paragraph 12, on p. 77 of Riffin's Petition for Certiorari.

23. Riffin argues: The Third Circuit ruled that the name of the shipper, Pace Glass, **was not confidential information**. That ruling trumps the STB's ruling that the name of the shipper, was confidential information.

24. There is a doctrine called the "law of the case." That doctrine states that if a court rules on an issue which was not raised as an issue, and which no party asked the court to address, that ruling will apply if the non-issue issue becomes an issue at a later time.

25. So while no one has asked a U.S. Circuit Court of Appeals to address the issue of whether Pace Glass' name should have been kept confidential, the Third Circuit has addressed the issue, and issued its ruling on this issue: Pace Glass' name is not 'confidential.'

26. And then Charles Montange discloses Pace Glass' name in a very public pleading placed on the STB's web site.

27. Up until the time Charles Montange put Pace Glass' name on the STB's web site, it was highly unlikely that anyone would have known that Pace Glass was the putative shipper. (Other than those who have a copy of the Pace Glass Verified Statement. Riffin knows about Pace Glass, for Riffin actually met with officials of Pace Glass regarding their desire for freight rail service.)

28. The other thing that Montange attempted to redact, was the Net Liquidation Value ascribed to the fee simple real property underlying the Harsimus Branch that Conrail still retains. Conrail, in a **June 1, 2015** filing, disclosed that the average price for the real property that it held in fee, was a bit less than **$18,000 an acre**, ($17,835.82), see p. 5, that the **minimum amount** of fee simple real property that would need to be conveyed in an OFA proceeding would be **1.24 acres**, see p. 5, that the total net liquidation value of that portion of Conrail's fee simple real property that was subject to the OFA process, was **$22,109.51**, and that the Net Liquidation Value for the easement impressed on the Embankment Properties, was Zero Dollars. See p. 5.

29. The Net Liquidation Value information is decidedly not confidential. (Nor should it be.)

30. WHEREFORE, for the foregoing reasons, Riffin would pray that the STB **strike** Montange's May 2, 2016 Motion to Compel, 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 4th Day of May, 2016, a copy of the foregoing Motion to Strike was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid.

240655
240656
240657

ENTERED
Office of Proceedings
May 12, 2016
Part of
Public Record

Before the
Surface Transportation Board

JR - 13

5/12/16

STB DOCKET NO. AB-167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-55 (Sub-No. 686X)

CSX TRANSPORTATION, INC. – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

JAMES RIFFIN'S REPLY TO THE CITY'S, ET. AL'S MAY 2, 2016 MOTION TO COMPEL RIFFIN TO RESPOND TO THE CITY'S, ET. AL.'S MARCH 28, 2016 DISCOVERY REQUEST

1. Comes now James Riffin, who herewith files his Reply to the Motion to Compel that was filed by Charles Montange, counsel for the City of Jersey City, the Rails to Trails Conservancy, and the Pennsylvaia Railroad Harsimus Stem Embankment Preservation Coalition (collectively "**Montange**"), and in reply states:

2. Riffin incorporates by reference herein, his arguments in his May 3, 2016 Motion to Strike Montange's Motion to Compel.

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3. In a decision served on May 22, 2015, at p. 8, the Surface Transportation Board ("**STB**") admonished the parties in this proceeding:

> "The Board recognizes the lengthy history of this proceeding and the complex and controversial issues that have been presented. That is why the Board is permitting a reasonable amount of discovery in this proceeding, notwithstanding the normal practice of limiting discovery in abandonment proceedings. We note, however, that **the record has become voluminous and, in our opinion, needlessly so.** Although the Board cannot limit the filings submitted by the parties in the future, **we expect the parties to exercise sound judgment when weighing the need for future motions or objections.**" Bold added.

4. In the May 22, 2015 decision, at p. 4, the STB also stated the rules regarding discovery in an abandonment proceeding (which this is):

> "In Board proceedings, parties generally are entitled to discovery "regarding any matter, not privileged, **which is relevant to the subject matter involved in a proceeding**." 49 C.F.R. §1114.21(a)(1). Further, it "is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Id., § 1114.21(a)(2). **However, discovery is typically disfavored in abandonment cases. Thus, parties seeking discovery in abandonments must demonstrate relevance and need.** *Cent. R.R. of Ind. – Aban. Exemption – in Dearborn, Decatur, Franklin, Ripley, & Shelby Cntys., Ind. (Dearborn).* AB 459 (Sub. No. 2X) (STB served Apr. 1, 1998.)" Bold added.

5. In this proceeding, "the subject matter involved in a proceeding" is:

A. Should Conrail be authorized to abandon its Harsimus Branch?

B. Did Conrail or the LLCs "intend[] to avoid the requirements of section 306108 of the NHPA." November 2, 2015 decision at 5.

C. Should the Offer of Financial Assistance ("**OFA**") process be permitted to move forward?

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6. As for the first issue (should abandonment be authorized), there is a consensus that Conrail should be granted authority to abandon the Harsimus Branch. [Conrail has established the criteria in 49 CFR 1152.50. (There has been no traffic on the Line for the 2-year period prior to 2009, when Conrail filed its Notice of Exemption ("**NOE**").]

7. While Montange has argued that Conrail and the LLCs intended to avoid the requirements of section 306108 of the NHPA, to date, the STB has not ruled on this issue.

8. In the May 22, 2015 decision, at p. 6, the STB did rule that the valuation information specified in 49 CFR 1152.27(a) and (d), must be provided. Conrail dutifully provided, and filed with the STB, valuation information on **June 1, 2015.**

9. As for permitting the OFA process to move forward, the STB, at p. 6 of its May 22, 2015 decision, stated:

> "Conrail's claim that the City Parties will be unable to submit a successful OFA may ultimately prove correct, but the Board's determination of whether to grant a request for an OFA **occurs after** the valuation information has been provided and **an OFA is filed**. Thus, the Board typically **does not consider or address the factors necessary to determine whether an OFA might be granted until the offeror** receives the valuation information in 49 C.F.R. §§ 1152.27(a) and (d) (which is in the abandoning railroad's possession) and **files an OFA**. Accordingly, we will grant the City Parties' motion to compel Conrail to produce the valuation information described in 49 C.F.R. §§ (a), (d) limited to the operation of and property comprising the Harsimus Branch only. ... Here, because of the unique circumstances of this case, the Board will decide whether to make the notice of exemption effective and will set a due date for OFAs in a future decision."

10. In *Stewartstown Railroad Company – Adverse Abandonment – In York County, PA*, AB 1071, Riffin filed a motion asking the STB to determine whether Riffin would have to "submit a more recent personal financial statement for his contemplated OFA." In a December 12, 2012 decision denying Riffin's motion, the STB stated:

> "It would be inappropriate for the Board, in effect, to rule formally on the sufficiency of Riffin's evidence in the abstract, **before Riffin's OFA, if any, has been filed.** The

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Board notes that it is the OFA offeror's obligation to provide accurate information sufficient to show, **when the offer is filed,** that the offeror has or will have the means to carry out its offer."

11. Presently, this proceeding is in a 'holding pattern.' The next thing that has to occur, is a public meeting, whereat interested person may submit comments concerning the reach of the NHPA: Does the STB have the authority to impose conditions that would condition how a former railroad property may be used after abandonment?

12. Rumor has it, that such a public meeting is not likely to be scheduled anytime soon. The STB did not get all of the funds that it last requested from Congress. Consequently, the STB must 'find' sufficient funds to pay the expenses of such a public meeting.

13. Proceedings, such as this Motion to Compel proceeding, consume what limited resources the STB has available. Which is why the STB admonished the parties to limit their filings in this proceeding.

14. Which brings Riffin to his first comment in reply:

Montange's Motion to Compel was totally unnecessary.

15. Montange acknowledged, at p. 5 of his Motion to Compel:

"There are no current filing deadlines set."

16. The only 'deadlines,' are those arbitrarily created by, and made by, Mr. Montange. It would appear that Mr. Montange scheduled his yearly trek to Europe for the month of May. Just why he wanted a response from Riffin just a few days before he decided to take a month's vacation, is unexplained, and perplexing. Did he intend to mull over Riffin's response while trekking in Europe? I would expect one to concentrate on the sights in Europe, while in Europe, as opposed to thinking about Riffin while vacationing in Europe.

17. Montange e-mailed his discovery request to Riffin on March 28, 2016. Montange also sent a hard copy to Riffin via first class mail, which arrived April 2, 2016. Montange **quite arbitrarily** picked **April 19, 2016**, as the date by which he wanted a response. (He probably picked that date for the sole reason that he knew that he was scheduled to leave for his yearly European trek on May 3, 2016.) On March 30, 2016, Riffin acknowledged receipt of Montange's discovery request. Riffin cautioned Montange that Daniel Horgan, counsel for the LLCs ("**Horgan**"), could seek similar discovery from Montange, if Montange persisted with his discovery request. Riffin further indicated that he would formally reply by Montange's April 19, 2016 date. Riffin totally forgot about Montange's discovery request. (Such is what happens when one gets past 70, and Riffin is past 70.)

18. On April 20, 2016, Montange sent Riffin an e-mail, **trying** to remind Riffin that Riffin's response was due on April 19, 2016. On April 26, Montange sent Riffin another e-mail, **trying** to remind Riffin that Riffin's response was overdue. Riffin actually saw these two e-mails on **April 28, 2016**. (Eric Strohmeyer telephoned Riffin on April 28, 2016, and told Riffin that Montange was getting agitated since Montange had not received Riffin's response. That was when Riffin remembered about Montange's discovery request.)

19. Riffin has told the world, in multiple filings, that Riffin does not have internet service at his residence, and that Riffin only looks at his e-mail if someone telephones Riffin and tells Riffin that he needs to look at his e-mail. (Riffin does not have, nor does he ever want to have, a 'Smart Phone,' which is capable of sending and receiving e-mail, or a telephone which is capable of 'texting,' or engaging in any other form of 'social media.')

20. On Thursday, April 28, 2016, at 2:11 pm EDT, Riffin e-mailed Montange. Riffin thanked Montange for reminding him about Montange's discovery request, and indicated that Riffin would try to respond by Friday, April 29, 2016.

21. Riffin typed his discovery request. After finishing his response, Riffin remembered that Montange had complained to the STB about Riffin e-mailing Riffin's pleadings to Montange.

See Montange's **September 14, 2015** Motion to Strike at pp. 2-3, where Montange stated:

> "City et al **have never** consented to email **service** on City et al by Riffin or any other party to this proceeding. To the contrary, City et al **have requested service of paper copies**." Bold aded.

22. Having remembered how adamant Montange was about getting paper copies via first class mail, Riffin placed his response into an envelope, put postage on the envelope, and then, as promised, placed, on **Friday night, April 29, 2016,** the envelope into a mail box.

23. On the following Monday, May 2, 2016, at about 4 pm, Riffin had occasion to visit a local library. While there, he took the time to look at his e-mail. He noted that he had an e-mail from Mr. Strohmeyer, which had an attachment. The attachment was a copy of Mr. Strohmeyer's pleading supporting Montange's Motion to Compel. There was no e-mail copy of Montange's Motion to Compel. Montange's Motion to Compel was not posted on the STB's web site. So Riffin called Mr. Strohmeyer, and asked Mr. Strohmeyer to read to Riffin, Montange's Motion to Compel, which he did.

24. Since Riffin in fact mailed his response on **April 29, 2016** (when he placed his envelope addressed to Montange into a USPS mail box), the very same day that he said he would send it, there is **no basis whatsoever** for Montange's **May 2, 2016** Motion to Compel.

25. Had Mr. Montange not been compulsive, and had he waited a few more hours before he filed his Motion to Compel, he would have realized that Riffin's response was already enroute. (Actually, Riffin believes that Mr. Montange had actual knowledge that Riffin's response was enroute: Riffin spoke with Mr. Strohmeyer on Wednesday, April 27, 2016, at 5:08 pm, and told Mr. Strohmeyer that Riffin would be sending his response to Montange on Friday, April 29, 2016.)

26. More importantly, had Mr. Montange **simply picked up his telephone and called** Riffin, anytime before he filed his Motion to Compel, he would have learned that Riffin's

response was enroute.

27. But, it would appear to Riffin, that Mr. Montange was 'hell-bent' (*Informal.* Stubbornly or recklessly determined), on filing his Motion to Compel. Perhaps hoping that the STB would grant the remedy that he actually desires: Barring Riffin from participating in the OFA process, if and when it ever occurs.

28. Riffin's theory regarding Mr. Montange's real motivation in filing his Motion to Compel, is supported by what appears to have transpired a week or so **before** the Motion to Compel was filed: It appears that Mr. Montange actually wrote his Motion to Compel a week or so before he actually filed it. Riffin deduces this since Eric Strtohmeyer filed a pleading supporting Mr. Montange's Motion to Compel, which was docketed on the STB's web site several hours **before** Mr. Montange' Motion to Compel was docketed. And since it would be difficult to write a pleading supporting a Motion to Compel without first **actually reading** the Motion to Compel, it would appear that Mr. Montange's Motion to Compel was actually written a week before it was filed (so that Mr. Strohmeyer had sufficient time to receive, read, then write his response).

29. The Motion to Compel asks the STB to compel Riffin to respond. **Riffin responded BEFORE the Motion to Compel was even filed.** The requested 'remedy' (compel Riffin to respond), is no longer a remedy that the STB can provide. In a court, that would be automatic grounds to dismiss a complaint. It likewise should be automatic grounds to dismiss Montange's Motion to Compel.

30. If Montange feels that Riffin's response was not to Montange's satisfaction, then Montange could, if he so desired, file a new Motion to Compel, detailing precisely why he is entitled to more information than Riffin has provided. However, Riffin would suggest that before Montange does file another Motion to Compel, he should review what discovery was granted, and more importantly, what discovery **was not** granted, in the STB's May 22, 2015 decision, to wit:

Not granted:

A. Documents regarding transactions between Conrail and the LLCs.

B. Conrail's policies regarding its real estate policies.

C. The names and addresses of Conrail's Board of Directors.

D. **All documents relating to the potential sale of the Harsimus for non-railroad uses.**

E. **All persons advising or recommending** actions Conrail or the **LLCs** should take.

F. All documents relating to the rail regulatory status, historic nature, or sale of the Harsimus

G. All documents showing Conrail's compliance with / objection to NJ's 1st right of refusal.

H. Documents regarding ownership of the LLCs.

I. Documents relating to agreements to toll any statute of limitations defenses.

J. Documents relating to the potential sale of any interests in the Embankment properties.

K. Documents sufficient to identify the names of persons advising Conrail, the LLCs, or Steve Hyman, regarding the Sale of the Harsimus.

L. Documents relating to the demolition of the Embankment properties.

M. Documents relating to offers to donate Embankment fill or stones.

N. Documents relating to any Joint Development agreements.

O. All **communications between CNJ Rail** / Eric Strohmeyer **and the LLCs**, or their agents.

P. All communications between Chicago Title and the LLCs.

Q. Documents relating to any potential claims by the LLCs against Conrail or attorneys.

31. Montange's Request No. 1 asks for copies of all communications **received** by Riffin from the LLCs, or their owners / agents. Montange's Request No. 2 asks for copies of all communications **sent** by Riffin to the LLCs, or their owners / agents. This request is quite similar to requests E, N and O in paragraph 30, above, which requests were **denied** by the STB as being overly broad, and not having any relevance to issues in this proceeding. Since similar requests were already denied, Montange should either refrain from seeking these requests, or come up with a really detailed, highly persuasive argument why he needs this information to address the issues **presently being considered** by the STB in this proceeding.

32. Montange's Request No. 3 asks for financial responsibility information from Riffin. As the STB made it clear in the May 22, 2015 decision, at p. 6, see ¶ 9 above, and in the *Stewartstown* case, see ¶ 10 above, financial responsibility questions / concerns **only become germane AFTER an OFA has been filed.** Since no OFA has been filed to date, and since the OFA process has been stayed until the Historic Preservation process has been completed,

> "It would be inappropriate for the Board, in effect, to rule formally on the sufficiency of Riffin's evidence in the abstract, **before Riffin's OFA, if any, has been filed.**" *Stewartstown, op. cit.*

33. As suggested in ¶ 31 above, Montange should consider withdrawing this request. No amount of argument or persuasion is likely to convince the STB to not follow its precedent.

34. Montange's Request No. 4, asks for copies of Riffin's bankruptcy filings. For the same reason stated in ¶ 32 above, this information is not germane at this time, and for the same reason stated in ¶ 33 above, Montange should consider withdrawing this request. In addition, per 49 CFR 1114.24, Riffin argues that since these bankruptcy filings are public records, Montange is obligated to obtain whatever documents he desires from the bankruptcy court.

RIFFIN'S REPLY TO OTHER COMMENTS MADE BY MONTANGE

35. In his Motion to Compel, Montange made a number of other comments, which Riffin will now address.

CONFIDENTIAL INFORMATION

36. Some time ago, Pace Glass executed a Verified Statement wherein Pace Glass indicated that it desired rail service in Jersey City. The Pace Glass Verified Statement was submitted to the STB under seal. A protective order was issued. Horgan attempted to lift the protective order. The STB held that the name of the shipper, and the quantity of material the shipper desired to ship, were 'confidential,' and should not / could not be disclosed, or used, in any other

proceedings, unless submitted under seal.

37. Riffin participated in Norfolk Southern's ("**NS**") FD 35873 proceeding. (NS sought, and received, authority to acquire 282 miles of Delaware and Hudson line.) Riffin filed, in the Third Circuit, a Petition for Review of the STB's FD 35873 decision. The STB challenged Riffin's right to file his Petition for Review in the Third Circuit. The STB argued that Riffin had no 'business interests' in the Third Circuit.

38. Riffin responded, by detailing his 'business interests' in New Jersey and in Pennsylvania. In his pleading, Riffin discussed Pace Glass' desire for freight rail service.

39. Riffin attempted to submit his pleading 'under seal.' His pleading was clearly marked: "Confidential." Riffin asked for a protective order, to keep his pleading 'sealed.'

40. On **February 4, 2016**, the Third Circuit issued its Order, wherein it:

A. Transferred Riffin's Petition for Review to the D.C. Circuit; and

B. **Denied** Riffin's request for a protective order, holding that the information in Riffin's confidential pleading, **did not meet** the criteria for 'confidential' material.

41. On Tuesday, **March 29**, 2016, at 12:22 pm (a bit past noon), Riffin **filed** a Petition for Writ of Certiorari in the Supreme Court, asking the Supreme Court to review the Third Circuit's order transferring Riffin's Petition for Review to the D.C. Circuit. Riffin's Petition was **docketed** on **March 30, 2016.**

42. Included in the Appendix of Riffin's Petition for Certiorari, was a copy of Riffin's Confidential Third Circuit pleading.

43. Riffin sent a courtesy copy of his Petition for Certiorari to Charles Montange.

44. Charles Montange photocopied several pages from Riffin's Petition for Certiorari, then appended those pages to his Motion to Compel.

45. Charles Montange attempted to redact Pace Glass' name from what he submitted.

46. Charles Montange missed one: In paragraph 12, on p. 77 of Riffin's Petition for Certiorari.

47. Riffin argues: The Third Circuit ruled that the name of the shipper, Pace Glass, **was not confidential information**. That ruling trumps the STB's ruling that the name of the shipper, was confidential information.

48. There is a doctrine called the "law of the case." That doctrine states that if a court rules on an issue which was not raised as an issue, and which no party asked the court to address, that ruling will apply if the non-issue issue becomes an issue at a later time.

49. So while no one has asked a U.S. Circuit Court of Appeals to address the issue of whether Pace Glass' name should have been kept confidential, the Third Circuit has addressed the issue, and issued its ruling on this issue: Pace Glass' name is not 'confidential.'

50. And then Charles Montange discloses Pace Glass' name in a very public pleading placed on the STB's web site.

51. Up until the time Charles Montange put Pace Glass' name on the STB's web site, it was highly unlikely that anyone would have known that Pace Glass was the putative shipper. (Other than those who have a copy of the Pace Glass Verified Statement. Riffin knows about Pace Glass, for Riffin actually met with officials of Pace Glass regarding their desire for freight rail service.)

52. The other thing that Montange attempted to redact, was the Net Liquidation Value ascribed to the fee simple real property underlying the Harsimus Branch that Conrail still retains. Conrail, in a **June 1, 2015** filing, disclosed that the average price for the real property that it held in fee, was a bit less than **$18,000 an acre**, ($17,835.82), see p. 5, that the **minimum amount** of fee simple real property that would need to be conveyed in an OFA proceeding would be **1.24 acres**, see p. 5, that the total net liquidation value of that portion of Conrail's fee simple real property that was subject to the OFA process, was **$22,109.51**, and that the Net Liquidation Value for the easement impressed on the Embankment Properties, was Zero Dollars. See p. 5.

53. The Net Liquidation Value information is decidedly not confidential. (Nor should it be.)

BARRING RIFFIN FROM THE OFA PROCESS

54. Montange's real goal appears to be to bar Riffin from participating in the OFA process. The obvious reason for such a desire, is to eliminate the 'competition.' If more than one OFA is filed, Conrail, at its **sole option and discretion,** may decide with whom it will negotiate. See 49 U.S.C. 10904 (f)(3) and see 49 CFR 1152.27 (l [L])(1). Only if Conrail does not reach an agreement with the first offeror, is the second offeror afforded an opportunity to negotiate an OFA with Conrail. See 49 CFR 1152.27 (l [L])(2)(i). And since the Memorandum of Understanding between the LLCs and Conrail states that Conrail must do whatever it can to perfect the LLCs' title, it would be expected that Conrail will negotiate with whichever OFA offeror that the LLCs demand that Conrail negotiate with. Since it presently is unknown if more than one OFA will be filed, or if any will be filed for that matter, which OFA offeror the LLCs will prefer (if there are more than one), is presently unknown. However, Montange and Riffin have made it very clear that both plan to file an OFA. And given the animosity between the LLCs and Montange, one would not expect the LLCs to ask Conrail to pick Jersey City's OFA, as opposed to Riffin's OFA. So it is very understandable why Montange would like to eliminate Riffin from the running. And eliminating Riffin from the running appears to be the only way that Jersey City's OFA offer is likely to be accepted.

55. Sort of like picking the president / supreme leader of North Korea, Syria or Egypt. You get a choice of one. [Sort of like picking what color you wanted your Ford Model A to be: You had a choice of Black or Black.]

EVADING THE OFA PROCESS / THE STB'S JURISDICTION

56. Montange argues that he needs the requested information in order to 'prove' that Conrail / the LLCs are attempting to evade (A) the STB's jurisdiction and (B) the OFA process.

57. The STB's jurisdiction was questioned. It was held that the Harsimus branch, and in particular, the right-of-way over the Embankment Properties, was conveyed to Conrail as a line of railroad (as Line Code 1420). That issue has been decided, and is no longer an issue:

> "Both the Board and the courts have already found that the Harsimus Branch is a rail line subject to the Board's abandonment authority, so the issue as to the status of the relevant property has been addressed and resolved. ... Accordingly, the requests do not seek information that is relevant to this ongoing proceeding, and will therefore be denied." May 22, 2015 at 6.

58. 'Evading' the OFA process is fairly easy to do. [And is quite lawful / and fairly commonly done. See for example AB 167 (Sub. No. 1190X), also a Jersey City abandonment proceeding.] Conrail and the LLCs could have asked the STB to exempt this proceeding from the OFA process. They chose not to.

59. What is interesting to Riffin, is the 1190X right-of-way is a far more ideal location to provide freight rail service. If Jersey City truly wanted to provide freight rail service, why did it not try to obtain the 1190X site, like Riffin did? While Jersey City, to date, has not disclosed from whom it "continues to receive inquiry from shippers in this regard," Motion to Compel at p. 6, rumor has it that the presently unknown other shippers are aggregate companies located in Jersey City. The same shippers that expressed a strong interest in getting rail service at the 1190X site.

Deprive the public of meaningful comment under section 106 of the NHPA

60. Montange argues that the information he requests from Riffin will somehow help prevent the public from being deprived "of meaningful comment under section 106 of the NHPA." Just how the information requested from Riffin will help prevent the public from being deprived "of meaningful comment under section 106 of the NHPA," is unexplained. Since this proceeding has been stayed for the sole purpose of providing the public with "meaningful comment under section 106 of the NHPA," Riffin argues that the information requested from Riffin cannot possibly be used to ensure that the public is provided with "meaningful comment under section 106 of the NHPA,"

ANTICIPATORY DEMOLITION OF THE EMBANKMENT PROPERTIES

61. Montange further argued that Riffin's information is needed to prevent "anticipatory demolition of the Embankment Properties." Motion to Compel at 4. To Riffin's knowledge, no one is presently attempting to demolish any of the Embankment Properties. Certainly not Riffin. So if no one is actually **trying** to demolish the Embankment Properties, how could Riffin's information even remotely prevent a 'none event,' from becoming an 'event?'

ABUSING THE AGENCY'S PROCESSES

62. Montange further argues that Riffin's information "is germane to ... efforts by the LLCs and / or Conrail [via] ... coordination between Riffin, the LLCs and / or Conrail to ... abuse the agency's processes." Motion to Compel at 4.

63. Boy, is that ever a stretch! To date, there has been no "coordination" between Riffin and either Conrail or the LLCs. Just the opposite. Conrail and the LLCs have publicly stated in filings before the STB, that they are in no wise 'working with,' or in agreement with, anything that Riffin has postulated.

64. However, the comment does raise the issue of whether **Montange** is attempting to "abuse the agency's processes." When this litigation first began, in 2006, Jersey City made it known that it desired to acquire the Embankment Properties for "park" and "trail" purposes. A possible commuter rail extension was also postulated. Nothing was said about **freight** rail uses.

65. Jersey City obtained $7 million via a bond sale. The bond prospectus said the money would be used to 'acquire park / green space.' No mention was made in the bond prospectus that the money might be used to pay for the cost of "freight rail infrastructure."

66. The issue of whether it is appropriate / lawful, to use the bond proceeds to acquire the Embankment Properties / pay for proposed freight rail infrastructure, is currently before a Hudson County, NJ court. As is the issue of whether the bond proceeds can be lawfully used to pay Charles Montange's legal fees.

67. 49 CFR 1152.27(c)(1)(ii)(B) states that "governmental entities will be presumed to be financially responsible." However, in a decision served on April 8, 2011, in *Indiana Southwestern Railway Co. – Abandonment Exemption – In Posey and Vanderburgh Counties, IND,* AB 1065X, the STB held that the presumption of financial responsibility may be rebutted. Ultimately, because Poseyville did not "possess in its accounts sufficient **discretionary** funds to purchase the Lines at the price published in the town's OFA," the STB held that Poseyville was not 'financially responsible.' Bold added.

68. So the question comes down to this: Does Jersey City, [or Riffin], "possess in its accounts sufficient discretionary funds to purchase the Lines at the price published in the town's OFA?"

69. Since Conrail has stipulated to the STB that the minimum purchase price for that portion of the Harsimus Branch that lies between MP 0.0 (Chestnut Street) and MP 0.89 (West side of Marin Blvd) [the only portion of the Harsimus Branch that Jersey City has indicated that it desires to acquire] is **$22,109.51**, see pp. 3 and 5 of Conrail's June 1, 2015 Valuation filing, **no**

one should even remotely attempt to question whether Jersey City or Riffin could pay the minimum purchase price for acquiring that portion of the Harsimus that lies between MP 0.0 and MP 0.89. [Or even to the West side of the Hudson Bergen Light Rail Line, the point to which Riffin desires to acquire, since Conrail has stipulated that the Net Liquidation Value for the Easement between the West side of Marin Blvd and the West side of the Hudson Bergen Light Rail Line, is Zero Dollars.] [Riffin avers that he has more than $23,000 in instantly available funds. And if Charles Montange desires to actually see the money, if he comes to Baltimore, Riffin will show him the money.] Jersey City probably has more than $23,000 in its 'petty funds' account.

70. The answer to the question in ¶ 68 depends on the answer to three additional questions:

A. Does 'financial responsibility' include the cost "to arrange for operations for a period of two years?"

B. How extensive must the "operations for a period of two years" actually be? Some operations over a portion of the line acquired? Operations over the entirety of the line acquired?

C. Can Jersey City use its 'bond' money to pay for the cost of providing freight rail infrastructure?

FINANCIAL RESPONSIBILITY

71. Riffin argues:

A. 49 U.S.C. 10904 does not define the phrase "financially responsible person."

B. 49 CFR 1152.27 (c)(1)(ii)(B) defines the phrase "financially responsible person" to be:

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"(B) Demonstrate that the offeror is financially responsible, that is, that it has or within a reasonable time will have the financial resources to fulfill proposed contractual obligations;

C. 49 U.S.C. 10907 defines the phrase "financially responsible person" to be:

"(1) is capable of paying the constitutional minimum value of the railroad line proposed to be acquired; **and**
(2) is able to assure that adequate transportation will be provided over such line for a period of not less than **3 years**." Bold added.

D. Under *Chevron*, an agency may interpret an ambiguous statute, i.e. provide more detail, providing the additional detail is reasonable. Since 49 U.S.C. 10904 is ambiguous (while 49 U.S.C. 10907 is not ambiguous), the STB is permitted to further define the phrase "financially responsible person," which the STB did when it promulgated 49 CFR 1152.27(c)(1)(ii)(B). Unfortunately, the definition in the regulations is still somewhat ambiguous. For many years, the STB held that at the time an OFA is made, the only 'proposed contractual obligation' was the offeror's contractual offer to purchase the line for its Constitutional minimum value. And then Mr. Kemp tried to acquire a short segment of UP line. To prevent that, in the decision denying Mr. Kemp's OFA, the STB added an additional requirement: Sufficient funds to operate the line for two years.

Riffin has several problems with the 'operate for two years' condition:

a. At the time an OFA is filed, the only 'contract' that exists, and the only "proposed contractual obligations," is the one to purchase the line.

b. In a proceeding such as this one, all of the track infrastructure was removed many decades ago. Riffin argues that it would be unreasonable, and in violation of one's Constitutional Right to **Equal** Protection of the Law, to require an OFA offeror to put all of the missing track infrastructure back in place, within two years, particularly since the **existing carrier** would only be

required to put any of the track infrastructure back in place, **only if** a 'reasonable demand for service' was presented to Conrail. And in this proceeding, no 'reasonable demand for service' has been presented, to date. [Riffin argues that a 'Verified Statement' from a potential shipper, which only states that the potential shipper 'desires' rail service, as opposed to **committing** to ship X number of rail cars per year, for a specified number of years, at a determined rail rate, to determined destination points, is decidedly **not** a 'reasonable demand for service.']

c. In this proceeding, Conrail (unlawfully) removed the switch which connected the Harsimus Branch to the National Rail System, some time **after** notices of intent to file an OFA were filed. 'Financial Responsibility' is determined **before** a Petition to Set Terms and Conditions is filed. Until the STB sets Terms and Conditions, and imposes upon Conrail a condition to reinstall the turnout that it unlawfully removed **after** the OFA process had started, Conrail is under no obligation to reinstall the turnout. And until that turnout is reinstalled, operations on the Harsimus cannot commence. And Conrail could, if it so desired, wait several years before it 'got around to' reinstalling a turnout. So, unless and until the STB imposes a condition upon Conrail to reinstall a turnout that will reconnect the Harsimus to the National Rail System, the OFA offeror has no means to compel Conrail to reinstall a turnout connecting the Harsimus to the National Rail System. And without the means to compel Conrail to reinstall a turnout, there is no way that an OFA offeror can ensure that rail operations could in fact commence within two years. Consequently, **at the time 'financial responsibility' is determined,** there is no way that an OFA offeror can warrant that operations will commence within two years. And **no amount of funds can remedy that impairment**. Only Conrail and the STB have the means to remedy that obstacle. And offering a 'bribe' to either Conrail or to the STB, to speed the process up, is decidely unlawfulful.

e. A basic tenet of statutory interpretation is: If Congress uses phraseology in one portion of a statute, but does not use similar phraseology in a different portion of a statute, the courts have held that Congress deliberately intended for the portion of a statute without the phraseology, **not** to be subject to the omitted phraseology. And any attempt by an agency to make both sections of the statute subject to the same, or similar, phraseology, will be rejected by a court.

f. A basic tenet of the Administrative Procedure Act, is that all 'rules' must first be subjected to public comments. Prior to 49 CFR 1152.27 (c)(1)(ii)(B) being promulgated, it was subjected to public comment. Adding a requirement for actual operation for at least two years, is a significant change in the rule. Riffin would argue, such a significant change is not permitted without additional formal rule making.

g. The issue of whether 'operation for two years' is a lawful additional condition, to date, has not been addressed by a U.S. Court of Appeals. Kemp did not appeal his adverse decision. Riffin tried, but the challenged decision was summarily affirmed before briefs were even filed. See AB 167 (Sub. No. 1191X). (Philadelphia, 2 miles of line). Riffin is waiting for another opportunity to raise this issue in a U.S. Court of Appeals.

h. 10904 and 10907 begin from two entirely different beginning points: In a 10904 proceeding, the carrier **desires** to abandon a line segment. In a 10907 proceeding, the carrier **does not** desire to abandon a line segment. (The carrier is strongly resisting divestiture of its right to operate the line segment.) To justify taking a line from a carrier that does not want to abandon its line, Congress added the additional "operate for three years" condition.

i. In a **10904** proceeding, the line segment typically is in really poor condition. When the '2-years out of service' exemption is used, there are no existing shippers. (In this proceeding, all of the track infrastructure was removed decades ago.) Since in a 10904 proceeding a considerable amount of track work frequently is required, operation of the line as soon as the transfer of operating rights has concluded, may well be impossible. And since there are **no existing shippers**, no shipper is likely to be leveling a 'reasonable demand for service.' And even if a demand for service is being leveled, that demand for service likely would not be construed as being a 'reasonable' demand for service. ('Reasonable' being defined as sufficient demand to warrant / justify the expense of providing the service / putting the track infrastructure back on the ground.) . Remember, a carrier has the right to remove its track infrastructure without receiving any authorization. Such removal is subject to the caveat that in the event a 'reasonable demand for service' is leveled, the carrier would have to put track infrastructure back into place. Since putting track infrastructure back into place could easily take more than two years, and since a carrier would not be held to be in violation of its common carrier obligation to provide 'service upon reasonable demand,' if it began the process of putting its track infrastructure back into place within a reasonable time after a 'reasonable demand for service' had been leveled, requiring an OFA offeror to do **more** than an existing carrier is obligated to do, would likely be held to be a violation of the Constitutional requirement for **Equal** Protection of the Law. That is a significant numbers of reasons why requiring an OFA offeror to have sufficient financial resources to operate a line for two years, is not likely to withstand judicial scrutiny. (Or to even be prudent or a reasonable supplemental requirement.)

j. In a **10907** proceeding, the line segment is in active use, and has active shippers (who are complaining about poor service). There already is an **existing** 'reasonable demand for service.' Since the line is currently being operated, it

can be 'operated' by the new operator as soon as the transfer of operating rights has concluded. That is a major justification for Congress imposing the additional 'operate for three years' condition.

HOW MUCH OF A LINE MUST BE OPERATED WITHIN TWO YEARS?

72. The next problem is: If one must demonstrate an ability to 'operate the line for two years,' just how much of the line must be 'in operation' within that two year period of time? All of it? Or a sufficient portion of the line to provide rail service to whatever shipper is demanding rail service?

73. Additional questions are: Must an OFA offeror demonstrate **both** that it is 'feasible,' and that the OFA offeror in fact '**intends to offer**,' rail service over the **entirety** of the line that the offeror seeks to acquire?

74. In this proceeding, the above questions are really fundamental questions, that the STB needs to address **before** an OFA is filed, for the STB had decreed that an OFA offeror in this proceeding must demonstrate that it is 'feasible' to provide rail service, but has **not** indicated over what portion of the Harsimus, such a showing of 'feasibility' must be demonstrated.

75. The STB is fully aware that the Harsimus was connected to the National Rail System at CP Waldo, that the Harsimus was an elevated line, and that the railroad bridges that carried the line to the Harsimus Cove Yard, were removed many decades ago.

RAIL OPERATIONS WEST OF NEWARK AVENUE

76. It would be fairly easy to create a small rail yard on that portion of the Harsimus that lies between CP Waldo and the **West** side of Newark Avenue. Such a rail yard could accommodate the needs of a shipper such as Pace Glass.

77. Were Conrail to reinstall the turnout at CP Waldo that it unlawfully removed after the OFA process began, track could easily be reinstalled on the ground between the CP Waldo turnout and the west side of the Docks Branch right-of-way. The only problem with this site is: There is no access to this site from a public road, without crossing over some of Conrail's fee simple real property. So, to use this site, the STB would have to permit an OFA offeror to buy from Conrail, two acres or so of 'adjacent' rail property, and would have to grant the OFA offeror the right to cross Conrail's Docks Branch at the at-grade crossing that currently is in place on the Docks Branch. All of this is possible, via a Set Terms and Conditions proceeding, and would be in conformity with existing precedent. See *In re Boston and Maine,* 596 F 2d 2 (1st Cir. 1974), *Iowa Terminal v. ICC*, 853 F 2d 965 (DC Cir. 1988) and *Railroad Ventures v. STB*, 299 F 3d 523 (6th Cir. 2002).

78. Another possibility is to ask the STB, in a Set Terms and Conditions proceeding, to compel Conrail to sell to the OFA offeror, two to four acres of Conrail's fee simple real property that is adjacent to the Docks Branch / west and south of Newark Avenue. The STB would also have to order Conrail to install a turnout in the Docks Branch, to permit connecting a new at-grade track to the Docks Branch, which new at-grade track would traverse the newly-acquired two to four acres. Since this real property historically was used for a Pennsylvania Railroad Yard, and historically was a part of the Harsimus Branch (as opposed to being a part of the Lehigh Valley Docks Branch Line), acquisition of this property would be in conformity with the *Iowa Terminal* and *Boston and Maine* cases cited above. (Permitting acquisition of land adjacent to the tracks being acquired.) And since this land historically was used as a rail yard by the Pennsylvania Railroad (which owned the Harsimus Branch), putting new tracks on the ground **would not** constitute 'new construction,' requiring authorization under 49 USC 10901.

79. Reinstalling these tracks at either of the two sites discussed above, would be fairly inexpensive for Jersey City. ($500,000 or so.) Riffin could **personally** reinstall a 3-track yard in either location, for under **$10,000**, over the course of six months or so. (Riffin has several hundred track feet of rail, three turnouts, several hundred concrete cross ties, and a thousand or so mandrels in his possession. Riffin owns, and knows how to operate, all of the necessary

maintenance-of-way equipment (tamper, ballast equilizer, track alignment machine, etc.) and heavy construction equipment (motor grader, front end loader, excavators, cranes, 15-yard tandem-axle dump truck, compactors, surveying equipment) that would be needed to put track back onto the ground. He also has the requisite truck tractor, hi-boy and low-boy semi-trailers, and CDL license, to move all of his equipment to the job site. The $10,000 would be used to buy diesel, to run his equipment, and for ballast. For another $20,000, he could hire equipment operators, then use them for 1,000 hours (at $20 per hour). That equates to 25 man-weeks, which equates to 5 people (including Riffin) working full time for six weeks. Which Riffin estimates is the amount of time that it would take him and his small crew, to put 500 track feet of rail back on the ground.

RAIL OPERATIONS EAST OF NEWARK AVENUE

80. Providing rail service **East** of Newark Avenue, is far more challenging. **Either:**

(A) One reinstalls railroad bridges to connect CP Waldo with the West end of the Brunswick Street Embankment, **OR**

(B) One puts a new turnout into Conrail's Docks Branch, then installs at-grade track, with a curve to the East, which new at-grade track connects with the Harsimus right-of-way under the NJ Turnpike Extension, then follows the Harsimus right-of-way, at grade, to the first Embankment section, at Brunswick Street, a bit East of Newark Avenue. To traverse each Embankment section, portals would have to be placed in the West and East ends of each Embankment section. The fill material in each Embankment section would need to be removed. Once the fill material was removed, a roof could be built over the cavern thus created, creating a fully enclosed working space. Such a working space would be ideal for transloading operations. Operations could be conducted year-round. Noise, odors, dust, etc., would not 'pollute' the surrounding neighborhoods. 'Unsightly' activities would remain hidden from view.

81. The STB and Montange are fully aware that no rail service was ever offered to shippers anywhere on the Harsimus between MP 0.0 (CP Waldo) and MP 0.89 (the West side of Marin Blvd.). That part of the Harsimus was used **exclusively** for **through (overhead)** rail traffic. The Harsimus Cove Rail Yard was where shippers could access their rail cars.

82. Of the two alternatives for rail service **East** of Newark Avenue, the at-grade alternative would be the preferred alternative. Providing freight rail service on **top** of each Embankment section would be, at best, very difficult: How would shippers get access to the top of an Embankment section? How would goods be transported from street level to the top of an Embankment section, or vice versa? Providing rail service on top of any of the Embankment sections would require installation of new railroad bridges, which would be extremely expensive.

83. If one plans to use the **top** of the Embankment sections for freight rail service, it would be extremely difficult to demonstrate that rail service could be provided 'profitably,' (one of the criteria the STB has stated must be demonstrated), given the enormous expense of reinstalling the required railroad bridges.

84. Providing rail service **at grade**, on the other hand, can be done 'profitably,' since placing track back on the ground at street level would not be very expensive. ($200 a track foot, if done by a contractor. $50 a foot, if done by Riffin.)

85. Placing track back on the ground at grade, would **not** cause a "significant adverse affect on a historic property," in violation of the NHPA. Placing one portal in the west and east ends of each Embankment section, would disturb **less than 2.8 %** of the exterior walls of each Embankment section.[1] In addition, the disturbance would occur in the least visible portion of the Embankment walls, and would be visible only if one were standing between each

[1] Each Embankment has a perimeter of about 1,000 feet. The height of each Embankment, on average, is about 20 feet. That is 20,000 SF of exterior walls. Each portal would be about 14 feet wide and about 20 feet tall, for a total of 270 SF per portal, or a total of 540 SF, which is 2.8% of 20,000 SF.

250

Embankment section. Riffin would argue that such a minimal disturbance does not rise to the level of being a "**significant** adverse affect on a historic property."

JERSEY'S CITY'S INTENTIONS

86. It is Riffin's understanding that Jersey City **has no intention whatsoever of ever providing FREIGHT rail service EAST of Newark Avenue.** It is Riffin's further understanding that Jersey City's freight rail plans are to acquire a few acres of Conrail's fee simple real property adjacent to the Docks Branch, install a new turnout in the Docks Branch, then put a few hundred feet of track on the fee simple land acquired from Conrail. (These plans appear in a Jersey City Council transcript.)

87. These plans by Jersey City would certainly be sufficient to provide limited freight rail service. But that begs the question: Must Jersey City **intend** to use the **Embankment portion** of the Harsimus for **Freight** Rail Service, in order to justify acquiring the **Embankment** portion of the Harsimus via the OFA process? And if Jersey City is required to intend to provide freight rail service on the Embankment portions of the Harsimus, must Jersey City have sufficient 'dedicated funds' to pay for the cost of providing the rail infrastructure that would be needed to provide freight rail service on the Embankment portion of the Harsimus?

88. Riffin argues that to justify acquiring the Embankment portion of the Harsimus, one has to at least provide some evidence that one **intends** to provide freight rail service on the Embankment portion of the Harsimus, and that one must provide at least a plausible plan for the provision of such freight rail service on the Embankment portion of the Harsimus.

89. And this is where Riffin begins to have difficulty with Jersey City's OFA attempt. To date, Jersey City has made it quite clear that it intends to provide freight rail service only on the property West of Newark Avenue. And if that is so, then where is the justification for taking the Embankment portion of the Harsimus for OFA purposes? After all, the OFA process is intended to facilitate 'continued freight rail service.' And if Jersey City has no intention of providing

freight rail service on the Harsimus, where is the justification for permitting Jersey City to take the Embankment portion of the Harsimus via the OFA process.

90. Riffin is fully aware that Jersey City will argue that the OFA process permits the taking of a line of railroad for **passenger** rail service, and that Montange will be relying upon a 1980's ICC case where the ICC made such a ruling. However, that case was decided **before** Congress relieved the railroads of their duty to provide passenger rail service. And that case was decided **before** the STB decided, on multiple occasions, that the provision of passenger rail service would be subject to the STB's jurisdiction **only if** such proposed passenger rail service was going to be (A) interstate, or (B) if not interstate, then the passenger service must connect, somehow, with Amtrak. (Either physically connect, or have some provision for through ticketing.) If neither of those conditions can be established, then the STB has consistently held that such passenger rail service is either 'excursion' rail service, or 'commuter' rail service, neither of which is subject to the STB's jurisdiction.

91. In the event that Montange wishes to challenge any of Riffin's contentions, Riffin would ask that the STB grant Montange the privilege of replying to this Reply by Riffin. (Normally, replies to a reply are not permitted. But an exception generally is made when such an unpermitted reply-to-a-reply, will provide the STB with a more complete record.)

RIFFIN'S INTENTIONS

92. Riffin, on the other hand, **has every intention of providing freight rail service EAST of Newark Avenue.** At grade. Through the center of each Embankment section. Just as he described in paragraph 80(B) above. Not only to Marin Blvd, but also between Marin Blvd and the West side of the Hudson Bergen Light Rail line.

93. Riffin's plans are step-wise: If he can get access to the Harsimus between MP 0.0 and

the West side of the Docks Branch,[2] Riffin would build a small 3-track yard at this location. This yard would be sufficient to meet immediate shipper needs. (Such as those sought by Pace Glass.) As indicated earlier, see ¶¶ 76,77 and 79, Riffin could construct such a yard for as little as $10,000, if he did all of the work himself, which he is fully capable of doing.

94. Step two would be the installation of a new turnout in the Docks Branch, then installation of track from that new turnout, to the Harsimus right-of-way, under the NJ Turnpike Extension. While Riffin was waiting for Conrail to put the new turn out in, Riffin would begin demolition of the remaining stanchions in the Harsimus right-of-way. Removing the stanchions would be quite easy for Riffin: He has two medium-sized excavators (200 series, for those who know their excavator sizes), and a very large hydraulic hammer which fits these two excavators. Riffin estimates that each stanchion could be removed in two to three days. Total cost to Riffin: About $500. For the diesel to run the excavators, and the diesel to run his tandem-axle dump truck, which would be used to carry the concrete debris to a different location. Once this small segment of track was in place, Riffin could offer even more freight rail transloading services.

95. Step three would be to seek a declaratory order from the STB. In such a declaratory order, Riffin would ask the STB to rule on whether a rail carrier has the absolute right to relocate its tracks anywhere within its right-of-way, either horizontally or vertically, without express authority from the STB. (Such relocation is subject to the exclusive jurisdiction of the STB, but is not regulated by the STB. Similar to the 10906 exception for excepted track.) Riffin would expect the STB to follow its long-standing precedent and rule that a rail carrier does have the right to relocate its tracks anywhere within its right-of-way, and that such relocation is not subject to either the STB's regulation, or to local or State regulation. One of the cases Riffin will cite is Ed Kessler's case in Oklahoma City, OK, where the STB held that the BNSF had the right to relocate its tracks a few hundred feet south of where they had been. (Outside of BNSF's

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[2] By convincing the STB, in a Set Terms and Conditions proceeding, that such access is necessary, and that such access has long been associated with the Harsimus Branch. (It has been. There was signal equipment adjacent to the Harsimus at this location. Access to this signal equipment was over the very land that Riffin desires to acquire.)

existing right-of-way, onto land recently acquired by BNSF for that very purpose.) See FD 35164, *Petition of BNSF for Declaratory Order*.

96. Step four would be to extend the track from the West side of Newark Avenue to the west end of the first Embankment section, at Brunswick. While the right-of-way was being prepared to accept track, a portal would be built into the West end of the first Embankment, at Brunswick. Once a portal had been built, the track would be extended to the western portal. Fill material would be excavated, placed into rail cars, then railed to another site. This process would continue until the tracks were extended to the West side of Marin Blvd. Since there is a fair amount of fill in each Embankment, it could take a month or so to remove the fill from each Embankment section.[3] Once again, since Riffin has two excavators, he could remove the fill material at very little expense to Riffin. (The price of the diesel consumed, plus the cost to rail the fill material to a suitable location, such as to Manville, NJ, where the fill material could potentially be used to construct a levee around that portion of Manville that periodically gets flooded. Remuneration for providing / transporting the fill material to Manville, would more than pay for the cost of removing / transporting the fill material to Manville.)

97. In the event that Jersey City objected to Riffin laying track across some of Jersey City's streets, Riffin would first remind Jersey City that the real property underlying Jersey City's streets, where the Harsimus right-of-way is located, actually belonged to the Pennsylvania Railroad (the PRR had fee simple title to its right-of-way), and that at best, Jersey City has a license to use the surface of that right-of-way for highway purposes. Jersey City would not likely be successful in arguing in a State court, that it had acquired an easement by prescription, or title

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[3] In theory, it could be done in 11 days. The inside dimensions of each Embankment is about 90' wide by 390' long by 20' high. That equates to 26,000 cubic yards. Each of Riffin's excavators can excavate about 1,200 cubic yards per day, or 2,400 cu yd per day. In 11 days, Riffin's two excavators could excavate about 26,000 cu yds. That would require three operators, one of which would be Riffin. (One for each excavator. One to move rail cars.) At $200 / day for the two non-Riffin operators, that equates to $4,400 in labor costs. Add $1,600 for diesel. Total cost to excavate each Embankment: About $6,000. Total actual cost to excavate six Embankment sections: About $36,000. Plus the cost to cut portals and to lay track. 2,400 cu yds would fill 48 open-hopper rail cars. A decent-sized train per day.

by adverse possession, since 'time' does not run against the sovereign (the Federal government), and since Jersey City's / New Jersey's eminent domain law is preempted by Federal law, when it comes to railroad property. Of course, the at-grade crossings would have to comply with applicable FRA at-grade crossings regulations. Since Riffin would propose to operate his trains across City streets only at night, when traffic was light to non-existent, Riffin's operation of his trains would not result in any significant adverse consequences for those traversing Jersey City's streets.

98. Once the first Embankment section was 'cavernized,' it could immediately begin to be used for freight rail transloading purposes. Riffin will note that he owns a fully functional 35-ton piece of equipment that can move a dozen or so rail cars. He lost his 50-tonner in Oklahoma.

99. Due to the narrow width of the Harsimus right-of-way, there is no place on the right-of-way, between MP 0.0 and MP 0.89, where one could turn one's locomotive, or rail cars, around. Historically, locomotives and rail cars were turned around in the Harsimus Cove Yard. It would be fairly easy to construct a wye within the bounds of the former Harsimus Cove Yard. Such a wye would make it possible to turn one's locomotives and rail cars around.

100. To date, Conrail has acknowledged that it has a 'constructive' rail easement across the former Harsimus Cove Yard. As it turns out, Conrail has more than just a 'constructive' rail easement across the former Harsimus Cove Yard. Conrail has two 'dedicated' easements, which easements were reserved by Conrail for continued freight rail purposes, when Conrail sold the Harsimus Cove Yard to **National Bulk Carriers on August 19, 1985**, which conveyance is recorded in the Hudson County Register's Office in **liber 3468, folio 64**, at folio 65-66.

101. Riffin also argues that Conrail **used** at least **six** of the Harsimus Cove Yard tracks as 'lines of railroad,' which 'lines of railroad' Conrail still retains, since Conrail has never been granted authority to abandon any of these lines of railroad.[4] And it is these lines of railroad, and

[4] Riffin's argument is different from the Line Code 1420 argument advanced by Montange. Montange's argument focused on what was **conveyed** to Conrail via the Final

the property adjacent to them, that Riffin desires to acquire via the OFA process, in order to be able to build a wye, which he needs in order to turn his locomotives and rail cars around.

102. The present owners of that portion of the Harsimus Cove Yard that is bounded by Marin Blvd on the West, Gangemi Drive (6th Street) on the North, the Hudson Bergen Light Rail Line on the East, and 2nd Street on the South, are fully aware that there are multiple rail easements on that property, for Riffin sent them a letter so advising them in October, 2015. The owner of that property is also fully aware of the litigation that has been ongoing for the past 11 years with regard to the Embankment properties.

103. Robert Jenkins, counsel for Conrail, made an interesting argument at the October 18, 2011 oral argument in *In re: City of Jersey City, et. al., vs. Conrail, et. al.,* Case No. 10-7135, wherein Mr. Jenkins argued:

> "It's not a cloud on the title if someone doesn't claim there's ... there's a problem." T. P. 43, L. 13-15.

104. The court did not agree with Mr. Jenkins, for the Court retorted:

> "Let me just ... there is ... but whether there's someone out there or not, there's two separate questions. One is, is there someone who might or might not claim it, but there is a question whether there is or not as to whether there's a cloud, right?" T. P. 44, L. 21-25, P. 45, L. 1-2.
>
> "You don't ... you don't need a challenger to create the cloud, ..." T. P. 45, L. 12-13.

105. **To conclude**: Riffin intends to provide freight rail service from MP 0.0 (CP Waldo) to

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System Plan. Riffin's argument is based on the long-established doctrine that how one **uses** tracks, determines whether the track is a 'line of railroad,' or 10906 'excepted' track. The six tracks identified by Riffin were **used** by the Pennsylvania Railroad, by the Penn Central Railroad, and by Conrail, for the movement of **through / overhead** traffic, which makes these six tracks 'lines of railroad.' And once a track becomes a 'line of railroad,' it remains that way until authority to abandon is granted, and such authority to abandon is actually exercised.

the West side of the Hudson Bergen Light Rail Line. He intends to institute rail service over the entirety of the Line, over a period of time. If Conrail timely re-installs the Harsimus Line turnout that it unlawfully removed after the OFA process began, Riffin could be providing rail service within six months of acquiring the Line. Not over the entirety of the Line, but on a portion of the Line. And over the course of two years, Riffin would expect that he could be offering rail service over the entirety of the Line. Providing, of course, that yet to be filed litigation does not delay Riffin's time line.

RESOLUTION

106. Riffin is not particularly enthralled with the actions of any of the parties in this proceeding. It is Riffin's belief that none of the parties have 'clean hands.' Conrail created the mess when it sold the Embankment properties to the LLCs without bothering to institute an abandonment proceeding. Something Conrail has done on multiple occasions. Jersey City was afforded an opportunity to purchase the Embankment properties. It chose not to. It was only after the LLCs bought the Embankment properties, that Jersey City suddenly began to 'covet' the Embankment Properties. The LLCs offered to sell the Embankment properties to Jersey City on multiple occasions. For as little as $7 million. (The LLCs now want at least $40 million, which is at least close to what the current fair market value would be, in light of the fact that a one-acre parcel less than 1,000 feet from the Embankment properties, was sold for $10 million in 2015. Since the Embankment properties comprise about six acres, that equates to $60 million.) All of the 'was it conveyed to Conrail as a Line of Railroad' litigation was unnecessary, since Conrail **used** the tracks on the Embankment properties for 'through / overhead' traffic, which use caused the tracks to become 'lines of railroad,' even if they had not been conveyed to Conrail as the Line Code 1420 line of railroad. The LLCs could have ended the litigation by filing a petition to acquire and operate shortly after it was determined that the Harsimus was conveyed as a line of railroad. The LLCs then could have filed to abandon the Line after two years, if it turned out that no shippers really in fact wanted freight rail service on the Harsimus, and then could have asked the STB to exempt the LLCs' abandonment from the OFA process, which the STB likely would have granted. Instead, the parties continue to litigate every minute thing possible.

107. It is Riffin's firm belief that if the parties to this proceeding do not reach a settlement, this proceeding will drag on for another five years or so. Particularly in light of the OFA issues that Riffin has identified in this pleading. Consequently, Riffin continues to advocate that the parties at least try to reach a settlement.

ANOTHER ISSUE

108. It has long been Riffin's belief that Jersey City's ultimate strategy to acquire the Embankment properties, was to first acquire the Embankment properties via the OFA process, provide a modicum of rail service, then at the end of two years, with Conrail's consent, at the end of five years, without Conrail's consent, petition to abandon the Line, then when abandonment authority is authorized, transfer the Line to a Trail Entity, which would then hold the Line in perpetuity. Much like what has happened with Conrail's Hi Line in New York City.

109. Such a strategy would not be illegal. Nor would it be an abuse of the STB's processes, providing some freight rail service is actually provided.

110. The difference is: Conrail ultimately agreed to a Trail agreement for the Hi Line.

111. In this proceeding, it is unlikely that the LLCs, or their successors, will ever willingly permit their properties to be permanently taken away from them via the OFA / Rails to Trails process.

112. Up until two weeks ago, I did not think that the LLCs had any hope of defeating a Rails to Trails strategy. Then, two weeks ago, I was sent a copy of the U.S. Court of Federal Claims June 9, 2011 decision in *Biery v. U.S.*, Case No. 07-6931, a copy of which is appended hereto, and a copy of the *Romanoff Equities, Inc. v. U.S.* decision. See 815 F. 3d 809.

113. In the *Biery* decision, the Court of Federal Claims held that if a railroad easement is no longer used for railroad purposes, the easement terminates, and the land reverts back to the original / adjacent owners. The Court further held that a 'trail use' of the former right-of-way

does not constitute 'railroad use,' even when the trail is subject to being reconverted back into a line of railroad. The end result was: Because the STB authorized the right-of-way to be converted into a trail, that was a 'taking,' which warranted compensation. So the U.S. Government was ordered to compensate the present day owners of the underlying real property, for the present day fair market value of the trail corridor, since the 'trail' use was a 'new' use.

114. In the *Remanoff* decision, the U.S. Court of Appeals for the Federal Circuit held that because the rail easement stated that the easement could be used "for railroad purposes **and** such other purposes," it was permissible to use the easement for the Hi Line pedestrian 'trail.'

115. In this proceeding, there is no express rail easement. (Other than the National Bulk Carriers easement that Conrail reserved.) There only is a 'constructive' rail easement. Which presumably is only for 'railroad use.' Thus the easement on the Embankment properties is more like the *Biery* easement. Which means that were Jersey City to attempt to convert the Harsimus into a trail at some future date, the LLCs, or their successors, would likely have a good cause of action against the U.S. Government for an unconstitutional 'taking,' and could demand, and receive, compensation from the U.S. Government for Jersey City's 'taking' of the Embankment properties.

116. In the *Biery* case, the U.S. Government did not give up the trail, in order to avoid paying compensation for the trail 'taking.'

117. Which raises an interesting question: If the U.S. Government were opposed to converting the Embankment properties into a 'trail,' (due to the amount of compensation the U.S. would have to pay for taking the property for a 'trail' use), could the U.S. Government prevent the conversion of the Line into a trail? If so, where would such an argument be raised? Not before the STB, for the STB's role in a Rails to Trails proceeding is 'ministerial.' That is, if the criteria for trail use is met, the STB has no discretion to prevent the conversion of the Line into a trail.

118. What Riffin finds even more interesting, is the STB, while apparently fully aware of the *Biery* proceeding, and similar proceedings, has not participated in any of those proceedings. Riffin also finds it interesting who the Department of Justice assigned to defend against these 'trail' suits: A Justice agricultural-law attorney from New Hampshire (the *Biery* trail was in Kansas), and a Justice Environmental-law attorney based in the Department of Justice building in D.C., for the Hi-Line case. And even more interesting is the fact that neither of these two Justice attorneys know who Robert Nicholson is. (He is the Justice attorney who represents the U.S. in all STB Petitions for Review. He knows his railroad law quite well, having been litigating STB appeals for a really long time.)

119. If the 'rails to trails' issue interests the reader, Riffin would suggest reading the *en banc* decision in *Preseault v. U.S.*, 100 F 3d 1525 (U.S. Court Appeals, Federal Circuit, 1996). In this decision, the court held that the removal of track infrastructure, under **Vermont** law, constituted an abandonment, which terminated the railroad's easement **before** the right-of-way was converted into a 'trail.' The court further held that while the Federal government has the **power** to convert a railroad right-of-way into a trail, it also has the **obligation**, under the 'taking' clause of the Fifth Amendment, **to compensate** the underlying fee owner for the value of the trail easement so taken. (Riffin believes that the dissent had the better legal argument, but the dissent could not muster enough votes to prevail with their arguments.)

CONCLUDING REMARKS

120. This is a very long pleading. Not everything in this pleading is addressed solely toward the actual issues the STB is being asked to decide. Certainly not the issue that is presently before the STB. (Supplemental Historic Comments.) However, nearly everything in this pleading either addresses comments made by Montange, or issues that, while not presently at issue, are likely to become an issue once the Historic Preservation process concludes. Riffin, being mindful of the '20 laches' that he received in the STB's March 24, 2016 decision striking Riffin's supplemental comments in FD 35873 / AB 156 (Sub. No. 27X), has tried to 'just keep to the facts' in this pleading. As stated above, it is Riffin's hope and desire that the parties reach a

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settlement before the STB expends any more of its very limited resources on this way-too-long proceeding.

121. I hereby certify, under the penalties of perjury, that the foregoing is true and correct to the best of my personal knowledge and belief. (In case you did not notice, I just turned this pleading into a 'Verified Statement.')

Respectfully,

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

CERTIFICATE OF SERVICE

I hereby certify that on or before the 14th Day of May, 2016, a copy of the foregoing Reply to Montange's Motion to Compel Riffin to Respond, was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid.

