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Office of Proceedings
September 15, 2016
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Public Record

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
Answer Interrogatories, Make Admissions, and Provide Responsive
Documents to Pending 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 interveners 212 Marin Boulevard LLC, et al, including NZ Funding LLC (herein all nine LLCs are referred to as "the LLCs" or "the Hyman interests") to respond fully and completely to interrogatories, requests for admission, and document requests served by email and express delivery on August 11, 2016.

Background to discovery dispute. City et al sought discovery from James Riffin, whom many regard as an abusive filer of OFA's, into Riffin's claims that he was assisting or

attempting to assist real estate developer Steve Hyman's LLCs in this proceeding through mis-use of the OFA remedy. When Mr. Riffin breached commitments to respond to discovery, City et al filed a motion to compel on May 2. At that point, Mr. Riffin responded with objections, mooting the first motion to compel. City et al withdrew it, filing a second motion to compel on August 5.

In order to obviate the need for discovery, counsel for City et al offered to attempt to negotiate stipulations with counsel for the LLCs. During the course of the negotiations, the LLCs' counsel (Mr. Horgan) represented that Mr. Hyman, the manager of the LLCs, suffered from a diagnosed medical condition such that he was no longer fit to make business decisions and had resigned as manager of the LLCs. Mr. Horgan sought by these representations to maintain that the LLCs were not bound to deals Mr. Hyman made with Mr. Riffin, or with parallel conduct, concerning the Harsimus Branch. However, Mr. Horgan refused or was unable to say when the disability arose, when and if Mr. Hyman's agency for the LLCs ceased, and, indeed, seemed to suggest that the agency continued or the LLCs could strike a deal with Mr. Riffin at some later time as their interests dictated. In any event, stipulations proved impossible, and the effort raised more questions than it resolved.

There were two results from the break-down of negotiations: first, the parties assembled for a hearing on August 23 in Washington, D.C. on City et al's second motion to compel Riffin. Second, and most germane here, City et al propounded a set of interrogatories, requests for admission and document requests to the LLCs on August 11. A copy of the cover email and discovery requests is attached as Exhibit A. The interrogatories and requests for admission all sought information on Mr. Horgan's calling into question Mr. Hyman's ability and presumably authority to speak for the LLCs. Some of the document requests also related to that matter. The remaining document requests concerned dealings by Riffin and the LLCs on the Harsimus Branch dispute.

The LLCs responded to all the discovery requests tendered by City et al with objections. See Exhibit B.

In the case of the document requests, the LLCs did turn over one responsive document (a memorandum drawn up in October 2015 by Riffin purportedly directed to representatives of Forest City Ratner). However, that document was tendered in support of a polemical cover letter dated Sept. 1, 2016, spuriously contending that the discovery which City et al sought was not

relevant.[1] The document is relevant not only in showing connection between Riffin and the Hyman interests, but also as an example indicating that Riffin did not turn over all responsive documents in response to Judge Dring's order on August 25. City et al relies in part on this LLC-supplied document in City et al's motion for sanctions against Riffin.

After receiving the last of the LLCs' objections to any discovery on or about September 1, City et al at the request of counsel for the LLCs (Mr. Horgan) attempted again to negotiate a solution to the discovery controversy. The LLCs broke off these negotiations on September 9. See email Horgan to Montange Sept. 9, 2016, 4:44 PM (Exhibit C).

The LLCs' interrogatory objections by Mr. Horgan indicated that that Mr. Hyman's last "participation" in the STB proceedings was attendance at a March 2, 2015 meeting with Victoria Rutson, Director of STB's Office of Environmental Affairs. Mr. Horgan also states that there is "[no] formal written resignation" as manager by Mr. Hyman, but claims none is required, and that "[n]onetheless, Mr. Steven Hyman no longer acts on behalf of the LLCs." Objection to Int. 1, LLCs' Answers and Objections, dated August 26, 2016.

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[1] This document is attached to the motion for sanctions against Riffin as Exhibit J. It was not supplied by Riffin, even though in the hands of the LLCs.

These limited claims by Mr. Horgan are belied by the record. Based on Mr. Horgan's claims to counsel that Mr. Hyman demands civil rights damages (cited in cover email in Exhibit A), Mr. Hyman apparently remains