James Riffin

241042
241043
241044

Before the Surface Transportation Board

ENTERED
Office of Proceedings
July 5, 2016
Part of
Public Record

7/5/16

Conrail -- Abandonment --in Hudson County, NJ.	)	AB 167 (Sub-no. 1189X)
		and
CSX Transp. - Discon. of Service - same	)	AB 55 (Sub-no. 686X)
		and
Norfolk Southern - Discon. of Service - same	)	AB 290 (Sub-no. 306X)

Second Motion on behalf of City of Jersey City et al
to Compel James Riffin
to Respond to Discovery (Document) Requests

City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (City et al) hereby move, pursuant to 49 C.F.R. 1114.21, 1114.30, and 1114.31, for an order directing James Riffin to respond fully and completely to document requests tendered on behalf of City et al.

City et al on March 28, 2016 served (by email and Express Mail) upon James Riffin the document requests set forth in Exhibit A. The document requests call for a response by April 19. Although Mr. Riffin several times promised a response (as set forth in our first motion to compel), he failed to do so. On May 2, City et al accordingly filed a motion to compel. At that point, Mr. Riffin served (by US Mail postmarked on that

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date) a response to City et al's document requests. A copy is attached as Exhibit B. Mr. Riffin also proceeded to file with this Board a flurry of papers in reply to the motion to compel contending, inter alia, the original motion to compel was moot. City et al agreed that the original motion was moot, and withdrew that motion in a filing dated June 7.

Unfortunately, Mr. Riffin's belated May 2 response to the document request served by City et al was nothing more than a set of misrepresentations and objections. City et al accordingly makes this second motion to compel.

City et al's document requests to Riffin fall into two categories: (1) communications between Riffin and 212 Marin Boulevard LLC, et al (Mr. Hyman) and/or Conrail, and (2) documents relating to Riffin's financial responsibility (if any apart from reliance on the LLCs to put up the money) to make an OFA, including his bankruptcy as discussed by STB in F.D. 35873, decision served March 24, 2016, p. 2 n.2. City et al will discuss the specific objections made by Riffin to each document request below.

City et al's document requests 1 and 2 (Riffin communications with LLCs or Conrail).

Riffin denies that he has any documents, including emailed documents from the LLCs, Hyman or the LLCs' attorney Horgan. In the attached verified statement (Exhibit C), Eric Strohmeyer,

principal of CNJ Railroad, states that he has personal knowledge that Riffin has received from or sent to the LLCs documents and still had same as of approximately one week ago (long after Riffin's denial that he had any). Mr. Strohmeyer's verified statement indicates that Mr. Riffin's claim that he has no responsive documents was not true when he made it on or about May 2.

Mr. Riffin did not file a verification to his assertion that he had no documents responsive to document request one. If he has no documents on May 2, 2016, then he should file a verification under penalties for perjury. Otherwise he should produce the responsive documents or be removed from the proceeding.

Riffin in response to document request 2 (and in contradiction to his claim of no documents in response to document request 1), says that he has sent documents to Hyman, Horgan and Conrail's counsel (Jenkins) but that the documents were "suggested settlement terms" which he says are privileged or confidential. Riffin has not purported to enter an appearance as an attorney or representative of the LLCs in this proceeding. No one claims he is an attorney for Conrail. His communications with the LLCs and Conrail therefore are not subject to attorney-client privilege or entitled to any other related protection. Moreover, no one associated with Conrail or

the LLCs is holding themselves out as Riffin's attorney. Riffin cannot claim that his own communications (business negotiations) with individuals or entities who are not his attorneys are covered by any attorney-client or related privilege. They are simply discoverable communications. To the extent they contain information entitled to confidential treatment as commercially sensitive, this Board has entered a protective order which will serve to maintain all the confidentiality that is appropriate to maintain in an STB proceeding. City et al, however, acknowledge that it is unclear that anything between Riffin and the LLCs qualifies for protection under the protective order. But that only underscores the spurious nature of any confidentiality objection. In any event, Riffin has waived any claim of privilege or confidentiality by sharing his dealings with the LLCs and Conrail with CNJ Railroad.

City et al's document request 3 relating to Riffin's financial responsibility.

Riffin has stated elsewhere that he intends to rely on Mr. Hyman (principal of the LLCs) to fund his proposed OFA and that he intends to make 90% of the Branch available to the LLCs for non-rail use. City et al are entitled to inquire into this apparent abuse of the OFA process to further the interests of a developer seeking to demolish the Branch to turn it into townhouses and/or skyscrapers. Mr. Riffin first objects that

the documents are privileged and confidential and not subject to a document request. This is spurious for the reasons stated for his similar objection to document requests 1 and 2.

Riffin also claims the documents are not relevant or material. If the documents show or suggest a relationship with Hyman as Riffin indicates in his pleadings to the U.S. Supreme Court and to the Third Circuit (see attachments C and D to City et al's first motion to compel), or as he declared to this Board in his pleading filed on June 11, 2015, in this proceeding, then they are highly relevant and material. They demonstrate a scheme on the part not only of Riffin but also of the LLCs to abuse this Board's processes, and specifically to mis-use the OFA remedy. Riffin in his response (Exhibit B) seems to deny that he has a business relationship with the LLCs, but that is contradicted by his representations to the Courts (attachments C and D to City's first motion to compel). When a party says one thing one place and denies it another, discovery is not only appropriate but also necessary to establish what is true, because the word of the party is no longer reliable.

Finally, Riffin, citing AB 1071, served Dec. 12, 2012, objects that the Board has stated that it is inappropriate for it to rule on the sufficiency of Riffin's evidence [of financial responsibility] in the abstract. But City et al is not seeking some sort of ruling on the sufficiency of evidence. What City

et al are seeking are documents that suggest that Riffin in league with the LLCs intend what amounts to an abusive and illegitimate use of STB processes and procedures.

Document request 4 (bankruptcy petitions and final orders).

The City's final document request asks for petitions and final orders in Riffin's bankruptcy proceedings, including but not limited to those referenced by STB in its decision served March 24, 2016, in F.D. 35873 at p. 2 n.2.

Riffin objected to this request, basically on undue burden grounds, claiming that the documents are public and may be found via PACER. But if a party wishes to refer to a public source, the party should identify that source with reasonable specificity, including jurisdiction, case number, and docket number. Mr. Riffin supplied nothing. Based on STB's references in F.D. 35873, supra, City et al have so far tracked down two bankruptcy proceedings which appear to involve Riffin: (a) In re: WMS LLC, No. 11-13085 (Bankr. D. Md.), and (b) In re: Riffin, No. 10-11248 (Bankr. D. Md.). (In re Riffin is not directly referenced by STB in its March 24, 206 decision, but is referenced in one of the decisions that STB does reference.) However, City et al have no idea if these encompass all such proceedings. Moreover, Riffin is in a far better position to identify the petitions and final orders by docket number than is

City et al to guess what is relevant. Riffin's undue burden objection is an undue transfer of burden to City et al.

Other Riffin contentions. Mr. Riffin has also made some additional general objections in letters and various pleadings in response to City et al's first motion to compel. None has merit and our failure to address any of his arguments made elsewhere is not an admission of their validity here. We will comment only on his claim, which Conrail and the LLCs also make, that discovery is inappropriate in abandonment proceedings.

This claim is spurious for the reasons set forth in the Appendix. In any event, this Board already has addressed this objection when lodged by Conrail and 212 Marin Boulevard, LLC, and has permitted discovery. See, e.g., Consolidated Rail Corp. - Ab. Ex. - in Hudson County, NJ, AB 167-1189X, served May 22, 2015. While we believe the Board unreasonably truncated that discovery (see Appendix hereto), the point is that there is no bar on discovery in an abandonment proceeding. The discovery City et al now seek is not disruptive nor is it burdensome. Riffin could fulfill it by supplying his exchanges with Mr. Hyman or the LLCs' various attorneys. Given how Mr. Strohmeyer describes Mr. Riffin's record keeping (Exhibit C), this likely could easily be done by electronic search of key words. There are no current filing deadlines set or applicable that forestall complete and full response to the discovery request tendered Mr.

Riffin in this proceeding. Since Mr. Riffin's own statements to this Board and to the Courts call into question his intent, motivation, and ability to provide rail service on the Harsimus Branch, and instead indicate that he acts on behalf of 212 Marin Boulevard, LLC et al (Mr. Hyman), Mr. Riffin's involvement appears to be in the nature of a further effort to evade this Board's jurisdiction and to thwart all public interest remedies aimed at keeping the Branch intact through misuse of the OFA process by Mr. Riffin in league with the LLCs. Discovery into these matters is clearly germane to this proceeding. If there is any burden on Mr. Riffin, it is warranted.

Any further or additional objections or arguments by Mr. Riffin against disclosing the requested documents is now untimely. Conrail's parent corporation (Norfolk Southern) has already recently explained that Mr. Riffin is a serial abuser of the OFA process.[1] This Board has indicated that it will apply sanctions against his abusive conduct.[2] Should Mr. Riffin fail to respond forthwith with the requested documents, he should be

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[1] See generally Petition of Norfolk Southern Railway Company to Institute a Rulemaking Proceeding to Address Abuses of Board Processes, Ex Parte (EP) 727.

[2] See Petition of Norfolk Southern Railway Company to Institute a Rulemaking Proceeding to Address Abuses of Board Processes, Ex Parte 727, served Sept. 23, 2015, at 4 (Board suggests it will engage in "increased enforcement" of procedural rules to address abuse issues in context of Norfolk Southern's petition to deal with abusive practices by Riffin in OFA proceedings).

barred from any further participation in the OFA portion of this proceeding.

Relief. In sum, this Board should order Riffin immediately to respond to Exhibit A fully and completely without further objection, and bar him from any further participation in the OFA portion of this proceeding should he fail to do so. City requests that Riffin be required to respond fully and completely and without objection no later than ten days after STB issues a decision in this matter.

Delays. In closing, City et al reiterates its wish to pursue its Offer of Financial Assistance remedy, as well as its other remedies, in this proceeding pursuant to an orderly schedule established by this Board. Under prior orders of this Board, OFA's were due June 11, 2015.[3] City was orally advised by STB staff on June 9, 2015, that the OFA schedule was vacated and a new one would be issued.[4] With the consent of Conrail and CNJ Railroad (the other timely applicant to file an OFA), City proposed that the Board set a schedule for OFA's to be due on June 19, 2015.[5] As of July 1, 2016 (over one year later), STB has yet to set a schedule. City continues to receive inquiry from shippers supporting City's efforts to OFA. City is unaware

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[3] City's Request for Clarification dated 9 June 2015 in AB 167-1189X, p. 1.

[4] Id. pp. 1-2.

[5] Id.

of any instance in which the deadlines for initiation and pursuit of the OFA process have been so long and indefinitely delayed. In brief, the delay is unprecedented. In the interval, Conrail's chosen developer (the LLCs) has launched yet another batch of state court litigation against the City's re-adoption of an ordinance authorizing OFA, and the City's bonding ordinance ensuring financing for the OFA. The delay to date, and the indefinite nature of the process, has harmed City and the public by delaying a remedy otherwise expeditiously available in abandonment proceedings, and the harm is compounded by the prolonged and - to the City - costly and burdensome litigation by the LLCs in state courts in the interval.

City et al do not wish to delay the proceeding by further motions; however, this motion is necessary to permit City et al can address the abuse of this agency's processes manifest in Mr. Riffin's participation in this proceeding ostensibly to assist the LLCs.

Respectfully submitted,

Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739
Counsel for City et al

Attachments: Appendix; Exhibit A (document requests); Exhibit B (Mr. Riffin's response);Exhibit C (Mr. Strohmeyer's verified statement)

Appendix

AB 167-1189X is an unusual abandonment proceeding. It involves an unlawful de facto abandonment of the last unused transportation corridor that otherwise could serve to alleviate congestion into Jersey City's downtown core. Moreover, the line in question encompasses a designated City Landmark (which also is eligible for the National Register of Historic Places) whose preservation would accomplish a multitude of other public interest goals, including but not limited to historic preservation and open space, consistent with the City's Master Plan. Unfortunately, it also involves an effort by Conrail and the LLCs, now extending into its second decade, (1) to evade STB jurisdiction, (2) to abuse the agency's processes, (3) to accomplish an unlawful transfer of a rail line from Conrail to the LLCs, and (4) to demolish the historic Harsimus Embankment with adverse impacts on adjoining historic districts and without any meaningful consideration of remedies which would avoid these toxic consequences. Since STB currently lacks an independent investigative capability (such capability requires an office that can make ex parte contacts to obtain witness statements and documents or alternative special arrangements which have not been made in this proceeding), it falls on parties to the proceeding to seek information on points (1) to (4) above through discovery. If the Board does not provide means for

parties opposed to the consequences of the Conrail/LLCs' unlawful de facto abandonments to develop evidence through discovery, then there is no means to ensure that relevant evidence of unlawful activity and unlawful intent (to the extent such showing is required) is presented to the Board. The Board cannot discharge its responsibility to regulate the industry in the public interest if it cannot or will not independently and vigorously investigate and if, at the same time, it does not permit parties adversely impacted by an unlawful abandonment to obtain full and complete discovery.

There are now at least two elements in AB 167-1189X that require a serious and meaningful investigation by this agency, or full and complete discovery against Conrail, the LLCs, and now Riffin. The two issues are (a) the intentional unlawful abandonment of the Harsimus Branch by purported transfer by Conrail to the LLCs in order to maximize profits by avoiding historic preservation regulation, and (b) Riffin's abuse, on behalf of the LLCs, of this agency's offer of financial assistance remedy in order to facilitate the LLCs' efforts to convert the rail line into non-rail uses (townhouses and skyscrapers).

Riffin has already explained to this Board that he filed his OFA out of sympathy for, and for the benefit of, the LLCs. Mr. Riffin has told this Board that

> "[i]n effect, Riffin [in discussions with Mr. Hyman] has agreed to permit the LLCs to use about 90% of the rights associated with their [Harsimus Branch] properties [if the LLCs force Conrail to agree to Riffin's OFA]. If Jersey City prevails, Jersey City will use 100% of [the Harsimus Branch] and will divest the LLCs of their right to possess any of their properties. In effect, Riffin is Mr. Hyman's 'back up plan.'"

Riffin Response in AB 167-1189X, filed June 11, 2015, at p. 10. In addition, Mr. Riffin has represented to the United States Court of Appeals for the Third Circuit and to the United States Supreme Court that he anticipates making an "offer of financial assistance" to acquire the Harsimus Branch "backed by Mr. Hyman's [the manager of the LLCs] considerable assets" and that he feels he has some assurance of compensation from Mr. Hyman.[6]

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[6] See Riffin certiorari petition in the U.S. Supreme Court in another rail dispute in which he explains, at paragraphs 69 to 73 (pp. 14-16) (City et al's first Motion to Compel Riffin, Exhibit C). Riffin in his Supreme Court brief further indicates that the problem caused Hyman and Conrail by the City's OFA will force Conrail to sell 12 acres in the Palisades to Mr. Hyman as well, and net Mr. Riffin various benefits as compensation for facilitating the denouement and flummoxing the City. Mr. Riffin also evidently elaborated elements of this scheme in a "confidential" portion of a pro se pleading he filed in the Third Circuit proceeding (Riffin v. STB, 3d Cir. Nol. 15-2701, included in his pro se cert petition at pp. 77-78 (excerpts in City's first Motion to Compel Riffin, Exhibit D). Riffin informed the Third Circuit (which evidently declined to keep the pleading confidential) that he anticipated making an OFA for the Harsimus Branch in AB 167-1189X "backed with Mr. Hyman's

Riffin indicates that he expects Mr. Hyman to force Conrail to deal with Riffin due to Conrail's fear of liability to the LLCs for fraudulently claiming to Mr. Hyman and his representatives that the Harsimus Branch was not a line subject to STB abandonment jurisdiction.

This leads to the other matter warranting investigation and discovery. City et al over two years ago apprised the Board of the LLCs' allegations that Conrail had fraudulently misrepresented to the City, the courts, and this agency, as well as to the LLCs, that the Harsimus Branch was not subject to abandonment licensing jurisdiction. See City et al's Notice of Decision, Exhibit C, filed in AB 167-1189X on November 22, 2013. The LLCs' allegations were and remain relevant. First, the LLCs by their own admission still maintain Conrail acted fraudulently. Their counsel by email on June 9, 2016, advised counsel for City et al that "the LLCs have prepared significant

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considerable assets." [Mr. Hyman is the manager of the LLCs.] See Riffin cert petition, p. 78 para 13. In any event, Riffin's abuse of STB processes in league with the LLCs is evidently intended to seize not only the Embankment but a significant undeveloped portion of the Jersey City palisades.

Mr. Riffin states many things in his cert petition (or quotes himself making statements elsewhere) concerning AB 167-1189X that are misleading or false, or both. However, City et al has no reason to doubt his representations to the Courts that he is relying on Mr. Hyman to finance his OFA, that he feels he has some assurance of compensation from Mr. Hyman, and that he is using the OFA process to accomplish non-rail ends for the LLCs.

fraud litigation against Conrail that has not progressed yet, only because the DC District Court declined to join the issue and the State Court has issued stay orders." Email, D. Horgan to C. Montange, copies to Jenkins (Conrail), Sloane (Conrail), Strohmeyer (CNJ) and Riffin (emphasis in original).

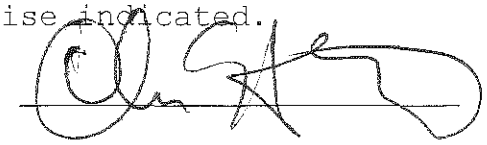
Second, Conrail has elsewhere argued that the LLCs timely knew all the relevant facts on which they now base their claims that Conrail engaged in fraud. But this is tantamount to Conrail showing that the LLCs were knowing participants in the fraud. In other words, by their own showings, Conrail and the LLCs demonstrate that they knowingly abused this agency's processes, for profit, and misrepresented what they were doing to the public, this agency, and the Courts. This abusive conduct cannot stand. If it does, it would encourage the regulated industry and developers to circumvent this agency's processes in violation of, inter alia, 49 U.S.C. 10903 in order to avoid environmental and historic preservation remedies. That violates, among other things, section 110(k) of the National Historic Preservation Act, as well as amounting to an intentional abuse of this agency's jurisdiction, and remedies.

The true victims of the showings Conrail and the LLCs make about each other of the unlawful de facto abandonment are the City and the public: the alleged/admitted fraud is frustrating access by the City and the public to remedies to keep the

Harsimus Branch intact in the public interest and in compliance with law.

Certificate of Service

The undersigned hereby certifies service by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, on or before the 5th day of July 2016 addressed to the parties or their representatives per the service list below, unless otherwise indicated.



Service List
(current as of December 2015)

Daniel Horgan,
Waters, McPherson, McNeill, P.C.
300 Lighting Way
P.O. Box 1560
Secaucus, NJ 07096 (LLCs)

Robert M. Jenkins III
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006-1101 (Conrail)

Daniel D. Saunders
State Historic Preservation Office
Mail Code 501-04B
NJ Dept. Environmental Protection
P.O. Box 420
Trenton, NJ 08625-0420

Massiel Ferrara, PP, AICP, Director
Hudson County Division of Planning
Bldg 1, Floor 2
Meadowview Complex
595 County Avenue
Secaucus, NJ 07094

Joseph A. Simonetta, CAE,
Executive Director
Preservation New Jersey
414 River View Plaza
Trenton, NJ 08611

Exhibit A

City et Al's Request For Documents

SEE APPX (211)

Exhibit B

RIFFIN's Reply to Request For Documents

See APPX (215)

Exhibit C

Verified Statement
of
Eric S. Strohmeyer

My name is Eric S. Strohmeyer. I am the Vice President and Chief Operating Officer of CNJ Rail Corporation, a New Jersey based railroad management and consulting business. My address is 81 Century Lane, Watchung, NJ 07069. I am over 18 years of age. I'm qualified and authorized to make this statement.

I am providing this verified statement in support of the City of Jersey City's ("City") second *Motion to compel.* I am providing this statement in order to provide the Board with testimony regarding certain activities of which I have personal knowledge.

Mr. Riffin has previously told me of the existence of certain documents which are germane to the Harsimus Branch that he has previously exchanged with Mr. Hyman, or representatives of Mr. Hyman.

In addition, I have had opportunity, from time to time, to briefly view Mr. Riffin's email account when he elected to check his email in my presence. For example, I was recently shown an email from Mr. Hyman to Mr. Riffin. I noted the email appeared to pertain to the Harsimus Branch and the surrounding litigation. As a result of these types of actions by Mr. Riffin, I am familiar with a portion of the contents of his account, including as it appeared approximately a week ago.

Prior to last week, I know he had sent emails, both with and without attachments, to and received same from, Mr. Hyman, among others. As of approximately a week ago, many of those emails appeared to still be in his email account. In some cases, I was copied on these emails, or they were forwarded to me.

Finally, as a result of my longstanding commercial relationship with Mr. Riffin, I have become very familiar with Mr. Riffin's many idiosyncrasies, including his email habits, but also his document retention practices. I have observed that he will retain documents received or produced in one of three forms; retained or stored in the "cloud" via email; downloaded, or otherwise stored on a flash drive; and most often, he will print a hard "paper" copy of a document he produced or received.

VERIFICATION

The foregoing Verified Statement is being made in accordance with the Board's regulations. By affixing my signature upon this statement herein below, I certify, under penalties of perjury, that the foregoing statement is true and accurate to the best of my knowledge and belief. In the event that anything contained herein is found to be false or misleading, I acknowledge that I may be subject to punishment.

Respectfully submitted,

Eric S. Strohmeyer

Executed on: July 1st, 2016

7/28/16

Before the
Surface Transportation Board

JR - 17

STB DOCKET NO. AB-167 (Sub-No. 1189X)

241203
241204
241205

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION – IN HUDSON COUNTY, NJ

ENTERED
Office of Proceedings
July 28, 2016
Part of
Public Record

STB DOCKET NO. AB-55 (Sub-No. 686X)

CSX TRANSPORTATION, INC. – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

JAMES RIFFIN'S REPLY TO CITY'S, ET AL.'S JULY 5, 2016 MOTION TO COMPEL

1. Comes now James Riffin, ("**Riffin**") who herewith files his Reply to City's, et al.'s[1] July 5, 2016 Second Motion to Compel ("**Motion**"), and in support hereof states:

2. Riffin received the hard copy of City et al.'s Motion on Saturday, **July 9, 2016**. Consequently Riffin has until **July 29, 2016** to file his Reply.

[1] Jersey City, Rails to Trails Conservancy, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition.

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MORE BACKGROUND INFORMATION

3. The LLCs[2] filed a Reply to City et al.'s Motion, which contains a through summary of this litigation to date. Riffin adopts by reference herein, as if fully reproduced herein, all of the LLCs' factual statements, and argument, with one small exception noted below.

4. The LLCs made mention of the extensive litigation between Jersey City, the LLCs and Conrail regarding whether the Harsimus Branch was **CONVEYED** to Conrail as the line of railroad known and identified in the Final System Plan, at P. 272, as Line Code 1420. The emphasis is on the word 'conveyed,' as opposed to the word 'used.'

5. While it is relevant whether the Harsimus was Line Code 1420, that is not the only argument available. Jersey City could (more easily) have argued that Conrail, and its predecessors in title, **used** the Harsimus as a 'line of railroad.' [3]

6. Earlier in 2016, Riffin had occasion to research, and write an extensive dissertation (more precisely, a 40 page Verified Statement), on the subject of Line vs. 49 U.S.C. 10906 'Excepted' (Spur, switching, yard tracks, etc) track, and more importantly in this proceeding, on the nature of the track that traversed the Embankment portion of the Harsimus [basically **from** CP (Control Point) Waldo (basically underneath the highway bridge that carries Waldo Street over the Harsimus) **to** MP (Mile Post) 0.88, which is on the West side of Marin Blvd (formerly Hendersen Street), and that traversed the former Harsimus Cove Rail Yard, which was East of present day Marin Blvd.

7. Tracks that are **used** for 'line haul' purposes, are 'lines of railroad.' 'Line Haul' basically means that the cars moving over the tracks are destined for more than one shipper. If a track

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[2] 212 Marin Blvd LLC, etc. See Footnote 1 of the LLCs' "Reply."

[3] ALJ Dring is a Department of Energy ALJ. Riffin does not presume that ALJ Dring is intimately familiar with 'railroad' law. So Riffin makes an effort to explain the 'railroad law' aspects of this case as though ALJ Dring is not knowledgeable about railroad law.

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serves one shipper, it normally is a 'spur' track. If tracks are used to assemble, or disassemble, trains, the tracks typically are 'yard' tracks. However, within all yards, there is at least one 'line of railroad,' and may be multiple 'lines of railroad,' if the tracks are 'used' to move thru traffic from a point of origin, through a yard, thence to a point of destination.

8. Having studied how the tracks in the former Harsimus Cove Yard were used, Riffin has concluded that multiple tracks (at least six) were used as lines of railroad. And once a track becomes a 'line of railroad,' it remains a 'line of railroad' until abandonment authority is granted by the Interstate Commerce Commission, or today, by the Surface Transportation Board ("**STB**"), and that abandonment authority is exercised (abandonment is 'consummated.')

9. City et al. use the misnomer "de facto abandonment" extensively. There is no such thing as 'de facto abandonment' of a line of railroad. A line of railroad remains a line of railroad unless and until abandonment authority is obtained, and exercised. A rail carrier has the absolute right to remove **all** of the track infrastructure associated with a line of railroad, and to cease providing rail service on a rail line, **subject to the caveat:** If a 'reasonable demand for service' is levied, the rail carrier **may** be required (ordered) to replace sufficient track infrastructure to provide rail service. See, for e.g., *Missouri Central Railroad Co. – Acquisition and Operation Exemption – Lines of Union Pacific Railroad Company,* STB Finance Docket No. 33537, Served April 30, 1998, wherein at p. 7 the STB stated:

> "The Cities argue that the line was *de facto* abandoned from long disuse. But the Cities offer no statutory or precedential support for this proposition. **Nor can they**, because it is well established that a rail line **is not abandoned** until this agency authorizes abandonment under 49 U.S.C. 10903 or the exemption provisions at 49 U.S.C. 10502." Bold added.

10. The LLCs correctly point out in their Reply at p. 8 to 19, that essentially City et al. is attempting to obtain from Riffin the same information that City et al. attempted to obtain from Conrail and the LLCs, without success.

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11. In the STB's May 22, 2015 Decision denying the vast majority of City et al.'s motion to compel discovery against the LLCs and Conrail, the STB made it clear:

A. Discovery is "typically disfavored in abandonment cases;" and

B. The party seeking discovery "must demonstrate relevance and need."

12. On the issue of 'relevance,' the STB noted that the discovery request **must** relate to an **issue pending** before the STB.

13. Whether the Harsimus was conveyed to Conrail as the line of railroad known as Line Code 1420, has been litigated and decided. That is no longer an issue.

14. Whether the Harsimus was 'de facto abandoned,' has been litigated and decided. The STB held that the Harsimus is a line of railroad that has not been abandoned.

15. This proceeding is an 'abandonment' proceeding.

ARGUMENT

16. The only issues remaining before the STB are:

A. Should the STB impose extraordinary 'Historic Preservation / Environmental' conditions, if the STB decides to grant abandonment authority? That is the issue **currently** being addressed by the STB.

B. Has Conrail presented sufficient evidence to justify granting Conrail abandonment authority? That will be the next issue that gets decided. This issue **cannot be addressed** until the 'Historic Preservation / Environmental' issue has concluded. Conrail has provided more than sufficient evidence that the Harsimus **was not used** for freight rail purposes for the two years prior to **January 6, 2009**, the date Conrail

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filed its 49 CFR 1152.50 Abandonment Exemption. Pursuant to 49 CFR 1152.50, abandonment authority **must be granted** if a line has not been used for freight rail purposes for the two-year period prior to when an abandonment exemption is filed. (The Harsimus has not been used for freight rail purposes since 1988, which is decades more than 'two years.')

C. Once abandonment authority is granted (a foregone conclusion), the next issue is: Should abandonment authority be stayed to permit the Offer of Financial Assistance ("**OFA**") procedures to be used? To answer this question, the STB has indicated that it will **require** any OFA offeror to demonstrate:

a. That there is a demonstrated need / desire for freight rail service by a potential rail shipper that **currently** wants freight rail service. In 2014, a potential rail shipper named Pace Glass filed a Verified Statement stating that it desired freight rail service in Jersey City. Pace Glass currently ships recycled glass via trucks. Presumably, Pace Glass will still desire rail service when the OFA process begins, which could be some considerable time in the future. (After the Historic / Environmental process has concluded. Which could take another year or so.)

b. That providing rail service on the Harsimus **is feasible.** This is the tricky part. This is extensively discussed in Riffin's first Reply to City et al.'s Motion to Compel. See JR-13, at ¶¶72 - 91, a copy of which is attached, and is incorporated by reference herein as if fully reproduced herein.

c. That providing freight rail service would be profitable. It probably would be, given the quantity of recycled glass that Pace Glass desires to ship.

d. That there is community support for freight rail service. When Jersey City was voting on whether to approve an Ordinance permitting Jersey City to file an OFA, of the 50 or so commenters, only one commenter objected: Counsel for the LLCs. That demonstrates 'community support.'

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D. And if, **and only if,** the OFA procedures are permitted to be used, then the STB will address the following additional issues:

a. Are whatever entities that file an OFA, 'financially responsible?' More on this issue below.

b. If the OFA offeror(s) are unable to reach an agreement with Conrail, and if one or more OFA offeror(s) file a Petition with the STB asking the STB to Set Terms and Conditions, what will those terms and conditions be?

17. Riffin has detailed the issues that still need to be decided, for the only discovery that is permitted, is discovery that addresses those issues.

CITY et al.'s ISSUES

18. City et al. list the following as issues:

A. The LLCs and Conrail attempted to / are attempting to, evade the jurisdiction of the STB. Whether the LLCs and Conrail attempted to evade the jurisdiction of the STB, is a long-dead issue. Since 2009, the LLCs and Conrail have made every effort to make sure that they do not 'evade' the jurisdiction of the STB.

B. Are the LLCs / Conrail attempting to 'abuse' the STB's processes? The only argument made by City et al in support of this allegation, is that Conrail sold the real property underlying the Harsimus to the LLCs without STB authority. Per *Maine, DOT – Acq. Exemption, Me. Central R. Co.,* 8 I.C.C. 2d 835 (1991) ("***State of Maine***"), a rail carrier may convey the real property underlying its 'line of railroad,' without STB approval, so long as the rail carrier retains a permanent easement to provide continued rail service. This makes sense, since many lines of railroad are over easements. Which means the rail carrier does not own the underlying real

property. It merely has the permanent right to **use** the real property for railroad purposes. In this proceeding, the LLCs made no effort to acquire / and has firmly disavowed any desire to acquire, the 'line of railroad' impressed upon the Embankment Properties that the LLCs purchased. See LLCs' Reply at 15.

C. Are the LLCs / Conrail attempting to thwart the Historic and Environmental Review process? Not hardly. City et al. asked the STB to conduct an extraordinary Historic and Environment Review process (to include what a future purchaser of the Line might use the real property for once abandonment is authorized and exercised). Having asked for this extraordinary relief, City et al. presently complains that the review is 'taking too long.' ("Be careful what you ask for. You might get it.")

MATERIAL REQUESTED FROM RIFFIN

19. It should be noted that **none** of the City et al.'s 'issues' / and **none** of the issues still to be addressed by the STB, even remotely relate to the **material requested from Riffin**:

A. Communications between Riffin and the LLCs / Conrail regarding how the LLCs might **use** the real property post abandonment / any (unidentified) **legal or regulatory disputes** concerning the Harsimus. As far as Riffin can discern, the only regulatory issues remaining are: (a) Is the STB going to impose extraordinary Historic / Environmental conditions? (b) Is the STB going to permit the OFA process to move forward?

B. **Financial Responsibility** information about Riffin.

C. Copies of Riffin's **Bankruptcy** orders.

20. So one may ask, what is City et al.'s real goal? To Riffin it is clear:

21. Both Jersey City and Riffin have filed Notices of Intent to File an OFA. That makes Jersey City and Riffin competitors, if the OFA process is permitted to move forward.

22. If more than one OFA is submitted to a rail carrier, the rail carrier has the absolute right, and sole discretion, to determine which offeror it wishes to negotiate with. If there is only one OFA offeror, the sole offeror is pretty much guaranteed that its offer will be accepted. If there is more than one offer on the table, then each offeror has to compete against each other. And it is not a matter of who submits the 'best' bid. It is about to whom the carrier wishes to convey the line.

23. In this proceeding, there is a Memorandum of Understanding between the LLCs and Conrail, which basically says that Conrail is obligated to do whatever it can do, to protect and perfect the LLCs' title. That at least suggests to Riffin that the LLCs are likely to be consulted by Conrail, prior to Conrail picking which OFA offeror it will negotiate with.

24. The LLCs decidedly do not like Jersey City. (After all, if the OFA process concludes, whomever acquires the Harsimus will have the right to **exclusive possession** of the entirety of the Embankment, its full width by its full length, from the center of the earth to the heavens, all for the princely sum of **Zero Dollars!**) And Jersey City has made it abundantly clear that Jersey City intends to possess the **entirety** of the Embankment, and intends to prohibit and **bar** the LLCs from possessing, or using, any portion of the Embankment.

25. In effect, Jersey City found a perfectly legal way to acquire exclusive use and possession of the Embankment, for Zero Dollars. That sure beats paying fair market value to acquire the Embankment. [A nearby (500 feet distant) 1-acre parcel sold for $10 million in 2015. The Embankment contains six acres.]

26. So Jersey City is trying to find some way to 'knock Riffin out of the race.'

THE LLCS AND RIFFIN

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27. The LLCs have made it very clear: They strongly oppose any OFA proceeding, including a Riffin OFA ["The LLCs will not support Riffin's OFA." "The LLCs will not provide any financial assistance to Riffin in connection with any OFA he may file at a future date."] . Reply at 19.

28. The LLCs have made it clear: The LLCs "have no agreement with Riffin." Reply at 19.

29. There is no written agreement between the LLCs, Steve Hyman, or Victoria Hyman, and Riffin.

30 City et al. expressly excluded from its discovery requests, any "legal pleadings filed with the Surface Transportation Board." Most of the e-mails between Riffin and Steve Hyman / the LLCs, are copies of legal pleadings. Occasionally, Steve Hyman will send Riffin an interesting article, such as a "Tubular Rail" concept.

FINANCIAL RESPONSIBILITY

31. It would appear to Riffin that City et al., by attempting to acquire a copy of Riffin's **current** financial statements, is attempting to argue that Riffin should be disqualified as an OFA offeror, due to his lack of 'financial responsibility.'

32. Riffin has multiple problems with this request. The first is: The STB, in prior OFA proceedings, has expressly held that the issue of 'financial responsibility' arises **only after** the OFA process **has begun**. See, for example:

33. On page 6 of the STB's May 22, 2015 decision, the STB stated:

> "Conrail's claim that the City Parties will be unable to submit a successful OFA may ultimately prove correct, but the Board's determination of whether to grant a request for an OFA **occurs after** the valuation information has been provided and **an OFA is filed**. Thus, the Board typically **does not consider or address the factors necessary to**

determine whether an OFA might be granted until the offeror receives the valuation information in 49 C.F.R. §§ 1152.27(a) and (d) (which is in the abandoning railroad's possession) and **files an OFA**. Accordingly, we will grant the City Parties' motion to compel Conrail to produce the valuation information described in 49 C.F.R. §§ (a), (d) limited to the operation of and property comprising the Harsimus Branch only. ... Here, because of the unique circumstances of this case, the Board will decide whether to make the notice of exemption effective and will set a due date for OFAs in a future decision."

34. In *Stewartstown Railroad Company – Adverse Abandonment – In York County, PA*, AB 1071, Riffin filed a motion asking the STB to determine whether Riffin would have to "submit a more recent personal financial statement for his contemplated OFA." In a December 12, 2012 decision denying Riffin's motion, the STB stated:

"It would be inappropriate for the Board, in effect, to rule formally on the sufficiency of Riffin's evidence in the abstract, **before Riffin's OFA, if any, has been filed.** The Board notes that it is the OFA offeror's obligation to provide accurate information sufficient to show, **when the offer is filed,** that the offeror has or will have the means to carry out its offer."

35. Riffin will bring to the ALJ's attention what Conrail has declared is the Net Liquidation Value of the Harsimus Branch (See Conrail's June 1, 2015 Valuation Information):

A. For the Metro Plaza portion (between Marin Blvd and the Light Rail. Conrail only has a constructive easement): Valuation Info at 1: Zero Dollars

B. For the Embankment Properties (LLCs' Properties) (Conrail only has a constructive easement) Valuation Info at 3: Zero Dollars

C. For a 60-foot corridor from CP Waldo to the West End of the LLCs' Properties. Valuation Info at 5.
Held in fee simple. $17, 835.82 / acre. 1.23967 Ac: **$22,109.51**

FRCP 34

36. 49 CFR 1114.30, and FRCP 34 are quite similar. Both state that the party upon whom

discovery requests are propounded, has the duty to permit the individual seeking discovery, "to inspect and copy" whatever the individual seeking discovery is permitted to 'inspect and copy,' **where ever the documents 'are normally kept.'**

37. The discovery rules **do not** require Riffin to copy, reproduce, or transport to the requestor, whatever documents are requested.

38. Riffin has offered to Charles Montange, City et al.'s counsel, the following:

> If Montange comes to Baltimore, Riffin will take Montange to one of Riffin's Banks, where Riffin will withdraw $22,200 in cash. Riffin will further Offer to let Montange hold, and count, the $22,200, to verify that Riffin has $22,200 in immediately available funds, which is more than sufficient to pay the Full Net Liquidation Value for the entirety of the Harsimus Branch.

37. Riffin will note for the ALJ that 'financial responsibility,' is defined in 49 CFR 1152.27(c)(1)((ii)(B) as: The offeror "has or within a reasonable time will have the financial resources to fulfill proposed contractual obligations."

38. At the time an OFA offer is made, the only "contractual obligation" is the obligation to pay the Net Liquidation Value for whatever portion of a line authorized to be abandoned, the offeror desires to purchase. Consequently, if one has $22,109.51 in available funds, (or within a reasonable time can obtain $22,109.51), then one is, by definition, 'financially responsible.'

COMMUNICATIONS

39. City et al. asks Riffin to produce e-mails between Riffin and the LLCs, Steve Hyman and Victoria Hyman.

40. Riffin's computer (and house / office) **is not** connected to the Internet. The nearest Internet connection is more than 1/4 mile away. To use the Internet, Riffin must go to a library, or to a McDonalds, which has Wi-Fi service. There, he can use his lap top computer, which is

Wi-Fi compatible. However, Riffin's lap-top computer is not connected to Riffin's printer. Nor has Riffin ever been able to figure out how to connect it to Riffin's printer.

41. When City et al. sent Riffin a copy of City et al.'s Second Motion to Compel, Riffin went to a library, where he signed on to his e-mail account. When Montange's e-mail was accessed, and an e-mail involving Dan Horgan (counsel for the LLCs), Steve Hyman and Victoria Hyman were accessed, Riffin 'saved' the e-mail to a flash drive. Riffin then returned to his home, inserted the flash drive into his computer, then attempted to open the e-mail.

42. Appended is a copy of what appeared on Riffin's computer monitor, and what Riffin was able to print out. As can be seen, what was printed out, is not comprehensible. Riffin deduces that the reason for this is Yahoo (where Riffin's e-mail account is located) has a special computer language for e-mails. Which language cannot be read by Riffin's computer programs.

43. Riffin sent a copy of what is appended, and the explanation noted above, to Mr. Montange, several weeks ago. (Around July 12, 2016.) Riffin further offered, in conformity with 49 CFR 1114.30 and FRCP 34, to let Montange come to Baltimore, and once he is in Baltimore, to let him look at all of Riffin's e-mails to the LLCs, or to the Hymans. So far, Mr. Montange has not responded.

CONCLUSION

44. Riffin objects to City et al.' discovery requests on the grounds that:

A. They are overbroad;
B. They are not relevant to the issues currently before the STB;
C. The STB has already ruled that similar discovery requests will not be granted.

45. In the event that the ALJ rules that Riffin is compelled to let Mr. Montange inspect and copy any documents in Riffin's possession, then Riffin would ask that Mr. Montange be

compelled to comply with the dictates of 49 CFR 1114.30 and FRCP 34, to wit: That Riffin **only be required** to produce, for inspection and copying, the documents Riffin is compelled to produce, such inspection and copying to occur where the documents are normally kept, to wit: In Baltimore.

46. 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 28th Day of July, 2016, a copy of the foregoing Reply to City et al.'s Motion to Compel, was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid.

James Riffin

Montange's Reply to my Reply To Montonges Motion to Compel 7-13-16

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E-mail from R Hill to Horgan

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Email from Riffin to Steve Hyman

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Email from Riffin to Victoria Hyman

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TO: ALJ Dring FERC 888 First Street NW Washington, DC 20426

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

8/26/16

CC: Charles Montange, Daniel Horgan, Robert Jenkins

DATE: August 25, 2016

RE: Status Report and comments.

Dear ALJ Dring:

STATUS REPORT

Per my agreement with Charles Montage, a copy of the e-mails between me and Steve Hyman, Vicki Hyman, and Daniel Horgan, were forwarded to Mr. Montange on August 25, 2016, by 6:30 pm. (All 103 of them.) Likewise, the case numbers for the three bankruptcy proceedings that I participated in, were forwarded to Mr. Montange on August ~~25~~ 26, 2016.

COMMENTS

Mr. Montange (misrepresented) to me, and to the Court, that forwarding the e-mails would be simple and would require very little of my time. I spent an hour on August 24, 2016, trying to forward the e-mails to Mr. Montange, as a 'batch.' (Which is how he said he wanted to receive them.) I learned, after an hour of trying, that Yahoo e-mails cannot be forwarded as a 'batch.' Instead, one must 'open' each individual e-mail. Once the e-mail is open, it then can be forwarded. It took me over two hours to 'open' the 103 e-mails Yahoo says have passed between me and Steve Hyman, Vicki Hyman, and Daniel Horgan, then to forward those e-mails to Mr. Montange, Daniel Horgan, Robert Jenkins, Adam Sloane and Eric Strohmeyer.

The Discovery Rules say one must make documents 'available for inspection and copying.' The Rules do not compel the document holder to do the copying for the person seeking the documents. However, it would have taken more time to litigate this 'principle,' than it took me to just e-mail them to Mr. Montange. E-mailing them, versus litigating the issue, also saved the Court a considerable amount of time.

I do apologize for being late. Normally, it takes about 75 minutes for me to drive to the STB building. I left at 7:30 am, thereby giving myself 150 minutes.

I arrived at the FERC building timely: At 9:52 am. There was no one in the 'metal detection' line. It only took about 90 seconds total time, to go through the metal detector. It took another four minutes to be issued a 'picture ID.' Since I have never been to the FERC building before, and since the hearing notice did not specify a hearing room number, I asked the security person where the hearing was being held. The security person said:

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"Up the escalator. Third door on the right."

So I went up the escalator, and proceeded to the "third door on the right." Which was locked. So I back-tracked: Door two was locked. Door one was locked. So I reversed course again, and tried the fourth door on the right. That is where the hearing was to be.

Since I have never been to the FERC building, I decided to drive to D.C. the night before the hearing, to locate the FERC building. I went to First Street. (One block **West** of Capital.) I went to the 800 block. There were residences there. The 700 block had a Walmart. I asked two Transit Police where the FERC building was located. They had no idea. So I called someone and asked them to find it on Google, then to give me directions. I learned that the First Street that I was looking for, was on the **East** side of Capital Avenue. But on the **West** side of the Amtrak tracks. After 45 minutes of searching, I located the FERC building. I am just glad that I looked for, and found, the building the night before.

I am taking the time to write this missive, to let you know what a 'newcomer' to the FERC building is likely to encounter. And given my experience, I will make the below suggestions, for any future hearings that are conducted in the FERC building for the benefit of entities appearing before the STB.

In the Notice of hearing, suggest that attendees arrive at least 15 minutes before the hearing time, to allow time to go through security.

Emphasize the it is First street **NE** (on the West side of the Amtrak tracks / one block East of Capital Street).

If one takes the train to Union Station, or takes a cab, it is easy to find the FERC building. **Driving** to the FERC building is more of a challenge.

You expressed some incredulity when I said that the purchase price for the Harsimus Branch was only $22,109.51, remarking that you had read that the Embankment portion was worth $60 million.

The **Fee Simple** fair market value of the Embankment portion may be $60 million (once one obtains some development rights). (Personally, I think that it would have a total potential value of $40 million or so. Another major developer put the number at $48 million, with a Present Value of $30 million or so, if permission to build 1,200 residential units was obtained.) However, it presently is zoned for 'park land' use only. Which has much less value.

But all of that presumes one can obtain Fee Simple title. Which **is not** what one gets via the OFA process. The OFA process permits one to obtain whatever title the rail carrier has. Conrail only has a 'rail casement' over the Embankment portion. Which rail easement will terminate whenever authority to operate over the rail easement is terminated (via abandonment). The OFA price is the Net Liquidation Value, which is the value **AFTER abandonment**. Since a rail easement terminates upon abandonment, a rail easement **has no value after abandonment.**

Consequently, the Net Liquidation Value of a rail easement is Zero Dollars. As Conrail certified. The only real property that Conrail has fee simple title to, is **West** of the property that was conveyed by Conrail to the LLCs. Conrail certified that the average price for the fee simple acreage that underlies the Harsimus, is a bit less than $18,000 / acre. A 60-foot wide corridor sufficient in length to connect the LLCs portion of the Harsimus to Conrail's track at CP Waldo, Conrail certified contains about 1.25 acres. Total price for the Fee Simple portion: $21,109.51.

Total price for the Embankment portion: Zero Dollars. (Because one is only obtaining a rail easement.) Total price for the Harsimus between CP Waldo and the Light Rail Line: $21,109.51. (Conrail only has a rail easement over the portion between the Embankment portion, and the Light Rail Line.)

And now you may have a better idea why the LLCs are opposing the OFA process so vigorously: Mr. Hyman paid $3 million for the Embankment portion, 13 years ago. At the time, he did not realize that Conrail still retained a rail easement over the Embankment portion. (Conrail misrepresented that the Embankment was 49 U.S.C. 10906 'excepted' track, which can be abandoned / sold without STB authority.) The courts held that the Embankment was an unabandoned 'line of railroad.'

Jersey City (and I), both have the right to acquire Conrail's easement over the Embankment portion for Free. And he who possesses that rail easement, has the right to exclusive possession of the Embankment, full width by full length, center of earth to the heavens. Thus, if Jersey City acquires the Embankment, it will have the right to exclude the LLCs from entering upon, or using, the Embankment property. After two years (with Conrail's permission), after five years (without Conrail's permission), Jersey City would have the right to convey the line to another entity, to be used as a 'trail,' or any other use that it desired. A very legal way to 'take' the LLCs' property. Just not too equitable. And taking the Embankment via the OFA process is a whole lot less expensive than taking the Embankment via Eminent Domain. [Free (except for litigation costs) vs. $40 million or so.]

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ENTERED
Office of Proceedings
September 15, 2016
Part of
Public Record

15 Sept. 2016

9/15/16

MOTION FOR SANCTIONS

Hon. John P. Dring, Administrative Law Judge
Federal Energy Regulatory Commission
Office of Administrative Law Judges
888 First Street, N.E.
Washington, DC 20426

Re: Conrail – Ab. Exemption – Hudson County, NJ, STB dkt AB 167-1189X and related cases.

Dear Judge Dring:

Per the order of the Surface Transportation Board (STB) in the above docket, served July 5, 2016, enclosed on behalf of City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively "City et al"), please find a motion for sanctions against Mr. Riffin and a motion to compel against 212 Marin Boulevard, LLC, et al ("LLCs"). Both motions relate to the continued efforts of City et al commencing last March to obtain meaningful discovery against Mr. Riffin and subsequently the LLCs in respect to matters relevant to this proceeding.

Respectfully submitted,

Charles H. Montange
Counsel for City et al.

cc. Parties per cert. of service

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Before the Surface Transportation Board

Conrail -- Abandonment --in Hudson County, NJ.	)	AB 167 (Sub-no. 1189X)
		and
CSX Transp. - Discon. of Service - same	)	AB 55 (Sub-no. 686X)
		and
Norfolk Southern - Discon. of Service - same	)	AB 290 (Sub-no. 306X)

9/15/16

Motion on Behalf of City of Jersey City et al for Sanctions Against James Riffin for Failure to Respond to Discovery (Document) Requests

City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition ("City et al") hereby move, pursuant to 49 C.F.R. 1114.31(b), for discovery sanctions, and in particular, for an order either (1) dismissing James Riffin from further participation in this proceeding, or, in the alternative, (2) barring James Riffin from submitting an "offer of financial assistance" ("OFA") pursuant to 49 U.S.C. 10904 in this proceeding, and (3) for attorneys' fees and costs associated with the motions to compel Riffin, hearings, and motion for sanctions, and any further hearings attendant thereto.

Summary. On August 25, in response to the order served by Administrative Law Judge Dring on the same date in this

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proceeding, Mr. Riffin evidently spent about two hours total (1) forwarding a selection of some 100 emails to counsel for Conrail, the intervenor LLCs, and City et al and (2) drafting a three-page letter to ALJ Dring objecting to further response and making arguments about his proposed OFA. City et al objected to the arbitrary limitations in Riffin's response (and to a clear misrepresentation in the letter as drafted). Mr. Riffin replied by email on August 26 that "[i]f you want any more, you will have to ask ALJ Dring to order it." Regrettably, City et al must now again request ALJ Dring for relief against Riffin.

Background

City et al on March 28, 2016, served (by email and Express Mail) upon James Riffin the document requests set forth in Exhibit A. The document requests call for a response by April 19. Although Mr. Riffin several times promised a response (as set forth in our first motion to compel), he failed to do so. On May 2, City et al accordingly filed a motion to compel. At that point, Mr. Riffin served (by US Mail postmarked on that date) a response, which amounted to a set of objections, to City et al. At the same time, Riffin filed a flurry of papers in reply to the motion to compel contending, inter alia, the original motion to compel was moot in light of his filing belated objections. City et al agreed that the original motion was moot, and withdrew that motion in a filing dated June 7, and

on July 5, filed a second motion to compel. On the same date (July 5), the Board served an order in this proceeding assigning discovery disputes to Administrative Law Judge Dring. Riffin filed another opposition to City et al's second motion to compel, suggesting among other things that he had no intelligible responsive documents (emails). In particular, Riffin indicated that he saves emails to a flash drive, which on retrieval "is not comprehensible." Riffin Reply to City's July 5, 2016 Motion to Compel, served July 28, 2016 at p. 12 (with exhibit). As Riffin acknowledges (id.), he made a similar representation that he had no intelligible responsive documents in a letter to counsel.

Judge Dring issued an order (served August 5) providing for a hearing in Washington, D.C., on August 24. Counsel for City et al arranged for a witness (Eric Strohmeyer), who could attest that, contrary to Riffin's representations, Riffin in fact had intelligible responsive documents, to be present at the hearing. On the evening before the hearing, Riffin ascertained that the witness (Strohmeyer) would be present, and unexpectedly crashed counsel's dinner meeting with the witness. Contrary to his prior claims, he there acknowledged that his computer held responsive intelligible documents and offered to make those available by close of business Friday, August 26. When he showed up at the hearing (somewhat tardily), he reiterated this

position, and it resulted in an order to produce documents in this proceeding, served by Judge Dring on August 25. Conrail also requested copies.

On Thursday, August 25, Mr. Riffin forwarded some 100 emails (Mr. Riffin claims 103, but several of those appear to be housekeeping in nature) from 2015 and 2016 chiefly from Mr. Steve Hyman (manager of the LLCs) to Mr. Riffin, with a smattering of emails from Victoria Hyman (Mr. Hyman's wife, who is represented by the Hyman interests to own the LLCs) and one of the LLCs' attorneys (Horgan) to Mr. Riffin. Mr. Riffin then circulated an email indicating that he had spent roughly two hours on this effort (and on preparing a letter, appended to his email, to Judge Dring) and declined to spend any more time. His letter to Judge Dring accused counsel for the City of misrepresenting how easy is would be to forward emails (evidently Mr. Riffin has so many responsive emails that it would take more than two hours to forward them). City et al objected to Mr. Riffin's curtailment.[1] Mr. Riffin nevertheless refused to forward any more, stating in an email dated August 26 that "[i]f you want any more, you will have to ask Judge Dring." Exhibit C.

[1] A copy of this exchange, including the first page of what Riffin represents is a version of his letter to Judge Dring, is contained in Exhibit B.

The letter to Judge Dring furnished by Riffin to City et al on August 25 represents that Riffin supplied his bankruptcy docket numbers to City et al on that date. Riffin claims to counsel that he sent a revised version of his letter to Judge Dring correcting the error, but he has declined to furnish a copy of the revised letter. Even if the revision was limited to a date correction, this renders what Mr. Riffin sent to Judge Dring, if Riffin in fact sent a letter to Judge Dring, an impermissible ex parte communication. In all events, the draft letter which we received by email goes well beyond housekeeping matters in pp. 2-3, and amounts to a pleading arguing points about the case. The letter apparently was not served on any parties as a pleading, violating service rules. Riffin has twice been admonished by STB to serve his pleadings on the parties to the proceeding. Decisions in AB 167-1189X, served July 25 and August 24, 2015. The second warning stated that improperly served documents would be rejected. The Riffin letter, if he sent a letter, must therefore be rejected on multiple grounds.

The fact that Riffin has more than one hundred responsive emails is not grounds to terminate discovery. It instead shows that Riffin was in extensive communication with the Hyman interests on matters relating to his OFA, corroborating the need for discovery. Had Riffin put 10 percent as much effort into

making documents available in accordance with the August 25, 2016 order as he has put into resisting discovery on spurious grounds, he would have saved himself time, not to mention the time his tactics have consumed for City et al, STB, and the Administrative Law Judge assigned this case.

Deficiencies. Turning to the limited emails that Mr. Riffin did produce in the roughly two hours he says he spent at the library working on a letter to Judge Dring, his discovery response fails to meet the requirements of the order served August 25, 2016, in all particulars: (1) Riffin appears to have deleted all identification of the recipients of the emails (examples in Exhibit D) other than himself, or text and attachments, so he has not furnished such mails in their totality; (2) in most cases in which the email he forwarded is an obvious "reply," he has failed to include the original email (examples in Exhibit E)[2]; (3) he has failed to include emails from himself to any representative or agent for the LLCs although those impliedly exist given the emails to him in apparent response (e.g., Exhibit E); (4) he has failed to

[2] Mr. Riffin has informed counsel that he uses Yahoo, and one can easily recover original emails to which an email was sent in reply on Yahoo-based email systems with which counsel is familiar. Riffin's claim of lack of technological prowess in operating word processing and email systems in order to recover documents is belied by his ability to prepare and to transmit documents in multiple STB and federal judicial proceedings.

include emails prior to 2015, although City et al is aware from other sources that such emails exist (e.g., Exhibit F), just as he has failed to disclose emails furnished us by CNJ from Hyman to Riffin concerning efforts to evade STB and STB-mediated remedies (Exhibit F); (5) he has omitted any communications between himself and representatives of the LLCs other than the Hymans and Horgan, even though such emails are known to exist (an example of such an email, in City et al's hands from another source, is set forth in Exhibit G); (6) Mr. Riffin refused even to search for exchanges with Bruce Nagel, even though City et al knows that such exist from another source (Exhibit G)[3]; (7) Riffin appears to have omitted all emails between himself and the Hyman interests bearing on the lawsuit Riffin filed in the past 30 days against Forest City over the Harsimus Branch (see excerpted Complaint, Exhibit H).[4] This omission is

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[3] Mr. Riffin professed not to remember a Nagel. City et al believe that Bruce Nagel is another attorney consulting now or in the past with the Hyman interests.

[4] Forest City is redeveloping the so-called Metro Plaza, which is a multi-acre site formerly occupied by the Harsimus Cove Yard. Riffin seeks to block hundreds of millions of dollars' worth of development on the site. See local press articles in Exhibit I. Riffin's Complaint in Riffin v. Forest City Ratner Companies, et al, U.S.D.C. N.J. 16-CV-4433-ES (Ex. H) seeks to enjoin the redevelopment pending outcome of AB 167-1189X. Riffin predicates his standing to sue on the STB's acceptance - in violation of its precedent - of a notice of intent to OFA in AB 167-1189X. According to press clippings in Exhibit I (item 1), Riffin says his purpose is to force Conrail and the City to negotiate with the Hyman interests. In short, Riffin is inter

unconscionable, since the lawsuit is predicated on the Riffin OFA and Riffin has declared that its chief purpose is to force Conrail and the City to "settle" with the Hyman interests (Exhibit I, item 2). In that suit, Riffin claims he has a property interest in the Harsimus Branch on the basis of his notice of intent to OFA, and he seeks to enjoin redevelopment of roughly 17 acres of downtown Jersey City presumably (according to his suggestions to the press) until the Hyman interests and presumably himself are satisfied. Kevin Coakley, attorney for Forest City, authorizes City et al to state that Hyman (who brought along Riffin) met with Forest City concerning the suit, Hyman said he was compensating Riffin in the event of success, but Forest City rejected their demands.[5] Mr. Riffin's discovery response is bereft of all documents relating to any of these OFA-based shenanigans.[6] A prolific emailer, Riffin obviously has other emails and documents concerning the Harsimus Branch that he is failing to disclose in violation of the August 25 order. Indeed, the LLCs' counsel (Horgan) recently supplied one (a demand letter to Forest City dated October 2015) to counsel for

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alia proposing at STB to file an abusive OFA, and simultaneously to mis-use the abusive OFA in civil litigation.

[5] Mr. Hyman's counsel (Horgan) has acknowledged to counsel that Hyman and Riffin met with Forest City.

[6] Another source supplied City et al with an email from Hyman to Riffin on the lawsuit dated Sept. 12, 2016 (Exhibit I, item 4), so doubtless there are many more undisclosed communications.

City et al. See Exhibit J (excerpts, because the entire document is voluminous).[7] Other examples of Riffin material supplied by sources other than Riffin include Exhibit G and, for that matter, Exhibit I's item 4.

In short, Riffin's earlier claims of lack of documents or incomprehensive documents are belied by the 100 emails he has supplied. Any claim that he makes as to supplying all responsive documents is belied by what he has supplied, and by documents and emails that Riffin made available to CNJ Rail or the LLCs and which they furnished to City et al in response to discovery against CNJ, or in one case from the LLCs, voluntarily. Mr. Riffin arbitrarily stopped his response because he felt that spending two hours on the matter (evidently inclusive of the time to prepare a three-page ex parte communication to Judge Dring) was already too much effort on his part.

Paraphrasing what attorneys have already said in other proceedings, Mr. Riffin is an individual who has been recognized and admonished by federal and state courts, and by the Surface Transportation Board ("STB") as a frequent litigant with a history of inappropriate filings, disregard for applicable

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[7] Unfortunately, this is the only responsive document which the LLCs have made available in connection with a document request that City et al served upon them. Efforts to negotiate a satisfactory discovery response with the LLCs have terminated.

procedures, bad faith filings, and an abusive use of litigation.[8] Although Mr. Riffin has a legal degree, he "is neither as licensed attorney nor practitioner approved to practice before [STB]." Norfolk Southern Ry. Co. - Petition Exemption - in Baltimore City and Baltimore County, AB 290-311X, served Jan. 29, 2010. This does not excuse him, for he nonetheless is a "person" appearing before the agency, and by regulation is bound "to the standards of ethical conduct required of practice before the courts of the United States." 49 C.F.R. 1103.11.

Norfolk Southern Railway Company filed a Petition for Rulemaking to Address Abuses of Board Processes, docketed at EP 727, on May 26, 2015. The Petition focused on abuses by Riffin

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[8] See, e.g., Balt. County v. Riffin, 2007 U.S. Dist. LEXIS 99000, *3-4 (D. Md. Oct. 4, 2007)("Riffin has made numerous attempts to disrupt valid state proceedings by filing civil rights complaints seeking injunctive relief against Baltimore County and by removing proceedings to this Court, forcing state proceedings to a grinding halt. Riffin's use of federal litigation to stonewall efforts by local authorities to enforce state law is abusive and this Court declines to facilitate those efforts any further."); Norfolk S. Ry. - Aban. Exemption -- in Norfolk & Virginia Beach, Va., AB 290 (sub no. 293X) (STB served Nov. 6, 2007), appeal dismissed sub nom Riffin v. STB, 331 Fed. Appx. 751 (D.C. Cir. 2009) (concluding, based on strong evidence that Mr. Riffin had filed in bad faith, that "we will closely scrutinize any future filings by Mr. Riffin … and we strongly admonish Mr. Riffin that abuse of the Board's processes will not be tolerated"); Riffin v. Balt. County, 2012 U.S. Dist. LEXIS 98213, *13-15, 2012 WL 2915251 (D. Md. July 16, 2012) ("Mr. Riffin's litigation history bespeaks an utter disregard for the Court's procedures, which can only be remedied by appropriate sanction."). See also Exhibit I, item 1(Jersey Digs news article).

of the OFA process. After taking comments, STB declined to issue the relief sought by NS (Decision, EP 727, served Sept. 23, 2015). Echoing prior admonitions by STB and the courts concerning Riffin (e.g., note 7, supra), STB indicated it would instead more vigorously enforce existing regulations dealing with inappropriate behaviors. Slip op. at 4. The agency also said it would institute a proposed rulemaking to examine its OFA process. (The OFA process has broken down in AB 167-1189X, where the agency has vacated the schedule provided by statute and its regulations, and has yet to issue a schedule, over 15 months after City sought - with Conrail consent - an expedited one.[9]) Failure to deal with Mr. Riffin through enforcement of discovery sanctions and regulations governing inappropriate participation in the agency's processes results in higher costs for litigants, the agency, and ultimately bad law in the form of efforts to "control" Mr. Riffin's behavior outside the sanction process. City et al request that, instead of tolerating antics,

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[9] See Decision in AB 167-1189X, served Nov. 2, 2015 (denying City's request for a schedule and allowing Riffin to file notice of intent to OFA six years out of time). Although STB has failed to provide a schedule for an OFA or other relief, and although the Hyman interests have sought through state court litigation to prevent the City from seeking any federal remedies, the Hyman interests efforts so far have been unsuccessful. The City remains resolute in seeking to vindicate its STB rights and remedies, and state remedies like NJSA 48:12-125.1 that apply to lines subject to STB abandonment proceedings.

the discovery order of August 25 be enforced with sanctions rather than more admonitions.

There is another reason to act. As City et al has explained in its two motions to compel against Riffin (see first motion filed May 2 at p. 2 n.1 and Ex. D thereto - Riffin cert pet. excerpts, and second motion filed July 5 at Appendix pp. 11-15), this case involves a kind of cascade of abuse of STB jurisdiction, STB processes, and, now, by Riffin and the Hyman interests, STB remedies as well. In particular, Riffin's explanations for his proposed OFA are tantamount to an admission that he intends to abuse STB processes, jurisdiction, and remedies, purportedly to secure real estate profits to the tune of $40 million (from time to time City et al hears more) for the Hyman interests from the unlawful sale of the Harsimus Branch by Conrail to the LLCs. Discovery to date shows that Mr. Hyman personally furnished Riffin with a copy of the 2008 Conrail/Hyman contract obligating Conrail to do the bidding of the Hyman interests. Mr. Riffin has explained that Hyman will compel Conrail to "accept" Mr. Riffin's proposed $23,000 OFA, in return for which he will ensure Mr. Hyman gets to develop all, or at least the bulk, of the Harsimus Branch for non-rail purposes. In short, he represents that he expects compensation from the grateful Hyman interests.

In addition, Riffin has asserted to counsel (in front of a witness) that he (Riffin) is in dispute with Baltimore County (Maryland) over certain rail equipment parked on Riffin's Baltimore County property in violation of local land use requirements. Riffin claims that he wishes to acquire rail operating rights somewhere (within 150 miles he says) in order to assert that his Maryland property is railroad property under the exclusive jurisdiction of STB, so as to preempt Baltimore County land use regulations. See 49 U.S.C. 10501(b). This Board has previously noted that Riffin is not supposed to use rail proceedings to harass railroads into donating lines to him for his use in land use disputes in Maryland. Norfolk Southern Rwy Co. - Ab. Ex. - in Norfolk and Virginia Beach, AB 290-293X, slip at 8.

Neither real estate plays with New York area developers in Jersey City nor disputes over land use in Baltimore County, Maryland are what OFAs in Jersey City, New Jersey, are supposed to be about. To the contrary, STB has indicated that OFAs are to permit a party "genuinely interested in providing continued rail service on a line that would otherwise be abandoned to acquire the line for such continued rail service." Consolidated Rail Corporation, supra, AB 167-1190X, slip at 3.[10]

[10] Mr. Riffin's proposed abusive conversion of the OFA process into a mechanism to acquire land for real estate development is

Mr. Riffin, with evident complicity of Mr. Hyman, has compounded abuse of the OFA process. As already suggested, Riffin has now sued Forest City Ratner, the developers of the Metro Plaza east of Marin Boulevard, contending that the Riffin notice of intent to OFA somehow vests Riffin with an equitable interest in the old Harsimus Cove yard east of Marin Boulevard. Riffin has evidently been discussing (including by email, see Exhibit G) such a suit since November (or perhaps October, see exhibit J) of 2015 with the Hyman interests. According to Exhibits G (Riffin memo to Nagel) and I (Riffin press statements), the purpose of the suit is to threaten the Forest City development to prompt Conrail and the City to "settle" with Hyman. This is in keeping with Riffin's earlier representation to the effect that his OFA was an instrument to promote the Hyman interests. According to attorney Kevin Coakley, who represents Forest City, Mr. Hyman explained to Forest City that he was compensating Riffin in the event Riffin advanced Hyman's interests.

The long and short of this is that Riffin and Mr. Hyman apparently have abusively positioned Riffin as an OFA applicant

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not new: Mr. Hyman himself at one point attempted to use the same ploy in connection with Conrail's Edgewater Branch in AB 167-1036 in 1987. Interestingly, Riffin in his discovery response has supplied material Mr. Hyman provided him about Hyman's AB 167-1036 invocation of the OFA process.

to get the Harsimus Branch and other properties in the old Harsimus Cove Yard for non-rail purposes, and are now involved in litigation against Forest City, based on Riffin's abusive OFA, to further shakedown Conrail and/or the City, and now evidently Forest City, by holding up redevelopment of a portion of the Harsimus Cove yard. Since Riffin omitted any of his machinations with the Hyman interests associated with the rail line or yard east of Marin Boulevard, Riffin has not produced all responsive documents despite the August 25 order.

City et al seeks to use the discovery process to obtain information showing these abuses, now especially as to STB remedies. Mr. Riffin now abuses the discovery process to hide his substantive abuses.

Riffin's failure to respond fully to the August 25 discovery order simply compounds the abuse of process to date.

Argument

The continued abuse of STB discovery processes has now reached the point of violation of an order compelling discovery to which Riffin ostensibly consented, which required Mr. Riffin to turn over, inter alia, emails between himself and the Hyman interests by Friday August 26. The proper response is not more admonitions to Riffin and expenses for the parties seeking discovery but appropriate sanctions. Accord, Norfolk S. Ry - Ab. Ex. - in Norfolk and Virginia Beach, supra, slip op. p. 8.

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The law on sanctions in discovery matters where, as here, a party (Riffin) is now in violation of an order, as set forth at 49 C.F.R. 1114.31(b)(2). STB may order facts concerning which discovery is sought to be deemed admitted, may prohibit the infringing party from introducing evidence, may strike pleadings of the infringing party in whole or in part, or may dismiss the party from the proceeding. In addition, or in lieu of the above, STB may order the infringing party to pay reasonable expenses, including attorneys' fees. Indeed, unless the Board otherwise penalizes the infringing party, the language in section 1114.31(b)(2)(iv) requires an award of attorneys' fees, unless the abusive conduct is found to be "substantially justified" or that other factors make penalization unjust. Riffin has been involved in innumerable STB and judicial proceedings. He holds a law degree. He has been repeatedly admonished by this agency and the courts for a decade or more, and despite all that experience and admonition has refused to adhere to a commitment embodied in Judge Dring's August 25 order. There is no legally cognizable excuse or justification for his continued obstreperous conduct, or the costs his obstreperous conduct has forced this agency and City et al to incur.

There are only three sanctions enumerated in section 1114.31(b)(2) that will remedy Mr. Riffin's obstreperous conduct

in this proceeding: (1) dismissal of Mr. Riffin from the proceeding; (2) an order barring Riffin from submitting an OFA; and/or (3) an award against Riffin and in favor of City et al of reasonable costs, including attorney's fees, for motions to compel and sanctions, attendance at hearings, and related matters. See also Denver & Rio Grande Rwy Historical Foundation - Pet for Dec. Order, F.D. 35496, served April 30, 2012, slip op. at 2 (enumerating sanctions).

This Board should dismiss Riffin from the proceeding for his discovery abuses. City et al indicated it would seek this relief if Riffin continued to default in our July 5 second motion to compel at p. 8. This relief is more than justified in light of the fact that Riffin was six years out-of-time in filing his notice of intent to OFA. Including him in the proceeding over the objection of Conrail and City et al in the first instance was contrary to uniform STB precedent. In any event, this Board has repeatedly noted that "Riffin is not a rail carrier." James Riffin– Acq. And Op. Exemption - Veneer Spur - in Baltimore County, MD, F.D. 35246, served Aug. 19, 2010; see also Norfolk Southern Ry Co. - Acq. Op. - Certain Rail Lines of the Delaware and Hudson Ry. Co., F.D. 35873, served May 15, 2015 "Riffin is not a Board-licensed rail carrier"). Riffin is not a corporation but a 73-year old individual who lacks rail operational experience. Moreover, he owns no property and has

no business interest in Jersey City. He literally has nothing to contribute to the proceeding. He evinces no support from any shipper. He certainly does not have the support of a local government or citizens' group. Finally, Riffin's track record -- not just overall but already to date in this proceeding -- indicates that no amount of "admonition" will prevent him from abusing STB procedures and jurisdiction. Riffin should be dismissed.

If Riffin is not dismissed entirely, then he should be prohibited from further pursuit of an OFA. All the same reasons for the sanction of dismissal apply for the sanction of barring him from filing an OFA. But there are additional grounds: in another recent Conrail abandonment proceeding in Jersey City, this Board disallowed a Riffin OFA attempt on the ground, inter alia, that "Riffin could not be considered a financially responsible person, as he recently filed for bankruptcy protection. … Insolvency is inconsistent with the financial responsibility to acquire and operate a railroad under the OFDA provisions." Consolidated Rail Corp - Ab. Ex. - in Hudson County, AB 167-1190X, served May 17, 2010, slip at 5. See also Norfolk Southern Ry., Co. - Pet. Exemption - in Baltimore City and Baltimore County, MD, AB 290-311X, served Jan. 23, 2012, slip at 12 (insolvency incompatible with OFA). Moreover, Riffin has indicated that his OFA is for the illegitimate purpose of

supporting the Hyman real estate (all non-rail) interests, and/or for the equally illegitimate and even more convoluted purpose of avoiding Baltimore County land use regulation on Riffin's property in Maryland. These purposes are not consistent with this agency's prior formulations concerning the purpose of an OFA. City et al's discovery is germane to Riffin's true purposes. If he wishes to conceal those purposes by refusing to make discovery (or if he simply does not wish to be bothered beyond his two hours' effort to date), the appropriate response per this Board's regulations at a minimum is to deny him access to the OFA process. In short, Riffin should be sanctioned by disqualifying him from the OFA process as to which he obstructs discovery.

In addition, City et al move for all costs (including travel arrangements for City et al's attorney) and attorney's fees they have incurred in preparing, serving, and filing two motions to compel, and this motion for sanctions, and for attendance at a hearing in Washington, D.C.. Ironically, Riffin, in refusing to make discovery, complained in an email that counsel was billing for all the discovery efforts. Of course counsel is billing for the discovery efforts. The point, however, is that there would be no bill at all if Riffin complied. The burden - all the time and expense -- is attributable to one thing, and one thing only: Riffin's

obstructions and passive-aggressive conduct. Riffin should pay for the attorney's fees and costs of City et al for which his conduct is responsible.

So far as City et al can tell, this Board to date has admonished Riffin many times over (twice already in this case), but has never sanctioned him. This time, however, Riffin has passed a new threshold: he has arbitrarily violated an order in response to a motion to compel. At that point, Board regulations specifically provide for sanctions, including attorney's fees. City et al should not continue to be on the hook for the costs of dealing with Mr. Riffin's passive-aggressive and obstreperous conduct. That only encourages such conduct. If the Board starts to award expenses when Mr. Riffin turns the Board's processes on their head, then he will stop.

Mr. Riffin, who claimed $23,000 in resources for an OFA at the August hearing, has sufficient funds to pay the attorney's fees and expenses set forth in the certification set forth in Exhibit K ($18,462.29, through Sept. 8). Those fees and expenses do not include anything for the time spent by counsel trying to arrive at a compromise with the LLCs' counsel, Mr. Horgan, to obviate the need to proceed against Riffin. They also reflect counsel's heavily discounted billing rate to City et al in light of the public interest in this case and the fact

that Rails to Trails Conservancy and the Embankment Preservation Coalition are 501(c)(3) preservation organizations.

If a further hearing on this motion for sanctions is required in Washington, City et al request that it be scheduled for a date in October (thus allowing replies, if any, as well as coordination with any motion to compel that may be necessary against the Hyman interests, see note 5 supra). City et al reserve the right to amend their certification of costs and fees to date to include all additional fees and expenses associated with additional hearings or activity on the motion for sanctions.

Conclusion

The time for bargaining on discovery is over. Riffin so declared on August 25, after he spent some portion of two hours on the matter. He breached the previous bargain he consented to, which had been entered in the form of an order, and his breach was on the very day the order was entered. He should be barred from the proceeding, or at a minimum from filing an OFA. In addition, attorney's fees and costs should be awarded against him.

If Riffin nonetheless is allowed some form of continued participation in this hearing, City et al also request an order compelling Riffin to make available his email accounts and passwords for inspection by City et al, and to supply all

documents (emails or otherwise) in his possession associated in any way with communications with the Hyman interests, and otherwise to respond fully and completely to the discovery requests in Exhibit A, no later than three business days from entry of the order. The obligation to make available responsive documents is a continuing one. If Riffin is allowed to remain in the proceeding, there should be no restrictions on his obligation to respond to the discovery already filed.

Riffin's letter to ALJ Dring, if he sent a letter circa August 25-26, 2016, must be rejected for improper service on the parties to the proceeding and as an ex parte communication dealing with substantive matters.

Respectfully submitted,

Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739
Counsel for City et al

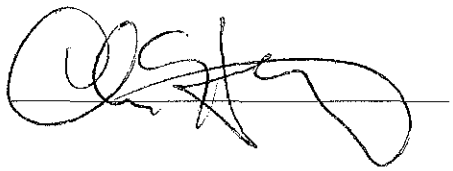
Attachments:

Exhibit A (document requests)
Exhibit B (Mr. Riffin's refusal to complete/City objection)
Exhibit C (Riffin says go to ALJ Dring for more response)
Exhibit D (typical email omissions of recipients, etc.)
Exhibit E (examples of deletions of original emails)
Exhibit F (pre-2015 email to Riffin from Hyman; and post-2015 email Hyman to Riffin, from another source)
Exhibit G (Riffin memo to Nagel from another source)
Exhibit H (Riffin Complaint against Forest City, excerpts)

Exhibit I (local press on Riffin lawsuit, including Riffin quotes and Sept. 12 Hyman to Riffin email)
Exhibit J (excerpts from Riffin Oct 2015 Forest City demand made available by LLCs but not Riffin)
Exhibit K (Certification of fees and expenses on Riffin discovery dispute through Sept. 8)

Certificate of Service

The undersigned hereby certifies service by depositing the foregoing for express delivery (next business day) upon Judge Dring at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426 and by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, on or before the 15th day of September 2016 addressed to the parties or their representatives per the service list below, unless otherwise indicated.



Service List
(current as of December 2015)

Daniel Horgan,
Waters, McPherson, McNeill, P.C.
300 Lighting Way
P.O. Box 1560
Secaucus, NJ 07096 (LLCs) [also by email]

Robert M. Jenkins III
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006-1101 (Conrail)[also by email]

Daniel D. Saunders
State Historic Preservation Office
Mail Code 501-04B
NJ Dept. Environmental Protection
P.O. Box 420
Trenton, NJ 08625-0420

Exhibit A

City et al's March 28

Document Requests

To James Riffin

SEE APPX

Exhibit B

Riffin Refusal to Complete

Discovery Response (email 5:58 PM Aug 25);

first page of Riffin letter to ALJ Dring attached to email

and

City et al objection to Riffin Refusal

(email 7:00 PM Aug 25)

Subject: Re: Letter to Dring

From: C. Montange (c.montange@frontier.com)

To: jimriffin@yahoo.com; dehorgan@lawwmm.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; esstrohmeyer@yahoo.com;

Date: Thursday, August 25, 2016 7:00 PM

The "agreement" was that you would supply all emails between yourself and agents or reps of the LLCs. You have not. You have spent, by your own statement at the end of 100 emails, about two hours sending those out. This is a clerical kind of task. You have so far spent far more time (replying to motions to compel, forcing a hearing, etc.) resisting discovery than in complying. I request that you simply finish sending emails between yourself and agents of the LLCs, as our discovery requests require. And if you have documents you exchanged outside the emails, those too. I have misrepresented nothing to you. By your own statements to date, a couple more hours should do it. This is hardly burdensome given the information sought, especially for a party voluntarily participating in the proceeding over the objection of the railroad and the City, and representing at STB, the Supreme Court, and to me personally that he is doing so as a real estate play on behalf of Mr. Hyman's interests. That is an abuse of process. For what it is worth, the City has spent orders of magnitude more time responding to the LLCs repeated OPRA discovery, and I personally have had to spend far more time responding to the LLCs' discovery requests. . I think you should comply with our discovery requests. Incidentally, Nagel is a name you can type into the email search as easily as Horgan or Hyman. And I am relatively confident that a gentleman of your professed astuteness is able to recall with whom he has corresponded in connection with your machinations with or for Mr. Hyman and the LLCs in connection with the Harsimus Branch.

On Thursday, August 25, 2016 5:58 PM, jim riffin <jimriffin@yahoo.com> wrote:

The appended letter I plan to mail to Dring on Friday. You should have received 103 e-mails (by my count). They are e-mails between Riffin and: Steve Hyman, Vicki Hyman and Dan Horgan. Mr. Montange: I do not even remember who Bruce Nagel is / was. You asked for Steve, Vicki and Horgan. Are you now asking for Nagel, Fritz and the surveying folks? The library shuts down its computers in 3 minutes, so I cannot research those entities tonight. (I was lucky the library let me use their computer for 2.5 hours. The time limit is normally only one hour.) Montange's name was always listed first, so Montange definitely got everything that was forwarded. I only got one error message: re Horgan.

(331)

TO: ALJ Dring FERC 888 First Street NW Washington, DC 20426

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

CC: Charles Montange, Daniel Horgan, Robert Jenkins

DATE: August 25, 2016

RE: Status Report and comments.

Dear ALJ Dring:

STATUS REPORT

Per my agreement with Charles Montage, a copy of the e-mails between me and Steve Hyman, Vicki Hyman, and Daniel Horgan, were forwarded to Mr. Montange on August 25, 2016, by 6:30 pm. (All 103 of them.) Likewise, the case numbers for the three bankruptcy proceedings that I participated in, were forwarded to Mr. Montange on August 25, 2016.

COMMENTS

Mr. Montange (misrepresented) to me, and to the Court, that forwarding the e-mails would be simple and would require very little of my time. I spent an hour on August 24, 2016, trying to forward the e-mails to Mr. Montange, as a 'batch.' (Which is how he said he wanted to receive them.) I learned, after an hour of trying, that Yahoo e-mails cannot be forwarded as a 'batch.' Instead, one must 'open' each individual e-mail. Once the e-mail is open, it then can be forwarded. It took me over two hours to 'open' the 103 e-mails Yahoo says have passed between me and Steve Hyman, Vicki Hyman, and Daniel Horgan, then to forward those e-mails to Mr. Montange, Daniel Horgan, Robert Jenkins, Adam Sloane and Eric Strohmeyer.

The Discovery Rules say one must make documents 'available for inspection and copying.' The Rules do not compel the document holder to do the copying for the person seeking the documents. However, it would have taken more time to litigate this 'principle,' than it took me to just e-mail them to Mr. Montange. E-mailing them, versus litigating the issue, also saved the Court a considerable amount of time.

I do apologize for being late. Normally, it takes about 75 minutes for me to drive to the STB building. I left at 7:30 am, thereby giving myself 150 minutes.

I arrived at the FERC building timely: At 9:52 am. There was no one in the 'metal detection' line. It only took about 90 seconds total time, to go through the metal detector. It took another four minutes to be issued a 'picture ID.' Since I have never been to the FERC building before, and since the hearing notice did not specify a hearing room number, I asked the security person where the hearing was being held. The security person said:

332

Exhibit C

Riffin Email Directing City et al to ALJ Dring

(Email 10:55 AM August 26)

Note: City et al responded to this email with an email stating, inter alia, that the Riffin discovery response was deficient and with a reservation of all rights.

Subject: 1189 motion to compel against Riffin

From: jim riffin (jimriffin@yahoo.com)

To: c.montange@frontier.com; dehorgan@lawwmm.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; esstrohmeyer@yahoo.com;

Date: Friday, August 26, 2016 10:55 AM

Per my agreement here are the three bankruptcy numbers: James Riffin: 10-11248; WMS LLC: 11-13085; BRL LLC: 11-15870.

It is my position that as of now, I have complied with all of my discovery obligations that I stipulated to.

As for 'Bruce Nagel:' I did type in 'bruce nagel' into my yahoo search engine. The response given was: Nothing found. Try the Web. So I tried the Web. There is a Bruce Nagel that is an architect. I have a vague recollection of having a telephone conversation with an architect many months ago. But it is a really vague memory. (Things that have little or no importance to me in the present, or immediate future, I quickly 'delete' from my brain's memory.)

As for Fritz Kahn: He is an attorney. I tried to hire him. Anything that passed between us is privileged.

As for the 'surveyor:' I tried to hire a surveyor, to survey the Metro Plaza parcel. His quoted fee was extremely high. After several months of no progress, I 'disengaged' him. (If I ever actually 'engaged' him.) I never actually ever met him. We had a few telephone conversations, a year or so ago.

My 'comments' to ALJ Dring were mailed 8-26-16.

Mr. Montange: If you want any more, you will have to ask ALJ Dring to order it. I have no idea who the LLCs' may have hired as 'agents.' (Other than Mr. Horgan.) Nor do I have any interest in knowing. Nor do I have any right to learn this information.

The time you have spent responding to / initiating discovery, have resulted in many 'billable hours.' I have no one to 'bill.' So there is a substantial difference between the hours you spend with this litigation, and the hours that I spend responding to your (unjustified / unreasonable) requests. But it was less time consuming to just send you the e-mails, as opposed to litigating whether I have a legal obligation to send you the e-mails. The point that I was making was: Just because you think that doing something is 'easy,' or can be quickly done, does not mean that it in fact will be 'easy.' Or even possible. And you need to be careful what you represent to a judge. Particularly ALJ Dring.

Exhibit D

General Omission of Identification of Recipient

Email, Hyman to Riffin (Riffin's name omitted) 1:20 PM

Feb 18, 2016 (almost all 100 emails like this, including all those in this Exhibit)

Email, Hyman to Riffin 11:12 PM August 9, 2016

(unless further omissions, evidently Mr. Hyman forwarding Documents associated with Mr. Hyman's invocation of the OFA remedy Conrail proceeding AB 167-1036 in 1987)

Email, Hyman to Riffin 11:12 PM April 23, 2016
(providing "partial" timeline of Mr.Hyman's actions and lawsuits dealing with Harsimus Branch against City)

Omission of Text

Email, Hyman to Riffin 1:20 PM Feb. 18, 2016

Omission of Original Email, Text, and Recipient

Email, Hyman to Riffin 11:18 AM May 1, 2016

Omission of any identification associated with an apparently Forwarded email

Email, Hyman to Riffin 3:40 AM June 18, 2016

(identification information omitted on forwarded email)

Subject: Fw: EP 729 comments

From: jim riffin (jimriffin@yahoo.com)

To: c.montange@frontier.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; dehorgan@lawwmm.com; esstrohmeyer@yahoo.com;

Date: Thursday, August 25, 2016 2:11 PM

On Thursday, February 18, 2016 1:20 PM, Steve Hyman <shyman@shyman.net> wrote:

--
Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

From: jim riffin <jimriffin@yahoo.com>
Reply-To: jim riffin <jimriffin@yahoo.com>
Date: Saturday, February 13, 2016 at 4:59 PM
To: Eric Strohmeyer <esstrohmeyer@yahoo.com>, Steve Hyman <shyman@shyman.net>, Daniel Horgan <dehorgan@lawwmm.com>
Subject: EP 729 comments

My comments re new OFA rules

Attachments

- STB EP 729 JR-1 Comments 2-12-16.pdf (155.82KB)

336

Subject: Fw: Emailing - JCRA ICC ABANDONMENT AB167 sub

From: jim riffin (jimriffin@yahoo.com)

To: c.montange@frontier.com; rmjenkins@mayerbrown.cor

Date: Thursday, August 25, 2016 1:41 PM

On Tuesday, August 9, 2016 11:12 PM, Steve Hyman <shyman@s

337

--
Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

Attachments

- JCRA ICC ABANDONMENT AB167 sub 1036.pdf

COMMISSIONERS

JOSEPH CARDWELL
CHAIRMAN

SILVANA KAMINSKI
VICE CHAIRMAN

STEPHEN ASTOLFI
MICHAEL J. MARINO
THOMAS McCANN
WENDY PEREZ
STEVEN R. ROSS

Certified – R.R.R.

JERSEY CITY REDEVELOPMENT AGENCY

3000 KENNEDY BLVD. • JERSEY CITY, N.J. 07306-3887

OLDFIELD 6-0517

EXECUTIVE

JEROME M. KILLEEN
EXECUTIVE DIRECTOR

GEORGE R. ALLEN, Esq.
GENERAL COUNSEL

ANTHONY R. CUCCI
MAYOR

March 27, 1987

Ms. Noreta R. McGee, Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

RE: AB167 sub 1036

Dear Madam Secretary:

It has come to our attention that Mr. Steven Hyman has filed initial papers in order to acquire the former Edgewater branch of the Lehigh Valley Railroad, now a Conrail-owned property. This line runs through and in proximity of the Liberty Harbor North Development Parcels 3-4 and 5 a Project Area of the Jersey City Redevelopment Agency for which a developer was designated on February 5, 1987 and March 21, 1985, respectively. These areas, combined, are approximately eighty (80) acres of land and were declared blighted in 1972 by the Municipal Council of the City of Jersey City, New Jersey.

Mr. Hyman made a proposal to the Agency on Parcels 3-4, but his proposal and development team was not chosen by the Jersey City Redevelopment Agency. It is our opinion that Mr. Hyman's attempted acquisition of the Edgewater Branch is for the purpose of obtaining leverage for his development intentions in that area and to interfere with the mixed-use development project slated for Parcels 3 and 4 (comprising 55 acres) and the proposed new Jersey City Medical Center, a new 340 bed hospital to be constructed on Parcel 5 and which will replace the obsolete facilities now in existence elsewhere.

We also object to the sale of the line and the continued classification of this property as operable due to the fact that same has been inactive for years. The area wherein the line is located is mostly vacant save for a few manufacturing concerns which have not relied upon rail service for years. Conrail has, as you know, filed a petition for abandonment on the basis of its determination and finding of insufficient revenues in relation to the continued operation of the line. The Jersey City Redevelopment Agency intends to acquire the industrial concerns and all of the acreage involved in both projects through Eminent Domain so that the development projects can proceed in all due course. All existing non-conforming land uses which conflict with the Liberty Harbor North Redevelopment Plan's land use controls (the prevailing zoning ordinance in Parcels 3-4 and 5) are to be eliminated through the implementation of the above described projects by the Jersey City Redevelopment Agency. This further makes continuance of the Edgewater Branch and preservation of its Right-of-Way contrary to public policy and detrimental to the public good.

In summary, I must reiterate our position objecting to the acquisition of the rail line by Mr. Hyman and any delay in its abandonment as initiated by Consolidated Rail Corporation as there is no need for a line in the area and it would only serve to hamper the development interests of the City of Jersey City. It is apparent to the Jersey City Redevelopment Agency that Mr. Hyman and his various business enterprises have no dependence upon rail service and that there is no intention on their part to operate the Edgewater Branch as a short line carrier. It is our belief that there is no justifiable cause for the Interstate Commerce Commission to grant Mr. Hyman the status of an approved common carrier.

If you should have any questions with regard to this matter, please do not hesitate to contact me.

Sincerely,

Paul W. Hamilton

for JEROME M. KILLEEN
Executive Director

JMK/PWH/baa

cc: Mayor Anthony R. Cucci
Steven Hyman

Subject: Fw: Emailing - JCRA ICC ABANDONMENT AB167 sub 1036.pdf

From: jim riffin (jimriffin@yahoo.com)

To: c.montange@frontier.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; dehorgan@lawwmm.com; esstrohmeyer@yahoo.com;

Date: Thursday, August 25, 2016 1:41 PM

On Tuesday, August 9, 2016 11:12 PM, Steve Hyman <shyman@shyman.net> wrote:

340

--
Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

Attachments

- JCRA ICC ABANDONMENT AB167 sub 1036.pdf (275.81KB)

Subject: Fw: Embankment Time Line till 2015 cases to follow in detail

From: jim riffin (jimriffin@yahoo.com)

To: c.montange@frontier.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; dehorgan@lawwmm.com; esstrohmeyer@yahoo.com;

Date: Thursday, August 25, 2016 1:50 PM

On Saturday, April 23, 2016 11:12 PM, Steve Hyman <shyman@shyman.net> wrote:

--
Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

Attachments

- 2016_04_23_23_07_18 Nancy Platkin partial timeline.pdf (11.22MB)

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DATE	ACTION
1902	Pennsylvania Rail Road builds 6-block long embankment on 6th Street, through a Jersey City residential neighborhood, for coal driven freight trains.
1996	JCRA encourages Consolidated Railroad Corporation (Conrail) to remove steel girder bridges connecting each bock of the 6th Street Embankment as the rail line is no longer active and trucks are unable to pass under the bridges.
1996	Embankment Coalition forms and brings suit against Jersey City and Mayor Brett Shundler to prevent the demolition of the 6th Street Embankment walls.
1998	Jersey City submits application to Green Acres for 9 acres of open space. Shundler plans for the remaining 4 acres to be used for recreational fields. Proposes first new park in Jersey City in 50 years. (IS THIS THE EMBANKMENT PROPERTY?)
1999	Embankment walls zoned historic under NJ state registration.
2003	Jersey City designates 6th St. Embankment property Historic Landmark Status.
2003	Hyman makes first offer to Conrail. Puts down a deposit to have first option to title.
2004	Jack Curley, Esq. starts condemnation case for Jersey City Redevelopment Agency (JCRA).
2004-02	[Feb] Embankment Coalition receives grant from Conservation Foundation matching NY/NJ Baykeeper funds to hire Embankment consultant Andrew Strauss. Strauss says rail line is a line, not a spur as Conrail attests.
2004-03	[March] Hyman offers rights to title of 6th St. embankment to Jersey City for Flintkote property abatement. Tax abatement for Flintkote was voted down 7—1. *The Jersey Journal: Monday, June 13, 2005, "Nod for Sixth St. brings green space Downtown."
2004-03	[March] City passes on option to purchase embankment for Flintkote abatement.
2004	Hyman purchases first option to purchase 6th Street Embankment after entering a deferred contract in 2003.
2004-06	City Council passes ordinances approving eminent domain to acquire embankment property
2004-09	City Council passes ordinances approving eminent domain to acquire embankment property
2004-09	Flintkote abatement passes by a 4—3 vote.
2005-03-12	Jersey City Council and Mayor Cunningham vote to use eminent domain/condemnation to seize 6th St. Embankment. Council votes 8-0-1 to buy property Hyman's first option contract. This is four administrations after Embankment Coalition started motion to intervene. Litigation between Jersey City and the LLCs begins.
2005-03-16	Mayor Cunningham, Conrail and the Embankment Coalition meet for the Mayor to announce Green Acres' commitment to help City apply for and receive funding of a 75% grant and 25% loan to acquire Embankment.
2005-07	Corzine and Lautenberg (Senators) earmark $1.6 million of the transportation infrastructure bill for embankment. SAFETEA-21
2005-06	East Coast Greenway Alliance announces the six block, half mile parcel would be part of a 2600 mile bike and walking trail stretching from Maine to Florida.
2005-07-29	City officials confirm Hyman purchased Embankment on July 12th at public auction for $3 million through several corporate entities. *Jersey Journal: Saturday, July 30, 2005, "Embankment Sold."
2005-08	Jastrzebski and LLCs file application to subdivide two lots at western end of Embankment property for residential development.
2005-08	Assemblyman Louis Manzo proposes position of sale due to Conrail's failure to notify the federal Surface Transportation Board before selling to Hyman and LLCs. Law requires railroad companies to officially abandon property. Law also requires that railroads give public officials 180

	days to purchase property after private offer. Conrail insists the Embankment railway is a spur and not a line and is exempt to these laws. *The Jersey Journal: Monday, August 29, 2005, "IN OUR OPINION: Do what it takes to get embankment."
2005-08	Jersey City Council proposes to give $20,000 to Seattle based lawyer, railroad specialist, Charles Montange on bequest of the embankment Coalition. *The Jersey City Reporter, October 2, 2005, "It's not easy being green."
2005-09	September JC City Council votes $20K expenditure to hire Charles Montange as recommended by Embankment Coalition to examine legality of sale to Hyman/LLCs. Jersey Journal Sept 30, 2005 "Jersey City's investing 20K in Embankment Hopes."
2005	LLCs' architect, Dean Marchetto, wins Smart Design Award from State of NJ for Embankment project.
2006-01	OPRA Request
2007-03	City Council votes 4-3 against approving a resolution authorizing the JC Council to file for a loan with the NJ Environmental Infrastructure Trust for $4.9 million to assist in acquisition of Sixth Street Embankment property. Conditions of loan would have been $4.9 million with 75% at no interest and 25% at 1% interest to be paid off over 20 years. "No to Nearly $5 Million" March 18, 2007, The Hudson Reporter.
2007	MOU
2008-04	LLCs offer Jersey City all 8 blocks of the Embankment property for $10 million (the amount a 2006 City appraisal estimated the property's worth) plus tax abatements and a change of zoning for a 20 acre area near the NJ Turnpike also owned by the LLCs. "Making 'Bank," Jersey Journal, April 3, 2008.
2008	Spring? LLCs apply to JC HPC for "Certificates of Economic Hardship."
2009-04-15	LLCs and Marchetto draw up plans for 12 multi million dollar houses on top of 6th Street Embankment from Marin Blvd to Brunswick St. 96% of the wall is left intact. 60/1000 ft on each wall. $5 million per house.
2009-04	Trespassers set fire at Marin Blvd. Weeks later, Police and Fire Dept respond as chunks of Embankment wall in a section west of Erie St topple. Area is cordoned to protect pedestrians.
2009-05	Application to JC HPC denied.
2009-05	City offers LLCs $7.6 million for the Embankment property in its entirety.
2009-08-24	JJ Article "Jersey City's 4-Year Battle on Embankment: too long, costly?" According to City officials, JC has spent $322,427 in fees on outside attorneys to obtain Embankment property.
2010-06 2010-07	JC Council votes 6-1-2 to introduce up to $7.7 million bond ordinance to buy Embankment. In July, City issues $7.65 million bond ordinance to buy Embankment.
2010-08	GRC denies OPRA release of documents deemed as attorney client privileged.
2010-11-24	City Council votes to hire former NJ Supreme Court Chief Justice James Zazzali to mediate over 6th St Embankment. Justice is paid $580 p/h for approximately 40 hours: $25K. Costs are split between LLCs, Conrail and City.
2011-05	JC Council rejects settlement proposed by LLCs. Proposed settlement sold 2 blocks of Embankment Property to JC for $10 million for park use only. Remaining Parcels would have development rights without restrictions or historic preservation issues. The City would waive all filing fees, escrows, construction fees and or any other fees connected to demolition, remediation, construction and development of the Embankment property. In addition, LLCs would acquire adjacent Conrail parcels located under the NJ Turnpike and request that no residential multi unit project within Ward E would receive a long-term tax abatement. Councilman Steve Fulop calls it "not even reasonable." *JJ Article May 11, 2011
2012-02	DC Circuit Court of Appeals reverses lower court decision and rules City and Community Groups may go forward to pursue ownership of Embankment.

2012	New Jersey Law Journal, August 27, "Jersey City has expended $500,000 in legal fees litigating the STB aspect in Federal Court in D.C. and OPRA, land use and civil rights issues in state court."
2012-02 2012-03	Settlement proposed by LLCs: JC to pay $7 million for LLCs to relinquish the property TK; Conrail to pay $13 to settle all pending legal battles around the sale. Settlement gets Council approval. JC and LLCs sign settlement deal. Settlement fails as Conrail chooses to not commit to its part in the deal.
2012-03	As part of a tentative settlement with the LLCs, JC City Council gives initial approval to changes of the Downtown redevelopment plan that would permit the construction of two towers on a portion of the Sixth Street Embankment property. Changes to the development plan are tentative to all parties signing the settlement.
2012-08	Court rules Jersey City must turn over documents previously being held under claims of attorney client privilege in LLCs OPRA request.
2013-01	Chicago Title ordered to pay $1.65 million in legal fees and costs in dispute over ownership of Embankment Property.
2013-09-30	Line not spur ruling
2014-02-21	LLCs appeal to Federal Gov't rejected. Appelate judges in Washington DC uphold District Court ruling saying sale if 6thStreet sale is invalid and subject to laws that require JC first option to purchase the property.
2014-10	NJ Economic Development Authority awards JC $5 Million in State funds for Berry Park for ball fields, courts, plantings, landscaping, paths and amenities.
UNKNOWN	City is Utilizing $1.3 Million of Green Acre funding to acquire land for Berry Park. Proposed completion is 2015 according to JC Ofiicials. JJ Oct 24. 2014 "JC Gets $5 Million in state funds for Berry Lane Park"
2014-11	Sarkisian rules JC and EC in compliance with OPRA request. LLCs lose appeal.
UNKNOWN	Hudson Yards Development: 26 acre mixed use development btw 10th and 12th aves from 30th to 33rd sts. 14 acres of open space.
2004	Zoning changes to neighborhood in 2004 to allow dor 5,500 units of housing along highline all but 1,100 of the 5,500 units of new housing development are for high income residents.

The 6th Street Embankment Vertical Timeline

For a list of all Embankment Docket #'s click HERE

SORT BY:
DATE: (Asc.) / (Desc.)
DOCKET#: (A-Z) / (Z-A)

DATE	DOCKET #	ACTION	MISC
10/01/02 (Specific Date Unknown)	HUD-L-4683-05	LLC's (plaintiffs) vs. JC, Planning Board and HPC	
01/26/05	AB-167-1189-X	Reply	Consolidated Rail Corporation
05/01/05 (Specific Date Unknown)	HUD-L-5037-05	JC (plaintiff) vs. LLC's and Planning Board (defendants) The City adopted an ordinance authorizing acquisition of the Embankment for park use.	
09/14/05	HUD-L-4683-05	Complaint	212 Marin Bo
09/21/05	HUD-L-4883-06	The LLC et al. obtained a ruling from the zoning officer dated Sept 21, 2005 that the Marin and Manila blocks of the Embankment were located in a residential zone. The property owners filed separate applications for subdivision and site plan approval. 161 days after the ruling of the zoning officer, Barbara A. Netchert, the newly appointed Director of Department of Housing, Economic Development and Commerce, ruled that the zoning of the parcels is governed by older redevelopment plans that restrict use to railroad use, preventing the applications from proceeding.	
09/30/05	HUD-L-4908-05	Complaint	212 Marin Bo
09/30/05	HUD-L-4908-05	Order to Show Cause HR	247 Manila A
10/03/05	HUD-L-4908-05	Order to Show Cause for Preliminary Injunctive Relief	
10/04/05	HUD-L-5037-05	Petition for Order of Preliminary Entry Pursuant to N.J.S.A. 20:3-16	Mun of Jersey City
10/04/05	HUD-L-5037-05	Order to Show Cause	
10/21/05	HUD-L-5037-05	Order for Preliminary Entry Pursuant to N.J.S.A. 20:3-16	Mun of Jersey City
10/27/05	HUD-L-4908-05	Answer	Planning Bd
11/10/05	HUD-L-4908-05	Appearance	212 Marin Bo
11/15/05	HUD-L-4908-05	Order to Show Cause	212 Marin Bo
11/18/05	HUD-L-4683-05	Mot Prt Sum Jdg	212 Marin Bo
11/28/05	HUD-L-4908-05	Order Remanding Application to the Planning Board and Imposing Restraints	
12/14/05	HUD-L-4683-05	Proof of Service	City of Jers
12/20/05	HUD-L-4683-05	Answer	City of Jers
12/20/05	HUD-L-4683-05	Stipulation Extending Time to Answer	JC Historic
12/20/05	HUD-L-4908-05	Stipulation Extending Time to Answer	City of Jers
12/20/05	HUD-L-4908-05	Ans Cntr & 3rd	City of Jers
01/04/06	HUD-L-4908-05	Misc Sub Atty	Planning Bd
01/12/06	FD-34818	Petition for Declaratory Order	Rails To Trails Conservancy
01/18/06	HUD-L-4908-05	Summons	Consolidated
01/23/06	FD-34818	Petition to Intervene	212 Marin Boulevard, Llc, 247 Manila Avenue, Llc, 280 Erie Street, Llc, 317 Jersey Avenue, Llc, 354 Coles Street, Llc, 389 Monmouth Street, Llc, 415 Brunswick Street, Llc, And 446 Newark Avenue, Llc

remainder of document omitted to save duplicating costs

Subject: Fw: Title 48

From: jim riffin (jimriffin@yahoo.com)

To: c.montange@frontier.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; dehorgan@lawwmm.com; esstrohmeyer@yahoo.com;

Date: Thursday, August 25, 2016 1:49 PM

On Sunday, May 1, 2016 11:18 AM, Steve Hyman <shyman@shyman.net> wrote:

Might be the answer.

Steve Hyman

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Subject: Fw: RR abandonment

From: jim riffin (jimriffin@yahoo.com)

To: c.montange@frontier.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; dehorgan@lawwmm.com; esstrohmeyer@yahoo.com;

Date: Thursday, August 25, 2016 1:44 PM

On Saturday, June 18, 2016 3:40 AM, Steve Hyman <shyman@shyman.net> wrote:

--
Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

Date: Friday, June 17, 2016 at 6:30 PM
To: Steve Hyman <shyman@shyman.net>
Subject: RR abandonment

Steve, I am recovering nicely from triple bypass surgery and am getting back into the abandonment game. A NARPO member from Indiana has raised a question about Conrail abandonments that has got me investigating the Conrail abandonment issue. Was your abandonment done under the Conrail Section 308 NERSA laws? Can you give me a cite of the STB/ICC abandonment application? I have been reading case law on Conrail Section 308 abandonments, and if your was one of those, then your attorneys have missed a huge loophole in the federal laws. Section 308 says that the ICC/STB cannot deny a Conrail abandonment except for an offer of financial assistance and also a 3rd Circuit court case says that trail use cannot be imposed by the ICC/STB as the wording of Section 308 does not allow anything except an offer of financial assistance.

Your thoughts.

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Exhibit E

Examples of Deletion of Original Email

To Which Email supplied by Riffin is Responding

Email: Vickie Hyman to Riffin, 6:39 PM Nov. 14, 2015

(Mrs. Hyman appearing to provide research assistance to Mr. Riffin but original request Riffin to Mrs. Hyman omitted)

Email: Vickie Hyman to Riffin, 8:46 PM May 31, 2016

(similar)

Email: Steve Hyman to [apparently] Riffin, 12:08 AM May 15

(Mr. Hyman offers "to go to Manville" with Riffin and asks about decision at STB)

Note: at the bottom of the page sent by Riffin containing the foregoing email is a rare instance in which Riffin provides an email (Riffin to Strohmeyer, Hyman and Kahn, 6:37 PM May 14) he sent to Mr. Hyman and others but improperly omits the text or attachments from the email. Riffin basically provided no emails which he sent to the Hyman interests.

Subject: Fw: try this
From: jim riffin <jimriffin@yahoo.com>
Date: 8/25/2016 2:55 PM
To: "C. Montange" <c.montange@frontier.com>, "Jenkins, Robert M." <RMJenkins@mayerbrown.com>, "Sloane, Adam C." <ASloane@mayerbrown.com>, Daniel Horgan <dehorgan@lawwmm.com>, Eric Strohmeyer <esstrohmeyer@yahoo.com>

On Saturday, November 14, 2015 6:39 PM, Vickie Hyman <vickie@shyman.net> wrote:

Go to:

http://mapmaker.rutgers.edu/

the click on Historical Maps of New Jersey

then click on New Jersey Historical maps and Air Photo Portal

THEY MAY HAVE WHAT YOU ARE LOOKING FOR

Good luck, Vickie

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Subject: Fw: Nancy Beiter
From: jim riffin <jimriffin@yahoo.com>
Date: 8/25/2016 2:53 PM
To: "C. Montange" <c.montange@frontier.com>, "Jenkins, Robert M." <RMJenkins@mayerbrown.com>, "Sloane, Adam C." <ASloane@mayerbrown.com>, Daniel Horgan <dehorgan@lawwmm.com>, Eric Strohmeyer <esstrohmeyer@yahoo.com>

On Tuesday, May 31, 2016 8:46 PM, Vickie Hyman <vickie@shyman.net> wrote:

Nancy R. Beiter, Esq
603-532-7225

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Subject: Fw: JR-11 supp to motion to stay
From: jim riffin <jimriffin@yahoo.com>
Date: 8/25/2016 2:42 PM
To: "C. Montange" <c.montange@frontier.com>, "Jenkins, Robert M." <RMJenkins@mayerbrown.com>, "Sloane, Adam C." <ASloane@mayerbrown.com>, Daniel Horgan <dehorgan@lawwmm.com>, Eric Strohmeyer <esstrohmeyer@yahoo.com>

On Friday, May 15, 2015 12:08 AM, Steve Hyman <shyman@shyman.net> wrote:

Jim,

Crazy week. I will be glad to go to Manville with you and discuss other possibilities. What was your decision at the STB?

Steve

Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

From: jim riffin <jimriffin@yahoo.com>
Reply-To: jim riffin <jimriffin@yahoo.com>
Date: Thursday, May 14, 2015 at 6:37 PM
To: Eric Strohmeyer <esstrohmeyer@yahoo.com>, Steve Hyman <Shyman@shyman.net>, "Fritz R. Kahn" <xiccgc@gmail.com>
Subject: JR-11 supp to motion to stay

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Exhibit F

Emails forwarded by CNJ Rail pursuant to discovery

But not by Riffin

1. 2014 emails Hyman to Riffin, with attachment

Attachment: Memo, F. Kahn to S. Hymann et al, Nov. 25, 2005, Alternative STB Scenarios

2. Email, Hyman to Riffin, 11:30 AM March 19, 2016

Discussing Strategies to Defeat City, including an Attachment dated March 16, 2016, entitled Strategic Review Of similar character

Note: Any claim of privilege to these documents is waived because Mr. Hyman provided same to (among others) Riffin, who is an outside party and not his attorney.

Subject: Fw: Fritz Kahn 2005 Hyman Railroad etc

From: Eric Strohmeyer (cnjrail@yahoo.com)

To: c.montange@frontier.com;

Date: Thursday, September 11, 2014 1:17 PM

This will be scanned into PDF format.

Eric

On Saturday, June 21, 2014 2:39 PM, Eric Strohmeyer <cnjrail@yahoo.com> wrote:

Jim, download and review the attached document file. It is in Microsoft word format.

On Friday, January 17, 2014 9:49 PM, Steve Hyman <shyman@shyman.net> wrote:

Attachments

- hymanthree.doc (30.00KB)

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MEMORANDUM

To: Mr. Steve Hyman, Ed McKirdy, Esq., Jeff Lewis, Esq.

From: Fritz R. Kahn

Subj.: Alternative STB scenarios

Date: November 25, 2005

.....

This is to memorialize the substance of our telephone conference call of last Wednesday, November 23, 2005, during the course of which we explored several alternative scenarios to be pursued before the Surface Transportation Board of the U.S. Department of Transportation.

I noted that Jersey City had engaged Charles H. Montange, Esq., a Seattle lawyer who is special counsel to the National Trails Conservancy and is principally engaged in securing abandoned railroad rights-of-way for cities or other bodies which wish to use them for hiking or biking trails under the National Trails System Act, 16 U.S.C. 1247(d). I, therefore, thought that it was likely that he shortly would bring a proceeding before the STB to have Conrail's sale of the 6th Street property to Steve invalidated. He would contend that the Harsimus Branch was a line of railroad which had not been authorized by the STB or the predecessor agency, the Interstate Commerce Commission, to be abandoned by Conrail, and, accordingly, the line or any portion of it could not be sold to Steve without the advance approval of the STB. For regulatory purposes, the Harsimus Branch remains an active line of railroad.

I thought that would be fine, because it would enable Steve to respond that Jersey City does not come to the STB with clean hands, having dealt with the Harsimus Branch

as if it had been abandoned by allowing the commercial and residential development of the Harsimus Cove area and the construction of the Newport Centre Mall and requiring the removal of the bridges over the side streets, such as Coles Street. Moreover, we would contend, depending upon the milepost designations of the quitclaim deed by which Conrail sold the 6th Street property to Steve, that the segment did not lie between Milepost 1.0 and Milepost 7.0 and, hence, was not a railroad line to be operated by Conrail as part of the Final System Plan. The segment was abandoned by virtue of the Regional Rail Reorganization Act of 1973, Pub. L. 93-236, 87 Stat. 985. The segment was conveyed to Steve as ordinary realty. If, however, the segment did lie between Milepost 1.0 and Milepost 7.0, we would need to argue, as John Fiorilla, Esq., Conrail's counsel, evidently believes, that the Harsimus Branch, at least after 1920, when the ICC first was vested with abandonment authority, was a spur and not a railroad line, and, pursuant to 49 U.S.C. 10906 and its predecessor provisions, no STB or ICC authorization was required for a spur abandonment. Conrail had abandoned the spur and, hence, properly could transfer the segment as ordinary realty to Steve. I think that might be a difficult argument to sustain, as the Harsimus Branch evidently remained an active line of railroad after 1920. In the alternative, we could argue that there was a *de facto* abandonment of the Harsimus Branch. As I previously have indicated, however, the STB does not recognize *de facto* abandonments and maintains that a railroad line is not abandoned until it has been authorized by the agency to be abandoned.

Of course, if the sale of the 6th Street property to Jay were invalid, as Jersey City would contend, then Conrail would remain the owner of an active railroad line, and Jersey City would be foreclosed from seeking to condemn the property.

Steve didn't much like my approach and thought it might be wiser to take the initiative and have a newly established corporation, let's say, Hyman Railroad, Inc., file a seven-day section-10901 class exemption notice, pursuant to 49 C.F.R. 1150.31, thereby becoming a railroad subject to STB jurisdiction. Again, as I have indicated previously, the STB welcomes *mea culpa* pleadings, and, while it might criticize Jay for not having made a timely filing when it purchased the 6th Street property, it is likely to allow the exemption to become effective.

Of course, Jersey City would be foreclosed from bring a condemnation action against Hyman Railroad, Inc., as it would be from bringing one against Conrail, if Conrail continued to be the owner of an active line of railroad. If it sought the property, Jersey City first would need to prosecute a so-called adverse abandonment application before the STB against either Conrail or Hyman Railroad, Inc., as the case may be, contending that there is an overriding public interest in preserving the Embankment. Jersey City's adverse abandonment application would be unlike any other ever brought before the STB, because there are no railroad operations being rendered on the 6th Street property and no shippers would be denied railroad service if the adverse abandonment application were granted. In the circumstances, the STB is likely to grant the application, stating that it will not allow its jurisdiction to be exploited to avoid the condemnation action that Jersey City is prepared to bring.

At such time as Hyman Railroad, Inc., itself determined that it wished to abandon the 6th Street property, it would need to file a Petition for Exemption, pursuant to 49 U.S.C. 10502 and 49 C.F.R.1121.1, et seq. , to be relieved of the formalities of an abandonment application filed pursuant to 49 U.S.C. 10903 and 49 C.F.R. 1152.1, et seq.

The Petition is certain to be granted, because there are no railroad operations being rendered on the property, and no shippers would be denied service. The process would take five to six months.

As we discussed, in authorizing an abandonment, the STB can impose a trails condition, pursuant to 16 U.S.C. 1247(d) and 49 C.F.R. 1152.29, or a public use condition, pursuant to 49 U.S.C. 10905 and 49 C.F.R. 1152.28, but they can be rejected at the discretion of the abandoning railroad. Neither condition can be enforced by the STB against the wishes of the abandoning railroad. Additionally, the STB, also, can allow a financially responsible person, including Jersey City, to purchase the property, pursuant to 49 U.S.C. 10904 and 49 C.F.R. 1152.27. In case the parties cannot agree upon the purchase price, the STB is empowered to set it. The price is not binding upon the purchaser; it, however, is binding upon the abandoning railroad. The so-called OFA process can only be used to continue freight operations on an active line of railroad, and cannot be employed as a subterfuge to obtain the right-of-way for some other purpose, such as a hiking or biking trail. Thus, Jersey City cannot hope to acquire the property through the OFA process.

Steve asked if there weren't another way to bring the matter before the STB. Of course, the STB, pursuant to section 5(d) of the Administrative Procedure Act, 5 U.S.C. 554(e), has the discretion to institute a declaratory order proceeding to terminate a controversy, as the one between Jersey City and Steve. Steve could file a petition with the STB requesting it to institute such a proceeding. Steve asked how long it would take until a decision were rendered in a declaratory order proceeding, and I replied that it might take six month, a year or two years.

After we got off the phone, I thought of a preferable way to proceed, one that would allow Steve to take the initiative, and one that would keep Conrail happy. And that would be for Steve to file the seven-day section-10901 exemption notice, establishing Hyman Railroad, Inc., and concurrently file a Motion to Dismiss on the ground that no authority was required for Steve to acquire the 6th Street property. Of course, we would need to make one or more of the same arguments I previously discussed, namely, if the milepost designations permit, that the segment purchased by Steve was not conveyed to Conrail as an active line of railroad but had been abandoned pursuant to the provisions of the 3R Act. Alternatively, we would contend that the segment purchased by Steve was not of an active railroad line, because Jersey City's actions occasioned a *de facto* abandonment of the property, regardless of whether it was a railroad line or a spur.

If the quitclaim deed by which Conrail sold the 6th Street property to Steve showed the segment Steve purchased to lie somewhere between Milepost 0.0 and Milepost 1.0, we're home free. If, however, it lies between Milepost 1.0 and Milepost 7.0, then we would be dealing with a line of railroad conveyed to Conrail pursuant to the Final System Plan, and we would need to prove the abandonment of the segment purchased by Steve. The quitclaim deed did not include the segment's milepost designations, we have to try to get a look at a Valuation Map of The United New Jersey Railroad and Canal Company. Certainly, John Fiorilla can get a copy, and there may be one in the Archives of the New Jersey Secretary of State. I'm making an inquiry whether it has a copy.

Subject: FW: LLC Litigation

From: Steve Hyman (shyman@shyman.net)

To: jimriffin@yahoo.com;

Date: Saturday, March 19, 2016 11:30 AM

--
Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

From: "Morsella, Patti" <pattim@lawwmm.com> on behalf of "McPherson, Sr., Kenneth" <kdm@lawwmm.com>
Date: Friday, March 18, 2016 at 10:44 AM
To: Steve Hyman <shyman@shyman.net>
Cc: "'calampi@alampi-law.com'" <calampi@alampi-law.com>, "Horgan, Daniel" <dehorgan@lawwmm.com>
Subject: LLC Litigation

Steve –

Attached is an updated presentation on the Pending and Proposed Litigation so that you can see where we are now, at the middle of March. We have followed on the track last laid out in our February meeting and as presented in a similar presentation of February 11, 2016.

In that interim period we have made progress. That, with developments soon to come as noted in the presentation, should provide us with additional funds in hand, and additional advantages against the City. We have not heard from Conrail, as Broder promised (no surprise), on its decision on redeeming the NZ Funding tax lien on its Lot 120 property. We and you have also spoken to Keith Bonche who will begin the foreclosure on behalf of NZ Funding, in coordination with us so that you get all of the potential advantages, as well as the money. This action may, depending on what the City does in response, hold the possibility of defeating the city on its claims under Title 48. NJSA 48:12-125.1; something you had long sought in order to lift the stay on the civil rights litigation.

The three pending state court matters, individually and collectively, are designed to thwart the City's plans to acquire the property through any STB action, and to establish a basis to cut off its financing for its STB activities. Of course, if the City's OFA ordinance is invalidated, for a second time, that should be very helpful in advancing resolution of the STB process.

Subsequent to receiving the results and outcomes of these three cases over the coming months, additional possibilities may be forthcoming to thwart the City's efforts to further delay the STB proceedings, and to avoid having to face the civil rights litigation by the LLCs. Also noted in the outline is the potential for bringing claims against Conrail.

The months of January and February have been quite demanding. You can discern this from the attached presentation and from the invoice statements for each of those two months which we are concurrently sending to you. We had advised you of our confidence in our recommended approaches and, for that reason, among others, have not charged for the March 2, 2016 all-day meeting with the STB in Washington, DC, attended by Dan Horgan and Eric McCullough. Nonetheless, we have devoted substantial time and effort in these complex matters and need to resolve our fee arrangement. The current two months of invoices are based on our current agreement that has not been changed. We would like to work with you to arrive at an acceptable accommodation on fees, but we cannot do that by ourselves. Let's meet with you and Carmine to meet and discuss this further as soon as possible.

Thanks,

Ken

Attachments

- LLC Litigation Overview 3 2016.pdf (68.69KB)

Confidential Attorney-Client Communication and Attorney Work Product

Pending & Proposed Litigation

Embankment Limited Liability Companies & NZ Funding

Strategic Review

March 16, 2016

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remainder of document omitted to save duplicating costs

Exhibit G

Email: Riffin to Strohmeyer 10:21 PM Nov. 21, 2015

Stating Hyman had discussed Riffin to Nagel memo

With Nagel

Riffin to Nagel memo (dated 21 Nov. 2015)

Subject: Fw: letter to bruce nagel

From: Eric Strohmeyer (esstrohmeyer@yahoo.com)

To: c.montange@frontier.com;

Date: Monday, June 13, 2016 2:53 PM

This this the email I called you about.

Eric

On Saturday, November 21, 2015 10:21 PM, jim riffin <jimriffin@yahoo.com> wrote:

Hyman talked to Nagel today. He has some interest. This is what I sent to him.

Attachments

- STB NJ AB 167 1189 L-1 to Nagel 11-21-15.pdf (103.64KB)

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FROM: James Riffin P.O. Box 4044 Timonium, MD 21094 **(443) 414-6210**
jimriffin@yahoo.com

TO: Bruce Nagel Nagel Rice 103 Eisenhower Parkway Roseland, NJ 07068
Bnagel@naglerice.com (973) 18-0400

DATE: Saturday November 21, 2015

RE: Steve Hyman's Embankment properties.

Hudson Exchange West [*Metro Plaza*] Property bounded by Marin Blvd on the West, 2nd Street on the South, Light Rail on the East, Gangemi (6th St) on the North.
Bought by / owned by: **Gregg Wasser** G& S Investors.
Being developed by: **Forest City Ratner** Companies of NY, NY.

ULTIMATE GOAL: Persuade Conrail to negotiate a settlement with Steve Hyman, Jersey City, Riffin and Wasser / Forest City.

PATH TO GOAL: Enjoin Wasser / Forest City from development of the Metro Plaza property. Wasser / FC sue Conrail for $800 million. I agree to lift injunction, providing Conrail negotiates an acceptable settlement.

ACCEPTABLE Settlement: **Conrail** deeds to Hyman the 12 acres +/- West / North of Newark Avenue. Conrail gives Hyman $5 million in cash. Conrail gives Riffin: The segment of the Harsimus from Marion Junction (½ mile west of Journal Square) to where the Harsimus leaves the PATH r/w; The Harsimus rr easement from Waldo Street to the Light Rail line; The D&H's Terminal Rights at Oak Island; Use of the Bayonne Industrial Track; Trackage rights from Jersey City to: Lakehurst, NJ, Manville, NJ, Oak Island Terminal, Bound Brook, NJ. Norfolk Southern gives Riffin trackage rights to Scranton, PA. CSX gives Riffin trackage rights to Belle Mead, NJ. Conrail, NS, CSX, give Riffin some surplus locomotives, open hopper and covered hopper cars, LP tank cars.

Jersey City grants development rights on the Embankment and Conrail's 12 acres
Hyman grants to Jersey City 3 Embankment tops, for park purposes.
Hyman gets a percentage interest in the Embankment / Conrail's 12 acres development.
Forest City gets to be the developer for the Embankment and Conrail's 12 acres.
Three high-rises are built on 3 Embankments. More high-rises are built on Conrail's 12 acres. A monorail is built connecting Journal Square / the hi-rises / Light rail.
Solar cells are installed on all hi-rises. Natural gas fuel cells provide electricity and some water for the hi-rises.

LEGAL ARGUMENTS: Status quo of RR r/w subject to Offer of Financial Assistance ("**OFA**"), must be maintained, until OFA process has been completed. (Cannot change the nature, status of r/w.) Cannot build on RR r/w, until OFA process has run its course. (See Vicksburg, MS Glass Road decision.) Riffin granted right to file an OFA. (See November

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2, 2015 STB decision.) Riffin has equitable title to RR r/w. Riffin has standing to sue in U.S. District Court to enjoin Forest City Ratner from building on RR r/w. (Federal question involved.)

Wasser / FC can sue Conrail per 49 U.S.C. 11704(b). [Carrier liable for damages sustained by a person as a result of an act or omission of that carrier in violation of the Interstate Commerce Act.] Conrail failed to follow dictates of 49 U.S.C. 10903. [Sold / abandoned line without prior STB authority.] Wasser / FC damaged. Can sue in U.S. District Court. [See 11704(c)(1).] Wasser / FC get attorney fees. [See 11704 (d)(3).]

Even though Conrail sold the real estate under the Harsimus line of railroad, per 49 U.S.C. 10903, 11901, and 11906, Conrail could not lawfully sell the 'line of railroad' easement impressed on the real estate under the Harsimus line of railroad, without STB authority. Nor could Wasser buy the line of railroad / easement impressed on the Harsimus line of railroad. See 49 U.S.C. 10901(a)(4).

Therefore, Conrail still 'owns' the Harsimus line of railroad easement impressed on the Metro Plaza real estate, and 'owned' that railroad easement in 2009, when Conrail filed to abandon the Harsimus line of railroad.

Lines of Railroad

A track, and the right-of-way associated with the track, can become a "line of railroad" two ways:

A. The Interstate Commerce Commission ("**ICC**") / Surface Transportation Board ("**STB**") can expressly authorize its creation. See 49 U.S.C. 10901(a) (1) and (2). [New construction (2), or the extension of an existing line of railroad into new territory, over newly constructed track, or over existing non-line of railroad track owned by another carrier (1).]

B. If a non- 'line of railroad' track (such as a yard, spur, switching, passing track):

   a. **Is used** for the movement of '**through**' rail cars (as opposed to 'local' traffic) **AND**

   b. **Is used** to carry rail cars to **more than one shipper**. See *Effingham* and Texas Steel mill case.

Once a track becomes a 'line of railroad,' it remains a 'line of railroad,' until such time that abandonment authority is granted, and exercised. See *Kalo Brick* and *Texas / Mexican RR* cases.

Non line-of-railroad track **can be** converted into a 'line of railroad' track. See *Effingham*.

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A 'line-of-railroad' track **cannot** be converted into non- line of railroad (Excepted) track. (It first must be abandoned (as a line of railroad).

"Excepted" track

Non- 'line of railroad' track is known as "**excepted**" track. See 49 U.S.C. 10906. Excepted track is subject to the exclusive jurisdiction of the STB. However, it is **not regulated** by the STB. That is, it can be sold, removed, or installed / removed, **without** prior STB authority.

Line Codes 1420 and 1440

Line Codes 1420 (Passaic and Harsimus) and 1440 (Hudson Street Industrial Track), were conveyed to Conrail on **April 1, 1976, pursuant to the Final System Plan ("FSP")**. Only those two "lines of railroad" were **conveyed** to Conrail via the FSP. The FSP also conveyed to Conrail all tracks and rail assets / properties, associated with those two line codes. **But NOT as "lines of railroad."**

Line Code 1440 was the **Hudson Street Industrial Track**. It started in the Harsimus Cove Yard. It traversed south, down Hudson Street, to Essex street, then went West, in the bed of Essex street. It served at least seven shippers, the largest shipper being the Colgate Company.

Line Code 1420 was the United New Jersey Railroad and Canal Company's **Passaic and Harsimus Branch**. It originally started at Exchange Place (MP 0.0), on the Hudson River. (At the East end of present day Columbus Blvd.) When it was built (in **1867**), it followed the bed of the present day Columbus Blvd, to the present-day PATH maintenance-of-way facility (bounded by Columbus Blvd on the South) [**MP 1.0**]. It then paralleled the PATH right-of-way, to Harrison (Kearny), NJ. [To MP 7.0.]

The original Passiac and Harsimus Branch carried **both** passenger and freight rail traffic. In **1871**, the Pennsylvania Railroad ("**PRR**") leased the Passiac and Harsimus Branch for 999 years. In **1901** the PRR decided to **re-route** freight traffic along 6th Street. It built an elevated line from the Jersey City Cemetery (on Newark Avenue, East of Waldo Street), parallel to, and adjacent to, 6th Street, to the Harsimus Cove Yard. The portion of the elevated line between Brunswick Street and present day Marin Blvd (**formerly Henderson Street**), was called **The Embankment**.

As of **1905**, all Passiac and Harsimus **freight traffic** was routed over The Embankment. All Passenger traffic was routed down the original Passiac and Harsimus Branch (down present-day Columbus Blvd).

In the 1960's, the PRR decided to **cease passenger** service on the Passiac and Harsimus Branch. In **1961**, the PRR **abandoned** the segment of the original Passiac and Harsimus that traversed over present-day Columbus Blvd. (Abandoned its Passenger Line, **from MP 0.0** (Exchange Place) **to MP 1.0** (Columbus at Brunswick.) Freight traffic continued to move over

the Embankment segment.

On **April 1, 1976**, the assets of the Penn Central and the United New Jersey Railroad and Canal Company, were conveyed to Conrail via the Final System Plan. See FSP p. 282. Line Codes 1420 and 1440 were expressly conveyed to Conrail. Only that portion of Line Code 1420 that was between MP 1.0 (original Passiac and Harsimus at Columbus and Brunswick) and MP 7.0 (Harrison / Kearny, NJ), was conveyed to Conrail. (Remember, in 1961, the PRR abandoned that segment between MP 0.0 and MP 1.0, when the PRR abandoned its passenger service.)

Line Codes 1420 and 1440 included all rail assets associated with those two line codes, such as yard, spur, passing and switching tracks, and all real estate associated with those two line codes.

Prior to Conrail's acquisition of the Passiac and Harsimus **freight** line of railroad, (Line Code 1420), all freight traffic traversed over the Embankment tracks, to the Harsimus Cove Freight Yard. Shortly after Conrail acquired Penn Central's Jersey City rail assets, Conrail named the Embankment right-of-way, the **Harsimus Branch**.

The Harsimus Branch, as it crossed Marin Blvd, had **six tracks**. Historic aerials (1954 and 1966), and the Valuation Maps for the Harsimus Cove Yard, show the location, and uses, of the six tracks that crossed Marin Blvd.:

Track One: The northern-most track went to two shippers on the north side of the pier that today is an extension of 6th Street ("**Pier**") [**Elk Warehouse** and **Chicago Shippers**.]

Track Two: The second track down went to the car float at the end of the Pier.

Track Three: The third track down went to the south side of the Pier. Bulk commodities (such as coal) were off-loaded from rail cars to barges anchored to the south side of the pier.

Track Four: Went to three more car floats south of the Pier.

Track Five: Went around the northern part of the Harsimus Cove Yard, and connected to the Hudson Street Industrial Track. It also was used to route cars to the **William J. Morris** Company, a freight consolidator that had bought 24 acres of the water-front portion of the Harsimus Yard in 1973 / 1974.

Track Six: Went around the southern part of the Harsimus Cove Yard. It connected to the track that served shippers located along Provost Street. A number of spur tracks branched off this track, and served warehouses along the East side of Marin Blvd, between Second Street and Fifth Street.

1979

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A 1979 aerial map of the Harsimus Cove Yard depicts only two tracks crossing Marin Blvd: Tracks Two and Three.

Track Two was used to serve shippers located on the Pier: Elk Warehouse, Chicago Shippers, and the barges being loaded on the south side of the Pier. The car float at the end of the Pier, was no longer in use.

Track Three was interconnected to Tracks Two, Four, Five and Six. It was used to service William J. Morris, Manischewitz, and shippers located adjacent to the Hudson Street Industrial track.

Rail Traffic in 1984 / 1974

For the 12-month period ending September 30, 1984, the following shippers received the following number of rail cars:

	1984 Carloads	**1974 Carloads**
Elk Warehouse:	364	
Chicago Shippers:	1,403	
Wm. J. Morris:	186	4,938
U. S. Packing:	?	6,991
Manischewitz:	35	
Hudson Street Industrial Track Shippers:		
Colgate:	1,068	
Refined Onyx:	107	
'B' Line Trucking:	41	

LINES OF RAILROAD IN 1976

On **August 9, 2007**, the STB, in FD 34818, held that the Embankment Segment [between MP 0.0 (Waldo Street) and MP 0.88 (West side of Marin Blvd)] was conveyed to Conrail via the FSP as Line Code 1420, and was conveyed to Conrail as a "line of railroad."

As stated above, Excepted track (yard, spur, switching, passing track) can be, and will be, as an operation of law, converted into "Lines of Railroad," if they are used for "through" rail traffic, and are used to serve more than one shipper.

Even though neither the STB nor the Special Court expressly held that the Harsimus Branch (Line Code 1420) **East** of Marin Blvd. was a 'line of railroad' when Conrail acquired the Harsimus / Line Code 1420 in 1976, Conrail is judicially estopped from arguing that the Harsimus / Line Code 1420 East of Marin Blvd **is not** a 'line of railroad.' (Jersey City only asked the STB and Special Court to rule on the status of the Harsimus / Line Code 1420 between

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Waldo Street and the West side of Marin Blvd.) Conrail's abandonment petition says the Harsimus / Line Code 1420, lies between MP 0.0 (Waldo Street) and MP 1.36 (East of Washington Street). Conrail, in a separate pleading, says MP 0.88 is at the West side of Marin Blvd. So there must be 0.47 miles of Line Code 1420 'line of railroad' East of the West side of Marin Blvd. That means the Harsimus / Line Code 1420 'line of railroad' continues across the Metro Plaza property.

Conrail's 1988 ZTS charts identify the track traversing the Embankment, as Track 215. (200 series tracks are 'lines of railroad.') Within the Harsimus Cove Yard, track 210 (Hudson Street Industrial Track), branches off of track 215. Track 215 then divides into tracks 731, 732 and 733, which tracks service "William J. Morris." (A freight consolidator, who bought two parcels from Penn Central in 1973 (10 ac, Parcel 'A') / 1974 (14 Ac, Parcel 'B'). See 3144 / 361 (May 11, 1973) and 3165 / 1 (May 29, 1974)

By 1979, only two of the six tracks that crossed Marin Blvd, were being used by Conrail. Those two tracks interconnected with the former Tracks One to Six. The segments of former Tracks One to Six that were in the Harsimus Cove Yard, were used to serve the shippers on the north side of the Pier (Elk Warehouse / Chicago Shippers, served via **Tracks One and Two**), the barges on the south side of the Pier (served via **Track Three**), William J. Morris (served via **Track Five**), and the Hudson Street Industrial Track (served via **Tracks Five and Six**).

Whether Tracks One to Six were **conveyed** to Conrail as lines of railroad, is irrelevant. What is relevant, is how Conrail **used** Tracks One to Six.

Conrail **used** Tracks One to Six for the movement of **through** traffic to **more than one shipper**. Conrail's **use** of Tracks One to Six caused Tracks One to Six to become "lines of railroad."

Once a track becomes a 'line of railroad,' it stays a 'line of railroad,' until abandonment authority is obtained, and exercised. See *The Atchison, Topeka and Santa Fe Railway Company – Abandonment Exemption – In Lyon County, KS,* Docket No. AB-52 (Sub-No. 71X), slip op. at 5 (ICC Served June 17, 1991). ["Because this track was clearly part of a rail line at one time, we find that it cannot be converted into an exempt spur ... solely through the railroad's unilateral decision to change its use of the track segment over time."]

On the 1979 Aerial, and on the Val Map for the Harsimus Cove Yard, Tracks One, Two and Three can be seen going due East from Marin Blvd, to the Pier on the water front. That puts a 'line of railroad' north of the Pep Boys site. Tracks Five and Six can be seen going diagonally across the Metro Plaza land. Spur tracks can be seen branching off of these 'main line' 'lines of railroad.

Yard tracks can be seen branching off the diagonal 'lines of railroad.' Yard tracks, and the land under yard tracks, can potentially be abandoned / sold, without STB approval. (So long as no OFA is filed to acquire the 'line of railroad' adjacent to those yard tracks. Under the OFA process, land adjacent to the line of railroad being abandoned, can also be acquired, even if it has

previously been sold. See *Railroad Ventures.*)

On **August 19, 1985**, Conrail sold the 18-acre parcel where Metro Plaza is currently located, to **National Bulk Carriers**. See Liber 3468, folio 64. On page 65 of that deed, Conrail reserved a **permanent 50-foot wide easement along the entirety of the northern boundary of the parcel sold to National Bulk Carriers, to be used for continued rail operations.**

Conrail never has sought, nor received, authority to abandon that rail easement. Consequently, it still exists.

On p. 66 of the National Bulk Carriers' deed, Conrail reserved a **temporary easement** to continue serving shippers William J. Morris and Manischewitz. Since the easement was being used to serve two shippers, the easement was being used as a 'line of railroad.' And once a 'line of railroad,' always a 'line of railroad.' Consequently, even though Conrail characterized the easement as being 'temporary,' it in fact was a 'permanent' easement, since it was a 'line of railroad' easement. See *Atchison, Topeka and Santa Fe Railway Company – Abandonment Exemption – In Lyon County, KS,* Docket No. AB-52 (Sub-No. 71X), ICC served June 17, 1991.

PRESENT DEVELOPMENT

Forest City's **first** hi-rise **is being built** (construction started 9-3-15) on the Pep Boys site. Forest City's **second** hi-rise **is to be built** further south, (construction to start in 2016-2017) clearly on the diagonal 'line of railroad' right-of-way.

Conrail, and Forest City, would try to argue that the Pep Boys land was lawfully sold to National Bulk, due to it being Yard tracks, and that the Pep Boys land is no longer subject to the STB's jurisdiction.

However, the National Bulk deed expressly reserves a 50-foot wide easement across the northern boundary of the National Bulk property (which is the northern boundary of Forest City's property).

The National Bulk deed also reserves 'temporary' easements across the center portion of the National Bulk / Metro Plaza property, which Riffin will argue, still exist, since they are 'lines of railroad' easements, which have never been abandoned.

Riffin's strategy

Riffin desires to stop **all** construction, including construction on the Pep Boys site. To do that, it must be established that the Pep Boys site is still subject to the STB's jurisdiction, and is still subject to the OFA process.

Argument: Pep Boys site is still subject to STB jurisdiction

Most Powerful Argument

Riffin's most powerful argument, is that the National Bulk deed expressly reserved a 50-foot wide easement across the northern boundary of the Metro Plaza parcel. Where Forest City is presently driving piles, is clearly within that 50-foot wide easement.

Riffin's second argument, is that the 'temporary' easement was not 'temporary.' Because the easement was used to serve more than one shipper, the easement was used as a 'line of railroad,' which has never been abandoned.

Riffin's third argument:

A 'line of railroad' includes the land adjacent to the 'line of railroad' tracks. A line of railroad's tracks can be placed anywhere within the line of railroad's right-of-way.

The land between the outer-most tracks within a railroad right-of-way, is a part of the 'line of railroad' right-of-way.

Per *Iowa Terminal, Railroad Ventures,* and *Boston & Maine,* an OFA offeror can acquire, in an OFA proceeding, land adjacent to a line of railroad's right-of-way, **which land was acquired by the railroad when it acquired the line of railroad**, so long as the adjacent land is 'needed for operation of the line of railroad.'

Land that was 'sold' prior to filing an abandonment petition, can still be acquired via the OFA process, so long as the land is 'needed for continued freight rail service.' (See *Railroad Ventures, Boston & Maine.*) [The STB / a court, can order the land be reconveyed back to Conrail. That is not a good option. The OFA purchase price would be the land's present fair market value. The STB / a court, can find that Conrail retained a rail easement over the underlying real estate. A much better option. Rail easements have a Net Liquidation Value of Zero Dollars. The owner of a rail easement has the right to exclusive possession of the full width of the rail easement, to the center of the earth, and to the heavens.]

The Pep Boys land is 'needed for continued freight rail service:' A 'wye' is needed at the East End of the Harsimus, in order to turn trains around. The top of the 'wye' needs to be adjacent to, and parallel to, the Light Rail tracks. The northern-most leg of the 'wye,' needs to traverse over the Pep Boys site. The southern-most leg of the 'wye,' will follow the southern-most line of railroad track, to the southern-most Eastern corner of the Metro Plaza parcel. The land in-between the 'wye' legs, is needed for spur track.

SITE PLANS

Riffin has a number of graphics. The first is a graphic prepared by the STB. The yellow line shows where the STB believes the Harsimus right-of-way is located.

The second graphic has a 'black box' on it. That box is where Metro Plaza is located.

The third graphic is a 'google earth' aerial of the Metro Plaza site. I have scaled the STB's right-of-way graphic onto the google earth graphic. I have also indicated where Forest City has erected a construction fence around its construction site. The building depicted in the upper right-hand corner of the Metro Plaza parcel, within the area enclosed within the construction fence, was the Pep Boys building. The building was demolished in August, 2015. Forest City's first hi-rise is to be built on the foot print of the former Pep Boys building.

Historic aerials can be found at: www.historicaerials.com

Once on the historicaerials' web site, type in the 'search' box: "6th street jersey city, nj"

Put your cursor on the picture, left click and hold your mouse, then move the mouse an inch or so up and to your left. The picture will move, allowing you to view more to the East and South. Look for a baseball field. That is at the corner of Marin Blvd and 6th Street. The Metro Plaza parcel lies East of Marin Blvd, between 2nd street and 6th street.

Zoom in to 30 m or 50 meters.

Click on the following years: 2013. (A fair image of what the site looked like in 2013.)
- 2004. A good color image of the site in 2004.
- 1995: Shows Metro Plaza just after it was built.
- 1994: Shows Metro Plaza and Washington Blvd being built.
- 1987: Fair image showing yard tracks.
- 1979: Good color image showing yard tracks and line of railroad, with catenary pole Shadows. Shows what the Harsimus Cove Yard looked like just after Conrail acquired it in 1976.
- 1966: Fair image showing the yard in 1966.
- 1954. Good Black & white image of the yard in 1954.
- 1931: Very poor image of the yard in 1931.

Mr. Cassera: I have asked Ted Cassera, a NJ land surveyor, to survey the four corners of the Metro Plaza parcel, bounded by Marin Blvd, 2nd street, the Light Rail, and 6th Street. I asked him to depict: The construction fence, location of BJ's and Bed Bath and Beyond. And the corners of any excavation / construction. I will provide him with information permitting him to depict where the Harsimus line of railroad right-of-way is located, and where the proposed wye is to be located. On Tuesday, November 17, 2015, aerial photographs of the Metro Plaza site were taken. These aerial photographs will have the boundary lines and lines of railroad overlayed on them.

Mr. Kahn: I have asked Fritz Kahn to read the *Iowa Terminal, Railroad Ventures,* and *Boston & Maine* cases, plus the Vicksburg Glass Road Bridge case. I have asked him to prepare an argument supporting my thesis that there were four tracks associated with the Harsimus line of

railroad, as it crossed Marin Blvd, going East. One line of railroad track continued due East, where 6th Street presently exists, to the water front. Two lines of railroad tracks, went across the Metro Plaza parcel on a diagonal. The land between the outer-most line of railroad tracks, is all a part of the Harsimus line of railroad right-of-way, and is needed for 'continued freight rail service' (As a wye, to turn trains around.)

Mr. Kahn is the former General Counsel for the ICC. He was an ICC staff attorney from 1959 to 1971, when he became General Counsel. He remained General Counsel until January, 1976. That makes him an 'expert' on railroad law.

If you would like, I will send to you copies of the Glass Road Bridge case, and the November 2, 2015 STB decision giving me the right to file an OFA, and a copy of the *Iowa Terminal, Railroad Ventures,* and *Boston & Maine* cases. I also have copies of the deeds to the Metro Plaza parcel.

After you read all of this, ask yourself the question: What is the likelihood that I would be successful in getting a federal judge to declare that I have equitable title to the railroad lines of railroad that traverse the Metro Plaza parcel? What is the likelihood I could get an injunction to stop all construction until the OFA process is completed?

What is the likelihood that Forest City would sue Conrail? And that Forest City's suit against Conrail would induce Conrail to negotiate a settlement? (Which is the ultimate goal.)

Exhibit H

Excerpts from Complaint

Riffin v. Forest City Ratner Companies, US DC for NJ

No. 16-CV-4433-ES

Showing Riffin's Reliance on OFA for Standing

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

JAMES RIFFIN *
P.O. Box 4044
Timonium, MD 21094 * Case No.: 16 -
(443) 414-6210
Plaintiff *

V. *

FOREST CITY RATNER COMPANIES *
1 Metro Tech Center
Jay Street *
Brooklyn, NY 11201
(718) 923-8400 *

G & S INVESTORS / JERSEY CITY, L.P. *
25th Floor
211 E. 43rd Street *
New York, New York 10017
(212) 286-8100 *

G & S METRO PLAZA LLC *
25th Floor
211 E. 43rd Street *
New York, New York 10017
(212) 286-8100 *

GS FC Jersey City Pep I Urban Renewal LLC *
c/o Forest City Residential Group, Inc.
50 Public Square, Terminal Tower Ste 1100 *
Cleveland, Ohio 44113
*

GS FC Jersey City Pep II Urban Renewal LLC *
c/o Forest City Residential Group, Inc.
50 Public Square, Terminal Tower Ste 1100 *
Cleveland, Ohio 44113

Defendants

COMPLAINT FOR DECLARATORY ORDER

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COMPLAINT FOR DECLARATORY ORDER,
PRELIMINARY INJUNCTION, PERMANENT INJUNCTION

1. Comes now your Plaintiff, James Riffin ("**Riffin**"), who herewith files this Complaint for a Declaratory Order, asking the Court to determine the property rights of Riffin in a parcel of land situated in Jersey City, Hudson County, New Jersey, commonly known as Metro Plaza ("**Metro Plaza**"), formerly known as the Harsimus Cove Rail Yard, formerly owned by the Penn Central Railway Company, and by the Consolidated Rail Corporation ("**Conrail**"), as detailed below.

2. In the event that the Court determines that Riffin does in fact have property rights in portions of the Metro Plaza Parcel, Riffin further asks the Court to enjoin the Defendants, and their employees, agents, and any person or entity acting on behalf of the Defendants, from changing the status quo of the Metro Plaza Parcel, as it existed on **January 6, 2009.** [The date Conrail filed its abandonment exemption, docketed AB 167 (Sub-No. 1189X), seeking authority to abandon its lines of railroad that traverse Metro Plaza / the former Harsimus Cove Rail Yard. See ¶¶ 15, 68, below.]

THE CONTROVERSY

3. When the Offer of Financial Assistance ("**OFA**") process began in AB 167 (Sub. No. 1189X), (on **January 6, 2009**), [see 49 U.S.C. 10904, 49 CFR 1152.27 and ¶¶ 69-78 below], the rail assets associated with that abandonment proceeding, **must remain in place, undisturbed**, until the OFA process has concluded.

4. Plaintiff argues that beginning in **August, 2015**, the Defendants unlawfully began disturbing the rail assets associated with the Metro Plaza parcel, by demolishing the Pep Boys building, and by beginning to construct the first of multiple hi-rises.

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5. Plaintiff further argues that the Defendants' putative title to the Metro Plaza parcel is infirm (is void *ab initio),* since the Metro Plaza parcel is encumbered by multiple lines of railroad, none of which have been abandoned, and since the Defendants, as non-rail carriers, are prohibited by 49 U.S.C. 10901(a)(4) from acquiring any legal interest in a line of railroad, or in the real estate associated with a line of railroad, without prior authority from the Surface Transportation Board.

BRIEF HISTORY OF THE METRO PLAZA PARCEL

6. On **April 1, 1976,** the **Harsimus Cove Yard** ("**Yard**"), located in Jersey City, NJ, was conveyed to Conrail via the Final System Plan. Appx 159. Conrail operated several lines of railroad that traversed the Yard. Rail operations in the Yard ceased in 1988.

7. On **August 19, 1985**, Conrail conveyed to **National Bulk Carriers, Inc.**, the Defendants' predecessor in title, 18 acres of the Harsimus Cove Yard. See liber 3468, folio 64. Appx 191.

8. On **January 31, 1994**, National Bulk Carriers deeded the majority of the land it acquired from Conrail, to **G & S Investors / Jersey City L.P.** See liber 4690, folio 303. Appx 197.

9. Defendant G&S Investors developed the Parcel.

10. The approximate 8-acre portion of the Yard bounded by Gangemi Drive on the north (6th Street), Marin Blvd. on the west, 2nd street on the south, and the Hudson Bergen Light Rail Line on the East, **known as Metro Plaza**, had structures built on it. The structures were occupied by **Pep Boys**, in the north east corner, **Bed Bath and Beyond**, in the north west corner, by **Shop Rite**, in the south west corner, and by **BJ's Warehouse** in the south east corner. The center / remainder of the 8-acre parcel, was used as a parking lot. See Ex. 2C, Appx 13.

11. In 2005, Conrail sold an adjacent parcel, known as the Embankment (which parcel was south of, and parallel to, 6th Street), to several limited liability companies (the "**LLCs**"). Jersey

City coveted the Embankment parcel. Litigation between the LLCs and Jersey City began, and continues today.

12. In 2009, at the request of Jersey City, the Surface Transportation Board ("**STB**") [the Federal agency that regulates railroads / formerly known as the Interstate Commerce Commission ("**ICC**")], determined, and ordered, that **the Embankment parcel was CONVEYED to Conrail as a line of railroad**, and further determined that Conrail **had not** sought, nor received, authority to abandon the Embankment parcel. In 2013, the U.S. District Court for the District of Columbia, sitting as the **Special Court**, granted Jersey City's motion for summary judgment, determining and ordering that the Embankment parcel **was a line of railroad**. See 09 cv 1900, 2013 WL 5423964 (D.D.C. Sept 30, 2013). The D.C. Circuit affirmed the Special Court's summary judgment order. See D.C. Circuit Appeal No. 13-7175, Decided February 19, 2014.

13. Per **49 U.S.C. 10903**, lines of railroad may not be abandoned, nor sold, without prior authority from the STB. Per **49 U.S.C. 10901(a)(4)**, non-rail carriers may not acquire a line of railroad, without prior authority from the STB.

14. Conrail **never sought**, nor received, authority to abandon, nor to sell, **nor did** the LLCs, or National Bulk Carriers (the Defendants' predecessor in title), seek, or obtain, authority to acquire, the lines of railroad that traversed the Embankment parcel (the LLCs' parcel), and that traversed the Harsimus Yard (traversed the Defendants' Metro Plaza Parcel).

15. On **January 6, 2009**, pursuant to 49 CFR 1152.50 (no rail traffic for past two years), Conrail filed an abandonment Notice of Exemption ("**NOE**"), seeking authority from the STB to abandon its Harsimus Branch. Conrail's NOE stated that the Harsimus Branch went from Waldo Street, in Jersey City (MP 0.0), through the Harsimus Yard, (MP 0.88 is where the Harsimus Branch crosses Marin Blvd.), to MP 1.36, a point some distance **East** of Washington Street. See Ex. 5-A, Appx 23, a STB graphic depicting the approximate location of the Harsimus Branch.

16. On **March 19, 2009**, Jersey City and CNJ Rail Corporation, pursuant to 49 U.S.C. 10904

40. Multiple Legal Notices will be conspicuously posted on and about the Metro Plaza Parcel, after the Complaint is filed, giving Notice of this Complaint. See Plaintiff's Certificate of Service.

VENUE

41. The Parcel of land that is the subject of this Complaint, is situated in Jersey City, Hudson County, New Jersey, which is within the geographical boundaries of this Court's jurisdiction. Therefore, the Court has Venue to hear the Complaint.

PARTIES

42. **James Riffin** is an individual who desires to obtain, via the Offer of Financial Assistance provisions of 49 U.S.C. 10904, the lines of railroad situated in Jersey City, that Conrail proposes to abandon, which lines of railroad are the subject of a proceeding before the Surface Transportation Board ("**STB**") (the Federal agency that regulates railroads), which STB proceeding has been docketed **AB 167 (Sub. No. 1189X)**.

43. Riffin's principal office is located in New Jersey.

44. The **Defendants** may have varying degrees of property rights in the parcel of land commonly known as **Metro Plaza**, which parcel of land is bounded on the north by Gangemi Drive (6th Street), on the west by Marin Blvd., on the south by 2nd Street, and on the east by the Hudson Bergen Light Rail Line. ("**Metro Plaza**" or "**Parcel**"). The Defendants' putative property rights are summarized below.

45. The principal offices of the Defendants are located in New York, New Jersey and Ohio.

ADDITIONAL FACTS

National Bulk Carriers, traversed any of the Metro Plaza parcel (Lot 3, 47, 50, 51, Block 11603); **and**

139. **If** the Court finds that the seven tracks / lines of railroad that crossed Henderson Street, and / or the two easements reserved by Conrail in Conrail's deed to National Bulk Carriers, are subject to the OFA procedures in AB 167 (Sub. No. 1189X); **and**

140. **If** the Court finds that Plaintiff has the right to file an OFA in AB 167 (Sub. No. 1189X),

141. **Then** Plaintiff prays that the Court issue an injunction (Temporary and / or permanent), enjoining the Defendants', and their agents, employees, or anyone working on behalf of the Defendants, to comply with Federal law applicable to the OFA process, to wit: Maintain the Metro Plaza parcel in the same condition that it was in on **January 9, 2009**, the date when Conrail filed its abandonment exemption in the proceeding docketed AB 167 (Sub. No. 1189X).

142. And the Plaintiff prays for such other and further relief as would be appropriate.

Respectfully,

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

Exhibit I

Local Press on Riffin's Effort

To Rely on OFA to Block

Redevelopment of Metro Plaza

1. Aug 11, 2016 "Jersey Digs" article describing complaint

2. August 8, 2016 "Jersey Journal" article noting that Riffin says "his chief aim with the lawsuit is to get Conrail [and] Jersey City [to settle] with Hyman …"

3. March 9, 2016 "Jersey Journal" article stating first phase is $223 million tower with 85 affordable housing units

4. Sept. 12, 2016 email, Hyman to Riffin Conveying internet reference (reprinted here for convenience) to Sept. 12 "Jersey Journal" argument about "sinister" lawsuit

Could A New Lawsuit Stall Metro Plaza's Renaissance?

By **Chris Fry** - August 11, 2016

The first tower under construction at Hudson Exchange West

A Maryland man with a litigious history and an oft-stated desire to run a train line has filed a lawsuit seeking to derail Metro Plaza's redevelopment, claiming that old Conrail tracks that formerly occupied the property were never legally and properly abandoned.

The seeds of the lawsuit were planted last year when plaintiff James Riffin, a colorful railway enthusiast, filed a notice with the federal government stating his desire to acquire the entirety of the abandoned Harsimus Branch rail line that runs through much of Jersey City. A portion of that line ran on the Metro Plaza site, although the tracks were demolished when the property was redeveloped in the early 1990s.

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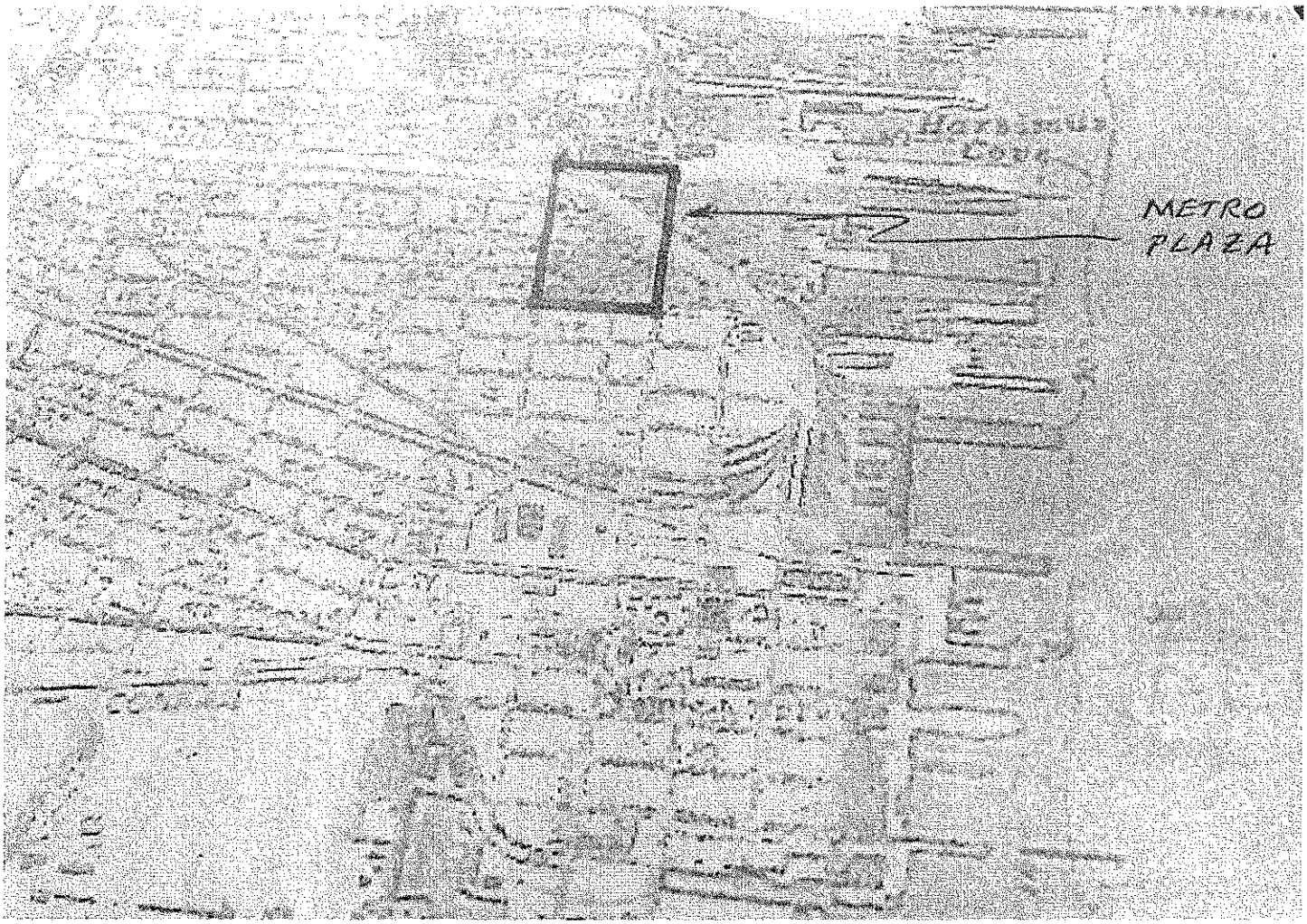
Jersey City's building boom has led Forest City Ratner to redevelop the property, which they kicked off earlier this year by breaking ground on Hudson Exchange West. A total of 11 towers could eventually occupy the site. But Riffin filed a lawsuit late last month in U.S. District Court to put the brakes on the project, naming Forest City Ratner, several of their subsidiaries and Metro Plaza owners G&S Investors as defendants.

Riffin, who is representing himself in court, claims that federal law bans Forest City from building on the property because they are "non-rail carriers" who are prohibited from "acquiring any legal interest in a line of railroad...without prior authority from the Surface Transportation Board."

He lays out his case in the 37-page filing, even citing the ongoing battle between Jersey City and the owners of the 6th Street Embankment as evidence. Riffin argues in parts of his complaint that because the 6th Street Embankment owners can't build housing on their land, Forest City shouldn't be able to either.

It's unclear if Conrail ever did properly and legally abandon their tracks that were near Metro Plaza, as their record on that point is inconsistent. A Federal Judge ruled in 2013 that the company did not correctly abandon tracks on the 6th Street Embankment, but Conrail did properly declare a section on 10th Street abandoned, which allowed LeFrak's Embankment House to be built. Conrail themselves have not commented on the case and, somewhat oddly, aren't named as a defendant.



Riffin included a map in his complaint's exhibits estimating where the rail line ran, but he requests that the court hold an evidentiary hearing "to determine the precise location of the seven lines of railroad that crossed Henderson Street."

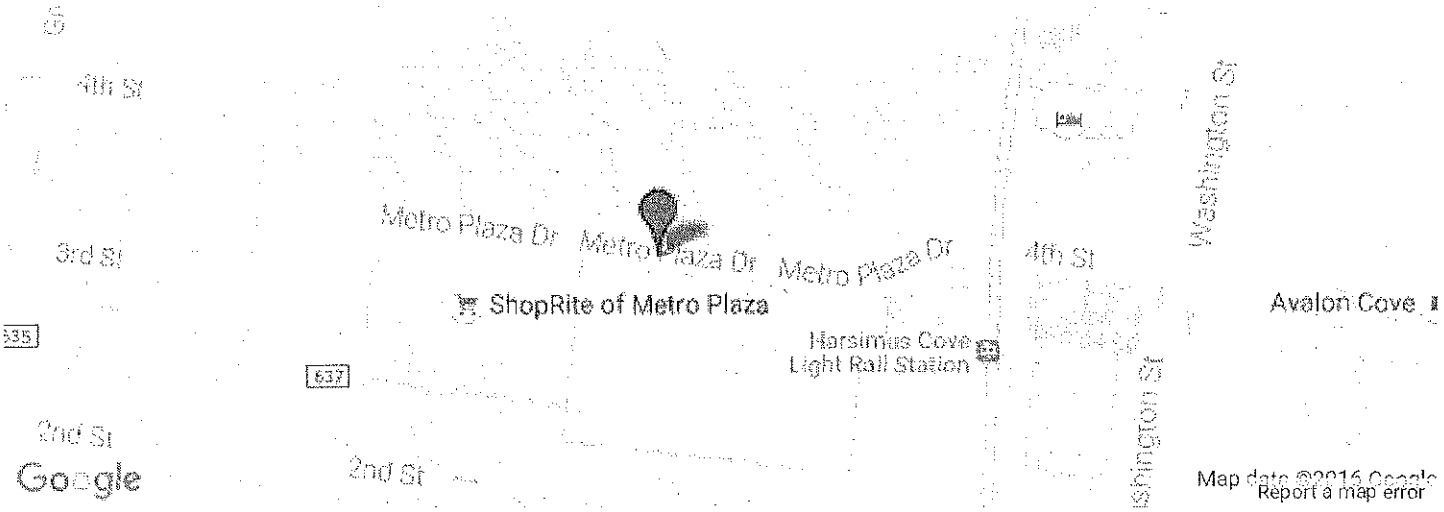
Click here to read the full text of the lawsuit.

A licensed attorney with a Masters from the University of Pennsylvania's Law School, Riffin has filed dozens of mostly losing lawsuits and appeals over the last two decades, most of them stemming from property he owns just outside of Baltimore he wishes to operate a rail line on. He's had criminal charges filed against him by authorities over, among other things, "malicious property destruction" and also had an environmental lawsuit brought against him by Maryland officials, eventually being fined $36,000 for performing clearing and construction on his land without a permit.

Riffin also spent nearly two weeks in Baltimore County Detention Center in 2008 for contempt of court over not posting a $250,000 bond. A District Court in Maryland also threw out eight of

his lawsuits in a 2007 ruling and wrote that "Riffin's use of federal litigation to stonewall efforts by local authorities to enforce state law is abusive and this Court declines to facilitate those efforts any further."

Regardless of the latest lawsuit's merit, Forest City doesn't appear phased by it, as work on Hudson Exchange has continued to hum along since Riffin's filing on July 20th. Time (and legal fees) will tell if any of Metro Plaza's evolution is disrupted by the case.



Metro Plaza Dr, Jersey City, NJ 07302

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Would-be Maryland trainman seeks to stop construction of Jersey City high-rise

By **Terrence T. McDonald | The Jersey Journal**
Email the author | **Follow on Twitter**
on August 08, 2016 at 1:32 PM, updated August 09, 2016 at 7:34 PM

A Maryland man has filed a bombshell lawsuit against the **developers of a high-rise under construction** near the Newport mall, saying federal law bars them from continuing to build on the property because it is a former rail yard never properly abandoned by Conrail.

The suit, filed last month in federal court in Newark, threatens to stall not just the completion of the planned 35-story high-rise, but also the long-term plan to construct 11 additional skyscrapers on the 18-acre site, known currently as Metro Plaza.

The complaint could lead to yet another hurdle for Jersey City to clear in its **decade-long mission to acquire the nearby Sixth Street Embankment**.

James Riffin, the plaintiff in the newest lawsuit, alleges that because the lines of rail that formerly traversed the Metro Plaza property were never abandoned by Conrail, the developers of the planned high-rises — a subsidiary of Forest City — don't have rights to the property.

Riffin, 73, filed notice with the federal government last year that he intends to acquire the entirety of the abandoned Harsimus Branch rail line, which ran from Waldo Street to the light-rail tracks on the Waterfront. A portion of the line ran on the embankment and on a portion of the Metro Plaza site.

That filing, Riffin says in the lawsuit, could end up giving him a claim on the Metro Plaza site, "from the center of the earth to the heavens."

A request for comment from the Forest City subsidiary was not returned.

READ THE COMPLAINT

Developers reveal plans for 35-story tower at Jersey City Pep Boys site

The abandonment issue is similar to the one at the heart of the embankment battle. There, the city alleges Conrail did not properly abandon the rail line that sat atop the stone, six-block embankment that ends at Sixth Street and Marin Boulevard before selling it to Victoria Hyman. The dispute is the subject of numerous lawsuits expected to drag out for the foreseeable future.

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Riffin's filing with the federal Surface Transportation Board, which regulates railroads, was a notice to file an "offer of financial assistance." Jersey City has filed similar paperwork to acquire most of the old Harsimus Branch rail line. Riffin says in his lawsuit that the Metro Plaza developers are forbidden from acquiring former rail lines without the STB's OK because they are not rail carriers.

Riffin doesn't run any rail companies but said he hopes to. He is a familiar name in the Maryland court system, where his critics called him a frivolous litigant, according to **a 2007 story from The Baltimore City Paper**, which in 2012 **dubbed him a "would-be trainman."** He fought an ultimately losing battle to acquire a rail line in Maryland.

Riffin told The Jersey Journal last week that his chief aim with the lawsuit is to get Conrail, Jersey City, Hyman and **her husband, Steve**, into a room to settle the embankment issue once and for all.

"Think of it like a boil," Riffin said. "How do you get rid of a boil? You lance it, get all the pus out. I'm lancing the boil."

Spokeswomen for Jersey City and Conrail declined to comment.

Terrence T. McDonald may be reached at **tmcdonald@jjournal.com**. Follow him on Twitter **@terrencemcd**. Find **The Jersey Journal on Facebook**.

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'Transformative' 12-tower project underway in Downtown Jersey City

By Terrence T. McDonald | The Jersey Journal
Email the author | Follow on Twitter
on March 09, 2016 at 2:08 PM, updated March 09, 2016 at 10:19 PM

JERSEY CITY — Declaring the start of a new era for Downtown Jersey City, Mayor Steve Fulop and developers today celebrated the start of construction of a **new residential high-rise near Newport Mall**, the first of 12 towers planned for the site over the next 20 years.

Fulop and developer Abe Naparstek said the project, known as Hudson Exchange, is one of largest, most transformative projects in the nation. The $223 million first tower, which will rise 35 stories and include 421 units plus 10,000 square feet of ground-floor retail space and a parking garage with 264 parking spaces, is expected to open in late 2017.

The tower, under construction on the site of the old Marin Boulevard Pep Boys, will also include 85 affordable-housing units, part of a Fulop administration effort to bring more affordable housing to the luxury high-rises along the Waterfront. **A 397-unit tower planned for a lot across Marin Boulevard** will include 80 affordable units, and the mayor said there are a few more similar projects "on deck."

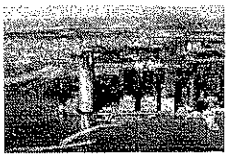
Fulop told The Jersey Journal that it's not fair that in recent years affordable housing has been relegated to neighborhoods far from the posh high-rises along the Hudson River. Just because a building is located Downtown, he said, that doesn't mean a person of modest income should be excluded from living there.

"It really doesn't create diverse neighborhoods," he said. "It's important to have everybody have an opportunity to live in every corner of the city."

Market-rate rents for the building are expected to range from $2,325 for one-bedroom apartments to $3,500 for two-bedroom units. Rents on the comparable affordable units will range from $954 to $1,194.

The developer will handle renting the affordable units, with the city acting as a check to make sure the residents in the units do not make more than 50 to 80 percent of the area median income, which in Hudson County is $63,600.

The affordable units come at a price for city and state taxpayers. The council last year **awarded Forest City a 25-year tax break** for the tower under construction now plus $10 million in redevelopment bonds that will be issued by the city. In addition the state New Jersey Economic Development Authority approved $40 million in state tax credits for the project. The affordable units revert to market-rate housing when the tax deals expire.



The 10 most lucrative Jersey City tax abatements

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Naparstek has argued that without those deals, the tower may not have received financing at all, let alone with 20 percent of the units set aside as affordable.

"There's a huge demand for that type of housing," he said. "It creates a more dynamic, diverse community."

The long-term plan for the entire 18-acre site, now called Metro Plaza, includes a revamped street grid that will connect the site to the neighborhood across Marin Boulevard and to the Waterfront, plus a public plaza.

Councilman-at-large Daniel Rivera grew up in the area, and said the site of the new tower "used to be my playground."

"I appreciate the beauty of the new Jersey City, but I miss the old Jersey City," Rivera said. "I really do."

Forest City is already making a list of people interested in the affordable units. To add your name to the list, email **hudsonexchangewest@forestcity.net**.

Terrence T. McDonald may be reached at **tmcdonald@jjournal.com**. Follow him on Twitter **@terrencemcd**. Find **The Jersey Journal on Facebook**.

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Subject: Fw: Developers of Jersey City tower ask judge to toss 'sinister' lawsuit | NJ.com

From: Eric Strohmeyer (esstrohmeyer@yahoo.com)

To: c.montange@frontier.com;

Date: Monday, September 12, 2016 3:39 PM

Hello Mr. Montange,

FYI: I just received this email from Jim Riffin. Please note, the originator of this email chain appears to be Steve Hyman.

On Monday, September 12, 2016 6:08 PM, jim riffin <jimriffin@yahoo.com> wrote:

On Monday, September 12, 2016 4:20 PM, Steve Hyman <shyman@shyman.net> wrote:

http://www.nj.com/hudson/index.ssf/2016/09
/developers_of_jersey_city_tower_ask_for_sinister_l.html#incart_river_index

--
Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

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Developers of Jersey City tower ask judge to toss 'sinister' lawsuit

By Terrence T. McDonald | The Jersey Journal
Email the author | Follow on Twitter
on September 12, 2016 at 3:51 PM, updated September 12, 2016 at 4:27 PM

JERSEY CITY —The developers behind a 35-story high-rise under construction in Downtown Jersey City have asked a federal judge to throw out **a lawsuit aimed at halting completion of the project**, calling the lawsuit a "sinister" effort on behalf of the plaintiff.

The developers, subsidiaries of Forest City and its partners, say in the 40-page brief filed Aug. 25 in federal court in Newark that plaintiff James Riffin has no standing to sue and that federal courts have no jurisdiction in a matter overseen by the federal Surface Transportation Board.

The brief calls Riffin a "frequent litigant" who has a history of inappropriate court filings and an "utter disregard" for court procedures.

"This suit is nothing more than Mr. Riffin's effort to use this court to wrongfully extract money from the defendants by threatening to interrupt the redevelopment," the brief says.

Riffin, 73, who lives in Timonium, Maryland, declined to comment. His response to the brief has not yet been made public.

A tale of two embankments in Jersey City

The 35-story high-rise is **part of a 12-tower project** planned for what's called the Metro Plaza site, a shopping center at Marin Boulevard and Sixth Street. The **developers have received state** and **city tax breaks** because they have pledged to set aside 20 percent of the tower's residential units as affordable housing.

The site sits on the former location of the Harsimus Cove Yard, which Conrail in 1985 conveyed to National Bulk. That company in 1994 deeded most of the land to defendant G&S Investors, which developed the site into Metro Plaza.

In his lawsuit, filed on July 20, Riffin alleges that because the lines of rail that formerly traversed the Metro Plaza property were never abandoned by Conrail, the developers of the high-rise don't have rights to the property. He says because he told the STB last year that he intends to acquire the entirety of the abandoned rail line, he could end up owning the site and re-starting a rail line on it. He wants construction on the residential tower halted until that federal matter is resolved.

The plaintiffs say Riffin attempted a similar move — obtaining authorization from the STB to operate a line of rail in Maryland without obtaining any legal title to the property — that was rejected by the STB. Even if Riffin obtained STB's OK to operate a line of railroad on the Metro Plaza site, the developers say, he has no legal title to the property.

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"He has not sustained any particularized injury as a result of any act or omission of any defendant," the developers say in their brief. "His alleged harm goes beyond mere speculation or even sheer fantasy. It is something more sinister."

READ THE DEVELOPERS' BRIEF

Terrence T. McDonald may be reached at **tmcdonald@jjournal.com**. Follow him on Twitter **@terrencemcd**. Find **The Jersey Journal on Facebook**.

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Exhibit J

Excerpts furnished by LLCs to City et al on Sept. 1, 2016:

Memo Riffin to Ratner et al, dated Oct. 14, 2015,

Threatening Litigation against Forest City development

(Excerpts from Memo)

Note: Mr. Riffin and the LLCs frequently and generally misconstrue or misstate the positions taken by City et al, or the goals and plans of City et al. By furnishing copies or excerpts from documents prepared by or arising from Riffin and LLCs, City et al does not indorse or necessarily agree with Riffin/LLC characterizations of and speculations concerning the positions or intentions of City et al, nor does City et al agree with or indorse the Riffin/LLC characterizations of the merits or nature of the legal positions taken or claims presented by either Mr. Riffin or the LLCs. This caveat applies for all exhibits in this discovery-related filing.

FROM: James Riffin P.O. Box 4044 Timonium, MD 21094 **(443) 414-6210**
jimriffin@yahoo.com

TO: **Bruce Ratner; Mary Anne Gilmartin; Abe Naparstek** Forest City Ratner Companies 1 Metro Tech Center Jay Street Brooklyn, NY 11201 **(718) 923-8400**

Gregg Wasser G&S Investors 25th Floor 211 E. 43rd Street NY, NY 10017 **(212) 286-8100**

DATE: October 14, 2015

RE: The "**Property**," that is to say: The Jersey City parcel bounded by Marin Blvd on the West; 2nd Street on the South. The Hudson Bergen Light Rail Line on the East; Thomas Gangemi Street on the North. Recently known as: **Hudson Exchange West**

Note: If you are a 'get to the point person,' or if you are too impatient to wait for novocaine to work, when getting dental work, then skip to p. 9.

INTRODUCTIONS

Messenger

My name is James Riffin. My role at the moment, is that of Messenger. I bring you tidings and a bushel of lemons. If you would like, I have a really good recipe for lemonade, which I am willing to share with you.

Below is the beginning and middle part of a tale. The ending has not been written yet. If you desire, you may influence how the tale ends.

THE 'PLAYERS'

Let me introduce the 'players' in the tale.

G&S Investors: Like a Chameleon, is has the ability to change the color of its skin, in order to better evade **predators**. Lately, it has changed its skin color several times. One of its latest skin colors is called "GS FC Jersey City Pep 1 (and 2) Urban Renewal LLC."

Forest City Ratner Companies: A long-established, well-respected, development company, which has recently decided to build several new castles in Jersey City, NJ.

Conrail: Ebenezer Scrooge. The 'Ghosts of Christmases Past' is what this tale is about. The question is: Will those 'Ghosts of Christmases Past' be put to rest, or will they continue to wander the countryside, doing their mischief.

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Jersey City: One of the Predators. Recently it was seen gamboling about the Property, in Sheep's clothing.

Charles Montange: The Chief Predator. He plots how to trap his pray.

Steve Hyman: A Squire who also desires to build castles in Jersey City.

Daniel Horgan: Steve Hyman's Knight, who has tried valiantly to protect his Squire, Mr. Hyman. Sometimes very successfully. But not so successfully before the Queen's Court.

Eric Strohmeyer: A Newcomer, who knows of many 'Ghosts of Christmases Past.'

James Riffin: A 'wee lad' who discovered several holes in the 'dike,' and who is attempting to warn that the dike is about to give way. He has also charted a good escape path, to avoid the impending calamity.

The King: The U.S. District Court in Newark, NJ. The King can either make a decision independent of the Queen, or, on occasion, may review decisions made by the Queen.

The Queen: The Surface Transportation Board ("**STB**"). The Queen (STB) regulates freight railroads. Until 1996, the Queen was called the Interstate Commerce Commission. Below, I tell you how to access the various decrees the Queen has issued, and the various pleadings filed with the Queen. The Queen is the player that determines the rules of the game, and that watches over the plays by the Queen's Vassals.

God: The U.S. Court of Appeals. He watches over his vassals from his throne in Philadelphia, PA, the District of Columbia, and eight other thrones. Decisions made by the Queen, or by the King, are reviewable by God, providing God is willing to listen to one's prayers.

THE TALE

A long time ago, (more than a hundred years ago), some bold entrepreneurs decided to build a line of railroad from the Docks of Jersey City to Kearny, NJ. They called this line of railroad, **The Harsimus Branch**. A mile or so away from the Docks, a rail yard was built. In the early 1900's, the portion of the rail line between Waldo Street and today's Marin Blvd, was elevated. Between Brunswick Street and today's Marin Blvd, the rail line was built at the top of what today is called, **The Embankment.**

Until the 1960's, all was fair in land through which the Harsimus ran. Then the storm clouds came. After much calamity, Congress decided to rescue the Harsimus, and many other railroad

lines. Congress created Conrail. Congress gave to Conrail, those lines of railroad that were deemed most fit to save.

Congress' Gifts to Conrail were recorded in a large book, entitled **The Final System Plan.** All of the Gifts were numbered. The Harsimus Branch was numbered "**Line Code 1420.**" Another gift to Conrail, was a line of railroad called **The Hudson Street Industrial Track,** which was numbered "**Line Code 1440.**" These Gifts to Conrail were duly noted on p. 272 of the big Final System Plan Book.

For awhile, these Gifts were appreciated by Conrail. In the 1980's, these two Gifts lost their luster. Conrail ignored these no-longer-wanted Gifts. In the 1990's Jersey City asked Conrail if Conrail would properly dispose of these no-longer-wanted Gifts. Conrail said, "No," but gave Jersey City permission to dispose of the bridges and rails that were associated with these Gifts.

After the bridges and rails were removed, Conrail decided to sell the dirt under these Gifts. (But not the Gifts. Gifts can only be sold with the Queen's Blessing.)

G&S Investors saw value in the former 'Yard' portion of the Harsimus. After some dickering, G&S acquired the 18-acre 'Yard' portion of the Harsimus. G&S built structures on the land it acquired. The Tenants did well. And all was well in the land of Jersey City.

In the 2000's, Conrail asked Jersey City if Jersey City wanted to buy the Embankment portion of the Harsimus. Jersey City declined. So Conrail put the Embankment up for bid. Only one person offered to buy the Harsimus: **Squire Steve Hyman.** He too saw value in the land. He sought to build castles on the Embankment.

Alas, the Fates were not kind to Squire Hyman. Shortly after he bought the Embankment, New Rulers took over Jersey City. The New Rulers coveted Squire Hyman's Embankment property. The New Rulers offered to buy the Embankment from Squire Hyman, for the same price that Squire Hyman paid. Squire Hyman wanted more than what he had paid.

That displeased the New Rulers. So the New Rulers hired a 'dragon slayer' whose name was Charles Montange. Mr. Montange was very experienced in slaying dragons. He had slain many dragons, and used their fur as Magic Carpets. Many people today walk on the Magic Carpets that he has made.

Mr. Montange knew the Queen very well, and knew the Queen's rules really well. He plotted how to slay the Hyman dragon. He devised a really ingenious plan:

First, he would have the Queen declare that the Harsimus was still a line of railroad, even though the rails and railroad bridges had been removed decades ago.

Squire Hyman's Knight, Dan Horgan, attempted to protect his Squire. He appealed the Queen's Decision to God. (While God was sitting on his D.C. throne.) God said: Let the Special Court King (sitting on his throne in the District of Columbia) review the Queen's

decision first. After much blustering, (and after Dragon Slayer Montange let Knight Horgan read the big Final System Book, and read some of the Queen's Rule Book), Knight Horgan and Dragon Slayer Montange decided to call a truce: They stipulated to the Special Court King that the Harsimus was still a line of railroad, for Conrail had never asked the Queen for her permission to abandon the Harsimus Gift that Congress had bestowed upon Conrail.

After Dragon Slayer Montange prevailed over Knight Horgan in the battle to determine whether the Harsimus was still a line of railroad, Conrail realized that it had displeased the Queen, by selling portions of the Harsimus Gift before asking for the Queen's permission to abandon the Harsimus Gift.

So Conrail, in an effort to appease the Queen, and in an effort to appease Squire Hyman, (who had given Conrail $6 million for the Embankment portion of the Harsimus), and in an effort to 'make things right,' Conrail asked for the Queen's permission to abandon **all** of its Harsimus Gift, not just the Embankment portion of the Gift. That meant, from Waldo Street to Washington Street.

So Conrail, **in 2009**, dutifully filed a Notice of Exemption with the Queen. The Queen docketed the Notice **AB 167 (Sub. No. 1189X).**

Dragon Slayer Montange gleefully waited until Conrail filed its Notice. Then Dragon Slayer Montange pounced on his pray: He filed a Notice with the Queen, that he intended to file an **Offer of Financial Assistance. ("OFA").** In effect, he asked the Queen for a license to hunt, to capture, and to provide Jersey City with the spoils of his hunting quest: The elusive Harsimus.

Dragon Slayer Montange knew his Queen's Rules of the Hunt very well. First, the Queen would declare that Conrail need not keep its Harsimus gift. The Queen then would ask if anyone else wanted the Harimus gift. If someone said yes, then the Queen would offer that someone the Harsimus gift. If that someone agreed to pay Conrail the Net Liquidation Value of the Harsimus Gift, then the Queen would grant that someone permission to acquire the Harsimus Gift from Conrail.

But the Queen had several stipulations: First, anyone who desired to acquire the Harsimus Gift would have to first prove that the Harsimus Gift was really needed for its original intended purpose: **For the provision of continued freight rail service.**

Then the buyer would have to use the Harsimus for continued freight rail purposes, for at least five years. (Only two years, if Conrail did not object.) At the end of five years, the buyer then could convert the Harsimus into a 'rails to trails.' So long as the Harsimus remained a 'rails to trails,' the Queen would continue to have jurisdiction over it, and could anoint someone to turn the trail back into a line of railroad.

In effect, Dragon Slayer Montange would deliver to Jersey City a Magic Carpet (a 'rail easement'), which would lie over the ground owned by Squire Hyman, and owned by G&S

During the OFA process, the local public works department decided to remove a rail bridge, and did so. When the STB learned about the unauthorized bridge removal, it issued an order forbidding the local public works people from any further removal activities. The STB also ordered Kansas City Southern to pay to the OFA offeror, the cost to replace the bridge.

THE COMPLAINT

When Conrail filed its abandonment petition, there was a parking lot on the rail easement across your Property. (And a Bed, Bath and Beyond, and perhaps a portion of BJ's.) Per OFA law, what existed in 2009, must remain just as they were in 2009, until the OFA process is completed.

It has come to my attention that you have imminent plans to begin constructing a 35-story hi-rise on Your Property. You also have plans to demolish the existing Bed, Bath and Beyond and BJ's structures, then build new structures. Were you to do any of this, the status quo of the rail easement, as it existed in 2009, would be changed. Which is not permitted by the OFA law.

Were you to build a structure on the rail easement, the purchaser of that rail easement would have the legal right to either have you remove the structure, or could charge you 'rent' for using the rail easement. (Sort of like 'ground rent.') Think Grand Central Station in NY. The rail easement is underground. The air space above the rail easement still belongs to the rail carrier. The owners of those hi-rises, pay rent for using that air space.

It matters not whom ultimately acquires the rail easement. Be it Jersey City, me, or Eric Strohmeyer. The owner of that rail easement has the right to 'exclusive' possession of that rail easement: The full-width by to the heavens by to the center of the earth.

Since I do not want the status quo to change during the OFA process, I will ask the District Court to enjoin any changes in the property, until the OFA process has run its course.

AN ALTERNATIVE

I have advocated for the past several years, that all of the parties need to get together, and reach a global settlement. That includes you. To date, no one has taken my suggestion seriously.

Conrail has zero interest in reaching a settlement. Mr. Hyman does have an interest. I have an interest.

Before a party will consider a settlement, the party must believe that they could lose the litigation. To date, Conrail has never thought that it could lose anything. Its conveyances were by Quit Claim deeds. Those deeds have no warranties of title. In effect, Conrail said that if it had any title, it was transferring that title, but it did not warrant that it had any title to convey.

In this case, by law, Conrail was not permitted to convey title to its rail easement to your predecessor in title, or to Mr. Hyman. Nor was your predecessor in title, nor was Mr. Hyman,

Exhibit K

Certification of Hours and Costs

Associated with Two Motions to Compel and

Motion for Sanctions

In re: City et al Discovery Against Riffin

In AB 167-1189X

I, Charles H. Montange, counsel for Jersey City et al in STB dkt AB 169-1189X, hereby certify under penalties for perjury that I spent at least 83 hours preparing, serving and filing (1) a first motion to compel when Mr. Riffin defaulted on promised response, (2) a withdrawal of the first motion as moot when Riffin filed tardy objections, (3) comments on Riffin's spurious motion to strike, (4) a second motion to compel, (4) preparation for, travel to and from, and attendance at a hearing on the second motion before Judge Dring, (5) review of documents produced by Riffin in response to the hearing and the discovery tendered, and (6) preparation through September 8 of a motion for sanctions. I further certify that I charge the City a discounted rate of $200 per hour in light of the fact that two non-profit preservational organizations are co-clients (Rails to Trails Conservancy and Embankment Preservation Coalition). Normal commercial rates are substantially higher. The total fee charged City et al is thus not less than $16,600 for 83 hours work. I incurred travel expenses of $1416.50 for the hearing before Judge Dring, and an additional $445.79 to make copies and serve the various pleadings enumerated above on parties in AB 167-1189X in accordance with STB service requirements and upon Judge Dring as required by STB through September 8, 2016. The total for fees and expenses is thus $18,462.29. These fees and expenses exclude all amounts attributable to extensive but unsuccessful efforts to arrive at stipulations with counsel for the LLCs (Mr. Horgan) to abate the need for further discovery.

- 1st compel
- w/ drawal
- mot strike
- 2d mot compel
- Travel
- sanct mot.

$200/HR

$1416 = trip D.C.

$445 = copies

$18,462

By: [signature]

Sept. 10, 2016

JAMES RIFFIN

PETITIONER

V.

SURFACE TRANSPORTATION BOARD

RESPONDENT

APPEAL OF AN INITIAL ALJ DECISION OF

THE SURFACE TRANSPORTATION BOARD

AB 167 (Sub. No. 1189X)

(Harsimus Branch – Jersey City, NJ)

RECORD EXTRACT

VOLUME THREE – REPLIES TO MOTION FOR SANCTIONS

PP. 403 - 472 - I

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JR - 18

Before the
Surface Transportation Board

9/26/16

STB DOCKET NO. AB-167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-55 (Sub-No. 686X)

CSX TRANSPORTATION, INC. – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

JAMES RIFFIN'S REPLY TO CITY'S, ET AL.'S SEPTEMBER 15, 2016 MOTION FOR SANCTIONS

1. Comes now James Riffin, ("**Riffin**") who herewith files his Reply to City's, et al.'s[1] ("**Montange**") September 15, 2016 Motion for Sanctions ("**Motion**"), and in support hereof says:

2. Riffin received the paper copy of City et al.'s Motion on Friday, **September 23, 2016.**

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[1] Jersey City, Rails to Trails Conservancy, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition.

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3. On **August 25, 2016**, the Surface Transportation Board ("**STB**") served the August 24, 2016 Order issued by ALJ Dring, wherein ALJ Dring ordered:

> "1. Mr. Riffin will provide City, et al. and Consolidated Rail Corporation with all e-mail communications between him and the LLCs **that Mr. Riffin retains in his possession**. Mr. Riffin will also supply City, et al. the docket numbers for three (3) bankruptcy proceedings involving Mr. Riffin. Mr. Riffin shall comply with this order by close of business on Friday, August 26, 2016."

4. On **August 26, 2016**, Riffin sent a Status Report to ALJ Dring certifying that:

   A. On **August 25, 2016**, "a copy of the e-mails between me and Steve Hyman, Vicki Hyman, and Daniel Horgan, were forwarded to Mr. Montange[2] on August 25, 2016, by 6:30 pm. (All 103 of them.)"

   B. On **August 26, 2016,** "[l]ikewise, the case numbers for the three bankruptcy proceedings that I participated in, were forwarded to Mr. Montange on August 26, 2016."[3]

5. On **September 15, 2016**, Montange filed a Motions for Sanctions, asking:

> "For discovery sanctions, and in particular, for an order either (1) dismissing James Riffin from further participation in this proceeding, or, in the alternative, (2) barring James Riffin from submitting an 'offer of financial assistance' ('OFA') pursuant to 49 U.S.C. 10904 in this proceeding, and (3) for **attorneys'** [plural in original] fees and costs associated with the motions to compel Riffin, hearings, and motion for sanctions, and any further hearing attendant thereto." Motion at 1. Bold added.

FIRST OBJECTION

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[2] A copy of the e-mails were also forwarded to: Adam Sloane, Robert Jenkins and Jonathan Broder, counsel for Conrail; to Daniel Horgan, counsel for the LLCs; and to Eric Strohmeyer.

[3] The Status Report stated that the bankruptcy numbers were forwarded on August **25**, 2016. The number '25' was crossed out, and the number '26' was hand-written below, to indicate that the bankruptcy numbers were forwarded on August 26, rather than on August 25.

6. The copy received by Riffin, and the copy posted on the STB's web-site, **ARE NOT** "paginated continuously, including cover letters and attachments."

7. Either Montange:

A. Has never read 49 CFR 1104.2 (b), which states:

> "All pages of original documents, and each side of pages that are printed on both sides, **must be paginated continuously, including cover letters and attachments.**" Bold added.

B. Or Montange chose to ignore 49 CFR 1104.2(b); or

C. Montange chose to make everyone's life more difficult, by failing to paginate the pages in his Motion.

8. Whatever the reason, Montange's failure to paginate his **104-page** Motion makes it very difficult to refer to individual pages in his Motion, without an extensive description of the page being referred to.

9. Rather than file a Motion to Strike Montange's Sanction Motion [for failing to follow the dictates of 49 CFR 1104.2(b)], and rather than asking ALJ Dring to **order** Montange to follow the dictates of 49 CFR 1104.2(b), if Montange chose to re-file his Motion for Sanctions, (which would inconvenience ALJ Dring and all the other parties), and which would waste another tree or so, for the paper to reproduce, a second time, his Motion for Sanctions, Riffin asks that ALJ Dring (and the other parties) to hand-number each page of Montange's Sanction Motion, as Riffin did.[4]

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[4] Riffin looked at his 'JR-17 Reply,' and noted that Riffin too failed to sequentially paginate his Reply, so Riffin cannot in good conscience chastise Mr. Montange too severely. Riffin apologizes to ALJ Dring, and the other parties, for his failure to sequentially paginate his Reply, and for the inconvenience his oversight caused. (Riffin normally paginates his appendices sequentially.)

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10. Riffin numbered each page of Montange's Motion, beginning with Montange's cover sheet. Page 1 of Montange's **Motion** is now numbered page '2.' Page '22' of Montange's Motion, where his signature and a list of the 'Attachments' appears, is now numbered '23.' The first page of the copy of Montange's 'Request for the Production of Documents,' is now numbered '29.' The last page of Montange's Motion, is numbered '104.'

SECOND OBJECTION

11. ALJ Dring's Order was very specific: Riffin was ordered to forward a copy of whatever Hyman / Horgan (LLCs counsel) e-mails Riffin **"retains in his possession."**

12. At the August 24, 2016 hearing before ALJ Dring, Riffin testified that he deletes e-mails for which he no longer has an immediate / present use for.

13. At the August 24, 2016 hearing, Riffin agreed to forward to Montange, whatever e-mails remained in his e-mail account.

14. On August 25, 2016, when Riffin began the process of forwarding his Hyman / Horgan e-mails to Montange, he did as Montange had instructed Riffin: Type in Hyman's / Horgan's name in the Yahoo Search Box. When the e-mails are displayed, forward whatever Riffin sees. Which is precisely what Riffin did. (After 30 minutes of trying, Riffin learned he could only forward one e-mail at a time, and only after the e-mail was 'opened.' That turned out to be a very time-consuming process, averaging a bit more than one-minute per e-mail forwarded.)

15. So Riffin's Second Objection is: Riffin provided Mr. Montange with precisely what Riffin was ordered to provide Mr. Montange.

THIRD OBJECTION

16. The STB's discovery rules are very specific. 49 CFR 1114.30(a)(1) states in relevant part:

> "(a) *Scope*. Any party may serve on any other party **a request**:
>
> (1) To produce and permit the party making the request **to inspect** any designated documents, or **to inspect and copy**, test, or sample any tangible things which **are in the possession, custody, or control** of the party upon whom the request is served ... ."

17. Riffin stated in his JR-17 Reply:

> 36. 49 CFR 1114.30, and FRCP 34 are quite similar. Both state that the party upon whom discovery requests are propounded, has the duty to permit the individual seeking discovery, "to inspect and copy" whatever the individual seeking discovery is permitted to 'inspect and copy,' **where ever the documents 'are normally kept.'** [See *Rowlin v. Alabama Dept. Of Public Safety,* 200 F.R.D. 459 (M.D.Ala. 2001).]
>
> 37. The discovery rules **do not** require Riffin to copy, reproduce, or transport to the requestor, whatever documents are requested.
>
> 43. Riffin sent a copy of what is appended, and the explanation noted above, to Mr. Montange, several weeks ago. (Around July 12, 2016.) Riffin further offered, in conformity with 49 CFR 1114.30 and FRCP 34, to let Montange come to Baltimore, and once he is in Baltimore, to let him look at all of Riffin's e-mails to the LLCs, or to the Hymans. So far, Mr. Montange has not responded."

18. Rather than insist that Montange come to Riffin in Cockeysville, MD, Riffin took the trouble to go to Washington, D.C., on the night before the August 24, 2016 hearing, to permit Montange to 'inspect' Riffin's e-mail account.

19. Riffin patiently waited for Montange to arrive at a restaurant that Riffin had arrived at earlier. When Montange arrived, Riffin offered to let Montange join Riffin,[5] then offered to let Montange 'inspect' Riffin's e-mail account. Riffin obtained a WiFi access code, accessed the Internet, accessed his Yahoo e-mail account, then placed his lap top computer, with his Yahoo e-

[5] Since Riffin was at the restaurant long before Montange arrived, it was Montange who 'crashed' Riffin's 'party.'

mail account displayed on the monitor, in front of Montange. Riffin typed in the name 'Hyman.' All of Riffin's e-mails to Steve Hyman were displayed. Riffin scrolled down the list, to let Montange have an overview of the e-mails. Riffin then offered to let Montange 'inspect' whatever e-mails he desired to inspect.

20. Rather than inspect Riffin's e-mails when he had an opportunity to do so, Montange asked if Riffin would just forward them to Montange. Riffin agreed.

21. After some discussion, Riffin left and returned to Maryland.

22. Riffin argues that he has **fully complied** with the discovery rules set forth in 49 CFR 1114.30(a)(1), for Riffin not only offered to let Montange inspect Riffin's e-mails, Riffin **placed in front of Montange** the very e-mails that Montange desired to inspect!

23. Montange **should not be heard to complain** that he has not been afforded an opportunity to 'inspect' the e-mails that he desired to inspect. Had Montange taken just a few minutes of his time **to actually look at** a few of the e-mails displayed before him, he would have noted:

A. A number of e-mails do not have the 'recipient's' name on them. Motion at 40, 43, 44, 51.
B. A number of e-mails do not have any 'text' on them. Motion at 39, 55.
C. A number of e-mails do not have an 'original request.' Motion at 52, 53, 54.
D. A number of e-mails do not have an 'attachment.' Motion at 52, 55.
E. Riffin's e-mail account **does not** contain some of the e-mails that Montange has obtained from 'other sources.' Motion at 56, 57, 58, 65, 68, 69
F. Riffin's e-mail account no longer has the e-mail that Riffin sent to Bruce Nagel (evidently) on (or about) November 21, 2015. Motion at 68, 69.
G. The earliest e-mail in Riffin's e-mail account to Hyman / Horgan, is dated December 30, 2014, for Steve Hyman, and is dated December 8, 2014, for Mr. Horgan.

FOURTH OBJECTION

24. On **September 24, 2016**, Riffin compared the photocopies of the e-mails in Montange's Sanctions Motion, with the e-mails displayed on a computer monitor, to ascertain whether the photocopied e-mails were identical to the e-mail displayed on the computer monitor. **ALL** of the e-mails compared, **were identical.** (Prior to making this comparison, Riffin had no way of knowing whether what was forwarded by Yahoo to Montange, was identical to what is displayed on a computer monitor Riffin is using. Now Riffin knows, and can certify, that what Montange received, is identical to what is displayed on a computer monitor that Riffin is using.)

FIFTH OBJECTION

25. Montange complains, Motion at 34, that Riffin agreed to forward to Montange "all emails between yourself and agents or reps of the LLCs. ... I request that you simply finish sending emails between yourself and agents of the LLCs."

26. The short answer to that objection, can be found in ALJ Dring's Order: Riffin was ordered to forward to Montange (and to Conrail's counsel) all e-mails between Riffin "and the LLCs that Mr. Riffin retains in his possession."

27. Riffin broadly interpreted "the LLCs" to include e-mails to / from Mr. Horgan, counsel for the LLCs, and e-mails to / from Steve Hyman and Vicki Hyman. (The oral agreement between Riffin and Montange included Steve and Vicki Hyman.)

28. The longer answer is found in Riffin's August 26, 2016 10:55 AM e-mail from Riffin to Montange, wherein Riffin stated:

> "I have no idea who the LLCs' may have hired as 'agents.' (Other than Mr. Horgan.) Nor do I have any interest in knowing. Nor do I have any right to learn this information."

29. The discovery rules require Riffin to disclose documents / information **in his possession**. To comply with Montange's 'request,' Riffin would first have to request that the LLCs disclose to Riffin all of the LLCs' 'agents.' (Which the LLCs would be under no obligation to disclose to Riffin.)

30. Other than Mr. Horgan, counsel for the LLCs (as the attorney for the LLCs, Mr. Horgan would be their 'agent'), Riffin has no idea what other entities might be 'agents of the LLCs.'

SIXTH OBJECTION

31. Montange, in his August 25, 2016 at 7:00 PM e-mail to Riffin, Motion at 34, stated:

> "Incidentally, Nagel is a name you can type into the email search as easily as Horgan or Hyman. And I am relatively confident that a gentleman of your professed astuteness is **able to recall** with whom he has corresponded in connection with your machinations with or for Mr. Hyman and the LLCs in connection with the Harsimus Branch."

32. Riffin followed Montange's instructions. Riffin typed in 'Nagel' in the Yahoo search box.

> "The response given was: Nothing found. Try the Web. So I tried the Web. There is a Bruce Nagel that is an architect. I have a vague recollection of having a telephone conversation with an architect many months ago. But it is a really vague memory (Things that have little or no importance to me in the present, or immediate future, I quickly 'delete' from my brain's memory.)" Motion at 37.

33. When Riffin received, and read, Montange's Sanctions Motion, he noted that Montange's Motion contained a copy of an e-mail to 'Bruce Nagel,' dated November 21, 2015, nearly a year ago. Motion at 69. After Riffin read the 'Bruce Nagel' e-mail, Riffin remembered who 'Bruce Nagel' was.

34. In 2015, Mr. Hyman was feeling very frustrated by the slow pace (glacial pace) of the 1189X proceedings. He frequently called many people, including multiple attorneys, trying to

find someone who could provide him with 'better' legal service. (Since he was frustrated by the slow pace of the 1189X proceeding, he took his frustration out on Mr. Horgan.) Riffin repeatedly told Mr. Hyman, that Mr. Horgan was the best attorney that he could get, that no attorney could know, or learn, the thousands of details it took Mr. Horgan years to learn, and that he should not 'fire' Mr. Horgan. Mr. Hyman continued his pursuit of alternate legal counsel. He frequently would call Riffin, vent his frustration, then 'conference' a call with some attorney that he knew, then ask Riffin to explain to the attorney, what the 1189X proceeding was about. In the case of Mr. Nagel, Mr. Nagel asked Riffin to send him a Memo, outlining what the 1189X proceeding was about. Which Riffin did. As always happened, Riffin never received any communication back from whomever Riffin had spoken to. So after awhile, Riffin's brain stopped 'remembering' the many people that he had spoken with. Including Mr, Nagel. And yes, Riffin did have a telephone conversation with an architect that Mr. Hyman 'conferenced' in to a call with Riffin. Riffin has no recollection what the architect's name might be.

SEVENTH OBJECTION

35. Montange spent a considerable number of pages discussing Riffin's Complaint against the owners of the Jersey City Metro Plaza parcel, including a 'meeting' Riffin had with a 'Kevin Coakley,' which Montange alleges is an attorney for one of the Defendants, Forest City Ratner Companies. Motion at 8, 9, 10, 80-85, 86-103. (That is 26 pages, or one-quarter of Montange's Sanctions Motion.)

36. Riffin's first response is: Riffin's Complaint, and his 'meeting,' are totally irrelevant to the 'document' request that Montange served on Riffin.

37. Montange's 'Document Request,' Motion at 29, defines the phrase 'Harsimus Branch:'

> "Harsimus Branch shall mean an portion of the line of railroad between **CP Waldo and Marin Boulevard** in Jersey City transferred to Conrail as line code 1420 ... ." Motion at 30.

38. The Metro Plaza Parcel lies **East** of Marin Blvd, while the line segment 'between CP Waldo and Marin Blvd.' lies entirely **West** of Marin Blvd.

39. Montange's 'Document Request,' states:

"Document requests. All the following documents are hereby requested pursuant to the **foregoing definitions** and conditions:

1. All documents received or possessed by Riffin or any representative of Riffin from the LLCs or any person acting on behalf of the LLCs [including but not limited to the manager of the LLCs (Mr. Steve Hyman) or attorneys for the LLCs] **relating** in any fashion **to the Harsimus Branch**, ..." Motion at 31.

40. Since the Metro Plaza Parcel lies **outside** of the line segment that Montange limited his discovery request to, any documents relating to the Metro Plaza Parcel are not a proper subject of this proceeding.

EIGHTH OBJECTION

41. Montange's 'document request,' defines the word 'document,' as follows:

"Definitions. For purposes of this Request, **document shall mean any writing**, notation, or record, regardless of form, and including but limited **to** both electronic and non-electronic media, including emails, diaries, business records, and **all documents maintained, retained,** authored, copied on, or received **by consultants, officers, employees, negotiators, board members, attorneys** otherwise **working for or on behalf of any party** (including without limitation railroad, corporation, limited liability corporations, or individual) **who has filed a pleading in AB 167 - 1189X.**" Motion at 29-30. Bold added.

42. Distilled down, a 'document' is 'any writing,' 'maintained, retained' **BY** 'consultants, officers, employees, negotiators, board members, attorneys' **WORKING FOR OR ON BEHALF OF** 'any party' 'who has filed a pleading in 1189X.'

43. Riffin **is not** 'working for or on behalf of' 'any party' 'who has filed a pleading in 1189X.

44. Nor is Riffin a 'consultant, officer, employee, negotiator, board member, or attorney.'

45. Besides a whole gang of people who initially filed comments, none of whom Riffin knows, works for, or on behalf of, the only 'parties' who have 'filed a pleading in 1189X,' are:

Conrail, the LLCs, City et. al., Eric Strohmeyer and Riffin.

46. Consequently, any 'writing' 'maintained, retained, authored, copied on or received' **by Riffin, IS NOT** within Montange's 'definition' of a 'document' and therefore **need not** be made available for inspection by Montange.

NINETH OBJECTION

47. Montange objects to the Status Report Riffin sent to ALJ Dring. Motion at 6. Riffin told Montange to cross out the number '25' following the word 'August' for the date that Riffin provided Montange with the bankruptcy docket numbers, then write the number '26' instead. [Meaning that Riffin provided the bankruptcy docket numbers to Montange on August 26, 2016, rather than on August 25, 2016, the date Riffin forwarded to Montange (and others) Riffin's Hyman / Horgan e-mails.] It appears to Riffin that Montange is incapable of doing that, or prefers to throw a temper tantrum, much like a small child, when told to get their own glass of water, after insisting that the parent hand the child a glass of water.

48. Montange also complains that Riffin did not serve a copy of the Status Report on all of the 'parties' that are entitled to be served with 'pleadings.' Motion at 6.

49. To begin with, it is not, nor was it intended to be, a 'pleading.' Riffin extended to ALJ Dring the courtesy of letting ALJ Dring know that Riffin had timely complied with ALJ Dring's order. And to let ALJ Dring know why Riffin was a few minutes late for the August 24, 2016 hearing. Nothing more. Nothing less. If ALJ Dring believes that the Status Report should be excluded from the record, Riffin will not object. The Status Report has performed its function.

TENTH OBJECTION

50. Montange complains that Riffin 'terminate[d] discovery' because Riffin did not feel like sending any more e-mails. Motion at 6. Riffin terminated discovery, because there were **no more relevant e-mails to send!**

ELEVENTH OBJECTION

51. Montange imputes ill-motive to Riffin because several e-mails appear to be in response to an 'undisclosed' e-mail. Motion at 52 - 54. The simple answer is: Riffin telephoned Mr. Hyman, and asked for a piece of information (the telephone number for Nancy Bider / where Riffin might find some historical maps / would Mr. Hyman have time to inspect some flood damaged houses in Danville, NJ). Vicki Hyman / Steve Hyman, e-mailed back the requested information / answer.

TWELFTH OBJECTION

52. Montange complains about a lack of e-mails between Riffin and Forest City Rather Companies. Motion at 8-9. Short answer: Forest City Rather Companies are totally unaffiliated with the LLCs, or the Hymans. Forest City is re-developing the Metro Plaza parcel, which **is not** within the line segment Montange defined as the 'Harsimus Branch.' See ¶ ¶ 37, 39 above.

53. Longer answer: There is a 'Kevin Coakley' who works for the law firm 'Connell Foley,' which law firm does represent the Forest City Rather Companies. However, Riffin does not recall speaking with, or even seeing, the 'Kevin Coakley' whose picture is displayed on the Connell Foley webpage.

54. Riffin did go to the office of **G&S Investors**, in Manhattan (Forest City's offices are in Brooklyn), and did speak with Gregg Wasser, the principal in G&S Investors. This visit occurred **after** Riffin had filed his Complaint against G&S Investors. The purpose of the visit, was to

offer Mr. Wasser a 'courtesy copy' of Riffin's Complaint, in order to afford Mr. Wasser an additional few weeks within which to draft an 'Answer' to the Complaint. (An Answer must be filed within 20 days after service of a Complaint. Riffin, being a party, could not lawfully 'serve' Mr. Wasser, so any courtesy copy given to Mr. Wasser, would not have been proper 'service.') As it turned out, Mr.Wasser did not want a courtesy copy of the Complaint. He said to serve it the proper way, and his attorney(s) would deal with it.

55. And as for what Montange alleges Mr. Hyman told Mr. Coakley, Riffin can only reply: Riffin was not privy to the conversation, so can neither confirm nor deny Montange's allegation.

56. Riffin has never been inside Forest City's offices in Brooklyn, NY.

THIRTEENTH OBJECTION

57. Montange complains that Riffin is / intends to, 'abuse the OFA process.' Motion at 13.

58. Short answer: This proceeding is about discovery, not about the OFA process in 1189X.

59. Longer answer: Riffin is merely walking in the footsteps of Montange. Many years ago, Montange complained about Mr. Hyman's demolition of two of the stanchions that held the trestle that carried the Harsimus over Newark Avenue, under the NJ Turnpike Extension. Montange asked Mr. Hyman to stop his demolition. Mr. Hyman stopped. Montange also asked Mr. Hyman **not** to demolish the Embankment portion. Mr. Hyman complied. (During the OFA process, the *status quo* of the line of railroad subject to abandonment, must be maintained.)

60. Forest City Rather and G&S Investors are in the process of changing the *status quo* of the portion of the Harsimus that traversed Metro Plaza. (They are removing / intend to remove, the paving in the Metro Plaza parking lot; are constructing / intend to construct, buildings on Conrail's two record-title easements that traverse the Metro Plaza parking lot.) Riffin asked them to stop changing the *status quo* of the Harsimus line until the OFA process concluded. Just

as Montange asked Mr. Hyman to stop changing the *status quo* of the Harsimus line. Mr. Hyman stopped. Forest City and G&S Investors elected not to stop. So Riffin filed a Complaint, asking the court to enjoin them from changing the *status quo* until the OFA process in 1189X concluded.

61. Montange petitioned the STB, and the Special Court (D.D.C.), to determine the proper classification of the tracks that traversed the Harsimus between CP Waldo and the **West** side of Marin Blvd. The STB and the Special Court determined that the tracks that traversed that portion of the Harsimus between CP Waldo and the West side of Marin Blvd, were 'lines of railroad,' that could not be 'abandoned' without authority from the STB.

62. Montange elected **not** to seek a determination of the proper classification for the tracks that traversed the Metro Plaza parcel. (City et al. have limited their OFA interest to the portion of the Harsimus that lies between CP Waldo and the **West** side of Marin Blvd.)

63. Riffin seeks to OFA the Harsimus from CP Waldo to the **East** side of Metro Plaza (to the West side of the Light Rail line that parallels the East side of Metro Plaza). (Riffin seeks to OFA the tracks that traversed Metro Plaza. Riffin desires to use that land for a 'wye,' to turn trains / rail cars around. The Harsimus West of Marin Blvd, is too narrow for a 'wye.') Since the OFA process is only applicable to 'lines of railroad,' and since the tracks that traversed Metro Plaza have not been 'classified,' Riffin filed a Complaint in the District Court[6], asking the District Court to determine the proper classification for the tracks that traversed the Metro Plaza parcel. Just as Montange sought a determination of the proper classification of the tracks that traversed the Embankment portion of the Harsimus.

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[6] In *U.S. v. Idaho,* 298 U.S. 105, 109 (1936), the Supreme Court held:

> "For whether certain trackage is a 'spur' is a mixed question of fact and law left by Congress **to the decision of a court; not to the final determination of either the federal or a state commission.**" Bold added. See also: *New Orleans Terminal Co. v. Spencer,* 366 F.2d 160, at 164-165, (5th Cir. 1966), *cert. denied*, 386 U.S. 942 (1967), and *Illinois Commerce Commission v. U.S.*, 779 F 2d 1270 at 1271, 1272, and 1273 (7th Cir. 1985).

64. City et al. have repeatedly stated that they desire to preserve the 'last rail corridor' in Jersey City. So too does Riffin desire to preserve the 'last rail corridor' in Jersey City. All the way to the Light Rail line, as opposed to just the West side of Marin Blvd.

65. As stated above, Riffin is merely walking in the footsteps left by Montange. Since Montange does not feel that City et al. are 'abusing' the OFA process, Riffin argues that he to is not 'abusing' the OFA process. Montange appears to be trying to subject Riffin to a 'double standard,' by arguing that Riffin's activities, which mimic Montange's activities, are 'abusive,' while the exact same activities, when done by Montange, are not 'abusive.' Riffin argues that neither Montange's, nor Riffin's, efforts to preserve the Harsimus, are 'abusive.'

FOURTEENTH OBJECTION

66. Montange seeks an order compelling Riffin to permit Montange to 'inspect' (for the second time) Riffin's e-mail account. While Riffin feels that he has no obligation to permit Montange to inspect his e-mail account a second time, Riffin does not strongly object to Montange looking at Riffin's e-mail account a second time. **Providing** the second look takes place in the presence of ALJ Dring, so that ALJ Dring can verify for himself, what Riffin has certified above.

FIFTEENTH OBJECTION

67. Montange seeks 'attorneys fees.' Motion at 104. Not just for him, but also for unknown, never revealed, 'ghost' attorneys, for as noted in ¶5 above, Montange seeks "**attorneys'** [plural in original] fees and costs associated with the motions to compel Riffin, hearings, and motion for sanctions, and any further hearing attendant thereto."

68. Montange alleges that he has spent "**83 hours** preparing, serving and filing (1) a first motion to compel" [which Montange withdrew, (2), since he acknowledged that it was 'moot,' Motion at 3] ... (3) commenting on Riffin's Motion to Strike Montange's redundant, irrelevant

statements in his 1st Motion to Compel; "(4) a second motion to compel; (5) preparation for, travel to and from, and attendance at a hearing;" (5) review of Riffin's e-mails; and (6) preparing his Motion to Compel.

69. Riffin argues that **if** he is liable for some of Montange's expenses, he is certainly not chargeable for Montange's preparation of a moot motion, nor for Montange trying to justify submitting redundant, irrelevant material. Nor is Riffin chargeable for Montange's review of Riffin's e-mails. In addition, **if** Riffin is liable for any of Montange's expenses, Riffin would demand a full, audited accounting. (Taking 83 hours to do what Montange did, seems to Riffin like a really large number of hours for such a small amount of output. Does Montange only type with one finger? He certainly did not spend any time doing any 'legal research,' nor reviewing any legal documents. Had he done so, he would have realized that Riffin's only obligation is to permit Montange **to inspect** relevant documents **in Cockeysville**, MD.) And Riffin would not be chargeable for copying moot motions or replies trying to justify filing redundant, irrelevant material.

SIXTEENTH OBJECTION – MISCELLANEOUS

70. Montange has offered no convincing argument, nor any legal precedent, to support his contention that communications between Steve Hyman and Riffin, Motion at 6, are in any way relevant to the issue **presently** before the STB: Should the Harsimus be subjected to Historic or Environmental post-abandonment conditions?

71. Montange **falsely represented**, Motion at 8, that Riffin had not sent any e-mails dated before 2015. See ¶23 (G) above.

72. Once Montange obtains desired documents, even if obtained from 'another source,' Riffin has no obligation to provide Montange with a duplicate copy of what he already has in his possession.

73. **Montange's rantings that the "OFA process is broken," Motion at 12, have no bearing on the discovery** issue before ALJ Dring. Furthermore, the only reason that the "OFA process is broken" ("broken" being defined by Montange as: No date has been set for submitting OFAs), is because Montange asked the STB to do a more detailed Historic and Environmental Review! Had he not argued so vigorously, and so incessantly, that the STB is **required** to do a more detailed Historic and Environmental review, the OFA process would have concluded several years ago. (Montange needs to keep in mind the old addage: Be careful what you ask for. You might get it.)

74. Montange made the observation, Motion at 12, that "efforts to 'control' Mr. Riffin's behavior" "results in ... bad law." Riffin would concur with this statement.

75. Whether Riffin is a 'frequent litigant,' Motion at 10, is irrelevant in this discovery proceeding. Montange too, is a 'frequent litigant.' In the 1189X proceeding, he has filed far more pleadings than Riffin has.

76. Montange complains that Riffin occasionally gets chastised for advocating his position too vigorously. Motion at 11. Riffin believes in vigorously advocating his position. Sometimes Riffin gets a bit too vigorous, and gets chastised.

77. What happened in EP 727 and EP 729, Motion at 12, and Riffin's disputes with Baltimore County, Motion at 14, have no relevance in this discovery proceeding.

78. Montange's rantings about Riffin's 'financial responsibility,' particularly Riffin's financial condition six years ago, Motion at 19, have no relevance in this discovery proceeding.

79. **Hearing:** Riffin has no objection to having a hearing in October, 2016.

CONCLUSION

80. Montange seeks severe sanctions against Riffin.

81. In the event that ALJ Dring, or the STB, determine that Riffin somehow 'disobeyed' ALJ Dring's August 25, 2016 Order, Riffin asks that he be afforded a **Hearing**, so that he may cross-examine his accusers, and so that he may present evidence of his total and complete compliance with ALJ Dring's August 25, 2016 Order.

82. In the event that ALJ Dring, or the STB, determine that the Sanctions Motions filed by Mr. Montange, on behalf of City et al., was unfounded, or created 'needless litigation,' or was done to 'harass' Riffin, Riffin would ask that ALJ Dring consider imposing an appropriate sanction against Mr. Montange, and against his clients, City et. al.

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

84. I certify under the penalties of perjury, that the foregoing is true and correct to the best of my personal knowledge, information and belief.

Respectfully,

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

CERTIFICATE OF SERVICE

I hereby certify that on or before the 26th Day of September, 2016, a copy of the foregoing Reply to City et al.'s Motion for Sanctions against Riffin, was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid.

James Riffin

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ENTERED
Office of Proceedings
September 26, 2016
Part of
Public Record

JR - 19

9/26/16

Before the
Surface Transportation Board

STB DOCKET NO. AB-167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-55 (Sub-No. 686X)

CSX TRANSPORTATION, INC. – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

JAMES RIFFIN'S MOTION TO STRIKE CONRAIL'S SEPTEMBER 23, 2016 REPLY IN PARTIAL SUPPORT OF CITY ET AL.'S MOTION FOR SANCTIONS

1. Comes now James Riffin, ("**Riffin**") who herewith files his Motion to Strike Conrail's September 23, 2016 Reply in Partial Support of City's, et al.'s[1] ("**Montange**") September 15, 2016 Motion for Sanctions ("**Motion**"), ["**Conrail's Reply**"] and in support hereof states:

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[1] Jersey City, Rails to Trails Conservancy, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition.

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2. On **September 23, 2016**, Conrail filed a pleading **mis-titled:** "Reply of Consolidated Rail Corporation in Partial Support of 'Motion on Behalf of City of Jersey City, et al. For Sanctions Against James Riffin for Failure to Respond to Discovery (Document) Requests"

3. 49 CFR 1104.8 provides:

> "The Board may order that any **redundant, irrelevant, immaterial**, impertinent, or scandalous matter be stricken from any document." Bold added.

4. Conrail, in its footnote 1, states:

> "Conrail, which did not propound the discovery at issue in City et al.'s motion, **takes no position** on whether Mr. Riffin's discovery-related conduct supports the imposition of sanctions." Conrail Reply at 2.

5. Conrail, by the clear, express language in its footnote 1, declares that its 'Reply' has **nothing to do** with the 'discovery issues' presented and argued in City et al.'s Motion for Sanctions. Consequently, Conrail's 'Reply' is clearly 'irrelevant' and 'immaterial' to the discovery issues raised, and argued, in City et al.'s Motion for Sanctions, and thus is subject to be stricken.

6. Conrail "has explained its position on OFAs in this proceeding" footnote 2, Conrail Reply at 2, by Conrail's own count, at least **six times**. Repeating, for a **seventh time**, Conrail's 'position on OFAs in this proceeding,' is decidedly 'redundant,' and is subject to be stricken.

7. Montange's Motion for Sanctions for Failure to Respond to Discovery (Document) Requests, is about Montange's (unsupported) allegation that Riffin somehow failed to comply with ALJ Dring's August 25, 2016 Order. **It is NOT about "OFAs in this proceeding."**

8. It is inappropriate for Conrail to use this Discovery proceeding, to mount its pulpit, then deliver a speech, for the seventh time, about "OFAs in this proceeding."

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9. Whether "OFAs in this proceeding" are appropriate, was decided by the STB some years ago, when the STB permitted the OFA process to begin, and more recently (May 22, 2015), when the STB ordered Conrail to provide Valuation Information.

10. Whether the STB will permit the OFA process to continue to move forward, will be determined by the STB **some time in the future**, when the STB evaluates whatever OFAs are filed. And per the STB's November 2, 2016 Decision, the STB declines, at the moment, to set a date by which OFAs must be filed.[2]

11. This **Discovery Issue proceeding** is **neither the time, nor the place**, for Conrail to voice its objections, for the seventh time, about "OFAs in this proceeding."

12. WHEREFORE, for the foregoing reasons, Riffin would pray that the STB **strike** all portions of Conrail's Reply, other than its short comment in its footnote 1, indicating that Conrail **takes no position** on City et al.'s Motion for Sanctions For Failure to Respond to Discovery (Document) Requests., and for such other and further relief as would be appropriate.

Respectfully,

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

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[2] The STB must complete the more in-depth Historic and Environmental Review that **City et al. demanded**, then "issue a separate decision making a Finding of No Significant Impact ("FONSI") to show that it has formally considered the environmental record," 49 CFR 1105.11(g), **before** the STB can set a date by which OFAs must be filed. "The Board **will** withhold a decision, **stay the effective date of an exemption**, or impose appropriate conditions upon any authority granted, **when an environmental or historic preservation issue has not yet been resolved.**" 49 CFR 1105.11(f). Bold added.

423

CERTIFICATE OF SERVICE

I hereby certify that on or before the 26th Day of September, 2016, a copy of the foregoing Reply to Conrail's Reply in Partial Support of City et al.'s Motion for Sanctions against Riffin, was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid.

James Riffin

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241588
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ENTERED
Office of Proceedings
September 27, 2016
Part of
Public Record

JR - 20

Before the
Surface Transportation Board

9/27/16

STB DOCKET NO. AB-167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-55 (Sub-No. 686X)

CSX TRANSPORTATION, INC. – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

JAMES RIFFIN'S *CLARIFICATION OF HIS* MOTION TO STRIKE *PORTIONS OF* CONRAIL'S SEPTEMBER 23, 2016 REPLY IN PARTIAL SUPPORT OF CITY ET AL.'S MOTION FOR SANCTIONS

1. Comes now James Riffin, ("**Riffin**") who herewith files his ***Clarification of his*** Motion to Strike ***Portions of*** Conrail's September 23, 2016 Reply in Partial Support of City's, et al.'s[1] ("**Montange**") September 15, 2016 Motion for Sanctions ("**Motion**"), ["**Conrail's Reply**"] and in clarification states:

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[1] Jersey City, Rails to Trails Conservancy, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition.

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2. While Riffin thought that his Motion to Strike (JR-19) was clear with regard to what Riffin moved to strike, it appears that it might not have been as clear as it could have been. Riffin apologizes for any confusion.

3. Riffin **does NOT** move to strike that portion of footnote 1 on p. 2 of Conrail's Reply, that Riffin quotes in ¶ 4 of his Motion to Strike.

4. Conrail's footnote 1 clearly is a responsive reply to the City et al.'s Motion for Sanctions. [Conrail 'takes no position' on City et al.'s Motion for Sanctions for Riffin's (alleged) failure to comply with ALJ Dring's August 25, 2016 Order.]

5. Riffin **does move to strike ALL** of the rest of the 'body' of Conrail's Reply.

6. City et al.'s Motion for Sanctions is based on ALJ Dring's August 25, 2016 Order.

7. ALJ Dring **only has authority** to rule on 'discovery issues.' ALJ Dring **does not** have any authority to rule on other issues, such as the OFA process, or alleged abuses of the OFA process / procedures. The STB is the **only entity** that can rule on OFA issues, including imposition of sanctions for abuse of the OFA procedures / process / or other issues.

8. It appears to Riffin, that the balance of Conrail's Reply (all those arguments other than what appears in footnote 1), address the OFA process, and Riffin's use / alleged misuse, of the OFA process.

9. To the extent that Conrail's Reply raises, discusses, or provides argument regarding issues **other than discovery related issues**, Riffin moves to Strike. [Conrail is in the wrong forum / making its arguments to the wrong decision maker.]

10. Riffin hopes that the above clarifies precisely what it is that Riffin moved to strike.

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12. If Conrail, or any other party, wishes / desires to argue that ALJ Dring has the authority to address issues other than discovery-related issues (such as whether anyone is abusing / misusing, the OFA procedures), Riffin will not object. Riffin will reserve the right to reply to any of those arguments.

13. Riffin apologizes for any confusion, or misunderstanding, anyone may have had due to Riffin's failure to note with sufficient particularity precisely what he moved to strike.

Respectfully,

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

CERTIFICATE OF SERVICE

I hereby certify that on or before the 27th Day of September, 2016, a copy of the foregoing Clarification of Riffin's Motion to Strike Portions of Conrail's Reply in Partial Support of City et al.'s Motion for Sanctions against Riffin, was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid.

James Riffin

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ENTERED
Office of Proceedings
October 24, 2016
Part of
Public Record

JR - 21

Before the
Surface Transportation Board

10/24/16

STB DOCKET NO. AB-167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-55 (Sub-No. 686X)

CSX TRANSPORTATION, INC. – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

JAMES RIFFIN'S WRITTEN ARGUMENT

1. Comes now James Riffin, ("**Riffin**") who herewith files his written arguments.

2. Courts can read a lot faster than Riffin can speak. To minimize the resources the Court must devote to the October 24, 2016 Discovery Hearing before ALJ Dring, Riffin will put into writing the majority of what he would say at the Discovery Hearing. Doing so permits ALJ Dring to concentrate on what is being said, and eliminates any need to take notes regarding what Riffin puts in this writing.

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THE ISSUES

3. This proceeding is an **abandonment** proceeding, which was filed pursuant to 49 CFR 1152.50. (No service for two years.) The **primary issue** in an abandonment proceeding, is whether the 'public convenience and necessity permits abandonment of the line at issue.' **IF** abandonment is authorized, then a second issue presents: Should the abandonment be subject to any 'historic' or 'environmental' conditions. **IF** someone expresses an interest in filing an Offer of Financial Assistance ("**OFA**") to acquire the line, then, **after** the STB has made a determination that abandonment is authorized, and **after** the STB has imposed whatever historic and environmental conditions that it feels are needed, **then, and only then,** will the STB address the OFA issue.

4. It is a hard and fast rule in all judicial proceedings: Speculative issues will not be addressed.

5. Whether the STB will permit the OFA process to move forward, is unknown at this time. Consequently, any rulings regarding the OFA process, at this point in time, would be rulings on 'speculative' issues, which a court is not supposed to be ruling on.

A WEE BIT OF HISTORY

6. The United New Jersey Railroad and Canal Company ("**UNJRCC**"), chartered a railroad from the Hudson River, at Exchange Place (the East end of present day Columbus Blvd), to Kearny, NJ, about 7 miles away. The Main Line went where present day Columbus Blvd is, to Journal Square, and thence to Kearny. The Pennsylvania Railroad ("**PRR**") leased the UNJRCC for 999 years. Around 1900, the PRR decided to build an elevated **freight main**, from CP Waldo (about 1,000 feet East of Journal Square), south of, and parallel to 6th Street, to the Harsimus Cove Yard. The original right-of-way (where Columbus Blvd is), from Exchange Place to CP Waldo, was dedicated exclusively to **passenger service,** becoming the **passenger main**. The PRR and the New York Central ("**NYC**") railroads merged, becoming the Penn Central.

7. In **1968**, the Penn Central abandoned the **Passenger Main,** from Exchange Place to CP Waldo. The right-of-way was sold to Jersey City, which built Columbus Blvd on it.

8. The Penn Central filed for bankruptcy protection. In **1973**, the trustee for the Penn Central, sold 10 acres of the Harsimus Cove Yard (in the southeast corner, adjacent to the waterfront), to the William J. Morris Realty Co. In **1974,** the trustee sold an additional 14 acres of the Harsimus Cove Yard (still adjacent to the waterfront, basically the remainder of the Yard East of the Light Rail Line, south of 6th Street), to the W.J. Morris Realty Co.

9. In **1976,** what remained of the Harsimus Branch, and everything appurtenant thereto, was conveyed **to Conrail via the FSP, as Line Code 1420. The Hudson Street Industrial Track,** ("**HSIT**"), **Line Code 1440**, was also conveyed to Conrail. (The HSIT went from the south side of the Harsimus Cove Yard south down Hudson Street, then West in Essex Street.)

10. In **1985**, Conrail sold the remaining portions of the Harsimus Cove Yard, to National Bulk. Conrail **reserved a rail easement** in order to continue providing rail service to remaining shippers. Conrail operated its last train on the Harsimus in **1988**.

11. **January 31, 1994**, National Bulk sold 18 acres of the portion of the Harsimus Cove Yard that it bought from Conrail, to **G&S Investors**. On **May 20, 1994**, Conrail terminated its rail easement across the Harsimus Cove Yard. G&S Investors built today's **Metro Plaza** on the 18 acres that it acquired from National Bulk.

12. Conrail offered the Embankment portion of the Harsimus to Jersey City ("**JC**"). JC declined to buy the Embankment portion. Conrail advertised the Embankment portion for sale. The only entity that expressed any interest, was **Steve Hyman**. Mr. Hyman formed a number of LLCs, which took title to the Embankment portion in **2005**.

13. In **2006**, a new mayor and new City Council persons were elected. They suddenly wanted the Embankment portion for a 'trail' and for 'park purposes.' They offered to buy the

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Embankment portion from Mr. Hyman, for the same price that Mr. Hyman had paid: $3 million. Mr. Hyman was willing to sell, but wanted to make a profit. Jersey City was unwilling to offer more than the $3 million that Mr. Hyman had paid for the Embankment portion.

14. Jersey City hired Charles Montange, a well-known 'rails to trails' lawyer. Mr. Montange quickly realized that the Embankment was a line of railroad, and that Conrail had never obtained authority to abandon any portion of the Harsimus Branch. He also knew that if Conrail were to abandon the Harsimus, Jersey City could file an Offer of Financial Assistance ("**OFA**") to acquire the 'constructive' rail easement that was, by law, still impressed upon the Embankment. And the beauty of it was: Rail easements have a Net Liquidation Value of Zero Dollars. That means that Jersey City could acquire the Embankment for the cost of hiring Mr. Montange. A really good deal, if you could pull it off. [Under the OFA statute, 49 U.S.C. 10904, an OFA offeror can effectively **compel** the carrier to convey its easement for zero Dollars, while under 49 U.S.C. 10905, (public purpose), conveyance **cannot be compelled**.]

15. Mr. Montange, not being very conversant with the dictates of the Final System Plan ("**FSP**"), filed his **FD 34818 Declaratory Order** proceeding. Mr. Montange asked **the STB** to determine that the Embankment portion (and **only** the Embankment portion) of the Harsimus, was **conveyed** to Conrail as Line Code 1420, via the Final System Plan. [He did not know that only the U.S. District Court for the D.C. District, sitting as the Special Court, may resolve '**conveyance**' issues. (The 'nature of' what was conveyed.)]

16. The STB studied how the Harsimus **was used** by the Pennsylvania Railroad ("**PRR**"), and by Conrail (from 1976, when Conrail acquired the Harsimus, until 1988, when Conrail operated its last train on the Harsimus). The STB determined that since the Embankment portion of the Harsimus was the **only portion** of the Harsimus still in existence in 1976 (the 'Passenger Main,' having been abandoned in 1968), the Embankment portion **must be** Line Code 1420.

17. The D.C. Circuit vacated the STB's FD 34818 decision, holding that only the Special Court could determine the nature of what was **conveyed** to Conrail via the FSP. City et al. and

the LLCs stipulated in the Special Court that the Embankment portion of the Harsimus was **conveyed** to Conrail as Line Code 1420. Conrail took no position. The Special Court then granted Summary Judgment, holding that the Embankment portion was conveyed to Conrail as Line Code 1420, a 'line of railroad.'

18. Conrail filed its **Notice of Exemption** ("**NOE**") to abandon the entirety of the Harsimus Branch, on **January 9, 2009**. Jersey City and Eric Strohmeyer, filed Notices of Intent to File an OFA to acquire portions of the Harsimus. (Jersey City to the West Side of Marin Blvd. Mr. Strohmeyer to the end of the Line, at MP 1.36, which is East of the Light Rail Line.) The LLCs appealed the STB's FD 34818 decision to the DC Circuit. The STB stayed the NOE proceeding until the court litigation was resolved. The STB lifted the Stay on **August 11, 2014**. However, the STB continued to hold the OFA process in abeyance, and **continues to hold** the OFA process in abeyance (until completion of its more detailed Historic and Environmental review).

19. Conrail filed its Valuation Information on **June 1, 2015**, certifying that the **entirety** of the Harsimus Branch could be acquired for **$22,110.** Riffin filed a Notice of Intent to File an OFA on **June 8, 2015**, which Notice was accepted by the STB on **November 2, 2015**.

THE CITY, et. al.'s 'ISSUES'

20. The City, et al., advocate that they need massive amounts of e-mails, and other correspondence and documents, to 'prove' that there is a 'conspiracy.' Just what the 'conspiracy' might be, **keeps changing**.

21. For **a goodly while**, (from 2006 until August, 2014) the City et al. advocated that there was a 'conspiracy' between **Conrail and the LLCs**, to circumvent the STB's abandonment procedures and the Historic and Environmental rules. (What City et al. likes to characterize as Conrail's 'de facto abandonment' of the Harsimus.)

22. In advocating for the City et al.'s 'de facto abandonment' conspiracy theory, City et al. commenced the FD 34818 litigation.

23. When Conrail filed its **Notice of Exemption** to abandon the entirety of the Harsimus Branch, on **January 9, 2009**, that pretty much eliminated the basis for the City et al.'s 'circumvention of the STB's abandonment procedures' conspiracy theory. (While City et al. continue to argue their 'de facto abandonment' conspiracy theory, there is no 'wind left in the sail' of that argument.)

24. The next City et al. conspiracy theory, was that **Conrail, the LLCs and the STB** were conspiring to circumvent the Historic and Environmental review process, by limiting the STB's review up to the date that abandonment authority would be granted. City et al. argued that the STB had to also consider what would happen **after** abandonment. Specifically, what a potential **buyer** of the abandoned right-of-way might do with the former right-of-way.

25. The STB accommodated the LLCs: The STB ordered a more detailed analysis of the potential historic and environmental consequences that might be associated with granting Conrail abandonment authority. That more detailed analysis continues. In effect, the STB gave the City et al. precisely what they asked for: A more detailed analysis.

26. Shortly after the STB granted City et al. their wish, the City et al. began to complain bitterly that it was 'taking too long' for the STB to do its more detailed analysis. Evidently, the City et al. only wanted a slightly-more-detailed analysis. (Whatever could be ascertained within a few months. Riffin says, 'within a few months,' for it was 'within a few months' after the STB granted City et al.'s wish, that City et al. began to complain that it was 'taking too long.')

27. More recently (since the STB's **November 2, 2015** decision granting Riffin the right to file an OFA, if and when OFAs are permitted to be filed), City et al. has been advocating **different** conspiracy theories:

A. Initially (shortly after the STB's **November 2, 2015** decision) that the **STB** was 'conspiring' to 'unlawfully' accept Riffin's Notice of Intent to File an OFA.

B. Then, a few months before the **August 24, 2016** Discovery Hearing, City et al. began advocating another 'conspiracy' theory: That Riffin did not have sufficient financial resources to meet the 'responsible financial person' criteria. [Since the STB's **September 30, 2016** decision in EP 729 (Proposed changes to the Financial Responsibility Rules), the City et al.'s fervor for this 'conspiracy theory' has diminished. (Per the proposed new EP 729 Financial Responsibility Rules, the total price to **acquire** ($22,110) and to **maintain** the Harsimus ($8,000 per mile or $9,600 for the 1.2 mile segment between CP Waldo and the West side of the Light Rail Line which Riffin desires to acquire) would be about **$31,700**, which Riffin has in just one of his many financial accounts (in addition to the cash that he displayed at the August 24, 2016 hearing)].

C. And even more recently [since **August 1, 2016**, when City et al. learned that Riffin had served a copy of his U.S.D.C., Newark, NJ Complaint upon four of the five defendants named in Riffin's Complaint (one of which was G&S Investors, of which Greg Wasser is the managing member)], City et al. has come up with an **even newer** 'conspiracy' theory: That the **LLCs / Steve Hyman**, are now conspiring with **Riffin** with regard to Riffin's Newark, NJ Complaint, and that Riffin's Newark, NJ Complaint represents an attempt to 'abuse' the OFA process.

RIFFIN'S REPLIES

28. **NONE** of City et al.'s 'conspiracy theories' have anything to do with the issues in this proceeding: Whether Conrail should be granted authority to abandon its Harsimus Branch / whether additional historic or environmental conditions should be imposed / whether the OFA process should be permitted to move forward.

29. This is a NOE proceeding. Under normal circumstances, this proceeding would have concluded within 120 days after Conrail filed its NOE. Discovery is disfavored in abandonment proceedings primarily because abandonment proceedings are supposed to be expedited. But for the fact that City et al. **demanded** a more detailed historic / environmental review, this NOE proceeding would have concluded, literally, years ago.

30. At every turn, City et al. has interjected extraneous issues which have prolonged this NOE proceeding for **seven years now (since 2009), and still counting!**

31. If this Court were to grant City et al.'s additional discovery requests, that would spawn even more irrelevant, collateral litigation, which would delay the conclusion of this proceeding by even more years, while these collateral issues were litigated.

32. Riffin asks:

A. What does it matter who is the managing member of the LLCs? Or when the LLCs elected to change their managing member? Or what is the mental condition of a former managing member? Or with whom the LLCs have communicated? Or what agreements the LLCs may have executed with non-carriers? What does that have to do with granting abandonment authority to Conrail? And by what right or authority would the STB impose its regulatory authority over non-carrier entities such as the LLCs? The LLCs are Intervenors. Subjecting Intervenors to extensive discovery requests would seriously 'chill' the intervention by interested parties in abandonment proceedings.

B. In a NOE proceeding, (such as this one) the procedure to be followed is: The Exemption is granted. If someone wishes to contest that exemption, that challenge is to be pursuant to a Petition to Revoke.

a. If a challenging entity desires to use discovery, that challenging entity must so

indicate, **in their initial pleading**. "Discovery **shall be completed** 30 days after the petition to revoke is filed." 49 CFR 1121.2.

C. What is the difference between Riffin's Newark, NJ Complaint and the City et al.'s FD 34818 Petition for Declaratory Order / the City et al.'s Petition for Declaratory Order that it filed in the Special Court? Both asked the Court / STB, to determine whether particular track segments were 'lines of railroad.' No one ever argued that City et al. was attempting to 'abuse the OFA process,' by asking whether the track segments on the Embankment portion of the Harsimus were 'lines of railroad.' So why would Riffin asking the Newark District Court to ascertain the proper classification for the track segments that traversed the portion of the Harsimus East of Marin Blvd, be an 'abuse of the OFA process?' Since the OFA process **only applies** to 'lines of railroad,' it must first be determined that a particular track segment is a 'line of railroad.' City et al. limited its inquiry to that portion of the Harsimus that it had an interest in: From CP Waldo to the West side of Marin Blvd. While it would have been more efficient had the entirety of the Harsimus Branch been looked at by the Special Court, the parties to that proceeding chose to limit their inquiry to the portion between CP Waldo and the West side of Marin Blvd. Since Riffin's interest continues to the West side of the Light Rail line, which is East of Marin Blvd, Riffin now seeks a determination for the track segment that lies to the East of Marin Blvd.

Jersey City consorted with, and **continues to consort with** (or as Mr. Montange would characterize it if done by anyone else, 'conspired with') two other entities: Rail to Trails Conservancy, and the PRR Harsimus Stem Embankment Preservation Coalition. Consorting with, or working in concert with, another entity, in pursuant of a 'lawful goal,' is **not an unlawful** conspiracy / consortium.

City et al. has made it very clear: Were Jersey City to be successful with its OFA, it would work with, its two partners, and would facilitate the desires of its two partners. The Rails to Trails Conservancy would likely get the trail that it desires. Trails **are**

not 'continued freight uses.' Preserving the Embankment's stone walls **does not** facilitate 'continued freight uses.' And 'continued freight uses' are the **only uses that justify using the OFA process.**

D. Rail carriers have long licensed non-carriers to use portions of their right-of-way for non-rail uses. Particularly when those licenses generate substantial license fees. All of which license-uses are fully permitted by the STB, **so long as none of the licensed uses materially interfere with the carrier's ability to provide rail service.**

Riffin has made it known that he fully intends to use the Harsimus right-of-way for continued freight rail purposes. He has also made it known that he does not need **all** of the air space above the right-of-way. He only needs about 30-feet of air space above the right-of-way. He has made it known that were an entity to seek a license to use that portion of the airspace that is more than 30-feet above the right-of-way, he would be amenable to negotiating such a license. After all, the license fees so generated, would help capitalize his freight operations, and would permit Riffin to offer lower rail rates to rail shippers. There is nothing unlawful about such licensing activities. Nor would such licensing activities be an 'abuse of the OFA process.' Quite the contrary. Such licensing activities would further support Riffin's argument that freight rail service is both 'feasible,' and is fully capable of being quite 'profitable,' two criteria the STB has indicated needs to be addressed in an OFA.

Riffin argues that any 'licensing' discussions he may have had, or may have in the future, are 'proprietary,' are not subject to 'discovery,' and have absolutely no relevance to the 'abandonment' and 'historical / environmental' issues currently before the STB. They would only have relevance if and when the OFA process is permitted to move forward, and then only if Riffin elects to disclose them. At this point in time, such potential future licensing agreements are truly 'speculative.' And until executed, will remain 'speculative.' The STB has repeatedly held that 'speculative' sources of income (either from shippers or licensees), are entitled to **no**

weight in an OFA proceeding (and have been consistently rejected by the STB in OFA proceedings).

SPECIFIC ISSUES

33. City et al. asks that Riffin be sanctioned:

A. Because City et. al. **speculates** that Riffin did not send to Mr. Montange all of the e-mails remaining in Riffin's e-mail account, that relate to Steve Hyman, Victoria Hyman, or the LLCs (Daniel Horgan).

Response: Riffin has offered to let Mr. Montange look at his e-mail account, so that Mr. Montange can verify that Riffin sent to Mr. Montange **all** of the Hyman-Horgan-Riffin e-mails remaining in Riffin's e-mail account (not just limited to those requested in City et al.'s Motion to Compel Discovery), up to August 24, 2016. Riffin has asked Mr. Montange if he wants a copy of the non-Harsimus-related e-mails that Steve Hyman has sent to Riffin post August 25, 2016. As for the latter, Mr. Montange has not indicated that he wants non-Harsimus Hyman e-mails. As for offering to let Mr. Montange look at Riffin's e-mail account before the ALJ Dring Hearing, Mr. Montange has indicated that he has **no desire** to look at Riffin's e-mail account before the ALJ Dring October 24, 2016 Hearing. See forwarded e-mails.

B. Because City et al. **speculates** that by Riffin filing his Newark NJ Complaint, Riffin is somehow abusing the OFA process.

Response: ALJ Dring has authority to impose sanctions for failing to comply with his discovery-related orders. Riffin has fully complied with ALJ Dring's discovery order relating to Riffin. ALJ Dring has no authority to impose sanctions for activities outside of the discovery process. Such sanctions, are within the exclusive purview of the STB. In addition, nothing that Riffin has done to date, would warrant any type of

sanctions, for Riffin has merely **imitated** the actions taken by City et al. It is **not** an abuse of the OFA process for Riffin to consort with, communicate with, or otherwise associate with **anyone** (whether a party to the 1189X proceeding or not), just as it is **not an abuse** of the OFA process for Jersey City to consort with Rails to Trails Conservancy, PRR Harsimus Stem Embankment Preservation Coalition, Conrail, G&S Investors, Greg Wasser, or any other entity. (Since neither Conrail, G&S Investors, Greg Wasser, or any other entity not a client of Mr. Montange, are 'clients' of Mr. Montange, any communications between Mr. Montange and these non-clients, **would not be subject to the Attorney-Client privilege.**)

34. City et al. **speculates** that there is an 'agreement' between Riffin and Steve Hyman / Victoria Hyman / the LLCs.

Response: There is no written, executed agreement of any kind between Riffin and either Steve Hyman, Victoria Hyman, or the LLCs. The LLCs have been very adamant, for multiple years (long before Riffin got involved in the 1189X proceeding), that the LLCs **oppose** any and all efforts to OFA the Embankment portion of the Harsimus, regardless of by whom, and adamantly will **not** support any OFA efforts.

And even if there were any written agreement between Riffin and any other entity, such agreement would not be subject to discovery, for any such agreement has absolutely no relevance to the issues before the STB in the 1189X proceeding.

35. The short and the long of City et al.'s baseless arguments / demands, is that Jersey City wants to **eliminate** all OFA competition, so that Jersey City is virtually guaranteed that it will be successful in its long-sought goal of acquiring the Embankment portion of the Harsimus **for free** (plus the cost of Mr. Montange's fees).

36. And the long and the short of City et al.'s baseless arguments / demands, is that without these demands, there would be nothing for Mr. Montange to do! (The 1189X proceeding is in a

holding pattern.) Without these baseless discovery / conspiracy arguments / litigation, Mr. Montange would have nothing to bill Jersey City for. His 'billable hours' income would plummet. Riffin argues that Mr. Montange's efforts are nothing more than a ruse to keep the litigation going, to give his clients the impression that he is 'working diligently' defending / advocating for, their 'rights.' And Riffin argues that City et al. **have no right** to any of the irrelevant, immaterial, collateral-issue 'documents' that City et al. improperly seek.

CONCLUSION

37. Over the past seven years, City et al. have alleged no less than **five conspiracy theories!** All involving different parties. All without any basis in reality. All just a figment of Charles Montange's vivid (paranoid) imagination.

38. Riffin argues that it is time for City et al. to 'sit down and shut up.' Let the STB finish the historic / environmental task that City et al. demanded that it complete for City et al. Once that task has been completed, then, and only then, should City et al. be heard from again. (The 'sit down and shut up' admonition should be applicable to all of the 1189X parties, not just to City et al. See paragraph 43 below.)

39. Riffin argues that City et al.'s Motion for Sanctions against Riffin should be **denied**.

40. Riffin argues that City et al.'s Motion to Compel discovery from the LLCs should be **denied.**

41. Riffin argues that the LLCs Motion for Sanctions against City et al. should be **granted.**

42. Riffin argues that Riffin's Motion to Strike portions of Conrail's Reply should be **granted**.

43. Riffin argues that the parties should be admonished, that there is to be no more discovery requests, unless those discovery requests directly concern the issue of whether Conrail should be granted abandonment authority.

44. 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 24th Day of October, 2016, a copy of the foregoing James Riffin's Written Comments, was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid, with the exception of Charles Montange. Since Mr. Montange does not accept service via e-mail, a paper copy will be hand-delivered to him at or before the October 24, 2016 Hearing before ALJ Dring. (A paper copy mailed to Mr. Montange would not arrive before the October 24, 2016 hearing.)

James Riffin

241845
241846
241847

ENTERED
Office of Proceedings
October 25, 2016
Part of
Public Record

JR - 22

Before the
Surface Transportation Board

10/25/16

STB DOCKET NO. AB-167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-55 (Sub-No. 686X)

CSX TRANSPORTATION, INC. – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

JAMES RIFFIN'S MOTION FOR STAY

1. Comes now James Riffin, ("**Riffin**") who herewith respectfully asks that ALJ Dring **stay** issuing / filing the Order that he orally made on October 24, 2016 in the above entitled proceeding, and in support hereof states:

2. On October 24, 2016, at the conclusion of a hearing regarding imposing sanctions upon James Riffin for allegedly failing to fully comply with ALJ Dring's August 25, 2016 Served decision in the above entitled proceeding, ALJ Dring ordered that Riffin be **dismissed** from the above entitled proceeding, and further ordered that Riffin pay a portion of Charles Montange's legal fees.

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3. In ruling that Riffin had not fully complied with ALJ Dring's August 25, 2016 Order, ALJ Dring held that the evidence submitted by City et al. was more credible than the oral testimony from Riffin, (wherein Riffin testified that he had fully complied with the August 25, 2016 Order.)

4. Riffin has requested his e-mail provider, Yahoo, provide to Riffin **certified copies:**

A. Detailing **all** of the e-mails "remaining in Riffin's Yahoo e-mail account, on **August 25, 2016**;" involving Riffin and "The LLCs." [More particularly, since none of the "LLCs" have e-mail accounts, involving the LLCs' agents / members / former members: Daniel Horgan (counsel for the LLCs), Vickie Hyman (present managing member of the LLCs) and Steve Hyman (former member of the LLCs.);

B. Detailing **all** of the e-mails that Riffin forwarded to Charles Montange, counsel for City et al., and to Robert Jenkins (counsel for Consolidated Rail Corporation), on **August 25, 2016**;

C. Certifying that the eleven Riffin / Hyman e-mails appended to City et al.'s Motion for Sanctions, are **precisely identical** to the same eleven e-mails in the custody of the Yahoo Custodian of Records.

5. A copy of Riffin's October 25, 2016 letter to Yahoo is appended. A copy of printouts of Riffin's e-mails involving the "LLCs," will be forwarded to ALJ Dring as soon as they can be printed and copied. (By close of business October 25, 2016.)

6. In rendering sanction orders for non-compliance with Surface Transportation Board ("**STB**") Discovery Orders, 49 CFR 1114.31(b)(2) states that:

"the Board may make such orders in regard to the refusal as **are just**."

7. Riffin argued / certified that he forwarded to City et al. and to Consolidated Rail Corporation, **all** of the e-mails **remaining** in his e-mail account on **August 25, 2016** involving Riffin and the "LLCs."

8. ALJ Dring found that Riffin's argument, certification, was not 'credible.'

9. Riffin has begun the process of providing **certified copies** from the **custodian of Riffin's e-mail account, Yahoo,** which certified copies **will substantiate** that Riffin did in fact forward to City et al. and to Consolidated Rail Corporation **all** of the e-mails remaining in Riffin's e-mail account on August 25, 2016 between Riffin and the "LLCs."

10. If ALJ Dring were to stay his order until the Yahoo Custodian of Records provides the requested certified records, ALJ Dring then could, if he was so inclined, modify his Order, thereby rendering a 'just' order that is supported by evidence from independent third parties.

11. Not immediately issuing an order would leave open the possibility of modifying ALJ Dring's Order. (As opposed to issuing an Order, then attempting to modify the Order after receipt of 'new evidence.') This approach would conserve the resources of ALJ Dring, the STB and the Courts, for if ALJ Dring were to stay issuing his order for a short period of time, and after reviewing the Yahoo certified copies, were to concluded that Riffin did in fact fully comply with the August 25, 2016 Order, then ALJ Dring could, if he was so inclined, modify his Order, and if ALJ Dring were to modify his order, that would eliminate Riffin's need to file a Petition for Reconsideration with ALJ Dring; an appeal to the Full STB Board; and the filing of a Petition for Judicial Review.

12. WHEREFORE, Riffin would respectfully pray that ALJ Dring:

A. Delay issuing / filing his order until Yahoo's Custodian of Records provides the requested Riffin e-mail certified documents;

B. 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 25th Day of October, 2016, a copy of the foregoing James Riffin's Motion for Stay, was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid.

James Riffin

241852
241853
241854

ENTERED
Office of Proceedings
October 25, 2016
Part of
Public Record

JR - 22

Before the
Surface Transportation Board

STB DOCKET NO. AB-167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-55 (Sub-No. 686X)

CSX TRANSPORTATION, INC. – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

STB DOCKET NO. AB-290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE OF SERVICE EXEMPTION – IN HUDSON COUNTY, NJ

APPENDIX TO

JAMES RIFFIN'S MOTION FOR STAY

CERTIFICATE OF SERVICE

I hereby certify that on or before the 25th Day of October, 2016, a copy of the foregoing Appendix to James Riffin's Motion for Stay, was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid.

James Riffin

444

FROM: James Riffin P.O. Box 4044 Timonium, MD 21094 (443) 414-6210
jimriffin@yahoo.com

TO: Yahoo Custodian of Records 701 First Avenue Sunnyvale, CA 94089

RE: jimriffin@yahoo.com

DATE: October 25, 2016

Dear Custodian of Records:

I am both faxing this request [to **(408) 349-7941**], and mailing this request via USPS.

On **August 25, 2016**, I was ordered to forward to c.montange@frontier.com (the lawyer for "City et al.") and to rmjenkins@mayerbrown.com (the lawyer for "Consolidated Rail Corporation")

> "all e-mail communications between him [James Riffin] and the LLCs [dehorgan@lawwmm.com; shyman@shyman.net; vickie@shyman.net; embankment@shyman.net,] that Mr. Riffin retains in his possession." See p. 2 of the attached Surface Transportation Board Order.

On **August 25, 2016**, I typed the names "Hyman" and "Horgan" into Yahoo's e-mail search engine. A large number of e-mails appeared. I clicked on each e-mail, thus opening the e-mail, then forwarded each e-mail to c.montange and to rmjenkins (and to four other e-mail recipients).

I now **must prove** that "**all** e-mail communication between [me] and the LLCs [horgan / hymans], that **remained** in my e-mail account" **on August 25, 2016, I in fact e-mailed** to c.montange and to rmjenkins.

REQUEST ONE

To make the required proof, I need a **certified / verified** print-out of **all** of the e-mails **remaining** in my account on **August 25, 2016**, between me and the LLCs [Mr. Horgan, Steve Hyman and Vicki Hyman]. I have appended a copy of the Horgan / Hyman e-mails that Yahoo's search engine listed as remaining in my e-mail account on October 24, 2016. I would ask that you **either:**

A. Print out a list of **all** Horgan / Hyman e-mails remaining in my Yahoo e-mail account **on August 25, 2016**, then **certify** that the list so printed contains **all** of the Horgan / Hyman e-mails remaining in my Yahoo e-mail account **on August 25, 2016**; **OR**

B. **Certify** that the appended list of Horgan / Hyman e-mails comprise **all** of the Horgan / Hyman e-mails remaining in my Yahoo e-mail account on August 25, 2016. (Whichever is more convenient for you.)

REQUEST TWO

I need a certified list of **all** of the e-mails that I **forwarded** to c.montange@frontier.com, and that I **forwarded** to rmjenkins@mayerbrown.com on **August 25, 2016.**

REQUEST THREE

I also need a **certified / verified** print-out of what 11 specific e-mails contain. I have appended a copy of the eleven e-mails. I would ask that you **either:**

A. Print out a **certified** copy of the eleven e-mails that I have appended; **OR**

B. **Certify** that the eleven e-mails that I have appended, are **precisely identical** to the e-mails contained in my Yahoo e-mail account.

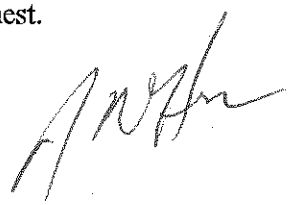
FEES

I understand that Yahoo charges a fee for the time it takes Yahoo to provide the requested information. Please advise me what the fee would be, how Yahoo accepts payment (credit card?), and the amount of any deposit Yahoo wants before completing the task.

Please either telephone me at **(443) 414-6210**, or e-mail me (**jimriffin@yahoo.com**) with the fee-information.

I need to submit the "e-mail proof" to the Surface Transportation Board (a federal agency) by **October 31, 2016.** If there is an extra fee for providing 'expedited service,' please tell me what the fee is, so that I can order 'expedited' service.

Thank you for your time and attention to this request.



45408 SERVICE DATE – LATE RELEASE AUGUST 25, 2016
ALJ

SURFACE TRANSPORTATION BOARD

ORDER OF PRESIDING ADMINISTRATIVE LAW JUDGE CONFIRMING ORDER TO REQUIRE JAMES RIFFIN TO RESPOND TO CERTAIN DISCOVERY REQUESTS

Docket No. AB 167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Decided: August 24, 2016

On July 5, 2016, the City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, City, et al.) filed a Second Motion to Compel James Riffin to Respond to Discovery (Document) Requests (Second Motion to Compel). The Second Motion to Compel requested an order directing Mr. James Riffin to respond fully and completely to certain document requests.

On July 25, 2016, the LLC Intervenors (LLCs)[1] filed a reply opposing the Second Motion to Compel. On July 28, 2016, Mr. Riffin filed a reply opposing the Second Motion to Compel. By order, decided August 8, 2016, oral arguments on the Second Motion to Compel were scheduled for Wednesday, August 24, 2016.

During the August 24, 2016 oral arguments, City, et al. and James Riffin entered an agreement into the record that would dispose of the Second Motion to Compel. The Presiding Administrative Law Judge ordered compliance with the agreement, and the record reflects that order. No participant objected to memorializing the agreement. This order confirms the Presiding Administrative Law Judge's order during oral arguments, and a summary of the agreement is set forth below.

[1] The LLCs consist of 212 Marin Boulevard, LLC; 247 Manila Avenue, LLC; 280 Erie Street, LLC; 317 Jersey Avenue, LLC; 354 Cole Street, LLC; 389 Monmouth Street, LLC; 415 Brunswick Street, LLC; and 446 Newark Avenue, LLC.

It is ordered:

1. Mr. Riffin will provide City, et al. and Consolidated Rail Corporation with all e-mail communications between him and the LLCs that Mr. Riffin retains in his possession. Mr. Riffin will also supply City, et al. the docket numbers for three (3) bankruptcy proceedings involving Mr. Riffin. Mr. Riffin shall comply with this order by close of business on Friday, August 26, 2016.

2. This decision is effective on its service date.

By the Board, John P. Dring, Administrative Law Judge.

4
DANIEL HORGAN

Last week					
	BeenVerif...	We Found Da	Sponsored		
☑	Horgan, Da...	AB-16...	Plea Inbox	📎	Oct 21
☐	Horga	Re: u...	Inbox		Oct 19
☐	Horgan, Da...	Re: J...	... ji Inbox		Oct 19
☐	Horgan, Da...	Disco...	... b Inbox		Oct 19
☐	Horgan, Da...	Disco...	... b Inbox		Oct 19
☐	Horgan, Da...	missi...	Ger Inbox	📎	Oct 18
☐	Horgan, Da...	Harsi...	... a Inbox	📎	Oct 17
All results					
All results					
All results					
Earlier in October					
☐	Horgan, Da...	LLC's...	... fi Inbox	📎	Oct 13
☐	Horgan, Da...	Monn...	... d Inbox		Oct 12
☐	Horgan, Da...	Re: A...	... p Inbox		Oct 12
☐	Horgan, Da...	RE: A...	... T Inbox		Oct 11
☐	Horgan, Da...	212 M...	... tl Inbox	📎	Oct 5
☐	Horgan, Da...	STB -...	... tl Inbox	📎	Oct 5
September					
☐	Horgan, Da...	Re: V...	... c Inbox		Sep 27
☐	Horgan, Da...	Re: V...	... c Inbox		Sep 27
☐	Horgan, Da...	Re: V...	... n Inbox		Sep 27
☐	Horgan, Da...	Re: A...	... y Inbox		Sep 26
☐	Horgan, Da...	Kevin...	http Inbox		Sep 23
☐	Horgan, Da...	Disco...	... u Inbox		Sep 19
☐	Horgan, Da...	Meet ...	http Inbox		Sep 15
☐	Horgan, Da...	Re: D...	... C Inbox		Sep 1
☐	Horgan, Da...	LLC r...	... V Inbox	📎	Sep 1
August					
☐	Horgan, Da...	Order	... any Inbox	📎	Aug 26
☐	Horgan, Da...	Re: e-...	This Inbox		Aug 25
☐	Horgan, Da...	FW: R...	... D Inbox	📎	Aug 25
☐	Horgan, Da...	Respo...	... D Inbox	📎	Aug 25
☐	Horgan, Da...	Corre...	... D Inbox	📎	Aug 15
☐	Horgan, Da...	Re: E...	... a Inbox	📎	Aug 9
July					
☐	Horgan, Da...	Re: J...	... n Inbox		Jul 28
☐	Horgan, Da...	Reply...	... ir Inbox	📎	Jul 25
☐	Horgan, Da...	PACE...	... w Inbox	📎	Jul 1

452

← 8/25/16

DH 1

MATCH 1

Daniel Horgan
dehorgan@lawwmm.co...
(201) 926-4402
☎ (201) 863-7153

1m 6m 1y

Apr 26 '16 Jul 26 '16 Today

You and Daniel Horgan appeared together on 341 messages between Aug 2014 and Oct 2016. The first message was from you to Daniel Horgan on Aug 26, 2014, regarding 'montagne fetter microsoft word and word perfect versions'.

Documents

11151-007.pdf	Oct 21
Letter to Magistrate on Riff...	Oct 18
Initial scheduling Order Rif...	Oct 18
Proposed discovery resolu...	Oct 17
LLCs reply to Riffin Motion...	Oct 13

See all

Related contacts

Eric Strohmeyer
esstrohmeyer@yahoo.com & 1 more email

Robert Jenkins
rmjenkins@mayerbrown.com

Adam Sloane
asloane@mayerbrown.com

See more

MARCH 1

2015						
☐	Horgan, Da...	Corre...	... D.	Inbox	📎	Aug 15
☐	Horgan, Da...	Re: E...	... a	Inbox	📎	Aug 9
July						
☐	Horgan, Da...	Re: J...	... n	Inbox		Jul 28
☑	Horgan, Da...	Reply...	... It	Inbox	📎	Jul 25
☑	Horgan, Da...	PACE...	... w	Inbox	📎	Jul 1
June						
☑	Horgan, Da...	Re: m...	Jim	Inbox		Jun 9
☑	Horgan, Da...	Re: A...	... J	Inbox		Jun 8
☑	Horgan, Da...	Re: A...	... T	Inbox		Jun 8
☑	Horgan, Da...	Re: A...	... s	Inbox	📎	Jun 7
May						
☑	Horgan, Da...	Draft ...	... e	Inbox		May 10
☑	Horgan, Da...	Re: M...	... ji	Inbox		May 8
☑	Horgan, Da...	Disco...	... w	Inbox		May 5
☑	Horgan, Da...	Curre...	... a	Inbox		May 2
Earlier in 2016						
☑	Horgan, Da...	Re: A...	... F	Inbox	📎	Jan 12
2015						
☑	Horgan, Da...	LLCs'...	... D	Inbox	📎	11/6/15
☑	Horgan, Da...	Re: A...	... E	Inbox		11/3/15
☑	Horgan, D...	Servi...	... b	Inbox		8/28/15
☑	Horgan, Da...	Your ...	Jim	Inbox		8/20/15
☑	Horgan, Da...	JR-5 ...	Dea	Inbox	📎	7/16/15
☑	Horgan, Da...	RE: J...	... F	Inbox	📎	7/15/15
☑	Horgan, Da...	RE: J...	Stro	Inbox		7/15/15
☑	Horgan, Da...	Re: S...	... c	Inbox		6/11/15
☑	Horgan, Da...	Re: S...	... c	Inbox		6/11/15
☑	Horgan, Da...	Letter...	... w	Inbox	📎	6/10/15
☑	Horgan, Da...	STB f...	... h	Inbox	📎	6/10/15
☑	Horgan, Da...	Re: V...	... y	Inbox		4/4/15
☑	Horgan, Da...	See A...	... M	Inbox	📎	3/31/15
☑	Horgan, Da...	Re: M...	... L	Inbox		3/26/15
☑	Horgan, Da...	Re: C...	... L	Inbox		3/18/15
☑	Horgan, Da...	Court...	... d	Inbox	📎	3/17/15
☑	Horgan, Da...	Re: L...	... L	Inbox		3/8/15
2014						
☑	Horgan, Da...	Monta...	... w	Inbox		12/24/14
☑	Horgan, Da...	Thoug...	... A	Inbox		/14

453

DH (2)

END

Vickie Hyman

Compose

From To All Messages Photos Documents 3 Results Save Refine

Add Gmail, Outlook, AOL and more

Sorted by Date

Inbox (5)
Drafts (6)
Sent
Archive
Spam (1)
Trash

May

☐	Vickie Hym...	Nancy ...	Nanc	Inbox	May 31

All results

2015

☐	Vickie	try this	Go	Inbox	11/14/15	
☐	Vickie Hym...	Map J...		Inbox	7/1/15	

Smart Views
Important
Unread
Starred
People
Social
Shopping
Travel
Finance

Folders
bc rail royal hudson 3...
Drafts
vicksburg

Recent

Vickie Hyman
vickie@shyman.net

1m 6m 1y

Apr 26 '16 Jul 26 '16 Today

You and Vickie Hyman have traded 13 messages between May 2015 and Oct 2016. He or she first sent you a message regarding 'Please Jim'.

Documents

scan.pdf 7/1/15

See all

Related contacts

Steve Hyman
shyman@shyman.net

Jason Schulze
jason.schulze@mbtlaw.com

Robertson Jason Alex
jrobertson3675@aol.com

See more

454

S Hyman

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From To All | Messages Photos Documents 2 Results Save Refine

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Folders
- bc rail royal hudson 3...
- Drafts
- vicksburg

Recent

Earlier in 2016

☐	S Hyman	Circuit ...	Stev	Inbox	Feb 26

All results

2015

☐	S Hyman	FW: Fu...	Stev	Inbox	3/20/15

S. Hyman
embankment@shyman...

1m 6m 1y

Apr 26 '16 Jul 26 '16 Today

You and S. Hyman traded 9 messages between Dec 2014 and Feb 2016. He or she first sent you a message regarding 'Amtrak: eTicket and Receipt for Your 12/30/2014 Trip - STEVEN HYMAN'.

Related contacts

~~Eric Strohmeyer~~
esstrohmeyer@yahoo.com & 1 more email

raj@jcnj.org
raj@jcnj.org

See more

455

All [redacted] Add Keywords Search Mail Search Web Home jim

1
STEVE HYMAN

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From To All Messages Photos Documents 87 Results Save Refine

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Drafts (6)
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Spam (1)
Trash
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Important
Unread
Starred
People
Social
Shopping
Travel
Finance
Folders
bc rail royal hudson 3...
Drafts
vicksburg
Recent

Last week

☐	Steve Hym...	Re: R...	-- S	Inbox		Oct 17

All results

Earlier in October

☐	Steve	COUR...		Inbox		Oct 3
☐	Steve Hym...	Fulop...	http	Inbox		Oct 2
☐	Steve Hym...	Bi-mo...	-- S	Inbox	📎	Oct 2

September

☐	Steve Hym...	FW: E...	-- S	Inbox		Sep 15
☐	Steve Hym...	FW: P...	-- S	Inbox		Sep 15
☐	Steve Hym...	Devel...	http	Inbox		Sep 12

August

☐	Steve Hym...	FW: B...	-- S	Inbox		Aug 22
☐	Steve Hym...	Fwd: ...	... F	Inbox		Aug 15
☐	Steve Hym...	City C...	-- S	Inbox	📎	Aug 11
☐	Steve Hym...	City C...	-- S	Inbox	📎	Aug 11
☐	Steve Hym...	Email...	-- S	Inbox	📎	Aug 9

June

☐	Steve Hym...	LUCA...	http	Inbox		Jun 18
☐	Steve Hym...	FW: R...	-- S	Inbox		Jun 18
☐	Steve Hym...	FW: R...	-- S	Inbox		Jun 18
☐	Steve Hym...	FW: R...	-- S	Inbox		Jun 5

May

☐	Steve Hym...	FW: P...	-- S	Inbox	🖼	May 11
☐	Steve Hym...	FW: R...	Tha	Inbox	📎	May 5
☐	Steve Hym...	Fwd: ...	... D	Inbox		May 3
☐	Steve Hym...	Title 48	Migh	Inbox		May 1

Earlier in 2016

☐	Steve Hym...	Emba...	-- S	Inbox	📎	Apr 23
☐	Steve Hym...	Fwd: ...	Ste	Inbox	📎	Apr 23
☐	Steve Hym...	FW: T...	-- S	Inbox	📎	Apr 11
☐	Steve Hym...	inform...	-- S	Inbox		Apr 11
☐	Steve Hym...	Court ...	-- S	Inbox	📎	Apr 4
☐	Steve Hym...	US C...	-- S	Inbox	📎	Mar 19
☐	Steve Hym...	FW: R...	-- S	Inbox	📎	Mar 19
☐	Steve Hym...	FW: R...	-- S	Inbox	📎	Mar 18
☐	Steve Hym...	FW: R...	-- S	Inbox		Mar 18
☐	Steve Hym...	Re: R...	-- S	Inbox		Mar 18
☐	Steve Hym...	FW: R...	-- S	Inbox	📎	Mar 14
☐	Steve Hym...	FW: R...	-- S	Inbox		Mar 14

456

Steve Hyman
shyman@shyman.net
(917) 916-7838
(212) 486-9407

1m 6m 1y

Apr 26 '16 Jul 26 '16 Today

You and Steve Hyman appeared together on 286 messages between Aug 2014 and Oct 2016. The first message was from you to Steve Hyman on Aug 12, 2014, regarding 'comments DO decision'.

Photos

See all

Documents

2016_08_11_15_34_58.pdf	Aug 11
2016_08_11_15_30_38.pdf	Aug 11
JCRA ICC ABANDONMEN...	Aug 9
RHT DRAFT2 ROMANOFF...	May 5
2016_04_23_23_07_18 Na...	Apr 23

See all

Related contacts

Daniel Horgan
dehorgan@lawwmm.com

Eric Strohmeyer
esstrohmeyer@yahoo.com & 1 more email

Adam Sloane
asloane@mayerbrown.com

See more

SH
1
MATCH 1

Max Ma on Flickr

STEVE HYMAN

Start Download - View PDF

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fromdoctopdf.com

Adam Sloane
asloane@mayerbrown.com

See more

Earlier in 2016					
Steve Hym...	FW: R...	-- S	Inbox		Mar 18
Steve Hym...	FW: R...	-- S	Inbox		Mar 18
Steve Hym...	Re: R...	-- S	Inbox		Mar 18
Steve Hym...	FW: R...	-- S	Inbox		Mar 14
Steve Hym...	FW: R...	-- S	Inbox		Mar 14
Steve Hym...	FW: 3...	-- S	Inbox		Mar 14
Steve Hym...	FW: R...	-- S	Inbox		Mar 14
Steve Hym...	FW: H...	... ti	Inbox		Mar 8
Steve Hym...	US C...	-- S	Inbox		Feb 29
Steve Hym...	6th St...	-- S	Inbox		Feb 29
Steve Hym...	6th St...	-- S	Inbox		Feb 29
Steve Hym...	G & S...	-- S	Inbox		Feb 29
Steve Hym...	Trans...	http	Inbox		Feb 26
Steve Hym...	FW: P...	-- S	Inbox		Feb 22
Steve Hym...	FW: E...	-- S	Inbox		Feb 18
Steve Hym...	Super...	http	Inbox		Jan 24
Steve Hym...	certifi...	-- S	Inbox		Jan 22
Steve Hym...	River ...	-- S	Inbox		Jan 18
Steve Hym...	Pep B...	http	Inbox		Jan 10
Steve Hym...	Pep B...	http	Inbox		Jan 10
Steve Hym...	Pep B...	-- S	Inbox		Jan 10
Steve Hym...	Enviro...	http	Inbox		Jan 7
Steve Hym...	FW: M...	-- S	Inbox		Jan 5
2015					
Steve Hym...	FW: J...	-- S	Inbox		12/17/15
Steve Hym...	FW: ...	-- S	Inbox		12/13/15
Steve Hym...	FW: ...	-- S	Inbox		12/13/15
Steve Hym...	Wine,...	http	Inbox		11/21/15
Steve Hym...	Manis...	http	Inbox		11/21/15
Steve Hym...	FW: R...	Plea	Inbox		11/18/15
Steve Hym...	Maps	https:/	Inbox		11/11/15
Steve Hym...	histor...	http	Inbox		11/11/15
Steve Hym...	Aerial...	-- S	Inbox		11/6/15
Steve Hym...	FW:	-- Steve	Inbox		11/5/15
Steve Hym...	FW: B...	-- S	Inbox		11/4/15
Steve Hym...	Bridge	http://	Inbox		10/17/15
Steve Hym...	31st D..	http	Inbox		10/17/15
Steve Hym...	Histor...	http	Inbox		10/17/15

MARCH 1

MARCH 2

457

SH (2)

STEVE HYMAN

Sorted by Date

2015					
☐	Steve Hym...	FW: J... -- S	Inbox	📎	12/17/15
☐	Steve Hym...	FW: ... -- S	Inbox		12/13/15
☐	Steve Hym...	FW: ... -- S	Inbox		12/13/15
☐	Steve Hym...	Wine,... http	Inbox		11/21/15
☐	Steve Hym...	Manis... http	Inbox		11/21/15
☐	Steve Hym...	FW: R... Ple	Inbox		11/18/15
☐	Steve Hym...	Maps https:/	Inbox		11/11/15
☐	Steve Hym...	histor... http	Inbox		11/11/15
☐	Steve Hym...	Aerial... -- S	Inbox	📎	11/6/15
☐	Steve Hym...	FW: -- Steve	Inbox	🖼	11/5/15
☐	Steve Hym...	FW: B... -- S	Inbox	📎	11/4/15
☐	Steve Hym...	Bridge http://	Inbox		10/17/15
☐	Steve Hym...	31st D.. http	Inbox		10/17/15
☐	Steve Hym...	Histor... http	Inbox		9/21/15
☐	Steve Hym...	Emba... http	Inbox		8/31/15
☐	Steve Hym...	Fwd: ... ... E	Inbox	📎	8/28/15
☐	Steve Hym...	Fwd: ... Beg	Inbox		8/28/15
☐	Steve Hym...	Fwd: ... ... E	Inbox	📎	8/28/15
☐	Steve Hym...	Aband... -- S	Inbox	📎	7/26/15
☐	Steve Hym...	Amtrak http:/	Inbox		7/1/15
☐	Steve Hym...	FW: S... GRI	Inbox		6/18/15
☐	Steve Hym...	Spur? What	Inbox	📎	6/10/15
☐	Steve Hym...	446 N... -- S	Inbox	📎	5/26/15
☐	Steve Hym...	446 N... -- S	Inbox	📎	5/25/15
☐	Steve Hym...	Newa... -- S	Inbox	📎	5/25/15
☐	Steve Hym...	Conra... -- S	Inbox	📎	5/25/15
☐	Steve Hym...	FW: A... -- S	Inbox	📎	5/25/15
☐	Steve Hym...	FW: A... -- S	Inbox	📎	5/25/15
☐	Steve Hym...	FW: A... -- S	Inbox	📎	5/25/15
☐	Steve Hym...	Appra... ... s	Inbox		4/30/15
☐	Steve Hym...	Fwd: ... ... f	Inbox	📎	4/24/15
☐	Steve Hym...	Look ... Ste	Inbox	📎	4/18/15
☐	Steve Hym...	FW: D... Goc	Inbox	📎	4/16/15
☐	Steve Hym...	FW: S... Ste	Inbox	📎	3/20/15
☐	Steve Hym...	Christ... http	Inbox		3/20/15
☐	Steve Hym...	Circui... Ste	Inbox	📎	3/17/15
2014					
☐	Steve Hym...	Lets t... http	Inbox		12/14

MATCH 2

458

END

SH 3

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vicksburg

Recent

August

☑	esstrohmey	623 status report	Aug 27
☐ >	me...me	1189 motion to compel against Riffin (5) You have pre	Aug 27
☐ >	me, C.	Letter to Dring (3) I see no problem in individual forwa	Aug 25
☐ >	me, C.	Error message (2) Mr. Riffin: I count 100 as received	Aug 25
☐	c.montange	Fw: Embankment Time Line till 2015 cases to follov (	Aug 25
☐ >	me...	e-mails (3) This response confirms that this a useless	Aug 25
☐ >	Horgan,,	Though you would like to see this (2) On Monday, De	Aug 25
☐ >	Horgan,,	Montange's Exhibit D and its Attachment 1 (2) On We	Aug 25
☐ >	Horgan,,	Re: Letter to Craig Keats. Decision time (3) On Mond	Aug 25
☐ >	Horgan,...	Courtesy Copies - STB Discovery Requests (7) On W	Aug 25
☐ >	Eric...me	Meeting notes ?? (3) On Thursday, March 26, 2015 5:	Aug 25
☐ >	Horgan,,	See Attached Letter - Overdue request for documen (2	Aug 25
☐ >	me...me	Vicksbg cases re ofa removal of bridge (3) On Saturd	Aug 25
☐ >	Horgan,...	STB filing this Evening (6) On Thursday, June 11, 20	Aug 25
☐ >	Horgan,,	Letter Filed with STB (2) On Wednesday, June 10, 20	Aug 25
☐ >	Eric...me	STB Reply Letter filed today June 11th 2015 (3) On T	Aug 25
☐ >	me...me	JR-7 AB 167 1189x service certification (9) On Wedn	Aug 25
☐ >	me...me	JR-5 Reply to Jersey City's Motion to Strike Riffin's (3	Aug 25
☐ >	Horgan,,	JR-5 Reply to Jersey City's Motion to Strike Riffin's (2	Aug 25
☐ >	Horgan,,	Your question (3) On Friday, August 21, 2015 6:06 PM	Aug 25
☐ >	Horgan,,	Service of Pleadings and other Papers AB-167-11 (2	Aug 25
☐ >	C....me	AB 167-1189X (5) On Wednesday, November 4, 2015	Aug 25
☐ >	Horgan,,	LLCs' response to City request for Clarification (2) On	Aug 25
☐ >	C....me	AB 167-1189X., letter responding to LLCs' reply to n (3	Aug 25
☐ >		Current motion by Montagne (2) On Monday, May 2, 2	Aug 25
☐ >	Horgan,,	Discovery (2) On Thursday, May 5, 2016 1:32 PM, "H	Aug 25
☐ >	me...me	My reply to Montange (3) On Sunday, May 8, 2016 9:	Aug 25
☐ >	Horgan,,	Draft Motion (2) On Tuesday, May 10, 2016 7:04 PM,	Aug 25
☐ >	Horgan,...	Re: AB 167-1189X; COMPLIANCE WITH STB RULI (1	Aug 25
☐ >	me...me	motion to strike parts of Montange's Motion to Withc (3	Aug 25
☐ >	Horgan,,	PACE GLASS (2) On Friday, July 1, 2016 2:43 PM, "	Aug 25
☐ >	Horgan,,	Reply to Discovery Motion in STB AB-167-1189-X (2)	Aug 25
☐ >	me...me	JR-17 Reply to City et al.'s Motion to Compel (3) On T	Aug 25
☐ >	me...me	Essay written by Pat Wald, former chief judge D.C. (3	Aug 25
☐ >	Horgan,,	Correspondence concerning Discovery Requests (2) (	Aug 25
☐ >	Horgan,...	Responses to Requests for Admissions and to Inter (6	Aug 25
☐ >	Vickie, me	Map JC/NYC (2) On Wednesday, July 1, 2015 1:47 P	Aug 25
☐ >	Vickie, me	try this (3) On Saturday, November 14, 2015 3:39 PM	Aug 25
☐ >	Vickie, me	Nancy Beiter (2) On Tuesday, May 31, 2016 8:46 PM	Aug 25
☐ >	S, me	FW: Fulop punished by Christie (2) On Friday, Mar	Aug 25
☐ >	S, me	Circuit Court 10/18/2011 (2) On Friday, February 20,	Aug 25

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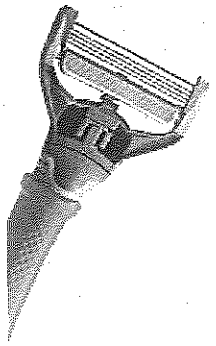

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p. 1

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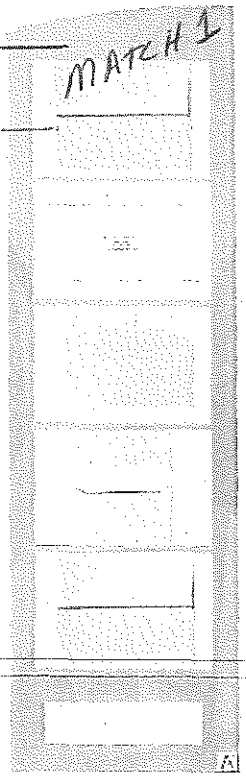
August

Vickie, me	Nancy Beiter (2) On Tuesday, May 31, 2016 8:46 PM		Aug 25
S, me	FW: Fulop punished by Christie (2) On Friday, March		Aug 25
S, me	Circuit Court 10/18/2011 (2) On Friday, February 26, 2		Aug 25
Steve, me	Lets take a shot at CSX STOCK (2) On Tuesday, Dec		Aug 25
Steve, me	Circuit Court Transcript (2) On Tuesday, March 17, 20		Aug 25
Steve, me	Christie v fulop (2) On Friday, March 20, 2015 11:31 A		Aug 25
me...me	D&H trackage rts proceeding ab 156-27-x (3) On Thur		Aug 25
Steve, me	Look at the maps (2) On Saturday, April 18, 2015 10:1		Aug 25
Steve, me	Fwd: STB decision today. (2) On Friday, April 24, 201		Aug 25
Steve, me	Appraisal investigation of property in Jersey City (2) C		Aug 25
c.montange	Fw: JR-11 supp to motion to stay On Friday, May 15,		Aug 25
Steve, me	FW: A-3877-12T2(APPELLATE OPINION FILED M (4		Aug 25
Steve, me	FW: A-215-13T4(APPELLATE OPINION FILED MA (2		Aug 25
Steve, me	Conrail Docs etc (2) On Monday, May 25, 2015 10:03		Aug 25
Steve, me	Newark Avenue Quitclaim Deed Block 446 Lot 18A (2)		Aug 25
Steve, me	446 Newark Ave., LLC & Conrail (2) On Monday, May		Aug 25
Steve, me	446 Newark Ave LLC (2) On Tuesday, May 26, 2015 5		Aug 25
Steve, me	Spur? (2) On Wednesday, June 10, 2015 6:23 AM, St		Aug 25
Steve, me	FW: STB Discovery (2) GREG, I, you need help. Tell		Aug 25
Steve, me	Amtrak (2) On Wednesday, July 1, 2015 12:14 PM, S		Aug 25
Steve, me	Abandonment Exemption in Lyon County, KS (2) On S		Aug 25
Steve, me	Fwd: WON 100% (7) On Saturday, August 29, 2015 3		Aug 25
Steve, me	Embankment Tax Appeal (2) On Monday, August 31,		Aug 25
Steve, me	Historical Maps Of New Jersey (2) On Monday, Septe		Aug 25
Steve, me	31st District NJ with Ray Lesniak (2) On Saturday, Oc		Aug 25
Steve, me	Bridge (2) On Saturday, October 17, 2015 5:51 PM, S		Aug 25
Steve, me	FW: Block 446 18A (2) -- Steve Hyman shyman@shy		Aug 25
Steve, me	FW: (2) On Thursday, November 5, 2015 6:13 PM, St		Aug 25
Steve, me	Aerials of 6th Street (2) On Friday, November 6, 2015		Aug 25
Steve, me	history of the cemetery (2) On Wednesday, Novembe		Aug 25
Steve, me	Maps (2) On Wednesday, November 11, 2015 8:06 PI		Aug 25
Steve, me	FW: RR spur (4) On Sunday, June 5, 2016 8:29 AM, S		Aug 25
Steve, me	Manischewitz (2) On Saturday, November 21, 2015 9:		Aug 25
	FW: When you marry an Italian - SafeShare.TV (5) On		Aug 25
Steve, me	FW: When you marry an Italian. (2) On Sunday, Dece		Aug 25
Steve, me	FW: Jersey City Ordinance (2) -- Steve Hyman shyma		Aug 25
Steve, me	FW: Motion to Intervene (2) On Tuesday, January 5, 2		Aug 25
Steve, me	Environmental Lawyer (2) On Thursday, January 7, 20		Aug 25
Steve, me	Pep Boys Sale (2) On Sunday, January 10, 2016 7:37		Aug 25
Steve, me	Pep Boys Sale (2) On Sunday, January 10, 2016 7		Aug 25
Steve...me	Pep Boys (3) On Sunday, January 10, 2016 8:46 PM,		Aug 25



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P.R

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Important
Unread
Starred
People
Social
Shopping
Travel
Finance
Folders
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Drafts
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Recent

August

Steve, me	Manischewitz (2) On Saturday, November 21, 2015 9:		Aug 25
	FW: When you marry an Italian - SafeShare.TV (5) On		Aug 25
Steve, me	FW: When you marry an Italian. (2) On Sunday, Dece		Aug 25
Steve, me	FW: Jersey City Ordinance (2) -- Steve Hyman shym		Aug 25
Steve, me	FW: Motion to Intervene (2) On Tuesday, January 5, 1		Aug 25
Steve, me	Environmental Lawyer (2) On Thursday, January 7, 20		Aug 25
Steve, me	Pep Boys Sale (2) On Sunday, January 10, 2016 7:37		Aug 25
Steve, me	Pep Boys Sale (2) On Sunday, January 10, 2016 7:48		Aug 25
Steve...me	Pep Boys (3) On Sunday, January 10, 2016 8:46 PM,		Aug 25
Steve, me	River Line 2000 (2) On Monday, January 18, 2016 9:3		Aug 25
Steve, me	certificate of appropriateness (2) On Friday, January 2		Aug 25
Steve, me	Superior Court of New Jersey (2) On Sunday, January		Aug 25
me...me	EP 729 comments (3) On Thursday, February 18, 201		Aug 25
Steve, me	FW: Plan to lower parking minimums in Jersey City (2		Aug 25
Steve, me	Transcripts (2) On Friday, February 26, 2016 2:40 PM		Aug 25
Steve, me	G & S Investors Greg Wasser National Bulk (2) On M		Aug 25
Steve, me	6th Street Embankment Jersey City (2) On Monday, 1		Aug 25
Steve, me	6th Street Embankment (2) On Monday, February 29,		Aug 25
Steve, me	US Court of Appeals of Columbia Circuit (2) On Mond		Aug 25
Steve, me	FW: Hudson Reporter Article of Yesterday (2) On Tue		Aug 25
Steve, me	FW: Riffin Comments in EP 729 (14) On Saturday, M		Aug 25
Steve, me	FW: 317 Jersey Ave. v. Jersey City - OFA ordinanc (2		Aug 25
Steve, me	US Court of Appeals No. 15-1435 (2) On Saturday, M		Aug 25
Steve, me	Court of Appeals JC v STB 212 Marin dismissed ag (3		Aug 25
Steve...me	information (3) On Monday, April 11, 2016 3:49 PM, F		Aug 25
Steve, me	FW: The Robert Pullman Tubular Rail you requestec (2		Aug 25
Steve, me	Fwd: Romanoff v. United States: Amicus Call-In (2) C		Aug 25
Steve, me	Embankment Time Line till 2015 cases to follow in c (2		Aug 25
Steve, me	Title 48 (2) On Sunday, May 1, 2016 11:18 AM, Steve		Aug 25
Steve, me	Fwd: City of Jersey City Motion to Compel Filing (2) C		Aug 25
Steve, me	FW: Romanoff v. United States: Draft Amicus Briefs (2		Aug 25
Steve, me	FW: Panoramic NYC Views in Downtown Jersey Cit (2		Aug 25
Steve, me	FW: ROW court case on Section 308 (2) On Saturday		Aug 25
Steve, me	FW: RR abandonment (2) On Saturday, June 18, 2016		Aug 25
Steve, me	LUCAS v. TOWNSHIP OF BETHEL | FindLaw (3) On		Aug 25
c.montange	Fw: STB Decision re: Shipper Statement On Friday,		Aug 25
Steve, me	Emailing - JCRA ICC ABANDONMENT AB167 sub (2		Aug 25
Steve, me	City Comic (2) On Thursday, August 11, 2016 8:35 PI		Aug 25
Steve, me	Fwd: Big news for parks and open space (2) Steve Hy		Aug 25
Steve, me	FW: Bergen Arches Proposal Envisions a World Cla (2		Aug 25
me, C.	e-mails (2) One option is to call your internet provic		Aug 24

Add to Cart
XELJANZ/XELJANZ XR is a prescription medicine called a Janus kinase (JAK) inhibitor.

MATCH 2

IMPORTANT SAFETY INFORMATION
What is the most important information I should know about XELJANZ® (tofacitinib citrate)/XELJANZ XR?
XELJANZ/XELJANZ XR may cause serious side effects, including:
Serious infections. XELJANZ/XELJANZ XR can lower the ability of your immune system to fight infections. Some people can have serious infections while

E-MAILS FORWARDED 8/25/16 p.3

461

END

Max Ma on flickr

Subject: Fw: try this
From: jim riffin <jimriffin@yahoo.com>
Date: 8/25/2016 2:55 PM
To: "C. Montange" <c.montange@frontier.com>, "Jenkins, Robert M." <RMJenkins@mayerbrown.com>, "Sloane, Adam C." <ASloane@mayerbrown.com>, Daniel Horgan <dehorgan@lawwmm.com>, Eric Strohmeyer <esstrohmeyer@yahoo.com>

> On Saturday, November 14, 2015 6:39 PM, Vickie Hyman <vickie@shyman.net> wrote:

Go to:

http://mapmaker.rutgers.edu/

the click on Historical Maps of New Jersey

then click on New Jersey Historical maps and Air Photo Portal

THEY MAY HAVE WHAT YOU ARE LOOKING FOR

Good luck, Vickie

462

Subject: Fw: Nancy Beiter
From: jim riffin <jimriffin@yahoo.com>
Date: 8/25/2016 2:53 PM
To: "C. Montange" <c.montange@frontier.com>, "Jenkins, Robert M." <RMJenkins@mayerbrown.com>, "Sloane, Adam C." <ASloane@mayerbrown.com>, Daniel Horgan <dehorgan@lawwmm.com>, Eric Strohmeyer <esstrohmeyer@yahoo.com>

On Tuesday, May 31, 2016 8:46 PM, Vickie Hyman <vickie@shyman.net> wrote:

Nancy R. Beiter, Esq
603-532-7225

463

Subject: Fw: Fritz Kahn 2005 Hyman Railroad etc

From: Eric Strohmeyer (cnjrail@yahoo.com)

To: c.montange@frontier.com;

Date: Thursday, September 11, 2014 1:17 PM

This will be scanned into PDF format.

Eric

On Saturday, June 21, 2014 2:39 PM, Eric Strohmeyer <cnjrail@yahoo.com> wrote:

Jim, download and review the attached document file. It is in Microsoft word format.

On Friday, January 17, 2014 9:49 PM, Steve Hyman <shyman@shyman.net> wrote:

Attachments

- hymanthree.doc (30.00KB)

464

Subject: Fw: JR-11 supp to motion to stay
From: jim riffin <jimriffin@yahoo.com>
Date: 8/25/2016 2:42 PM
To: "C. Montange" <c.montange@frontier.com>, "Jenkins, Robert M." <RMJenkins@mayerbrown.com>, "Sloane, Adam C." <ASloane@mayerbrown.com>, Daniel Horgan <dehorgan@lawwmm.com>, Eric Strohmeyer <esstrohmeyer@yahoo.com>

On Friday, May 15, 2015 12:08 AM, Steve Hyman <shyman@shyman.net> wrote:

Jim,

Crazy week. I will be glad to go to Manville with you and discuss other possibilities. What was your decision at the STB?

Steve

Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

From: jim riffin <jimriffin@yahoo.com>
Reply-To: jim riffin <jimriffin@yahoo.com>
Date: Thursday, May 14, 2015 at 6:37 PM
To: Eric Strohmeyer <esstrohmeyer@yahoo.com>, Steve Hyman <Shyman@shyman.net>, "Fritz R. Kahn" <xiccgc@gmail.com>
Subject: JR-11 supp to motion to stay

465

Subject: Fw: EP 729 comments

From: jim riffin (jimriffin@yahoo.com)

To: c.montange@frontier.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; dehorgan@lawwmm.com; esstrohmeyer@yahoo.com;

Date: Thursday, August 25, 2016 2:11 PM

> On Thursday, February 18, 2016 1:20 PM, Steve Hyman <shyman@shyman.net> wrote:

--
Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

From: jim riffin <jimriffin@yahoo.com>
Reply-To: jim riffin <jimriffin@yahoo.com>
Date: Saturday, February 13, 2016 at 4:59 PM
To: Eric Strohmeyer <esstrohmeyer@yahoo.com>, Steve Hyman <shyman@shyman.net>, Daniel Horgan <dehorgan@lawwmm.com>
Subject: EP 729 comments

My comments re new OFA rules

Attachments

- STB EP 729 JR-1 Comments 2-12-16.pdf (155.82KB)

466

Subject: FW: LLC Litigation

From: Steve Hyman (shyman@shyman.net)

To: jimriffin@yahoo.com;

Date: Saturday, March 19, 2016 11:30 AM

--
Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

From: "Morsella, Patti" <pattim@lawwmm.com> on behalf of "McPherson, Sr., Kenneth" <kdm@lawwmm.com>
Date: Friday, March 18, 2016 at 10:44 AM
To: Steve Hyman <shyman@shyman.net>
Cc: "'calampi@alampi-law.com'" <calampi@alampi-law.com>, "Horgan, Daniel" <dehorgan@lawwmm.com>
Subject: LLC Litigation

Steve –

Attached is an updated presentation on the Pending and Proposed Litigation so that you can see where we are now, at the middle of March. We have followed on the track last laid out in our February meeting and as presented in a similar presentation of February 11, 2016.

In that interim period we have made progress. That, with developments soon to come as noted in the presentation, should provide us with additional funds in hand, and additional advantages against the City. We have not heard from Conrail, as Broder promised (no surprise), on its decision on redeeming the NZ Funding tax lien on its Lot 120 property. We and you have also spoken to Keith Bonche who will begin the foreclosure on behalf of NZ Funding, in coordination with us so that you get all of the potential advantages, as well as the money. This action may, depending on what the City does in response, hold the possibility of defeating the city on its claims under Title 48. NJSA 48:12-125.1; something you had long sought in order to lift the stay on the civil rights litigation.

P.Z - 3/19/16 S HYMAN

The three pending state court matters, individually and collectively, are designed to thwart the City's plans to acquire the property through any STB action, and to establish a basis to cut off its financing for its STB activities. Of course, if the City's OFA ordinance is invalidated, for a second time, that should be very helpful in advancing resolution of the STB process.

Subsequent to receiving the results and outcomes of these three cases over the coming months, additional possibilities may be forthcoming to thwart the City's efforts to further delay the STB proceedings, and to avoid having to face the civil rights litigation by the LLCs. Also noted in the outline is the potential for bringing claims against Conrail.

The months of January and February have been quite demanding. You can discern this from the attached presentation and from the invoice statements for each of those two months which we are concurrently sending to you. We had advised you of our confidence in our recommended approaches and, for that reason, among others, have not charged for the March 2, 2016 all-day meeting with the STB in Washington, DC, attended by Dan Horgan and Eric McCullough. Nonetheless, we have devoted substantial time and effort in these complex matters and need to resolve our fee arrangement. The current two months of invoices are based on our current agreement that has not been changed. We would like to work with you to arrive at an acceptable accommodation on fees, but we cannot do that by ourselves. Let's meet with you and Carmine to meet and discuss this further as soon as possible.

Thanks,

Ken

Attachments

- LLC Litigation Overview 3 2016.pdf (68.69KB)

Subject: Fw: Embankment Time Line till 2015 cases to follow in detail

From: jim riffin (jimriffin@yahoo.com)

To: c.montange@frontier.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; dehorgan@lawwmm.com; esstrohmeyer@yahoo.com;

Date: Thursday, August 25, 2016 1:50 PM

On Saturday, April 23, 2016 11:12 PM, Steve Hyman <shyman@shyman.net> wrote:

--
Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

Attachments

- 2016_04_23_23_07_18 Nancy Platkin partial timeline.pdf (11.22MB)

469

Subject: Fw: Title 48

From: jim riffin (jimriffin@yahoo.com)

To: c.montange@frontier.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; dehorgan@lawwmm.com; esstrohmeyer@yahoo.com;

Date: Thursday, August 25, 2016 1:49 PM

On Sunday, May 1, 2016 11:18 AM, Steve Hyman <shyman@shyman.net> wrote:

Might be the answer.

Steve Hyman

470

Subject: Fw: RR abandonment

From: jim riffin (jimriffin@yahoo.com)

To: c.montange@frontier.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; dehorgan@lawwmm.com; esstrohmeyer@yahoo.com;

Date: Thursday, August 25, 2016 1:44 PM

On Saturday, June 18, 2016 3:40 AM, Steve Hyman <shyman@shyman.net> wrote:

--
Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

Date: Friday, June 17, 2016 at 6:30 PM
To: Steve Hyman <shyman@shyman.net>
Subject: RR abandonment

Steve, I am recovering nicely from triple bypass surgery and am getting back into the abandonment game. A NARPO member from Indiana has raised a question about Conrail abandonments that has got me investigating the Conrail abandonment issue. Was your abandonment done under the Conrail Section 308 NERSA laws? Can you give me a cite of the STB/ICC abandonment application? I have been reading case law on Conrail Section 308 abandonments, and if your was one of those, then your attorneys have missed a huge loophole in the federal laws. Section 308 says that the ICC/STB cannot deny a Conrail abandonment except for an offer of financial assistance and also a 3rd Circuit court case says that trail use cannot be imposed by the ICC/STB as the wording of Section 308 does not allow anything except an offer of financial assistance.

Your thoughts.

471

Subject: Fw: Emailing - JCRA ICC ABANDONMENT AB167 sub 1036.pdf

From: jim riffin (jimriffin@yahoo.com)

To: c.montange@frontier.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; dehorgan@lawwmm.com; esstrohmeyer@yahoo.com;

Date: Thursday, August 25, 2016 1:41 PM

On Tuesday, August 9, 2016 11:12 PM, Steve Hyman <shyman@shyman.net> wrote:

--
Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

Attachments

- JCRA ICC ABANDONMENT AB167 sub 1036.pdf (275.81KB)

472

E-mails associated with ALJ Dring's August 25, 2016 Order

DATE	TIME	FROM	TO
8/24/16	6:06 pm	Riffin	Montange
8/25/16	12:48 am	Montange	Riffin
8/25/16	6:31 pm	Riffin	Montange
8/25/16	6:43 pm	Riffin	Montange
8/25/16	7:13 pm	Montange	Riffin
8/25/16	7:34 pm	Montange	Riffin
8/25/16	8:50 pm	Horgan	Riffin / Montange
8/25/16	8:55 pm	Riffin	Montange
8/25/16	10:00 pm	Montange	Riffin
8/26/16	1:52 am	Montange	Riffin
8/26/16	1:51 pm	Riffin	Montange
8/26/16	2:31 pm	Montange	Riffin
8/26/16	2:38 pm	Riffin	Montange
8/26/16	2:53 pm	Montange	Riffin
8/27/16	2:07 pm	Riffin	Montange

472-B

BLANK

Add Gmail, Outlook, AOL and more

Inbox (3)
Drafts (6)
Sent
Archive
Spam (2)
Trash (22)
Smart Views
Important
Unread
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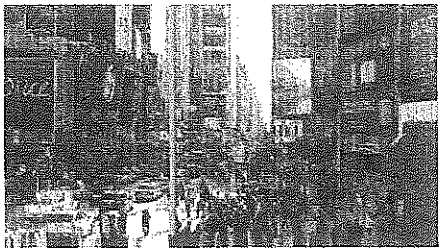
Not all heroes wear capes.
Be a hero. Donate today.
DONATE NOW
American Red Cross

e-mails (2) People

jim riffin <jimriffin@yahoo.com> Aug 24 at 6:06 PM
To C. Montange, Daniel Horgan, Robert Jenkins

I searched and found all of Hyman's e-mails. I checked each box. But there is nothing to click on to forward them as a group. 'Move' is an option. But I am reluctant to try that, since I have never done that before. (Would it work? If done wrong, will it delete everything?) To forward them, you need to tell me how to do that, since there is no 'forward' icon choice. (And I thought these would be on your e-mail when you arrived back home.)

Reply Reply to All Forward More



C. Montange <c.montange@frontier.com> Aug 25 at 12:48 AM
To jim riffin, Daniel Horgan, Robert Jenkins

One option is to call your internet provider and ask for technical support. My provider, which subcontracts to Yahoo, provides if it for free. But I suspect the files may be too large to transmit in large mass and may need individual transmission, or as smaller groups. We seek emails and docs to or from Steve Hyman, Victoria Hyman, or any representative of either Hyman or the LLCs, including Mr. Horgan and all other attorneys for either Hyman or the LLCs. All of your communications with any of the stated individuals or reps involve Harsimus.

8/24/16 6:06 pm
8/25/16 12:48 AM
8/25/16 6:31 pm

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Drafts (6)
Sent
Archive
Spam (2)
Trash (22)
Smart Views
Important
Unread
Starred
People
Social
Shopping

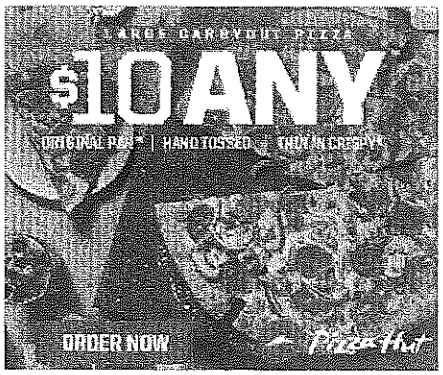
e-mails (3) People

jim riffin <jimriffin@yahoo.com> Aug 25 at 6:31 PM
To C. Montange, Robert Jenkins, Adam Sloane, Daniel Horgan, Eric Strohmeyer

It took two+ hours to send 103 e-mails to Montange, etc. With Yahoo, you can only forward one at a time, after it has been opened. Those e-mails are all of the e-mails that Yahoo says that I have sent / received from: Steve Hyman, Vicki Hyman and Dan Horgan. Montange: If you find a pony in that pile of poney shit, let me know. At least you guys get to bill someone for the time you will waste looking through this pile of shit.

472-C

Reply Reply to All Forward More



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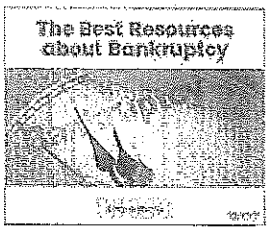
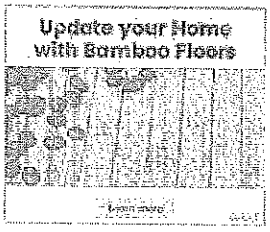
Spam (2)
Trash (22)
Smart Views
Important
Unread
Starred
People
Social
Shopping
Travel
Finance
Folders
bc rail royal hudson 3...
Drafts
vicksburg
Recent



Travel
Finance
Folders
bc rail royal hudson 3...
Drafts
vicksburg
Recent



Error message (2)

People

jim riffin <jimriffin@yahoo.com> Aug 25 at 6:43 PM
To Daniel Horgan, Robert Jenkins, Adam Sloane, Eric Strohmeyer, C. Montange

I got an error message at 4:47 pm saying that whatever I forwarded at that time, was not delivered to Horgan. Dan: Here is a list of the e-mails that I sent around 4:47 pm. See if you are missing one. 4:43 – Panoramic Views; 4:45 - Romanoff ; 4:45 - City JC Motion Compel; 4:46 - Title 48; 4:47 - Embankment time line.

Reply Reply to All Forward More

C. Montange <c.montange@frontier.com> Aug 25 at 7:13 PM
To Jim riffin, Daniel Horgan, Robert Jenkins, Adam Sloane, Eric Strohmeyer

Mr. Riffin: I count 100 as received so far. I do not see 4:43 to 4:46, yet, but do have 4:47. My 100 count also counts some things labeled as coming from Horgan but are older documents, as if from you. I am also not counting the three emails (including the one responded to herein) in which you note the transmission problem to Mr. Horgan and express chagrin over having to respond to discovery. It is possible I will receive the missing emails later. If I do not have a total that corresponds to your total, then you have probably inadvertently omitted me as addressee and you will need to resend the ones that you sent to the others and omitted in my case.

Show original message

C. Montange <c.montange@frontier.com> Aug 25 at 7:34 PM
To Jim riffin, Robert Jenkins, Adam Sloane, Daniel Horgan, Eric Strohmeyer

Mr. Riffin, as to matters of interest, I thank you for compliance to date, and the process of review continues. Unfortunately, it appears that you have some arbitrary limits in your response. It is my understanding that the LLCs communicated with you as far back as 2009. In addition, you evidently corresponded with attorneys (a Mr. Bruce Nagel for example) in addition to Mr. Horgan, who worked for the LLCs (Hyman interests). You in fact told me on August 23 that you received some information from surveyors furnished by the LLCs (Hymans) and at least talked to others (Mr. Kahn was referenced) whom the LLCs furnished or proposed to furnish to you in connection with your efforts relating to the Harsimus Branch The document discovery sought any documents and emails transmitted to or from you with any such individuals, and was not time limited.

472-D

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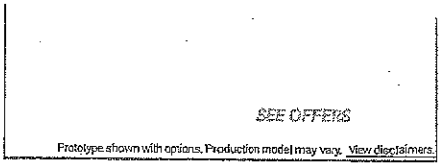
Reply Reply to All Forward More

8/25/16 6:43 pm
8/25/16 7:13 pm
8/25/16 7:34 pm



Horgan, Daniel <dehorgan@lawwmm.com> Aug 25 at 8:50 PM
To C. Montange
CC jim riffin, Robert Jenkins, Adam Sloane, Eric Strohmeyer

This response confirms that this a useless effort chasing wild ponies

Sent from my iPhone

8/25/16 8:50 pm

> Show original message

8/25/16 8:55 pm

Reply Reply to All Forward More

Max Me on flickr

https://mg.mail.yahoo.com/neo/launch?.rand=c7eer7flkrkr5#4907386953 1/1

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Spam (2)
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Smart Views
Important
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Starred
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Social
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Travel
Finance
Folders
bc rail royal hudson 3...
Drafts
vicksburg
Recent

Letter to Dring (3)

People

jim riffin <jimriffin@yahoo.com> Aug 25 at 8:55 PM
To C. Montange, Daniel Horgan, Robert Jenkins, Adam Sloane, Eric Strohmeyer

The appended letter I plan to mail to Dring on Friday. You should have received 103 e-mails (by my count). They are e-mails between Riffin and: Steve Hyman, Vicki Hyman and Dan Horgan. Mr. Montange: I do not even remember who Bruce Nagel is / was. You asked for Steve, Vicki and Horgan. Are you now asking for Nagel, Fritz and the surveying folks? The library shuts down its computers in 3 minutes, so I cannot research those entities tonight. (I was lucky the library let me use their computer for 2.5 hours. The time limit is normally only one hour.) Montange's name was always listed first, so Montange definitely got everything that was forwarded. I only got one error message: re Horgan.

STATUS Report to ALL DRING

STB NJ AB_.pdf

472-E

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All jim, search your mailbox Search Mail Search Web Home jim

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Drafts (6)
Sent
Archive
Spam (2)
Trash (22)
Smart Views
Important
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Starred
People
Social
Shopping
Travel
Finance
Folders
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Drafts
vicksburg
Recent

Use These Great Genealogy Resources

Letter to Dring (3)

People

C. Montange <c.montange@frontier.com> Aug 25 at 10:00 PM
To jim riffin, Daniel Horgan, Robert Jenkins, Adam Sloane, Eric Strohmeyer

The "agreement" was that you would supply all emails between yourself and agents or reps of the LLCs. You have not. You have spent, by your own statement at the end of 100 emails, about two hours sending those out. This is a clerical kind of task. You have so far spent far more time (replying to motions to compel, forcing a hearing, etc.) resisting discovery than in complying. I request that you simply finish sending emails between yourself and agents of the LLCs, as our discovery requests require. And if you have documents you exchanged outside the emails, those too. I have misrepresented nothing to you. By your own statements to date, a couple more hours should do it. This is hardly burdensome given the information sought, especially for a party voluntarily participating in the proceeding over the objection of the railroad and the City, and representing at STB, the Supreme Court, and to me personally that he is doing so as a real estate play on behalf of Mr. Hyman's interests. That is an abuse of process. For what it is worth, the City has spent orders of magnitude more time responding to the LLCs repeated OPRA discovery, and I personally have had to spend far more time responding to the LLCs' discovery requests. . I think you should comply with our discovery requests. Incidentally, Nagel is a name you can type into the email search as easily as Horgan or Hyman. And I am relatively confident that a gentleman of your professed astuteness is able to

recall with whom he has corresponded in connection with your machinations with or for Mr. Hyman and the LLCs in connection with the Harsimus Branch.

8/25/16 10:00pm

Show original message

Reply Reply to All Forward More

C. Montange <c.montange@frontier.com> Aug 26 at 1:52 AM
To jim riffin, Daniel Horgan, Robert Jenkins, Adam Sloane, Eric Strohmeyer

8/26/16 1:52 AM

I see no problem in individual forwarding: that ensures that potentially large data packets get through, but here is the yahoo support link if you ever have technical issues with your yahoo email.
https://help.yahoo.com/kb/helpcentral

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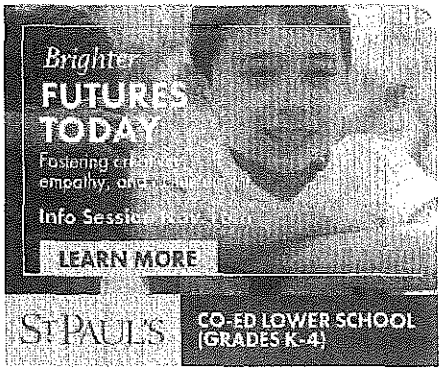
472-F

Reply Reply to All Forward More

Sam's Club
Club Pickup
Order online. Pick up in club. Done!
Help your business save time and money. Join now.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Fostering critical empathy, and ...
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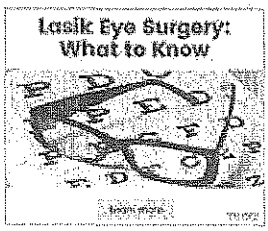
Recent



GIVE
SOMETHING
that means
SOMETHING
American Red Cross
Donate at redcross.org

1189 motion to compel against Riffin (5)

People

jim riffin <jimriffin@yahoo.com> Aug 26 at 1:51 PM
To C. Montange, Daniel Horgan, Robert Jenkins, Adam Sloane, Eric Strohmeyer

Per my agreement here are the three bankruptcy numbers: James Riffin: 10-11248; WMS LLC: 11-13085; BRL LLC: 11-15870.

It is my position that as of now, I have complied with all of my discovery obligations that I stipulated to.

As for 'Bruce Nagel:' I did type in 'bruce nagel' into my yahoo search engine. The response given was: Nothing found. Try the Web. So I tried the Web. There is a Bruce Nagel that is an architect. I have a vague recollection of having a telephone conversation with an architect many months ago. But it is a really vague memory. (Things that have little or no importance to me in the present, or immediate future, I quickly 'delete' from my brain's memory.)

As for Fritz Kahn: He is an attorney. I tried to hire him. Anything that passed between us is privileged.

As for the 'surveyor:' I tried to hire a surveyor, to survey the Metro Plaza parcel. His quoted fee was extremely high. After several months of no progress, I 'disengaged' him. (If I ever actually 'engaged' him.) I never actually ever met him. We had a few telephone conversations, a year or so ago.

My 'comments' to ALJ Dring were mailed 8-26-16.

Mr. Montange: If you want any more, you will have to ask ALJ Dring to order it. I have no idea who the LLCs' may have hired as 'agents.' (Other than Mr. Horgan.) Nor do I have any interest in knowing. Nor do I have any right to learn this information.

The time you have spent responding to / initiating discovery, have resulted in many 'billable hours.' I have no one to 'bill.' So there is a substantial difference between the hours you spend with this litigation, and the hours that I spend responding to your (unjustified / unreasonable) requests. But it was less time consuming to just send you the e-mails, as opposed to litigating whether I have a legal obligation to send you the e-mails. The point that I was making was: Just because you think that doing something is 'easy,' or can be quickly done, does not mean that it in fact will be 'easy.' Or even possible. And you need to be careful what you represent to a judge. Particularly ALJ Dring.

8/26/16 1:51 PM

Reply Reply to All Forward More

C. Montange 1. Given what you say, I under Aug 26 at 2:31 PM

472-G

jim riffin <jimriffin@yahoo.com> Aug 26 at 2:38 PM

Max Ma on flickr

C. Montange <c.montange@frontier.com> Aug 26 at 2:31 PM
To jim riffin, Daniel Horgan, Robert Jenkins, Adam Sloane, Eric Strohmeyer

8/26/16 2:31 PM

1. Given what you say, I understand that your discovery response is in your judgment complete as of Thursday after your spent a couple hours forwarding 100 emails and then prepared and sent the attached letter to Judge Dring. Please verify that your letter is what is attached. If your letter to ALJ Dring is other than that attached hereto, please provide it forthwith. For the record, your discovery response is deficient for a variety of reasons, and we reserve all our rights.

2. You did not provide any information on dockets for you bankruptcies until your email of Aug 26 below. Which courts are associated with which numbers so they will be meaningful?

3. I have but one further response to your snarky comments about attorney fees. City et al appropriately believe that some resources spent on discovery to prevent abuse of STB processes and remedies is better than losing a case due to abuse of STB processes and remedies. We would not have to expend any resources if you had simply cooperated in providing reasonable discovery. You forced two motions to compel and a trip to Washington, D.C., at which time you agreed to discovery and now reneged. You waste more time being recalcitrant than in providing what is easy to provide. Furthermore, you are in this case voluntarily by your own admission to assist Mr. Hyman. On August 23, you told me in front of a witness that you were in this case as a real estate play for what you say is $40 million value that you seek for yourself and Mr. Hyman through non-rail use of the Harsimus Branch. We remain properly concerned that Riffin and the LLCs are abusing or seeking to abuse STB processes, jurisdiction and remedies in order to maximize profits from an unlawful (and according to the LLCs) fraudulent sale of relevant portions of the Harsimus Branch by Conrail to the LLCs.

Have a great weekend everyone.

Max Ma on flickr

472-H

Home Mail Search News Sports Finance Celebrity Weather Answers Flickr Mobile Try Yahoo Mail on Firefox

All jim, search your mailbox Search Mail Search Web Home jim

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Drafts (6)
Sent
Archive
Spam (2)
Trash (23)

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1189 motion to compel against Riffin (5)

People

jim riffin <jimriffin@yahoo.com> Aug 26 at 2:38 PM
To C. Montange, Daniel Horgan, Robert Jenkins, Adam Sloane, Eric Strohmeyer

The letter I sent to Dring is the same as the one I sent to you, with one exception: I changed the bankruptcy info provided date to August 26,2016.

U.S. Bankruptcy Court, Maryland, Baltimore Division.

Show original message

Reply Reply to All Forward More

C. Montange <c.montange@frontier.com> Aug 26 at 2:53 PM
To jim riffin, Daniel Horgan, Robert Jenkins, Adam Sloane, Eric Strohmeyer

Please send by attachment to me exactly what you sent to ALJ Dring.

Thank you for the court associated with the numbers.

Show original message

Reply Reply to All Forward More

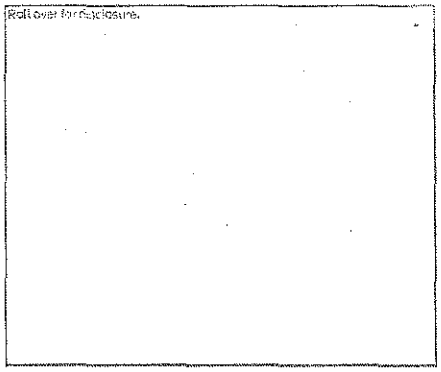
jim riffin <jimriffin@yahoo.com> Aug 27 at 2:07 PM
To C. Montange, Daniel Horgan, Robert Jenkins, Adam Sloane, Eric Strohmeyer

You have precisely what I sent to Dring. I merely crossed out the 25 and replaced it, by hand, with a 26.

Show original message

Reply Reply to All Forward More

Click to Reply, Reply All or Forward



8/26/16 2:38 PM
8/26/16 2:53 PM
8/27/16 2:07 PM

472-I

Send

Max Ma on flickr

JAMES RIFFIN

PETITIONER

V.

SURFACE TRANSPORTATION BOARD

RESPONDENT

APPEAL OF AN INITIAL ALJ DECISION OF

THE SURFACE TRANSPORTATION BOARD

AB 167 (Sub. No. 1189X)

(Harsimus Branch – Jersey City, NJ)

RECORD EXTRACT

VOLUME FOUR – CITY'S REQUESTS FOR DOCUMENTS FROM CONRAIL AND THE LLCs, WITH REPLIES

PP. 473 - 589

Submitted by: **James Riffin, Petitioner,** ***pro se***
P. O. Box 4044
Timonium, MD 21094
(443) 414-6210

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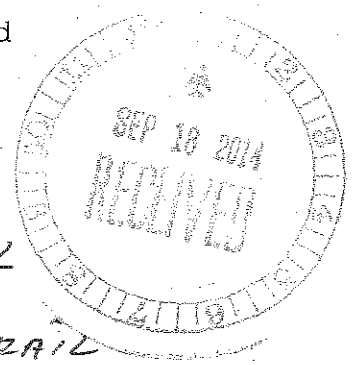
Before the Surface Transportation Board



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Motion to Compel Discovery and Against Conrail

ENTERED
Office of Proceedings
September 18, 2014
Part of
Public Record

Motion on behalf of City of Jersey City et al

to Compel Consolidated Rail Corporation et al

to Respond to Discovery (Document) Requests

City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (City et al) hereby move, pursuant to 49 C.F.R. 1114.21, 1114.30, and 1114.31, for an order compelling Consolidated Rail (Conrail), Norfolk Southern (NS) and CSX Corporation (CSX) to respond fully and completely to document requests tendered on behalf of City et al.

A copy of the most recent version of the document requests (dated August 11, 2014) is set forth in Exhibit A, attached hereto. That request called for a response by September 3, 2014. Conrail served a written refusal to supply any document

473

(in the form of blanket objections) on that date. The refusal is set forth in Exhibit B, attached hereto.

Three of the document requests (numbers 12, 13 and 14) requested documents that may exist in files of NS and CSX. NS and CSX have made no response at all, by objection or otherwise, to the document requests and thus are in default.

Background

Unlawful sale. In 2005, Conrail unlawfully sold a portion of a line of railroad known as the Harsimus Branch to eight commonly owned and controlled LLCs (212 Marin Boulevard LLC, et al) without an abandonment authorization. The portion of the line of railroad sold contained the historic Sixth Street Embankment, which Conrail knew was eligible for the National Register of Historic Places, and thus protected under 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470f), since 2000. The unlawful sale not only evaded STB licensing jurisdiction, but also meaningful application of section 106 to the property. It is part of an unlawful anticipatory demolition of the Harsimus Branch in violation of NHPA section 110(k), 16 U.S.C. 470h-2(k).

Federal proceedings. When efforts to resolve the matter by negotiation failed, City et al challenged Conrail's unlawful sale of the Harsimus Branch to the LLCs in F.D. 34818 in January 2006. City et al have sought meaningful relief since that time.

During the course of the many maneuvers by Conrail and the LLCs to prevent City et al from obtaining relief, Conrail filed this abandonment proceeding, and NS and CSX (parents of Conrail) the associated discontinuance proceedings.

However, at the same time Conrail brought this abandonment proceeding, Conrail and the LLCs petitioned for review of STB's orders in F.D. 34818. Conrail and the LLCs took the position that the Harsimus Branch was not a line of railroad, and that this Board lacked jurisdiction to determine that the Harsimus Branch was a line of railroad subject to its abandonment jurisdiction. In 2009 they were successful, inasmuch as the D.C. Circuit vacated this Board's decisions in F.D. 34818, finding that the agency lacked jurisdiction until the United States District Court for the District of Columbia determined that the Harsimus Branch was a line of railroad. See Conrail v. STB, 571 F.3d 13 (D.C.Cir. 2009). Since that time (shortly after this abandonment proceeding was started), this proceeding has effectively been in abeyance, either de facto or by order.

Contrary to their theory in the court of appeals, the LLCs ultimately stipulated that the property was a line of railroad under STB jurisdiction, and Conrail stipulated no contest. Over the continued opposition of the LLCs, City et al moved for summary judgment in effect that the Board had abandonment jurisdiction. The United States District Court for the District

of Columbia, sitting as 3-R Act Special Court, granted summary judgment in City of Jersey City v. Conrail, 968 F.Supp. 2d 302 (D.D.C. 2013) that the Harsimus Branch was indeed a line of railroad subject to STB abandonment jurisdiction.

City et al then sought lifting of the abeyance order at STB. Conrail and the LLCs opposed pending the LLCs' appeal of summary judgment. The court of appeals summarily affirmed the U.S. District Court in an unpublished decision. Once the period for Supreme Court review lapsed, this agency lifted the abeyance order.

Information Disclosed in U.S.D.C. Proceedings

In the course of the proceedings in United States District Court, the LLCs admitted that Conrail had fraudulently misrepresented to them, the courts, this agency and the City that the Harsimus Branch was something other than a line of railroad. Conrail responded in essence that the LLCs were aware of should have been aware of the relevant facts at all times pertinent. If the LLCs were aware or should have been aware, then so should Conrail. The combination of admissions constitute an admission that Conrail and the LLCs intentionally

misled the agency, the courts and the City in an effort to evade STB abandonment regulation, including NHPA section 106.[1]

In addition, the LLCS disclosed to the United States District Court that they had entered into various agreements with Conrail, including a 2007 agreement to secure the property in question to the LLCs evidently notwithstanding actions by tribunals with jurisdiction. Such agreements confirm that any section 106 process undertaken at this time is meaningless, and that a section 110(k) [16 U.S.C. 470h-2(k)] anticipatory demolition has transpired. In that event, this agency may not grant an abandonment license, absent conditioning to allow a meaningful section 106 process, which would entail among other things voiding the unlawful 2005 transfer and ordering a transfer to the City notwithstanding Conrail's 2007 agreement with the LLCs to secure the property to the LLCs.

Discovery

On inquiry to the Office of Environmental Analysis (OEA), City et al was advised that the agency lacks resources and procedures to investigate or to examine matters pertinent to section 110(k), such as evaluation of intent. Nonetheless, section 110(k) is unquestionably applicable to STB proceedings.

---

[1] Documents demonstrating the facts asserted in this paragraph, and elsewhere in this overview, are already on file in this proceeding and are summarized in Appendix I to this Motion.

See 36 C.F.R. 800.9(c). In light of STB's limited resources, it falls on the parties who have sustained injury by reason of the section 110(k) violation to seek and to present argument concerning the violation. Since Conrail is clearly not voluntarily providing such evidence and information, it must be sought using this agency's discovery procedures.

There has been no discovery in this proceeding, which was in de facto abeyance shortly after it commenced. In all events, this is the first discovery opportunity available since information came to light in 2012-13 not only constituting admissions by Conrail and the LLCs of an intentional evasion of STB jurisdiction, but also disclosure by the LLCs that they and Conrail had entered into one or more agreements commencing in 2007 in furtherance of the evasion (including an agreement to neuter any remedies this agency might afford).

After the D.C. Circuit's summary affirmance of the U.S.District Court summary judgment in favor of City et al, City et al accordingly served a set of document requests upon Conrail, CSX and NS on May 6, 2014 on matters relating to the fraudulent misrepresentation allegations and on the agreements to further the fraudulent misrepresentations and to deny meaningful relief to the City.

Conrail, NS and CSX by their attorneys refused to respond on the ground that AB 167 (Sub-no. 1189X) was still in abeyance

by letter dated May 16, 2014. Conrail's letter (Exhibit C) hinted that Conrail might view the request as burdensome, harboring improper motive, or lacking relevance.

City et al through counsel assured Conrail that City et al would be willing to discuss "any reasonable idea" to reduce burden, that the requests were in any event unobjectionable, and invited Conrail to join in seeking a lifting of the abeyance (email dated May 16, 2014, Exhibit D). Conrail declined to seek a lifting of the stay, and declined to discuss the discovery requests.

In the meantime, the LLCs (notwithstanding the judicial determination that the Harsimus Branch was a line subject to STB abandonment jurisdiction) filed a Petition with STB (F.D. 35825) for a determination that the Harsimus Branch was not a line subject to STB abandonment jurisdiction. STB denied the Petition in a decision served August 11, 2014. The LLCs have moved for reconsideration.

In a decision served in this abandonment proceeding (AB 167-1189X) on the same date (August 11), this Board lifted the abeyance order. City et al served (for a second time) the document requests upon Conrail, CSX and NS by email and express the same day, seeking a response by September 3, 2014. In the cover letter (p.2 of letter in Exhibit A), City again expressed a willingness to negotiate reasonable response limitations to

requests Conrail felt unnecessarily burdensome. On September 3, 2014, Conrail responded with the objections attached as Exhibit B and no documents at all. CSX and NS did not respond.

I. Conrail's General Objections Are Misplaced

1. Timeliness objection.

Conrail claims City et al's discovery requests are "grossly untimely." In light of (a) the proceeding being held in abeyance until August 11, 2014; (b) the admissions and disclosures in United States District Court by the LLCs and Conrail in 2012-13; (c) the Board's August 11 decision directing a supplemental environmental process; and (d) the Board's duties under, inter alia, sections 110(k) and 106 of the NHPA, any claim that City et al's discovery requests are untimely is frivolous. Conrail's "notice of exemption" on which this abandonment proceeding is based was filed on February 26, 2009. Oral argument in the Conrail/LLCs' appeal to deprive this agency of jurisdiction was on April 20, 2009, with a decision in June 26, 2009. This proceeding had been in a de facto abeyance since oral argument in April 2009, and certainly since the decision in June 2009. The Board placed this proceeding in formal abeyance in a decision issued April 20, 2010. The SEA's Environmental Assessment was issued on March 23, 2009, obviously before there was any time for discovery, and certainly there was no time for discovery on the "environmental" issues Conrail

thinks germane. Tendering discovery requests on August 11, 2014, on the very day the Board reactivated this proceeding, is obviously timely. The requests were tendered at the earliest opportunity. Indeed, Conrail had a complete foreshadowing of the requests months before, for they were first tendered on or about May 6.

2. Prior opportunity objection.

Conrail claims that City et al had substantial discovery in 2006 in F.D. 34818. City et al had next to no discovery in 2006. First, the discovery was time limited[2] and focused on use (number of carloadings) and users (customers) for the line, and second, Conrail claimed almost all relevant documents were on outdated computer tapes no longer accessible, at least to normal mortals, or even to experts, since by that time City et al's opening statement was due.[3] The issues are now different. The issues in AB 167-1189X are not whether the property was a line. Instead, the issues, among other things, are what Conrail and

---

[2] This Board established a schedule in F.D. 34818 by way of a Decision served February 8, 2006. That schedule required City et al to file an opening statement on March 10, 2006 (essentially four weeks later). City et al immediately served some document requests, as to which Conrail and the LLCs obtained a protective order by Decision served March 2, 2006. Disovery during that brief period was obviously truncated.

[3] The time between entry of the protective order and due date of City et al's opening statement was all of eight days. See note 2.

the LLCs knew or should have known, and whether they intentionally evaded federal licensing authority. While City et al views the evasion as self-evidently intentional based on Conrail and LLC admissions to date, Conrail is in denial, and thus the whole matter remains the prime subject for discovery. In light of this, the issues are not those of 2006, but instead the issues now relate to application and enforcement of section 110(k) (intent to evade STB jurisdiction), meaningful application of section 106, and protection of the integrity of STB jurisdiction and remedies generally. The gravity of these issues is underscored by the disclosures by the LLCs and Conrail in 2012-13 concerning fraudulent misrepresentations to the City, the courts, and this agency, and by the LLCs concerning the existence of various agreements to evade this Board's jurisdiction or to circumvent effective remedies for the unlawful abandonment. See Appendix I. As we indicated in our Reply to Conrail's "Supplemental Environmental and Historic Report" and Supplemental Comments on Environmental Assessment served 3/23/2009 which City et al filed on September 3 filing (incorporated by reference herein) in this proceeding, all these issues require examination by this Board.

City et al have not had any meaningful opportunity for discovery on these matters until now. Nor has this Board had

any opportunity to examine the issues, especially in light of the disclosures in United States District Court.

3. Relevancy objection.

Conrail claims the discovery is aimed at matters neither relevant nor likely to produce relevant information, because they differ from issues of concern to bringing the 2009 "Environmental Assessment" ("EA") "up to date." Conrail Response at 2. Conrail also says that the OEA in the March 2009 EA resolved section 110(k) issues in Conrail's favor. STB's OEA published the original EA in March of 2009 roughly three weeks after Conrail filed its notice of exemption. The original EA purports to deal with section 110(k), but is obviously deficient in that regard, as we showed in our September 3 Reply. Even more troubling, as OEA staff have stated to us, they lack resources and procedures to deal with section 110(k) matters. In any event, the EA is clearly not up to date on section 110(k). The existing EA instead bases conclusions concerning 110(k) on actions it asserts the City took before the year 2000, or on Conrail's filing of an abandonment proceeding that the railroad at the same time sought to render moot. Nothing the City did at any time immunized Conrail from its duty to comply with this agency's abandonment jurisdiction. And Conrail's belated actions before this agency years later only trigger section 110(k); they are the opposite of showing that the

statute is not applicable. The 2009 EA is thus defective as a matter of law, and in all events it is oblivious to all the disclosures and admissions by the LLCs and Conrail in 2012-2013 in United States District Court. See City et al Reply, supra, filed September 3, 2014, incorporated herein. These disclosures and admissions include the fact that the LLCs and Conrail entered into agreements for intentional evasion of STB jurisdiction, which of course includes section 106, and to circumvent effective remedies. This not only implicates section 110(k) but also suggests that Conrail and the LLCs sought, and continue to seek, to thwart STB jurisdiction generally. City et al's discovery is highly germane.

4. Conrail's misrepresentation of City et al's position.

In a bold attempt to suggest that section 110(k) is irrelevant, Conrail at p. 3 of its "Response" acknowledges that under section 110(k), this Board may not license the abandonment. Conrail then in boldface type claims "[b]ut the City Parties clearly are not seeking to have the Board deny abandonment authorization, and they never suggested that Conrail should withdraw its abandonment notice." This Conrail boldface claim is a combination of fiction and delusion on the railroad's part.

City et al has repeatedly filed extensive objections to abandonment in light of section 110(k) and Conrail's misconduct

generally. For example, we filed a letter and extensive exhibits on January 21, 2009 (a month in advance of Conrail's notice of exemption) noting that this Board could not lawfully license Conrail's proposed abandonment absent a finding of "justification" and consultation with the Advisory Council on Historic Preservation. There is absolutely no showing of "justification" in this proceeding. Instead, the LLCs and Conrail entered into an agreement in 2007 to circumvent STB remedies. No abandonment license may be issued here unless the Board voids the deeds to the developer (or orders reconveyance of the property by the LLCs to Conrail), and further directs Conrail to convey the property to the City at the same price paid by the LLCs in the illegal abandonment.

City et al restated its January 2009 request for relief in a formal "Restatement" filed March 13, 2009. City et al objected to OEA's EA conclusions concerning environmental matters generally and section 106 and 110(k) matters specifically in "Additional Comments" filed May 7, 2009. We formally moved to reopen on, inter alia, section 110(k) grounds filed May 7, 2009.

City et al reiterated our objections, especially in light of the evidence that came to light in the United States District Court in 2012-2013 in our Reply, supra, filed September 3, 2014.

Conrail's boldface is thus wrong at least four times over and has been wrong since January 2009, before the railroad filed this abandonment proceeding.

As to Conrail's use of class exemption notice procedures, City et al have also repeatedly objected. For example, City et al objected to use of 49 C.F.R. 1152.50 procedures in this proceeding in an Opposition filed January 15, 2009, before Conrail filed the notice of exemption on which this proceeding is now based. City et al restated our objection in our Restatement of Previously Requested Relief and Reservation of Rights, filed March 13, 2009. We filed "Additional Comments" and a "Motion to Reopen" on May 7, 2009, objecting inter alia to insufficiency of notice provided by Conrail in this proceeding (Conrail failed to comply with the regulatory requirement for newspaper notice in the county where the abandonment is located). We further noted our objections to use of notice proceedings for controversial cases such as this one in our Reply filed September 3, 2014. Again, Conrail's boldface claim that City et al are not seeking a denial of Conrail's abandonment authorization ignores the record four additional times over and since January 2009.

City et al have repeatedly indicated that this Board should not allow Conrail to use exemption procedures in controversial cases such as this. We have repeatedly opposed any abandonment

authorization unless conditioned on deed voidance and transfer of the property to the City for public use (rail and/or trail and open space) consistent with historic preservation.

Conrail's boldface claim is a boldface "untruth."

Moreover, Conrail's stonewalling our discovery seems to underscore why the two year out-of-service notice procedure is inappropriate here. Conrail is apparently using the procedure as an excuse to evade discovery and to ram through an illegal abandonment without any effective remedies. This agency has said that parties like Conrail and the LLCs engaging in unlawful transfers of a rail line without abandonment authority for the purpose of degrading and destroying the line are engaged in an "abuse" from which they must not "be allowed to profit." SF&L Railway, Inc. - Acquisition and Operation Exemption - Toledo, Peoria and Western Railway, F.D. 33995, served Oct. 17, 2002, slip at 19 & n.35.

5. Conrail's denial argument.

Conrail claims that the 2007 agreement it struck with the LLCs to avoid being sued by them for damages for fraud does not reflect unlawful motive or purpose. Conrail Response at 3. Conrail does not give any reason for this conclusion. Evidently we are to trust the railroad because it is Conrail. But it is too late for that; too much that was invisible is now visible. The LLCs in United States District Court charged Conrail with

fraud on themselves, this agency, the courts and the City. Conrail and the LLCs entered into an agreement in 2007 providing that the LLCs would not sue Conrail so long as Conrail cooperates with them, and secures the property to them, and claimed in District Court that Conrail was in breach. The whole episode leads to a number of conclusions, none favorable to Conrail. For example, an agreement by Conrail to cooperate so it is not sued for fraud reflects a motive to evade liability for unlawful or tortious behavior. Such an agreement calls for further evasion of effective remedies for past misconduct and amounts to an agreement to cover up as well. It suggests two parties fear they have been caught, and are attempting to secure the profit from the unlawful dismantlement of a line. In sum, rather than complying with the law, the 2007 agreement indicates that Conrail and the LLCs set out to thwart it.

This is corroborated by what happened after the agreement. The LLCs (sometimes joined by Conrail) launched a wave of federal and state litigation, including SLAPP suits, against City et al and their attorneys. Indeed, the manager of Conrail's chosen developer (the LLCs) threatened to bankrupt with litigation anyone who mentioned the work "Embankment."[4]

[4] The LLCs' manager has confessed on the record that he threatened to bankrupt personally the leadership of the Embankment Preservation Coalition "when this is all over." Transcript of Zoning Board of Adjustment Proceeding, Case Z09-

More recently, the manager for the LLCs offered to donate the historic Embankment to a neighboring city for use as fill for hurricane protection. See Appendix I. According to the LLCs, there are additional agreements with Conrail similar or ancillary to the 2007 agreement to accomplish the illegal abandonment. All these agreements and the facts surrounding them are germane to the application of section 110(k) and to the crafting of appropriate relief to protect the integrity of this Board's jurisdiction and processes.

6. Process integrity.

Conrail's various objections are specious for another reason. Conrail's chosen developer has stated that Conrail engaged in fraudulent misrepresentations to the developer, the courts, this agency, and the City concerning the regulation of the Harsimus Branch. This goes beyond environmental issues. It is a charge by a party in a position to know (indeed, Conrail presented extensive evidence that the LLCs very much knew) that Conrail was engaged in an intentional or at least actionably negligent evasion of federal regulation. That kind of conduct calls for effective remedies. To reiterate, this Board has said

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010, 212 Marin Boulevard, et al., April 5, 2011, at p. 146. The LLCs' manager also said he would "devastate" the City. Id. at 140. The LLCs' manager appears frequently before the Jersey City Council to advise them that he is winning, and they are only losing money in their attempts to obtain legal remedies before this agency and in the courts.

that parties like Conrail and the LLCs engaging in unlawful transfers of a rail line without abandonment authority for the purpose of degrading and destroying the line are engaged in an "abuse" from which they must not "be allowed to profit." SF&L Railway, Inc. - Acquisition and Operation Exemption - Toledo, Peoria and Western Railway, F.D. 33995, served Oct. 17, 2002, slip at 19 & n.35. The issue goes beyond environmental documentation, and instead involves maintaining the integrity of the agency's jurisdiction and procedures. If parties can get away with what Conrail and the LLCs are attempting, then a meaningful section 106 process is impossible, anticipatory demolition becomes desirable and extremely profitable,[5] and remedies to protect the public in abandonments are equally meaningless.

7. Burdensomeness objection.

All Conrail's objections on ground of burden are specious. City et al offered to negotiate "any reasonable idea" to reduce burden last May. City et al reiterated that offer in its August 11, 2014 letter to Conrail re-serving the document requests. City et al made that offer in good faith. Conrail does not

[5] According to a recent news media report ("Hudson County News" August 4, 2014), the LLCs, who paid Conrail $3 million in the unlawful sale transaction, demand a minimum of $30 million, but also feels the property should be rezoned, and that the property is now worth $50 million to $100 million.

respond. Conrail cannot complain it is burdened when it spurns relief.

8. Privilege objection.

Conrail claims that some of the information sought may be covered by some kind of privilege. Conrail Response at 4. City et al provided an instruction that in the event a privilege is claimed, the document should be identified, parties to it disclosed, and the nature of the privilege asserted. City et al Request for Production pp. 2-3. That is a customary approach for dealing with privileged documents and hardly grounds for objection.

9. Harassment and delay objection.

In its specific objections, Conrail claims that our document requests were tendered for delay and harassment so frequently that we will treat that as a general objection. City et al is sensitive to the harassment issue. City has faced a deluge of state law discovery requests (OPRA) from the LLCs for some years now, and has no wish to face Conrail with what City has faced. Moreover, City et al lack the resources to harass. Our document requests are tendered in order to obtain information germane to the issues in this abandonment proceeding. City et al only wish that STB had the resources of the old ICC to investigate such matters on its own. Moreover, City et al early on advised Conrail we would entertain "any

reasonable idea" to lessen any burden on Conrail; Conrail never responded. We reiterated our offer in our August 11 letter. Conrail responded only with the written objections at issue here.

As to delay, the discovery requests were tendered before this Board lifted the abeyance order. Conrail is responsible for any delay. If Conrail means to complain about delays while this proceeding was in abeyance, the United States District Court for the District of Columbia has already indicated that Conrail's chosen developer (the LLCs) engaged in ploys designed to prejudice the other parties (including most importantly City et al) and to cause unnecessary delay. 969 F.Supp.2d at 303 and 307.

II. Conrail's Specific Objections Are Misplaced

Conrail's specific objections for the most part simply incorporate its general objections. As shown above, Conrail's general objections have no merit. We incorporate our responses to those general objections in each and every response below.

1. Doc. Request 1 seeks the original sales agreements and amendments thereto. The original sales documents and modifications to date are part and parcel of the illegal abandonment. City et al believe that the original "sale" agreement was in the nature of an option only, allowing ample time for due diligence, and that is certainly relevant to

evasion and intent to evade. A request for the original sales documentation and amendments thereto is thus amply relevant or designed to lead to relevant evidence and thus discoverable under 49 C.F.R. 1114.21(a)(2). City et al seek them, and Conrail should now be compelled to produce them.

2. Doc. Request 2 seeks all versions of the October 12, 2007, agreement between Conrail and the LLCs by which the LLCs agreed not to sue Conrail if it cooperated in litigation and secured the property to them (circumvention of effective remedies), as well as any other similar agreements. This document request is obviously relevant, and anything but overbroad. Conrail must be compelled to produce all versions of the October 12, 2006 agreement.

3. Doc. Request 3 seeks documents sufficient to show how Conrail approves real estate transactions. Conrail claims this is not calculated to lead to relevant evidence. Documents showing how Conrail approves real estate transactions are germane to determining who may have been involved in the illegal abandonment, and also to Conrail's intentions. As a minimum, they may lead us to possible candidates for a deposition. Conrail must be compelled to respond.

4. Doc. Request 4 asks for board of director minutes and communications concerning the Harsimus Branch sale. Contrary to Conrail's claim of lack of relevance, what and when its board

of directors was informed, and what its board of directors approved or disapproved, and why, are potentially highly germane to evasion issues, section 110(k) issues, and remedies generally. Boards of directors in general hold ultimate corporate authority and the involvement of Conrail's in this transaction is thus relevant, and certainly may lead to admissible evidence. We know that the Conrail board approved the 2007 agreement by which the LLCs agreed not to sue Conrail if Conrail cooperated with them in litigation against STB and City et al, because the LLCs produced in United States District Court a memo from Jonathan Broder (a Conrail lawyer and officer) so informing the LLCs.

5. Doc. Request 5 is essentially the same as 4 but relates to the 2007 agreement. See our response to number 4. Conrail must be compelled to respond.

6. Doc. Request 6 seeks identification of members of the Conrail board during the relevant time period. Conrail objects that this is "outrageous." Conrail says it is "beyond the pale" that board members would be deposed. Conrail Response at 7. Conrail cites no authority for the proposition that its board members may not be deposed if they may have relevant evidence. We are entitled both to board communications concerning the illegal sale of the Harsimus Branch and the 2007 agreement by Conrail to cooperate with the LLCs so it would not be sued, and

to know who the board members are so we can understand the capacity of the persons mentioned in board communications and undertake further discovery if that appears appropriate. Conrail must be compelled to respond.

7. Doc. Request 7 asks for documents tolling that statute of limitations for suing Conrail concerning the contract to sell the Harsimus Branch. This is another way to search for documents relevant to agreements by Conrail and the LLCs to subvert STB regulation or undermine STB's remedies. Conrail claims that City et al should have sought this information earlier in the proceeding. As already indicated, Conrail's notice of exemption was filed in late February of 2009, and this proceeding shortly thereafter went into a prolonged period of de facto or de jure abeyance due to the claim by the LLCs and Conrail, now renounced, that the Harsimus Branch was conveyed to Conrail as something other than a line of railroad subject to this Board's abandonment jurisdiction. Inasmuch as the LLCs did not disclose until 2012-13 that Conrail had entered into a tolling agreement, and the abandonment proceeding here was in de facto or de jure abeyance until August 11, 2014, this is our first opportunity to seek this information. Conrail must be compelled to respond.

8. Request 8 asks for communications between NJ DOT and Conrail other than pleadings concerning the sale of the Harsimus

Branch or STB proceedings. Conrail's timeliness objection is misplaced for reasons already discussed. Conrail complains about lack of relevance. It is our understanding that NJ DOT may have warned Conrail that the Harsimus Branch was a line of railroad during the title insurance process. That alone is highly germane to Conrail's knowledge and intent to evade STB regulation and STB remedies. Any writing bearing on communications between Conrail and NJ DOT may thus lead to highly relevant evidence of the first order. Conrail must be compelled to respond.

9. Request 9 seeks documents relating to other sales or potential sales of Conrail land between CP Waldo and the point of sale to the LLCs. Conrail's claim that this is untimely is specious for the reasons previously stated. Conrail's claim that this is not relevant is likewise specious. If there are any additional sales or contracts for sale and so forth, then they are further evidence of evasion of this Board's jurisdiction and processes. In addition, the information is potentially germane to claims of severance mounted by the LLCs. Conrail must be compelled to respond.

10. Doc. Request 10 seeks documents identifying those persons who advised or took action or recommended actions for Conrail for the Harsimus Branch from 2000 to date. Conrail says this is irrelevant. The identity of those persons who advise

and act for the corporation is obviously germane to issues of evasion and intention to evade STB jurisdiction and remedies. Conrail must be compelled to respond.

11. Doc. Request 11 seeks similar information as to the LLCs. Conrail objects again on relevancy, and also says that the request should be directed at the LLCs. As to relevancy, our statement in 10 above also applies here. As to asking the LLCs, City et al may well file discovery against the LLCs to the extent our time and resources permit, but City et al are nonetheless within the scope of 49 C.F.R. 1114.21 to ask Conrail for any documents it has showing who was involved for the LLCs. Conrail must be compelled to respond.

12. Doc. Request 12 seeks documents bearing on any inquiry by Conrail employee Ryan, including to NS or CSX, concerning the regulatory status of the Harsimus Branch. Conrail objects on grounds of relevance. Mr. Ryan was an apparent point person for Conrail on the Harsimus Branch transaction. It is clearly relevant to know whether he examined what he claimed to be talking about, and if he did, what he found out, insofar as the documents indicate. Again, the inquiry is well within 49 C.F.R. 1114.21. Conrail must be compelled to respond. NS and CSX did not appear to respond or to lodge objections, and must also be compelled.

13. Request 13 asks for documents from the files of CSX and NS relating to the rail regulatory status, historic nature, and sale of the Harsimus Branch from 2000 to date, other than pleadings in the litigation arising from F.D. 34818. NS and CSX do not respond. Conrail, to which the document request was not directed, claims that what NS and CSX have is "likely" to be copies of what Conrail has, but then objects that the request is "stunningly overbroad." Since the Conrail board of directors is apparently confined for the most part to officers of NS and CSX, it is possible that some of the officers of NS and CSX may have documents relating to the Harsimus Branch which they are keeping in their NS and CSX files. It is hardly stunningly overbroad to ask that someone at least look. As we have said, if Conrail feels something is too burdensome, we will entertain reasonable relief. But Conrail simply lodges a blanket objection. In the circumstances, the information is obviously within the scope of 49 C.F.R. 1114.21, CSX and NS have proceedings piggybacked on AB 167-1189X, and NS and CSX must be compelled to respond.

14. Request 14 calls for documents (other than those prepared by Conrail to contest NJSA 48:12-125.1) showing Conrail, CSX or NS complying with or objecting to a state statute creating a preferential purchase right. Conrail objects on relevancy grounds. Conrail filed a supplemental ER/HR on August 21, 2014, in this proceeding which argued in essence that

City et al has no STB remedies and should rely on state law remedies, but that it lacks funds for such remedies, so (according to Conrail) Conrail and the LLCs have placed City in a position such that it has no meaningful remedies at all. This Conrail argument has been a consistent position of Conrail (and the LLCs) since 2006. NJSA 48:12-125.1 is a state law remedy. It would void the LLCs' deeds, and further provides for a right of first refusal to acquire at the price paid by the LLCs. Conrail has claimed that the remedy in unconstitutional in U.S.D.C. 09-1900. But since Conrail in its August 21 supplement takes the position that City et al have a full and adequate state law remedy, but lack funding, it is germane for City et al to inquire for documents showing whether Conrail, CSX and NS comply or challenge preferential purchase remedies like the New Jersey statute in states where they operate. This information also is germane to whether Conrail intends to evade not only STB remedies but also STB-mediated state law remedies like preferential purchase rights. The information is within 49 C.F.R. 1114.21. Conrail also objects that CSX, NS and Conrail do not operate in some states. This is not an objection. It just means they presumably have no documents relating to those states. Conrail's objections concerning harassment, burden, or attorney client privilege has already been addressed. Conrail must be compelled to respond.

15. First request in August 11 letter asked Conrail for documents relating to sales or transfers or projected sales or transfers in the Waldo to Harsimus area to any interest controlled by the persons in control of the LLCs, or to PATH, from January 1, 2006 to present. Conrail objects on grounds of relevance. Sales or deals concerning parcels in the Waldo area may be as unlawful as the 2005 sale to the LLCs, or related to efforts to evade accountability for that unlawful sale. In addition, the information might be relevant to valuation proceedings (e.g., pending OFA). In all events, it is within 49 C.F.R. 1114.21. Conrail must be compelled to respond.

16. Second request in August 11 letter asked Conrail for documents relating to proposed transactions with the parties controlling the LLCs and Conrail involving the Harsimus Branch or any other property in Jersey City owned by Conrail from January 1, 2003 to date. Conrail objects on grounds of relevance. This request would result in production of documents showing the course of dealings between the LLCs and Conrail in regard to the Harsimus Branch, and is germane to issues of evasion of STB regulation as well as cover up of evasion. It is well within 49 C.F.R. 1114.21 to ask about the unlawful sale of the Harsimus Branch to the LLCs without the required prior STB authorization. Conrail must be compelled to respond. Conrail's

various objections of harassment, privilege, and so forth have already been shown to be inapplicable.

III. Investigation

As City et al discussed in our September 3 Reply, supra, the ICC when faced with an unlawful abandonment would conduct an investigation. The law concerning illegal abandonments has not changed in relevant part, but STB lacks the field offices and staff that ICC enjoyed. STB thus relies almost exclusively on voluntary compliance. That has not occurred in the case of Conrail.

From City et al's resource point of view, City et al would much prefer that STB conduct an investigation by sending attorneys and specialists to examine Conrail personnel and documents first hand, relieving City et al of at least some of the burden of seeking discovery. But we recognize that STB no longer has sufficient personnel, and, as the agency says, now finds out about illegal abandonments after the fact.[6]

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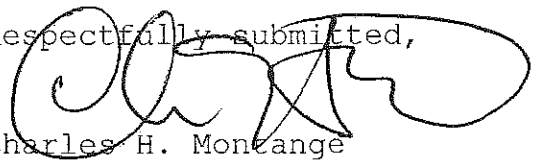
[6] Consummation of Rail Line Abandonments that Are Subject to Historic Preservation and Other Environmental Conditions, Ex Parte 678, served April 23, 2008, slip op. at 4 ("In some cases railroads have taken actions affecting rail property without first seeking abandonment authority. When this occurs on inactive lines, we generally do not discover these actions until after the fact when the carrier seeks abandonment authority. Such actions are unlawful.").

This does not mean that railroads such as Conrail should be immune to discovery requests designed to develop the facts and to explore issues germane to the illegal abandonments. Destruction and sale of rail lines without STB prior authorization remains "unlawful." City et al accordingly request this agency to issue an order compelling Conrail to respond fully and completely to all of our discovery requests, if possible no later than October 16, 2009, in order to avoid delay in this proceeding, so the dimensions of Conrail's unlawful actions may be explored, at least in a limited fashion. Conrail is not entitled to a rubber stamp no matter how loudly it stomps its constructive feet at being held to account.

Respectfully submitted,



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Of counsel: Andrea Ferster
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The Duke Ellington Building
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Washington, D.C. 20037

Exhibit A - August 11, 2014, cover letter re-tendering document requests served May 6, 2014.
Exhibit B - Conrail objections served September 3, 2014
Exhibit C - Conrail May 16, 2014 letter refusing respond while Proceeding in abeyance
Exhibit D - City et al May 16, 2014 email response to Exhibit C

Appendix I

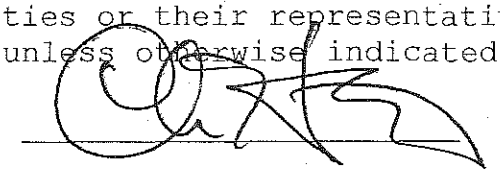
Previously filed evidence includes, but is not limited to, the following, all of which is available on the STB website for this docket:

1. City et al, Notice, filed Nov. 22, 2013 (Exhibit B contains the Developer's Stipulation and Conrail's Stipulation, Exhibit C contains excerpts from the Developer's proposed Answer in which Developer admits Conrail engaged in fraudulent misrepresentations and negligent misrepresentations)
2. Conrail filed a response on December 11, 2013, which attached its brief in U.S.District Court describing how the Developer timely knew all the facts on which the Developer's claims of fraud or negligence by Conrail were based.
3. City et al submission filed May 22, 2014 (Exhibit C sets forth again the Developer's admission that Conrail engaged in fraudulent and negligent misrepresentations; Exhibit D contains a letter from Conrail to SHPO objecting to State and National Register listings - O'Toole to Guzzo, June 4, 1999, and Guzzo's January 25, 2000 noting listing and eligibility nonetheless).
4. City et al motion for a scheduling order (Exhibits include a copy of the 2007 contract between Conrail and Developer, as filed by Developer in U.S.D.C. for D.C. as document 94-3, Conrail's joinder in demolition permit requests, signed Dec. 13, 2007, by V.P. and General Counsel Jonathan Broder after this Board concluded in F.D. 34818 that the Harsimus Branch was a line of railroad; and Decl. by Mr. Marks that Developer offered the Embankment for free as fill to Hoboken in Jan. 2014).

   Other relevant evidence has previously been supplied in FD 34818 or in AB 167-1189X before the proceeding was de facto suspended in 2009.

Certificate of Service

The undersigned hereby certifies service by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, on or before the 17th day of September 2014 addressed to the parties or their representatives per the service list below, unless otherwise indicated.



Service List

[AB 167 (Sub-no. 1189X)]

- with address corrections as of August 2014 -

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Mayer Brown LLP
1999 K Street, NW
Washington, D.C. 20006-1101
For Conrail [by express (next day) delivery, 16 Sept. 2014]

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For 212 Marin et al

And the following self-represented individuals or entities:

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Exhibit A

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FAX: (206) 546-3739

11 August 2014

Robert Jenkins, Esq.
Mayer Brown LLP
1999 K Street, NW
Washington, D.C. 20006

Re: Document Requests to Consolidated Rail Corporation ("Conrail), Norfolk Southern Railway Company ("NS"), and CSX Transportation Company ("CSX")

Conrail - Abandonment - in Hudson County, NJ, AB 167 (Sub-no. 1189X) and AB 55 (Sub-no. 686X) & AB 290 (Sub-no. 306X)

Dear Mr. Jenkins:

Enclosed please find a copy of the document production requests on behalf of City of Jersey City, et al, addressed to Conrail, NS and CSX which were served on May 6, 2014, upon you as counsel for Conrail, NS and CSX. On behalf of Conrail et al, you declined to respond on the ground that AB 167 (Sub-no. 1189X) was being held in abeyance. STB today lifted the stay in the abandonment proceeding. Please treat the attached previously served document requests as renewed on this date, same terms and conditions, with the modification that the response date is now 3 September, 2014.

In addition to the document requests stated in the attachment, my clients also request all documents (same definition as in the attached) bearing upon or relating to sales or transfers, or projected sales or transfers, of property interests of Consolidated Rail Corporation to any interest controlled or owned by Steve Hyman or Victoria Hyman, or the Port Authority of New York and New Jersey (PATH), or any other party (a) in or near the former Waldo Yard in Jersey City, (b) between any portion of the former Waldo Yard in Jersey City and

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the Harsimus Branch, (c) along the former Pennsylvania Railroad mainline between Journal Square and Newark Avenue in Jersey City, and/or (d) along the former River Line (or connections thereto from National Docks Secondary or the Harsimus Branch) between the Bergen Arches Cut and CP Waldo in Jersey City from January 1, 2006 to the date of response. Conrail is specifically requested to produce all maps relating to such sales or transfers, or projected sales or transfers, in its custody or control.

City et al also requests all documents (same definitions, terms and conditions, but with due date of September 3, 2014, as set forth in the attached) constituting, reflecting, or arising out of proposed transactions between Conrail and (a) Victoria Hyman, (b) Steve Hyman, or (c) any company owned or controlled by Victoria or Steve Hyman involving (i) any portion of the Harsimus Branch or (ii) any property in Jersey City owned or controlled by Conrail from January 1, 2003, to the date of response.

As usual, I am pleased to discuss reasonable response limitations if you feel any of these document requests are unnecessarily burdensome.

By my signature below, I hereby certify service of the foregoing on the above date by email and express on Mr. Jenkins at his address of record.

Respectfully submitted,

Charles H. Montange
Counsel for City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition

Att.

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation - Abandonment Exemption - In Hudson County, NJ	)))	AB 167 (Sub-no. 1189X)

And related discontinuance proceedings AB 55 (Sub no. 686X)(CSX Transportation, Inc.) and AB 290 (Sub-no. 306X) (Norfolk Southern Railway Company)

Request for the Production of Documents
Intervenors City et al to Consolidated Rail Corporation, Norfolk Southern and CSX

Pursuant to 49 C.F.R. 1114.30 and other applicable authority, intervenors City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition hereby request that Consolidated Rail Corporation ("Conrail"), Norfolk Southern Railway Company ("NS"), and CSX Transportation Corporation ("CSX") (hereinafter all three collectively referred to as "railroads") produce the following documents for inspection at the offices of Rails to Trails Conservancy, 2121 Ward Court NW, 5th Floor, Washington, D.C. 20037, at 9 AM, 28 May 2014, or such other mutually convenient time and date (no later than 28 May 2014) is arranged between counsel, or deliver copies of the said documents to counsel for City et al his address below on or before that date

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pursuant to reasonable terms for payment for costs of duplication and delivery agreed to in writing between counsel.

Definitions. For purposes of this Request, document shall mean any writing, notation, or record, regardless of form, and including but limited to both electronic and non-electronic media, including emails, diaries, business records, and all documents maintained, retained, authored, copied on, or received by consultants, officers, employees, negotiators, board members, attorneys otherwise working for or on behalf of the railroads or any one of them.

Harsimus Branch shall mean any portion of the line of railroad between CP Waldo and Marin Boulevard in Jersey City transferred to Conrail as line code 1420, which line of railroad is the subject of the abandonment proceeding bearing STB docket AB 167 (Sub-no. 1189X).

"The LLCs" shall mean one, more or all of 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Coles Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, and 446 Newark Avenue, LLC.

Additional instructions. If the railroads claim privilege against disclosure of one or more documents, such as an attorney client privilege, then please identify the document by providing

its author, the persons to whom it was directed, the persons who received copies of it, its date, its basic subject matter, the document request to which it is responsive, and the basis for the claim of privilege.

Document requests. All the following documents are hereby requested pursuant to the foregoing definitions and conditions:

1. All versions of the following documents as referenced in the Memorandum of Understanding executed by "Conrail," SLH Holding Company, and "the LLCs" signed October 12, 2007 by Jonathan Broder and a person believed to be S. Hyman, which Memorandum of Understanding was filed by the LLCs as document 94-02 (filed 11/08/12) in U.S.D.C. 09-1900:

   (a) "Agreement of Sale dated June 24, 2003"

   (b) "letters dated September 22, 2003, May 7, 2004, and September 15, 2004"

   (c) "Amendment of Agreement of Sale dated October 27, 2004"

   (d) All writings that relate in any way to the foregoing (a), (b), or (c).

   (e) Any other amendments or modifications to any agreement for the sale of any portion of the Harsimus Branch to any interest owned or controlled, directly or indirectly, by Victoria or Steve Hyman.

2. All versions of the Memorandum of Understanding signed or dated October 12, 2007, by Broder and Hyman as referenced above, and any other agreements or documents reflecting written or oral understandings between one or more of Conrail, the LLCs, or SLH Holding Company "to maintain the benefit of the 2005 sale" of portions of the Harsimus Branch to SLH Holding Company or the LLCs.

3. Documents sufficient to show any policy of Conrail for approval by officers and/or the board of directors of Conrail for real estate, including but not limited to the Harsimus Branch, applicable from 2002 to the date of this document request, including but not limited to any requirements for board approval for sales exceeding certain valuations.

4. All documents, including but not limited to, corporate minutes and communications with, to, from or concerning the board of directors of Conrail, including presentations to the board of directors of Conrail, concerning the sale of any portion of the Harsimus Branch to SLH Holding Company or "the LLCs," including but not limited to any documents relating to approval or to withholding of approval of sales

agreements, or amendments of sales agreement, relating to any portion of the Harsimus Branch.

5. All documents, including but not limited to, corporate minutes and communications with, to, from or concerning the board of directors of Conrail, including presentations to the board of directors of Conrail, concerning the Memorandum of Understanding signed October 12, 2007 by Broder and Hyman as referenced above.

6. Documents sufficient to set forth the name and current business address of members of the Conrail board of directors 2002 to the date of this document request (or a list with relevant dates of service, names and business addresses).

7. All documents relating to agreements or understandings purporting to toll any statute of limitations defense that may be asserted by Conrail or an attorney representing any party (including but not limited to Conrail) to the Agreement of Sale dated June 24, 2003, as later amended.

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8. All documents relating to any communication to or from the New Jersey Department of Transportation concerning sale or purported sale of the Harsimus Branch or the need for regulatory action by the Surface Transportation Board concerning same, other than pleadings filed on behalf of the New Jersey Department of Transportation or the attorney general of New Jersey in U.S.D.C. 09-1900.

9. All documents relating to sale or potential sale of land or interests in land containing the portion of the Harsimus Branch between CP Waldo and the portion of the Harsimus Branch purportedly sold to SLH Holding Company and/or the LLCs, including but not limited to proposed sales, proposed brokerage agreements, or any other proposal that might result in non-railroad use of that portion of the Harsimus Branch.

10. Documents sufficient to identify (by name, current business address and position during all relevant times at the railroads) all persons advising or taking action for Conrail or recommending action by Conrail in connection with the sale of any portion of the Harsimus Branch from 2000 to date.

11. Documents sufficient to identify (by name, current business address and position during all relevant times at SLH Holding Company or the LLCS) all persons advising or taking action for SLH Holding Company or the LLCs in connection with the sale of the Harsimus Branch from 2000 to date.

12. All documents reflecting any inquiry by Conrail employee Ryan or Conrail attorney Fiorilla or any other employee or agent of Conrail directed to any other person employed by, retained by, or acting as an agent for Conrail, CSX or NS concerning whether the Harsimus Branch was a line of railroad requiring STB abandonment authorization prior to sale to SLH Holding Company or the LLCs, and all documents responsive thereto.

13. All documents in the files of CSX or NS, including the files of their attorneys, consultants, agents, employees, officers and board members, relating to the rail regulatory status, historic nature, or sale of Harsimus Branch from 2000 to date other than pleadings in F.D. 34818, U.S.D.C. 09-1900, or appeals or petitions for review therefrom, or pleadings in this abandonment proceeding.

14. All documents (other than pleadings prepared by Conrail seeking to contest the constitutionality of N.J.S.A. 48:12-125.1) showing NS, CSX or Conrail compliance with, or objection to, any state law that creates a preferential purchase right for public agencies in connection with railroad lines that are subject to STB abandonment proceedings, including but not limited to N.H. Rev. Stat. 228:60-b; Vermont Stat. Ann. § 3404; Mass. Gen., Law, chap 161C, § 7; Conn. Stat. 13b-36(c); New York's Transportation Law § 20.

Respectfully submitted,

Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
206-546-1936
Fax: -3739
Email: c.montange@frontier.com
for Intervenors City et al

Certificate of Service

I hereby certify service of these document requests by email attachment on 6 May 2014 addressed to Robert Jenkins III, counsel for Conrail (and NS and CSX), and by deposit of same for express (next business day) delivery on 6 May 2014 addressed to Mr. Jenkins as his business address of record (Mayer Brown LLP, 1999 K Street, NW, Washington, D.C. 20006).

Charles H. Montange

Exhibit B

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB 167 (SUB-NO. 1189X)

CONSOLIDATED RAIL CORPORATION
—ABANDONMENT EXEMPTION—
IN HUDSON COUNTY, NJ

RESPONSE OF CONSOLIDATED RAIL CORPORATION TO REQUEST FOR PRODUCTION OF DOCUMENTS

Consolidated Rail Corporation ("Conrail") responds herein to the request for production of documents it received from the City of Jersey City, et al. ("City Parties") on August 11, 2014. As described in more detail below, Conrail objects in general to the City Parties' requests on grounds of untimeliness, irrelevance, and privilege. Conrail objects to the specific requests both on those general grounds and on grounds of overbreadth, burden, and harassment.

GENERAL OBJECTIONS

The City Parties' requests are grossly untimely. The issue of the legality of Conrail's sale of the Embankment properties without seeking abandonment authority for the Harsimus Branch was thoroughly joined in the Declaratory Order proceeding (STB Docket No. 34818) that preceded the above-captioned abandonment proceedings. The City Parties obtained substantial document discovery in 2006 both from Conrail and the purchasers of the Embankment properties (the "LLCs"). The City Parties used that discovery extensively both in the Declaratory Order proceeding and in the subsequent abandonment proceedings. Regardless of relevance, most of the matters they are inquiring about now could have been the subject of much earlier discovery requests. Now that these proceeding are in their final stages, it is far too late for the City Parties to serve new document requests.

Furthermore, the discovery requests are neither relevant nor likely to lead the discovery of admissible evidence. The issues framed by the Board in its decision served August 11, 2014 relate only to assuring that the Environmental Assessment ("EA") is up to date and to assessing whether there have been any changes in circumstances since Conrail filed its last supplemental environmental and historic reports that would affect the Board's environmental and historic review.[1] The City Parties' discovery requests do not relate to whether there have been any such changes or to the environmental or historic preservation issues that are before the Board more generally.

The discovery requests also are irrelevant and not likely to lead to the discovery of admissible evidence because they appear to be framed solely to support an argument that Conrail and the LLCs have engaged in a fraudulent scheme, which allegedly would trigger a voiding of the deeds for the property and re-conveyance of the properties to Conrail, and/or the remedies provided for under Section 110(k) of the National Historic Preservation Act ("NHPA"), 16 U.S.C. 470h-2(k)). Conrail continues to vigorously dispute the allegations that it engaged in any fraudulent scheme, but more significantly for present purposes, the allegations are irrelevant because the relief that they allegedly support would do nothing to preserve the integrity of the Board's processes or to preserve or enhance the Board's authority to place conditions upon the abandonment.

As we have previously explained, Conrail has asked the Board to approve abandonment of the Harsimus Branch right of way. Ordering a re-conveyance of the underlying real estate to Conrail would not make any difference to the Board's ability to approve abandonment and impose conditions. The same remedies are available to the Board now that would have been

[1] On August 21, 2014, Conrail filed the supplemental environmental and historic report ordered by the Board.

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available if Conrail had sought abandonment of the Harsimus Branch right of way in 2005. As for the remedies that would be available under Section 110(k) of NHPA, that provision empowers the agency, under certain circumstances, to deny a "license" to a petitioner—in this context, abandonment authority. ***But the City Parties clearly are not seeking to have the Board deny abandonment authorization, and they have never suggested that Conrail should withdraw its abandonment notice.***[2]

The City Parties have attempted to justify new discovery by referring to a 2007 Memorandum of Understanding ("MOU") between Conrail and the LLCs. Nothing in the MOU, however, reflects any unlawful motive or purpose, or otherwise indicates a scheme to unlawfully evade the jurisdiction of the STB. On its face, the MOU merely sets forth an agreement to undertake legal actions to protect the sale of the properties to which Conrail and the LLCs had agreed. The invocation of the MOU is mere make weight to attempt to justify intrusive, burdensome, harassing, and dilatory discovery. The City Parties have been pressing the same theory that the sale of the properties was illegal since the inception of this proceeding. They have been seeking the voiding of the deeds and asserting violations of Section 110(k) of the NHPA throughout these proceedings. OEA already has rejected the City et al.'s Section 110(k) arguments. EA at 14. The MOU cannot justify this latest attempt to resurrect the City Party's allegations and to further delay these proceedings and harass Conrail.

---

[2] In any event, the Section of Environmental Analysis (now and hereafter the Office of Environmental Analysis or "OEA") correctly observed in the March 23, 2009 EA that Conrail has not engaged in any "anticipatory demolition" of historic structures that could violate Section 110(k). Indeed, OEA noted that it was "the City itself" that had been the driving force in pushing for redevelopment of underutilized rail property and trackage. EA at 14.

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Finally, many of the discovery requests are also overbroad, unduly burdensome, and calculated to inquire into matters subject to the attorney-client, settlement, and/or joint interest privileges.[3]

SPECIFIC OBJECTIONS

Request 1.

All versions of the following documents as referenced in the Memorandum of Understanding executed by "Conrail," SLH Holding Company, and "the LLCs" signed October 12, 2007 by Jonathan Broder and a person believed to be S. Hyman, which Memorandum of Understanding was filed by the LLCs as document 94-02 (filed 11/08/12) in U.S.D.C. 09-1900:

(a) "Agreement of Sale dated June 24, 2003"

(b) "letters dated September 22, 2003, May 7, 2004, and September 15, 2004"

(c) "Amendment of Agreement of Sale dated October 27, 2004"

(d) All writings that relate in any way to the foregoing (a), (b), or (c).

(e) Any other amendments or modifications to any agreement for the sale of any portion of the Harsimus Branch to any interest owned or controlled, directly or indirectly, by Victoria or Steve Hyman.

Objection: Conrail incorporates its General Objections by reference. This request also is irrelevant and unlikely to lead the discovery of admissible evidence. Furthermore, this request is untimely. Each of the items designated in subsections (a) through (e) could have been

[3] Conrail also objects to the demand for a privilege log. The great bulk of the material encompassed by the City et al.'s requests is likely to be privileged. The preparation of a privilege log would be unduly burdensome and would yield no information of any value.

inquired into in discovery earlier in this proceeding. Furthermore, subsection (d) of the request in particular is overbroad and unduly burdensome.

Request 2.

All versions of the Memorandum of Understanding signed or dated October 12, 2007, by Broder and Hyman as referenced above, and any other agreements or documents reflecting written or oral understandings between one or more of Conrail, the LLCs, or SLH Holding Company "to maintain the benefit of the 2005 sale" of portions of the Harsimus Branch to SLH Holding Company or the LLCs.

Objection: Conrail incorporates its General Objections by reference. This request also is irrelevant and unlikely to lead the discovery of admissible evidence. Furthermore, this request is overbroad and unduly burdensome and appears calculated to intrude upon applicable Joint Interest and Settlement privileges.

Request 3.

Documents sufficient to show any policy of Conrail for approval by officers and/or the board of directors of Conrail for real estate, including but not limited to the Harsimus Branch, applicable from 2002 to the date of this document request, including but not limited to any requirements for board approval for sales exceeding certain valuations.

Objection: Conrail incorporates its General Objections by reference. This request also is irrelevant and unlikely to lead the discovery of admissible evidence. Conrail's policies for

approval of real estate sales have no conceivable relevance to the issues remaining in this proceeding. Even if they did, this request is untimely, since these matters could have been inquired into in discovery much earlier in this proceeding.

Request 4.

All documents, including but not limited to, corporate minutes and communications with, to, from or concerning the board of directors of Conrail, including presentations to the board of directors of Conrail, concerning the sale of any portion of the Harsimus Branch to SLH Holding Company or "the LLCs," including but not limited to any documents relating to approval or to withholding of approval of sales agreements, or amendments of sales agreement, relating to any portion of the Harsimus Branch.

Objection: Conrail incorporates its General Objections by reference. This request also is irrelevant and unlikely to lead the discovery of admissible evidence. This highly intrusive and unusual request appears designed solely for purposes of harassment and delay. The confidential business deliberations of Conrail's Board on a property sale in 2005 do not have the slightest relevance to the historical and environmental issues remaining in this proceeding. Even if they did, this request is untimely, since it could have been inquired into in discovery much earlier in this proceeding.

Request 5.

All documents, including but not limited to, corporate minutes and communications with, to, from or concerning the board of directors of Conrail, including presentations to the

board of directors of Conrail, concerning the Memorandum of Understanding signed October 12, 2007 by Broder and Hyman as referenced above.

Objection: Conrail incorporates its General Objections by reference. This request also is irrelevant and unlikely to lead the discovery of admissible evidence.

Request 6.

Documents sufficient to set forth the name and current business address of members of the Conrail board of directors 2002 to the date of this document request (or a list with relevant dates of service, names and business addresses).

Objection: Conrail incorporates its General Objections by reference. This request also is irrelevant and unlikely to lead the discovery of admissible evidence. Further, this request appears to have been propounded solely for the purpose of harassment and delay. The identity and business addresses of current and former Conrail Board members is pointless information unless the City Parties intend to seek depositions of those individuals. As outrageous and untimely as the City Parties' document requests are concerning the confidential business deliberations of Conrail's Board, the idea of depositions of individual Board members is beyond the pale.

Request 7.

All documents relating to agreements or understandings purporting to toll any statute of limitations defense that may be asserted by Conrail or an attorney representing any party

(including but not limited to Conrail) to the Agreement of Sale dated June 24, 2003, as later amended.

Objection: Conrail incorporates its General Objections by reference. This request also is irrelevant and unlikely to lead the discovery of admissible evidence. Furthermore, this request is untimely. These matters could have been inquired into in discovery earlier in this proceeding.

Request 8.

All documents relating to any communication to or from the New Jersey Department of Transportation concerning sale or purported sale of the Harsimus Branch or the need for regulatory action by the Surface Transportation Board concerning same, other than pleadings filed on behalf of the New Jersey Department of Transportation or the attorney general of New Jersey in U.S.D.C. 09-1900.

Objection: Conrail incorporates its General Objections by reference. This request also is irrelevant and unlikely to lead the discovery of admissible evidence. Furthermore, this request is untimely. These matters could have been inquired into in discovery earlier in this proceeding. Furthermore, there is no issue or dispute in this matter relating to the actions of the New Jersey Department Transportation or to Conrail's communications with that entity, and Conrail is not contesting the jurisdiction of the Board or the need for Board approval concerning the abandonment of the property at issue. As such, this request appears to have been propounded solely for the purposes of harassment and delay.

Request 9.

All documents relating to sale or potential sale of land or interests in land containing the portion of the Harsimus Branch between CP Waldo and the portion of the Harsimus Branch purportedly sold to SLH Holding Company and/or the LLCs, including but not limited to proposed sales, proposed brokerage agreements, or any other proposal that might result in non-railroad use of that portion of the Harsimus Branch.

Objection: Conrail incorporates its General Objections by reference. This request also is irrelevant and unlikely to lead the discovery of admissible evidence. Furthermore, this request is untimely. Much of the information sought in this request could have been sought in discovery earlier in this proceeding.

Request 10.

Documents sufficient to identify (by name, current business address and position during all relevant times at the railroads) all persons advising or taking action for Conrail or recommending action by Conrail in connection with the sale of any portion of the Harsimus Branch from 2000 to date.

Objection: Conrail incorporates its General Objections by reference. This request also is vague, irrelevant, and unlikely to lead the discovery of admissible evidence. Furthermore, this request is untimely. Much of the information sought in this request could have been sought in discovery earlier in this proceeding. Furthermore, this request appears to have been propounded solely for the purposes of harassment and delay.

Request 11.

Documents sufficient to identify (by name, current business address and position during all relevant times at SLH Holding Company or the LLCS) all persons advising or taking action for SLH Holding Company or the LLCs in connection with the sale of the Harsimus Branch from 2000 to date.

Objection: Conrail incorporates its General Objections by reference. This request also is vague, irrelevant, and unlikely to lead the discovery of admissible evidence. Furthermore, this request is improperly directed to Conrail. Only SLH know who was "advising or taking action for SLH." Even if it had any relevance and was directed to the proper party, this request would be untimely, since the information sought in this request could have been sought in discovery earlier in this proceeding. This request appears to have been propounded solely for the purposes of harassment and delay.

Request 12:

All documents reflecting any inquiry by Conrail employee Ryan or Conrail attorney Fiorilla or any other employee or agent of Conrail directed to any other person employed by, retained by, or acting as an agent for Conrail, CSX or NS concerning whether the Harsimus Branch was a line of railroad requiring STB abandonment authorization prior to sale to SLH Holding Company or the LLCs, and all documents responsive thereto.

Objection: Conrail incorporates its General Objections by reference. This request also is irrelevant and unlikely to lead the discovery of admissible evidence. Furthermore, this request is untimely. These matters could have been inquired into in discovery earlier in this proceeding.

Request 13.

All documents in the files of CSX or NS, including the files of their attorneys, consultants, agents, employees, officers and board members, relating to the rail regulatory status, historic nature, or sale of Harsimus Branch from 2000 to date other than pleadings in F.D. 34818, U.S.D.C. 09-1900, or appeals or petitions for review therefrom, or pleadings in this abandonment proceeding.

Objection: Conrail incorporates its General Objections by reference. This request also is unduly burdensome, irrelevant, and unlikely to lead the discovery of admissible evidence. Furthermore, this request is untimely. Much of the information sought in this request could have been sought in discovery earlier in this proceeding. Finally, it is highly likely that any materials in the hands of NS or CSX "relating to the rail regulatory status, historic nature, or sale of Harsimus Branch from 2000 to date" are copies of documents in Conrail's files. To request a search of all of NS's and CSX's files for any records responsive to this stunningly overbroad request is simply harassment which the Board should not tolerate.

Request 14

All documents (other than pleadings prepared by Conrail seeking to contest the constitutionality of N.J.S.A. 48:12-125.1) showing NS, CSX or Conrail compliance with, or

objection to, any state law that creates a preferential purchase right for public agencies in connection with railroad lines that are subject to STB abandonment proceedings, including but not limited to N.H. Rev. Stat. 228:60-b; Vermont Stat. Ann. § 3404; Mass. Gen., Law, chap 161C, § 7; Conn. Stat. 13b-36(c); New York's Transportation Law § 20

Objection: Conrail incorporates its General Objections by reference. This request also is unduly burdensome, irrelevant, and unlikely to lead the discovery of admissible evidence. Analyses of State laws are irrelevant to this proceeding, and this is particularly so with regard to the laws of the States designated in the request. No property at issue in this proceeding is located in any of those States, and indeed, Conrail, NS, and CSX do not operate in several of them. This request appears to have been propounded solely to harass, delay, and intrude upon attorney-client privileged matters.

Unnumbered Request (1):

All documents bearing upon or relating to sales or transfers, or projected sales or transfers, of property interests of Consolidated Rail Corporation to any interest controlled or owned by Steve Hyman or Victoria Hyman, or the Port of Authority of New York and New Jersey (PATH), or any other party (a) in or near the former Waldo Yard in Jersey City, (b) between any portion of the former Waldo Yard in Jersey City and the Harsimus Branch, (c) along the former Pennsylvania Railroad mainline between Journal Square and Newark Avenue in Jersey City, and/or (d) along the former River Line (or connections thereto from National Docks Secondary or the Harsimus Branch) between the Bergen Arches Cut and CP Waldo in Jersey City from January 1, 2006 to the date of response. Conrail is specifically requested to produce

all maps relating to such sales or transfers, or projected sales or transfers, in its custody or control.

Objection: Conrail incorporates its General Objections by reference. This request also is unduly burdensome, irrelevant, and unlikely to lead the discovery of admissible evidence. The disposition or potential disposition of property that is not the subject of this proceeding is immaterial to the issues before the Board. As such, this request appears to have been propounded merely to harass, delay, and intrude upon matters subject to the settlement privilege.

Unnumbered Request (2):

All documents constituting, reflecting, or arising out of proposed transactions between Conrail and (a) Victoria Hyman, (b) Steve Hyman, or (c) any company involved or controlled by Victoria or Steve Hyman involving (i) any portion of the Harsimus Branch or (ii) any property in Jersey City owned or controlled by Conrail from January 1, 2003 to the date of response.

Objection: Conrail incorporates its General Objections by reference. This request also is unduly burdensome, irrelevant, and unlikely to lead the discovery of admissible evidence. Furthermore, this request is untimely. Much of the information sought in this request could have been sought in discovery earlier in this proceeding. Furthermore, this request appears to have been propounded merely to harass, delay, and intrude upon matters subject to the settlement privilege.

Robert M. Jenkins III / ACS

Jonathan M. Broder
CONSOLIDATED RAIL CORPORATION
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Philadelphia, PA 19103
(215) 209-5020

Robert M. Jenkins III
Adam C. Sloane
MAYER BROWN LLP
1999 K Street NW
Washington DC 20006
(202) 263-3261

Attorneys for Consolidated Rail Corporation

September 3, 2014

* * *

CERTIFICATE OF SERVICE

I, Adam C. Sloane, hereby certify that on this 3rd day of September, 2014, I caused the foregoing Response of Consolidated Rail Corporation to Request for Production of Documents to be served on counsel for City of Jersey City, et al. by email attachment and next business day air (via UPS) at the following addresses:

Charles H. Montange
426 NW 162nd Street
Seattle, WA 98177

Andrea Ferster
General Counsel, Rails to Trails Conservancy
2121 Ward Court NW, 5th Floor
Washington, DC 20037

Adam C. Sloane

Exhibit C

MAYER·BROWN

Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006-1101

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rmjenkins@mayerbrown.com

May 16, 2014

Charles H. Montange
426 NW 162nd Street
Seattle, Washington 98177

Re: Docket No. AB 167 (Sub-No. 1189X),
Consolidated Rail Corporation -- Abandonment
Exemption -- In Hudson County, NJ

Dear Mr. Montange:

This responds to your request for production of documents dated May 6, 2014. As you know, by order dated April 20, 2010, the STB held all proceedings in the above-captioned case in abeyance, and the case has not been reactivated. Parties are not required to respond to discovery or to object to individual requests in an inactive proceeding. Thus, even if your requests were timely and unobjectionable on grounds of relevance, burden, or improper motive, there would be no requirement for Conrail to respond. If the case is reactivated, and if you choose to resubmit these document requests to us, Conrail will respond or object as appropriate.

Sincerely yours,

Robert M. Jenkins III

cc: Jonathan M. Broder

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Mayer Brown LLP operates in combination with other Mayer Brown entities with offices in Europe and Asia and is associated with Tauil & Chequer Advogados, a Brazilian law partnership.

Exhibit D

Me May 16 ★
To: Jenkins, Robert M.

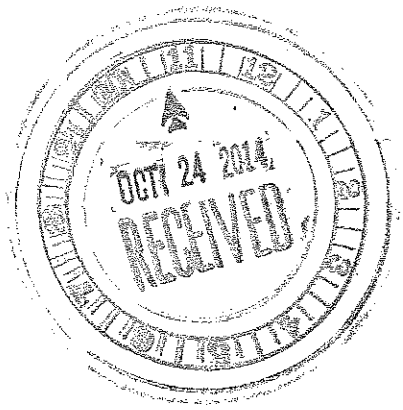
By the way, I have now read your letter. While I am prepared to discuss with you any reasonable idea you may have to relieve any "burdensome" feature of any discovery I tender on behalf of a client to you (in general, I am willing to do that courtesy to any party), if you mean to suggest that the material sought is not relevant (or designed to lead to relevant information), or burdensome, or arising from improper motive, then you of course are mistaken.

Let us join together in getting the abeyance order in AB 167 (1189X) lifted.

BLANK

CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177

(206) 546-1936
FAX: (206) 546-3739



23 October 2014

By Express Service

Motion to Compel Discovery Against The LLCs

236893
236894
236896

ENTERED
Office of Proceedings
October 24, 2014
Part of
Public Record

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423 [20024 for express delivery]

Re: Conrail - Ab. Ex. - in Hudson County, NJ,
AB 167 (Sub-no. 1189X) and related cases
AB 55 (Sub-no. 686X) & AB 290 (Sub-no. 306X)

Dear Ms. Brown:

These proceedings involve the unlawful de facto abandonment and sale by Consolidated Rail Corporation (Conrail) of the Harsimus Branch to eight commonly owned and controlled LLCs in derogation of this Board's jurisdiction. The unlawful abandonment and sale was in evasion of application of section 106 of the National Historic Preservation Act (NHPA), and, among other things, was part of an anticipatory demolition of the Harsimus Embankment implicating NHPA section 110(k).

The parties to the unlawful abandonment and sale have documents germane to issues raised in this proceeding, or which are likely to lead to discoverable evidence, which they are refusing to make available. City of Jersey City (City), Rails to Trails Conservancy (RTC), and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (Coalition) (collectively City et al) wish to obtain discovery of these documents before filing further motions. In addition, City et al expect the documents, if ever produced, to support City et al's position that section 110(k) precludes this agency from authorizing

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abandonment of the Branch under the circumstances presented and to other issues raised in the Board's 2009 environmental/historic report, and which must be addressed in the Board's projected revised report.

Enclosed for filing in the above referenced proceedings on behalf of is the original and ten copies of a motion to compel discovery against eight limited liability companies (212 Marin Boulevard, LLC, et al.) and a related limited liability company that we understand to be under similar ownership and/or control (NZ Funding) (hereinafter referred to collectively as the LLCs). The LLCs and NZ Funding are parties to this proceeding.

The LLCs have refused to make any documents available in response to City et al's document discovery requests. City et al have previously filed a motion to compel applicable to Consolidated Rail Corporation (Conrail). Conrail likewise refused to make any documents available in response to City et al's document requests. The LLCs and Conrail have caused years of delay in resolving the lawful rail regulatory status of the Harsimus Branch and in affording relief to City, RTC and Coalition for the their unlawful actions. They cause yet more delay in refusing to make available relevant documents thus forcing City et al to file motions to compel.

City et al has also filed a document discovery request against CNJ Rail; namely, for all communications with the LLCs. CNJ Rail initially provided a few documents, represented that it had many more, but was devoting its time to fulfilling the discovery requests of the LLCs, and has otherwise failed to respond. The due date for CNJ's response has passed. If City et al does not receive a response from CNJ Rail in the near future, City et al expects to file yet another motion to compel.

Thank you for your assistance in this matter.

Respectfully,

Charles H. Montange
for City et al.

Encls.

cc. Service list, with encl.

Before the Surface Transportation Board

Conrail -- Abandonment --in Hudson County, NJ.	)	AB 167 (Sub-no. 1189X)
		and
CSX Transp. - Discon. of Service - same	)	AB 55 (Sub-no. 686X)
		and
Norfolk Southern - Discon. of Service - same	)	AB 290 (Sub-no. 306X)

Motion on behalf of City of Jersey City et al

to Compel 212 Marin Boulevard LLC, et al

to Respond to Discovery (Document) Requests

City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (City et al) hereby move, pursuant to 49 C.F.R. 1114.21, 1114.30, and 1114.31, for an order directing 212 Marin Boulevard LLC, et al (hereinafter "the LLCs") to respond fully and completely to document requests tendered on behalf of City et al.

A copy of the document requests (served on September 19, 2014) is set forth in Exhibit A, attached hereto. That request called for a response by October 16, 2014. The LLCs by email served a written refusal to supply any document (in the form of

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some specific as well as a number of blanket objections) on that date. The refusal is set forth in Exhibit B, attached hereto.

City et al have also filed discovery in the form of document requests upon Consolidated Rail Corporation ("Conrail") in this proceeding. Conrail has refused to make any response as well. City et al have filed a motion to compel Conrail to respond. Conrail has objected to making any response. The LLCs essentially parrot Conrail's refusal to provide discovery. The gravamen of the objections by both Conrail and the LLCs is the same: that City et al seek information that is neither relevant nor necessary for disposition of this proceeding.[1]

We will address the LLCs' relevancy and need objections in a general fashion, and then turn to other specific objections.

I. Relevancy and Need Objections

The LLCs' claims that the document discovery sought by City et al relating to Conrail's unlawful sale of the Harsimus Branch to the LLCs is irrelevant or not needed is patently meritless. This Board has explained in no uncertain terms that sale of rail lines for non-rail purposes without prior authorization from this Board, including prior compliance with environmental and

[1] For example, the LLCs object to the relevance of essentially all the document requests addressed to them, and Conrail contends that City et al has failed to demonstrate "relevance and need." Compare Exhibit B with Conrail Reply to Motion to Compel at 2.

historic preservation laws, is "unlawful." Consummation of Rail Line Abandonments that Are Subject to Historic Preservation and Other Environmental Conditions, Ex Parte 678, served April 23, 2008, slip op. at 4. "A railroad may not 'abandon' a rail line (i.e. be relieved of its common carrier obligation... and dispose of the property for non-rail use) without the express permission of [STB]." Id., slip op. at 2.

In 2005, Conrail unlawfully sold a portion of a line of railroad known as the Harsimus Branch to eight commonly owned and controlled LLCs (212 Marin Boulevard LLC, et al) without an abandonment authorization. The illegal sale included the historic Sixth Street Embankment, which Conrail knew was eligible for the National Register of Historic Places, and thus protected under section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470f), since 2000. The unlawful sale not only evaded STB licensing jurisdiction, but also meaningful application of section 106 to the property. It is part of an unlawful anticipatory demolition of the Harsimus Branch in violation of NHPA section 110(k), 16 U.S.C. 470h-2(k).

Under 49 U.S.C. 10501(b), STB jurisdiction is exclusive over rail property, and preempts state law remedies. Since the Harsimus Branch was and is obviously a rail line, City et al in 2006 initially challenged Conrail's unlawful sale of the Harsimus Branch to the LLCs by filing a petition for a

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declaratory order that the property was a regulated rail line. See F.D. 34818. City et al have sought meaningful relief since that time. While we will not burden this motion with the gory details of litigation since that time, it is important to note that City et al from the inception of this abandonment proceeding have indicated that they intended to seek application of NHPA section 110(k) to Conrail's unlawful sale. Under section 110(k), this agency may not authorize abandonment of the Harsimus Branch if Conrail sought to evade NHPA section 106 requirements by intentionally significantly adversely affecting the Harsimus Embankment (a property protected under section 106). As the LLCs admit in their objections to discovery, if this agency declines to permit abandonment, then the LLCs' plans to destroy the rail line (and the Embankment) will be preempted. Exhibit B at p. 4, item #6.[2] Section 110(k) is thus clearly relevant in this proceeding, as conceded in the LLCs' own objections.

[2] The LLCs indicate (Exhibit B, pp. 4-5) that they continue to dispute this Board's jurisdiction, even though the D.C. Circuit has upheld the U.S.D.C. for D.C. summary judgment that this agency has jurisdiction, even though this Board rejected the LLCs subsequent petition contesting this Board's jurisdiction in F.D. 35825, and even though these decisions are now final and beyond any further judicial review.

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In the initial environmental assessment issued by this Board's Section of Environmental Analysis (SEA)[3] served March 23, 2009, SEA claimed section 110(k) was not applicable because City had not shown that Conrail intended "to harm historic sites or structures." EA, slip op. at 14.[4]

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[3] SEA is now the Office of Environmental Analysis (OEA). We will use SEA and OEA interchangeably.

[4] In the initial EA, slip at 14, SEA purported to discuss application of section 110(k), claiming that City et al had not shown that Conrail harbored requisite intent. To the contrary, SEA argued that City had urged Conrail to redevelop the Harsimus Branch commencing in 1984 and implied that this exculpated Conrail. It is not clear to City et al to what SEA refers. The portion of the Branch at issue was not under discussion so far as City is aware in 1984. City years later did express concern that Conrail had failed to maintain bridges and trestles, to the point they constituted hazards. City's redevelopment agency in the late 1990's did begin to work with Conrail on possible redevelopment of the Branch. But assuming arguendo all of this, that still does not support SEA's conclusion that Conrail did not intend to redevelop the Embankment. When the Embankment was listed on the State Register of Historic Places in 1999, Conrail protested in essence that the listing would be contrary to development. This reinforces the conclusion that Conrail harbored an intent inconsistent with preserving the Embankment. Moreover, by 2000, the Embankment had been listed on the State Register and determined eligible for the National Register of Historic Places. At that point, the City's redevelopment agency could no longer facilitate actions inconsistent with preserving the Embankment and withdrew from cooperating with Conrail to redevelop the Harsimus Branch. In other words, City policy changed well before Conrail either contracted to sell the property for development, or sought abandonment authorization. Conrail had knowledge of the historic status of the Embankment parcels commencing in 1999 and certainly by 2000. Notwithstanding knowledge that the Embankment were thus covered by section 106, the railroad in 2005 sold the property to the LLCs without abandonment authority using a property description that acknowledged that the property was part of a line of railroad. At the time of sale, the City was actively seeking to acquire the Harsimus Branch for preservation. The sale was

In sum, this agency's own environmental staff have confirmed the relevance of issues as to Conrail's intentions in the context of this abandonment proceeding. Discovery seeking information on Conrail's intentions, including the intentions of Conrail's chosen developer (the LLCs), is thus appropriate for it is either relevant or designed to lead to relevant information.

As to "need" for such discovery, STB is statutorily charged with making a determination regarding authorization for rail abandonment, and may not simply rubber stamp whatever a railroad wishes to do with its chosen developer in the context of an illegal de facto abandonment. Even in notice of exemption proceedings, this agency must comply with NEPA and NHPA. See Illinois Commerce Commission v. ICC, 848 F.2d 1246, 1261 (D.C. Cir. 1988), cert. denied, 488 U.S. 1004 (1989). Section 110(k) is part of NHPA, and may be neither ignored nor whitewashed. This position is corroborated in this Board's Consummation

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unlawful, and amounted to an effort to evade this agency's jurisdiction and section 106. For this and other reasons, the "evidence" cited in the EA at p. 14 supports application of section 110(k) (Conrail intentionally leagued with City commencing in 1984 and onward to remove the Embankment) rather than the opposite as contended in the EA. Conrail's intent to evade was independently again affirmed in 2007 when Conrail and the LLCs entered into a memorandum agreement by which Conrail, in return for not being sued by the LLCs, pledged to secure title to the Embankment in the LLCs notwithstanding this agency's determination that Conrail needed an abandonment authorization.

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decision, supra, in which the Board said that in cases of unlawful abandonments, as happened here, the Board "will take whatever steps [are] necessary to enforce compliance with [NEPA and NHPA]." Slip op. at 4.

After the stay in this abandonment proceeding was lifted in August 2014, counsel for City et al inquired of OEA staff as to how they would address section 110(k) issues. OEA staff advised that they lacked resources and/or procedures to address section 110(k) issues, with specific reference to matters of "intent." To date, City et al is aware of no independent investigation or discovery undertaken by OEA or other arms of the Board into section 110(k) issues in this proceeding.[5] Meaningful examination of section 110(k) so far as City et al is aware thus rests upon information supplied by City et al.

City et al are vigorously contesting SEA's conclusion, as expressed in the March 23, 2009 EA, that Conrail lacked the requisite intent. See, e.g., City et al. filings in this docket

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[5] This Board's predecessor, the ICC, conducted investigations of illegal abandonments, including extensive document discovery and interviews of witnesses. E.g., Verified Statement of David A. Randall, as Special Agent for Office of Compliance and Consumer Assistance, ICC, in Rails to Trails Conservancy, et al - Pet for Dec. Order, F.D. 31392, dated July 29, 1988. The referenced proceeding involved an illegal abandonment in City of Seattle by Burlington Northern, including sales to developers. Mr. Randall reviewed documents and interviewed numerous BNSF and developer witnesses, including on issues of intent. This investigation occurred even before section 110(k) was added to NHPA (see 106 Stat 4761, Oct. 30, 1992).

on September 3, 2014 and September 25, 2014. In the referenced pleadings, City et al have shown that Conrail and the LLCs acted intentionally, or with the equivalent (willful blindness), to evade this agency's jurisdiction (including section 106), despite knowledge that the Harsimus Embankment was protected under section 106. Nonetheless, until and unless STB reverses the EA's March 23, 2009 claim that City et al have failed to show that Conrail intended to harm historic properties, City et al must exhaust their efforts to make such a showing. This constitutes a perfectly adequate showing of "need" for further discovery, both of documents and the identity of potential witnesses at both Conrail and the LLCs.

In further corroboration of this "need," City advises that all state court litigation in which it might otherwise pursue discovery as to Conrail's intentions has been stayed pending an outcome in this proceeding.[6] In other words, City (much less RTC and Embankment Preservation Coalition) have no way to seek

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[6] Mr. Curley, City of Jersey City's counsel in most of the state court proceedings involving the Harsimus Branch, advises as follows: "In the main case pending before the Superior Court of New Jersey filed under Dkt. No. HUD-L-4908-05, a stay order was entered shortly after Conrail filed its answer to the City's third party complaint. The stay resulted in the LLCs' not having to file claims against Conrail in accordance with the entire controversy rule. In addition, all discovery was stayed. The last pleading filed in that case was the LLCs' first amended complaint. A representative stay order is attached." The referenced attachment is included herewith as Exhibit C.

additional relevant information, or information likely to lead to such information, except through this Board's discovery processes.

City et al of course also seek other relief in this proceeding. For example, City et al intend to move this Board to void the deeds from Conrail to the LLCs, independent of section 110(k).[7] While City et al take the position that the deeds should be voided as issued in contravention of STB jurisdiction, or alternatively, in the public interest pursuant to 49 U.S.C. 10903(e)(1)(B), and for other reasons, the LLCs appear to take the position that they were somehow good faith purchasers whose title should not be disrupted. While City et al view their faith or lack of it as irrelevant, the LLCs (and Conrail) seem to be contending the contrary. Until this agency voids the deeds, matters or knowledge and intent are thus ripe for discovery, wholly apart from section 110(k).

Ironically, although the LLCs now admit that Conrail made fraudulent misrepresentations to them (and to this agency, the City, and the Courts) that the Harsimus Branch was not a rail

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[7] Indeed, under section 110(k), this agency must deny abandonment authority given the anticipatory demolition in which Conrail and the LLCs engaged. The only way to avoid applying section 110(k) to bar abandonment is to void the deeds from Conrail to the LLCs. In that sense, voiding the deeds is an alternative to denying the relief sought by Conrail (that is, an effective abandonment authorization) in this proceeding.

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line, and even though this amounts to admitting that Conrail intentionally sought to evade section 106, and even though Conrail has responded that the information on which the LLCs base their claims of fraud was timely known to the LLCs, the LLCs nonetheless assert that their ownership of the parcels in question "is not in dispute" in this proceeding. Exhibit B at p. 3.[8] If parties so clearly implicate themselves in a fraudulent transfer in derogation of STB jurisdiction, a normal mortal would conclude that ownership of the parcels is very much in dispute. City et al disputes that ownership. The New Jersey State Historic Preservation Office has also questioned how the agency can discharge its obligations under federal law while the LLCs remain in alleged ownership. As noted herein, the LLCs appear to agree, arguing that so long as they "own" the property, its destruction is outside the reach of this Board's authority. See LLCs' objection to Document Request 11. N.J.S.A. 48:12-125.1 also now clearly provides that the LLCs' deeds are void.

II. Specific Objections

[8] The LLCs have also sued the City, including members of its Law Department, and others on the theory that it is a tort and federal civil rights violation to question their title as a result of the unlawful de facto Conrail abandonment and sale to the LLCs. E.g., 212 Marin Boulevard, LLC et al v. City of Jersey City, NJ Superior Court HUD-L-4683-05 (the case referenced in Exhibit C as stayed pending federal results).

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1. Document Request ("DR") 1 sought materials referenced in the Oct. 12, 2007, memorandum of understanding between Conrail and the LLCs relating to the Harsimus Branch. The LLCs seem to admit that this request is relevant to City et al's claims that title should be voided or that section 110(k) applies, but then claim that the information is not relevant on the ground that title is not at issue. Since title is at issue, the LLCs' objection is a non-starter. The LLCs seem also to suggest that City et al cannot seek relief because this is an "Expedited Abandonment Proceeding." While City et al have repeatedly contested use of expedited procedures here, the fact that STB has so far allowed Conrail to use them does not mean that the agency can or will ignore NEPA, NHPA, or the public interest in the remedies sought by City et al. See Consummation, supra, at p. 4; Illinois Commerce Commission, supra, 848 F.2d at 1261.

2. DR 2 sought all versions of the October 12, 2007 memo of understanding between Conrail and the LLCs that pledged Conrail to take all measures necessary to convey title in the Harsimus Branch to the LLCs, notwithstanding this Board's determination that the property was a line of railroad rendering the sale of the property to the LLCs unlawful, and any similar agreements. The LLCs had previously stated to the

United States District Court that there were additional such memoranda or oral understandings. In a garbled sentence, the LLCs object on relevancy grounds, but may also be claiming there are no other documents. Their relevancy objection is misplaced for the reasons previously stated. The documents in question evince, or may evince, an intent to evade STB jurisdiction and section 106, and are thus properly discoverable. If the LLCs have no responsive documents, they should simply so state. Any other response impermissibly evades a relevant document request.

3. DR 3 seeks documents sufficient to show ownership of the LLCs and changes to date. The LLCs claim this is irrelevant. Ownership of developers who purchase rail lines for non-rail use without abandonment authorization is an appropriate subject of inquiry. See Verified Statement of David A. Randall, July 28, 21988, in F.D. 31292, supra, at pp. 40-43 (clarifying ownership of rail property).

4. DR 4 sought tolling agreements between the LLCs and attorneys or Conrail (pledges not to assert a statute of limitations defense against the LLCs in return for not being sued pending efforts by the LLCs to evade

STB jurisdiction). The LLCs claim that tolling agreements are irrelevant. To the contrary, the Oct. 12, 2007, agreement between Conrail and the LLCs is in part a tolling agreement, designed to forestall a suit against Conrail by the LLCs (presumably for fraud) so long as Conrail cooperates with them. City et al is informed and believes the LLCs have similar agreements with one or more of Conrail's attorneys. Such agreements are highly germane to section 110(k) issues, Conrail efforts to evade section 106, and other relief sought by City et al.

5. DR 5 sought communications from the NJ Department of Transportation concerning the sale or STB regulation of the Harsimus Branch. Based on statements in one of the Decisions in the LLCs' litigation against Chicago Title, someone at the New Jersey Department of Transportation apparently stated to representatives of the LLCs and/or to Chicago Title's agent involved in issuing title insurance on the property at issue that the Harsimus Branch was subject to STB jurisdiction, prior to the alleged sale.[9] This is potentially highly germane to section

[9] 212 Marin Boulevard LLC et al v. Chicago Title Insurance Company, Superior Court of NJ, Dkt. HUD-L-5801-09, filed Dec. 2,

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110(k) issues, as well as other relief sought by City et al. The LLCs lodge a relevancy objection, apparently claiming that the Harsimus Branch as a line of railroad has been established since 1976 in federal decisions. If the LLCs mean that they now admit (stipulate) that they knowingly purchased the Harsimus Branch in 2005 in violation of the requirement that they first obtain STB abandonment authorization, they should so state. If they are prepared to so stipulate, then further inquiry into their knowledge of illegal conduct in 2005 may be unnecessary. In the absence of such a stipulation, information concerning what they knew or should have known prior to the unlawful sale remains potentially relevant.

6. DR 6 sought documents relating to sales of land or potential sales of land between CP Waldo and the property sold to the LLCs. From time to time, the LLCs have advocated development rights for Conrail property west of the LLCs' purchase area all the way

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2010, slip at 2, indicates that the New Jersey Department of Transportation expressed concern over whether an abandonment authorization had been issued and this was brought to the attention of both the LLCs and their title insurer prior to the LLCs' purchase of the Harsimus Branch from Conrail.

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to CP Waldo. City et al are concerned that Conrail and the LLCs have entered into some understanding or contract granting the LLCs an interest in Conrail property between the LLCs' purchase west of Newark Avenue all the way to the mainline at CP Waldo, again in derogation of this Board's jurisdiction. The LLCs misconstrue the request to pertain to what the LLCs already claim to own by reason of the 2005 sale. The LLCs should be directed to supply documents relating to the subject matter of the request, and not hide behind a misconstruction.

7. DR 7 asks for documents sufficient to identify Conrail personnel involved in the illegal sale from 2000 to date. The LLCs seem to admit relevancy, but then inconsistently claim it is "improper." Relevant requests are not "improper." As to overbroad or burdensome, the LLCs are in a unique position of knowing the identity of the Conrail personnel with whom they dealt, and from whom they obtained the fraudulent misrepresentations concerning the status of the Harsimus Branch. This information is highly germane. The LLCs claim that City et al should be directed to Conrail, but then acknowledge that Conrail has refused to supply that information on the

ground that it amounts to harassment and burden to their directors, officers, employees and consultants. The LLCs state they join in Conrail's objection. Seeking the identity of Conrail personnel involved in a transaction is not harassment or burden to any one, especially in a regulated industry in which the personnel of a railroad are supposed to comply with the law rather than (as the LLCS have stated) fraudulently evade it. Accord, Verified Statement of Mr. Randall, supra (ICC investigator examines involved personnel). The fact that Conrail may have been "outed" in its unlawful action may be annoying to Conrail's personnel, but that is not grounds either for the LLCs or Conrail to refuse to respond to discovery.

8. DR 8 asks for documents sufficient to identify representatives of the LLCs involved in the illegal transaction. The LLCs object on the same basis as in number 7, and their objection is misplaced for the reasons previously stated.

9. DR 9 asks for documents reflecting any inquiry by the LLCs into the regulatory status of the Harsimus Branch prior to their 2005 acquisition. The LLCs object on the same grounds that they refused to

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supply Department of Transportation documents in response to DR 5. They should supply the documents unless they are prepared to stipulate they knowingly engaged in an unlawful purchase of the section 106-protected Harsimus Branch in 2005.

10. DR 10 asks for documents relating to demolition of the Harsimus Embankment by or on behalf of the LLCs. The LLCs state that they have not demolished the Embankment so no documents exist. They have sought demolition permits, and Conrail has joined in seeking those permits. The LLCs have offered to donate the Embankment to Hoboken for use as fill. Documents relating to their efforts to demolish the Embankment are relevant and should be produced.

11. DR 11 requests documents relating to the LLCs' offer to donate the Embankment to Hoboken for fill. The LLCs object that donation of the Embankment for fill in another City are not relevant. To the contrary, offers to donate the Embankment for fill indicate that an unlawful anticipatory demolition has occurred, in that Conrail knowingly sold a section 106 asset to a developer for demolition prior to seeking an abandonment authorization, in that Conrail and the LLCs contracted in 2006 to take all measures

necessary to accomplish this end in the face of an STB determination that a line of railroad was involved, and in that both Conrail and the LLCs are now claiming that the agency cannot or should not do anything about it because Conrail has somehow removed the property from STB jurisdiction. Indeed, the LLCs now claim in their objection to DR 11 that STB has no continuing jurisdiction over demolition issues. By so arguing, the LLCs admit that they are part of a scheme to evade meaningful application of section 106.

12. DR 12 seeks documents concerning joint development or similar agreements pertaining to the Branch. City et al understand that the LLCs have entered, or attempted to enter, into at least one such agreement. The LLCs claim such agreements are irrelevant because they cannot be implemented until after abandonment. But the agreements indicate the intent of Conrail and the LLCs to demolish the Branch, and are relevant to the relief sought by City et al.

13. DR 13 seeks all documents relating to communications between CNJ Railroad and the LLCs. CNJ has informed City et al that it has long been in communication with the LLCs and indeed that CNJ has sought to make

a deal with the LLCs evidently to operate a line of railroad on the Branch for them. From time to time in the past, Mr. James Riffin, who represents himself as affiliated with CNJ, has advocated positions to rail counsel for the City, which positions favored the LLCs. In addition, CNJ Railroad has also filed a timely notice of intent to OFA in this proceeding. Communications between CNJ and the LLCs are potentially highly relevant to, or may lead to evidence highly relevant to, the knowledge and intent of Conrail and the LLCs concerning the Harsimus Branch. In addition, such communications will assist the City in determining if CNJ is a bona fide potential operator of a rail transload should the City's OFA be successful, or whether CNJ is some kind of Trojan horse for the LLCs and by extension Conrail.

14. DR 14 requests documents reflecting communications between Chicago Title and the LLCs concerning the Harsimus Branch. The LLCs object that this "intrudes upon privileges associated with discussions" in state court litigation. City et al seek any information germane to inquiries by the LLCs or their title insurer into the regulatory status of the Harsimus

Branch prior to the 2005 sale, including representations made to Chicago Title or its local agent concerning that status by Conrail, the LLCs, or any other person or entity. Since New Jersey title practice requires title examiners specifically to inquire into the regulatory status of Conrail lines (see, e.g., Additional Supp. Comments of City et al filed 25 Sept. 2014, App. 1, items a and b - Handbook of NJ Title Practice), Chicago Title or its local agent should have made relevant inquiries. Documents bearing on such inquiry may be highly relevant, or may lead to highly relevant evidence. The fact that the LLCs are litigating with Chicago Title elsewhere is not a defense to production of the information in this proceeding. Neither the LLCs nor Conrail may immunize documents from discovery by litigating between themselves or others elsewhere.

15. DR 15 requests documents relating to claims, or reservations of claims, by the LLCs against attorneys, Conrail, or others arising from fraudulent or negligent misrepresentation of the status of the Harsimus Branch to the LLCs. The LLCs explained to the United States District Court that Conrail made

fraudulent or negligent misrepresentations to them.[10] In their objection to DR 15, they claim that Conrail's fraud and negligence concerning application of STB jurisdiction to the rail line are not relevant to this agency's handling of this abandonment proceeding. The LLCs suggest this is an "Exempt Abandonment Proceeding" rendering such matters irrelevant. This is absurd. In Consummation, supra, this agency admonished railroads that it would not tolerate evasion of NEPA and NHPA responsibilities in the event of an unlawful de facto abandonment, such as happened here. Indeed, the Board said it would consider precluding carriers engaged in unlawful abandonments from using expedited procedures. In any event, the Board must comply with NEPA and NHPA in all abandonment proceedings. Illinois Commerce

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[10] City et al has filed the LLCs' admissions in United States District Court against Conrail several times already in this proceeding. In addition, the Verified Statement of Daniel Horgan (the LLCs' counsel here) discussing when he finally investigated the evidence concerning whether the Harsimus Branch was conveyed as a line of railroad, and concluded it so clearly was that he further concluded that Conrail made fraudulent misrepresentations in suggesting the contrary is set forth in Additional Supp. Comments, supra, App. 4, item a. Mr. Horgan's Verified Statement thus corroborates the position City et al have taken all along, and further supports the conclusion that Conrail evaded STB regulation, including section 106 regulation, in contravention of section 110(k).

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Commission, supra. Use of expedited procedures does not excuse the Board from compliance.

For nine years, Conrail and the LLCs have attempted to thwart this Board's jurisdiction, and the LLCs in their objections seem to continue to deny it. The LLCs have actively sought to deprive this Boad of any jurisdiction, not only in challenges in court, but after those were unsuccessful, in the recent petition in F.D. 35825. Parties to an unlawful transaction, who have thwarted this agency's jurisdiction for nine years, are hardly in a position to urge that Conrail's use of a two year out of service exemption somehow requires the agency, on grounds of expedition, to ignore the fraud and negligence the LLCs state Conrail committed, to ignore meaningful application of section 110(k), to facilitate the unlawful actions of the LLCs and Conrail in 2005, or otherwise to foster the demolition of a section 106 protected asset in the face of efforts by City et al to acquire it for rail, open space, trail, and other public purposes consistent with section 106.

In addition to seeking to deprive this Board of jurisdiction, the LLCs themselves have asked STB to

dismiss this expedited abandonment proceeding.[11] It is inconsistent for them now to attempt to hide behind the nature of the proceeding as an excuse to avoid supplying any responsive documents.

The LLCs further claim that DR 15 is "overbroad, burdensome, [and] intended to harass the LLCs." It is none of these. City et al's discovery request may be frustrating to the LLCs; it certainly is based in part on their claims and uses their own claims against them. But this does not make it unfair or burdensome in any sense urged by the LLCs. The fraud and negligence that the LLCs have shown on the part of Conrail is highly germane in any abandonment proceeding dealing with the Harsimus Branch, for it readily equates to an intent to evade this agency's jurisdiction, including section 106 jurisdiction. This of course implicates section 110(k) of the NHPA, meaningful application of section 106, and the relief that must be afforded to City et al in this case.

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[11] LLCs' Letter of July 18, 2014, to this Board (STB item 23623) appears to ask the Board to "ex parte" dismiss this proceeding if the City Council of Jersey City does not conform to the wishes of the LLCs, which the City Council has so far declined to do.

LLCs' various privilege objections. Finally, the LLCs sometimes include objections of privilege. E.g., Exhibit B, items 1, 2, 9, 11. The DR instructions called for identification of privileged documents, not for their disclosure. Exhibit A, p. 3. Unless the LLCs identify privileged documents, there is no means to evaluate the applicability of the asserted privilege. That is why the documents must be identified per the instructions. The Board should order the LLCs to do so.

Conclusion

The sale of the Harsimus Branch to eight LLCs in 2005 was "unlawful." The LLCs appear to join Conrail in urging that this unlawful sale be ignored, or rubberstamped, and that this Board refuse to consider any meaningful relief to City et al, or any meaningful compliance with NEPA and NHPA in light of the unlawful sale. The LLCs on this basis join with Conrail in seeking to avoid any discovery response. To rubberstamp the unlawful action of Conrail and its developer, and to prevent responsible discovery as sought by City et al, would be inconsistent with this Board's duties under NEPA, NHPA, and ICCTA. For the reasons stated herein, City et al requests the Board to issue an order compelling the LLCs and NZ Funding to respond fully and completely to all outstanding discovery

requests, if possible no later than November 21, 2014, in order to avoid further delay in this proceeding.

Respectfully submitted,

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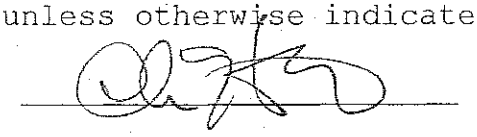
Exhibit A - Document Requests as emailed on September 21, 2014
Exhibit B - LLCs' objections served October 16, 2014
Exhibit C - State court stay order (includes discovery)

Certificate of Service

The undersigned hereby certifies service by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, on or before the 23d day of October 2014 addressed to the parties or their representatives per the service list below, unless otherwise indicated.



Service List

[AB 167 (Sub-no. 1189X)]

- with address corrections as of August 2014 -

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Exhibit A

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation – Abandonment Exemption – In Hudson County, NJ	)))	AB 167 (Sub-no. 1189X)

And related discontinuance proceedings AB 55 (Sub no. 686X)(CSX Transportation, Inc.) and AB 290 (Sub-no. 306X) (Norfolk Southern Railway Company)

Request for the Production of Documents
Intervenors City et al to Intervenors 212 Marin Boulevard, LLC, et al and NJ Funding, LLC

Pursuant to 49 C.F.R. 1114.30 and other applicable authority, intervenors City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition hereby request that 212 Marin Boulevard, LLC, et al (as defined herein, and referred hereinafter as "the LLCs") and NJ Funding LLC produce the following documents for inspection at the offices of John J. Curley, Three 2nd Street, Harborside Financial Center, 1202 Plaza Ten, Jersey City, NJ 07311 at 9 AM, 16 October 2014, or such other mutually convenient time and date (no later than 16 October 2014) is arranged between counsel, or deliver copies of the said documents to counsel for City et al his address below on or before that date pursuant to reasonable terms for payment for

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costs of duplication and delivery agreed to in writing between counsel.

Definitions. For purposes of this Request, document shall mean any writing, notation, or record, regardless of form, and including but limited to both electronic and non-electronic media, including emails, diaries, business records, and all documents maintained, retained, authored, copied on, or received by consultants, officers, employees, negotiators, board members, attorneys otherwise working for or on behalf of the LLCs or any one of them.

Harsimus Branch shall mean any portion of the line of railroad between CP Waldo and Marin Boulevard in Jersey City transferred to Conrail as line code 1420, which line of railroad is the subject of the abandonment proceeding bearing STB docket AB 167 (Sub-no. 1189X).

"The LLCs" shall mean one, more or all of 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Coles Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, and 446 Newark Avenue, LLC.

"NZ Funding LLC" or NZ shall mean the entity referred to as Nz Funding LLC in the petition for a declaratory order filed at the Surface Transportation Board docketed as F.D. 35825.

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Additional instructions. If the LLCs and/or NZ claim privilege against disclosure of one or more documents, such as an attorney client privilege, then please identify the document by providing its author, the persons to whom it was directed, the persons who received copies of it, its date, its basic subject matter, the document request to which it is responsive, and the basis for the claim of privilege.

If the LLCs and/or NZ have no responsive documents, so state.

Document requests. All the following documents are hereby requested pursuant to the foregoing definitions and conditions:

1. All versions of the following documents as referenced in the Memorandum of Understanding executed by "Conrail," SLH Holding Company, and "the LLCs" signed October 12, 2007 by Jonathan Broder and a person believed to be S. Hyman, which Memorandum of Understanding was filed by the LLCs as document 94-02 (filed 11/08/12) in U.S.D.C. 09-1900:

   (a) "Agreement of Sale dated June 24, 2003"

   (b) "letters dated September 22, 2003, May 7, 2004, and September 15, 2004"

   (c) "Amendment of Agreement of Sale dated October 27, 2004"

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(d) All writings that relate in any way to the foregoing (a), (b), or (c).

(e) Any other amendments or modifications to any agreement for the sale of any portion of the Harsimus Branch to any interest owned or controlled, directly or indirectly, by Victoria or Steve Hyman.

2. All versions of the Memorandum of Understanding signed or dated October 12, 2007, by Broder and Hyman as referenced above, and any other agreements or documents reflecting written or oral understandings between one or more of Conrail, the LLCs, or SLH Holding Company "to maintain the benefit of the 2005 sale" of portions of the Harsimus Branch to SLH Holding Company or the LLCs.

3. Documents sufficient to show the ownership of the LLCs and NZ and any changes in ownership from 2003 to date.

4. All documents relating to agreements or understandings purporting to toll any statute of limitations defense that may be asserted by Conrail or an attorney representing any party (including but not limited to Conrail) to the Agreement of Sale dated June 24, 2003, as later amended.

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5. All documents relating to any communication to or from the New Jersey Department of Transportation concerning sale or purported sale of the Harsimus Branch or the need for regulatory action by the Surface Transportation Board concerning same, other than pleadings filed on behalf of the New Jersey Department of Transportation or the attorney general of New Jersey in U.S.D.C. 09-1900.

6. All documents relating to sale or potential sale of land or interests in land containing the portion of the Harsimus Branch between CP Waldo and the portion of the Harsimus Branch purportedly sold to SLH Holding Company and/or the LLCs, including but not limited to proposed sales, proposed brokerage agreements, or any other proposal that might result in non-railroad use of that portion of the Harsimus Branch.

7. Documents sufficient to identify (by name, current business address and position during all relevant times at the railroads) all persons advising or taking action for Conrail or recommending action by Conrail in connection

with the sale of any portion of the Harsimus Branch from 2000 to date.

8. Documents sufficient to identify (by name, current business address and position during all relevant times at SLH Holding Company or the LLCS) all persons advising or taking action for SLH Holding Company or the LLCs or NZ in connection with the sale of the Harsimus Branch from 2000 to date.

9. All documents reflecting any inquiry any representative of the LLCs or SLH Holding Company prior to acquisition of any portion of the Harsimus Branch by SLH or the LLCs concerning whether the Harsimus Branch was a line of railroad requiring STB abandonment authorization prior to sale to SLH Holding Company or the LLCs, and all documents responsive thereto.

10. All documents relating to demolition of the Harsimus Embankment by or on behalf of the LLCs.

11. All documents relating to offers to donate the Harsimus Embankment as fill to Hoboken or any other entity or individual.

12. All documents relating to any sale or exchange or joint development agreement or similar transaction, or any proposed sale or exchange or joint development agreement or similar transaction, of any portion of the Harsimus Branch by the LLCs (or NZ) and any entity or individual other than Conrail or the City of Jersey City.

13. All documents embodying or discussing communications, oral or in writing, by the LLCs and/or NZ with CNJ Rail Corporation, or any agent or representative of same, relating to the Harsimus Branch or litigation concerning the Harsimus Branch.

14. All documents embodying or discussions communications, oral or in writing, with Chicago Title Company, or any agent or representative of same, relating to the parcels in the Harsimus Branch purportedly acquired by the LLCs or NZ, or litigation relating to those parcels.

15. All documents embodying claims, or reservation of claims, made by the LLCs or NZ against attorneys, Consolidated Rail Corporation, or other individuals or

entities arising from fraudulent or negligent misrepresentation of the regulatory status of the Harsimus Branch to the LLCs.

Respectfully submitted,

s/

Charles H. Montange
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Email: c.montange@frontier.com
for Intervenors City et al

Certificate of Service

I hereby certify service of these document requests by email attachment on 19 September 2014 addressed to Daniel Horgan, counsel for the LLCs and NZ, Waters, McPherson, McNeill, P.C., 300 Lighting Way, P.O. Box 1560, Secaucus, NJ 07096 and by deposit of same for express (next business day) delivery on 19 September 2014 addressed as above.

s/
Charles H. Montange

Exhibit B

BEFORE THE SURFACE TRANSPORTATION BOARD

Washington, D.C.

Docket Numbers:

AB-167-1189-X
And Related Proceedings
AB-55-686-X
AB-290-306-X

Response To Jersey City, et al. Request For Production Of Documents

BY

212 Marin Boulevard, LLC
247 Manila Avenue, LLC
280 Erie Street, LLC
317 Jersey Avenue, LLC
354 Cole Street, LLC
389 Monmouth Street, LLC
415 Brunswick Street, LLC
446 Newark Avenue, LLC
NZ Funding, LLC
Limited Liability Companies of New Jersey

The above limited liability companies respond to the Request for the Production of Documents by Jersey City, et al, dated September 19, 2014 with respect to each of the fifteen document requests as set forth below.

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1. This request for numerous documents related to a Memorandum of Understanding between Conrail and SLH Holding Company (October 12, 2007) has no relevance to these expedited abandonment proceedings by Conrail ("Expedited Abandonment Proceeding"). Any conduct by the Intervenor LLCs or NZ Funding, LLC, a non-party, (collectively, the "LLCs") concerning their respective real estate interests, occurring years prior to the filing of the present Exempt Abandonment, has no relevance to this Expedited Abandonment Proceeding, addresses no issue properly before the STB in these proceedings, and is not likely to lead to the production of any relevant material or information.

These proceedings are not about title to the property that is undisputedly held by the eight LLCs under their deeds from Conrail in 2005. With respect to the five subparts of this request:

a. Under New Jersey law the Agreement of Sale dated June 24, 2003 was merged into the deeds later issued. For the reasons stated above, it has no relevance to these proceedings, nor is it likely to lead to the discovery of relevant information.
b. The three letters written in connection with the transaction, likewise have no relevance for the reasons aforesaid, nor are they likely to lead to the discovery of relevant information.
c. The Amendment of Agreement of Sale dated October 27, 2004 has no relevance for the reasons aforesaid, nor is it likely to lead to the discovery of relevant information.
d. The further request for "any writings that relate in any way to the foregoing..." likewise have no relevance for the reasons aforesaid, nor is it likely to lead to the discovery of relevant information.
e. Any "other agreement" for sale of property purchased in 2005 would be similarly objectionable, but it is a matter of public record that no other sale has been consummated.

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Were any of the foregoing documents deemed to be discoverable, some documents between Conrail and the LLCs would be subject to a privilege as settlement documents, and/or attorney-client privileged. The LLCs reserve their rights to raise such objections.

2. The Memorandum of Understanding, referenced in Request 1, above, has been produced repeatedly in these and other proceedings between the parties. There are no additional agreements or documents reflecting oral or written understandings and production of any other documents concerning the aforesaid Memorandum of Understanding are not relevant in any way to these proceedings for the reasons expressed in response to Request 1, above. Notwithstanding this objection, and to the degree that this request seeks materials that would be subject to the settlement privilege, attorney/client privilege, or other privileges, the LLCs reserve all rights as to those privileges.

3. This request for ownership documents has no relevance whatsoever to the Exempt Abandonment Proceeding, and the ownership of the property by the intervener LLCs is not in dispute. In January 2013 the City initiated suit against the LLCs' affiliate, NZ funding LLC, and additional parties in the Chancery Court, Hudson County, New Jersey. That dispute is now before the appellate courts in New Jersey. To the degree that this request touches upon that litigation, it is completely irrelevant to any matter now pending before the STB in this Exempt Abandonment Proceeding. Further, Conrail's deeds to the LLCs issued in 2005 have been made of record before the STB, and there is no dispute as to the legitimacy of those deeds, with the exception of litigation brought by the City in the courts of New Jersey. See, 212 Marin Blvd., LLC et al. v. City of Jersey City et al., Superior Court of New Jersey, Hudson County, Docket Number HUD-L-4908-05. That litigation has been stayed pending final completion of all federal proceedings, and therefore,

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according to the City, issues of ownership cannot or should not be addressed until this Exempt Abandonment Proceeding and all associated federal proceedings are concluded.

4. This request for tolling agreements concerning statutes of limitations for other potential claims or litigation is improper in this Exempt Abandonment Proceeding. Any such agreement, or documents relating to such agreement, is irrelevant to the issues in these proceedings and would not lead to the discovery of relevant information. Claims against third parties that have yet to be adjudicated, or even brought by the LLCs, cannot be adjudicated by the STB and, in any event, the City would not be a proper party in the litigation and adjudication of such claims. It should not use the STB discovery procedures to interlope or interfere with the prosecution or settlement of such claims.

5. This request for New Jersey Department of Transportation documents concerning the 2005 sale of the Harsimus Branch are irrelevant to any issues in these Exempt Abandonment proceedings and not likely to lead to the discovery of relevant information. The status of the rail line in 1976 has been established in federal court proceedings. By virtue of those same proceedings, and further proceedings in STB Finance Docket 35825, any such documents are irrelevant to the limited issues associated with this Exempt Abandonment Proceeding, and are not likely to lead to the discovery of relevant information.

6. This request appears to require the production of all documents concerning the LLCs' plans for their properties post-abandonment. There can be no legitimate issue or concern in this Exempt Abandonment Proceeding with such documents or materials. If the pending abandonment is denied by the STB, presumably those materials would be preempted by continuing federal railroad regulation (although the LLCs dispute the jurisdiction of the STB and

continue in that objection). If abandonment is granted, Conrail would have no further interest in the property by virtue of its 2005 deeds to the LLCs, and the LLCs would be free of federal regulation to pursue their plans. In any event, the STB does not regulate nor adjudicate property interests, and these matters are beyond any issue in this Exempt Abandonment.

7. This request for the identity of all persons providing advice to Conrail, taking action for Conrail, or recommending action by Conrail in connection with any sale of the property is improper and overbroad. For any potentially responsive document within the possession or control of the LLCs it would be necessary for the LLCs to speculate on the actions of third parties not within their control, and the actions and intent of Conrail with respect to the activities of those third parties in order to determine if those bodies were acting for or providing advice to Conrail, and whether Conrail was directing their actions or accepting their advice. This request should be directed to Conrail as Conrail is the only entity capable of providing the information requested. Conrail has properly objected to this request as a fishing expedition designed to harass and burden its directors, officers, employees, and consultants. The LLCs join in that argument against this request.

8. This request for the identity of all persons advising or taking action on behalf of the LLCs in connection with the sale of the Harsimus Branch from 2000 to today is overly burdensome, overly broad, and will not produce any information relevant to any issue in this Exempt Abandonment proceeding. To the degree that this and similar inquiries are designed to produce extensive lists of persons to be deposed by the City, as Conrail has correctly objected, the request appears designed for no purpose other than impose undue burden and expense, and to harass the LLCs. The request is entirely improper in these proceedings and beyond the scope of any issue subject to adjudication by the STB in in the Exempt Abandonment. The request further

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seeks information that would be covered by the attorney-client privilege, and the LLCs reserve all rights as to that privilege.

9. This request for documents concerning inquiries on behalf of the LLCs, prior to the 2005 sale by Conrail, concerning the status of the Harsimus Branch is also improper as more fully described in response to request number five, above. The request further seeks information that would be covered by the attorney-client privilege, and the LLCs reserve all rights as to that privilege.

10. No portion of the Harsimus Embanknent has been demolished by or on behalf of the LLCs. Therefore no such documents exist.

11. This request for documents concerning donation of the Harsimus Embanknent as fill is irrelevant to any issue to be adjudicated in this Exempt Abandonment Proceeding and is unlikely to result in production of relevant information. To the degree that such use of the LLCs' properties would take place, it would occur post-abandonment and be regulated by other jurisdictions under other laws, and the STB would have no continuing jurisdiction over such activities and could not therefore give consideration to such potential activities.

12. This request for agreements concerning post-abandonment development of any of the LLCs' properties is irrelevant to any issue to be adjudicated in these Exempt Abandonment proceedings. To the degree that such use of the LLCs' properties would take place, it would occur post-abandonment and be regulated by other jurisdictions under other laws, and the STB would have no continuing jurisdiction over such activities and could not therefore give consideration to such potential activities.

13. This request for information concerning documents related to all discussions with CNJ Rail is improper and overbroad, going beyond any legitimate issue

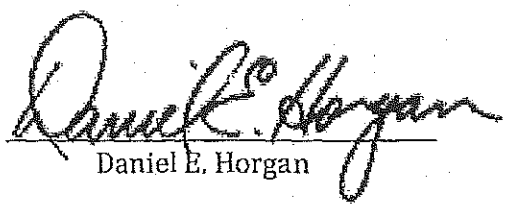
concerning CNJ's Notice of Intention to submit an Offer of Financial Assistance. To the degree that any such discussions have taken place, documents "embodying or discussing" such communications would intrude upon various privileges including attorney-client privilege, attorney work product privilege and conceivably other privileges embodying joint undertakings. Any such material to the degree that it may exist, is well beyond the scope of documents relevant to these proceedings and would concern actions outside of these proceedings. The request may also implicate documents that extend to the settlement privilege.

14. This request for documents "embodying or discussing communications, oral or in writing, with Chicago Title Company" is improper and overbroad, going beyond any legitimate issue to be adjudicated in these Exempt Abandonment proceedings. To the degree that any such discussions concerning litigation by the LLCs against Chicago Title Company involve the claims now pending in the courts of the State of New Jersey, the request improperly intrudes upon the privileges associated with discussions of such proceedings. In any event, Chicago Title Company provides insurance for titles to real estate, a matter beyond and beside the STB's jurisdiction over the operation of railroads.

15. The final request concerning claims against attorneys, Conrail, or others for fraudulent or negligent misrepresentation of the regulatory status of the Harsimus Branch is simply not relevant to these proceedings. Conrail's fraud or misrepresentation to the LLCs or any other party, arguably including even the STB, are not within the scope of this Exempt Abandonment Proceeding. To the degree that the requested documents concern claims outside of these proceedings, the STB has no jurisdiction over such matters, and the City is not a proper party to such proceedings. The request, like many of the others, is entirely overbroad, burdensome, intended to harass the LLCs, and will not produce any relevant material.

CERTIFICATE OF SERVICE

I, Daniel E. Horgan, an attorney-at-law of New Jersey, New York, and the District of Columbia, hereby certify that on October 15, 2014, I caused service of these responses upon Charles H Montagne, Esq. and all individuals and entities listed as Parties in SDB Docket Number AB-167-1189-X by First Class Mail.

By: 
Daniel E. Horgan

DATED: October 15, 2014
827229

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Exhibit C

Prepared and filed by the court.

COPY

FILED
JAN 07 2014
PETER E. BARISO, JR., A.J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – HUDSON COUNTY
DOCKET NO. HUD-L-4683-05

212 MARIN BOULEVARD, LLC,
247 MANILA AVENUE, LLC,
280 ERIE STREET, LLC,
317 JERSEY AVENUE, LLC,
354 COLE STREET, LLC,
389 MONMOUTH STREET, LLC,
415 BRUNSWICK STREET, LLC, and
446 NEWARK AVENUE, LLC,

Plaintiffs,

v.

CITY OF JERSEY CITY, THE PLANNING BOARD OF THE CITY OF JERSEY CITY and JERSEY CITY HISTORIC PRESERVATION COMMISSION,

Defendants.

Civil Action

ORDER

On the court's own motion, it is on this 7th day of January, 2014, ORDERED that this matter is stayed until June 30, 2014, pending the final resolution of the Federal Court litigation. Plaintiff's attorney to serve a copy of this Order upon all parties within seven (7) days of the date of this Order.

PETER E. BARISO, JR., A.J.S.C.

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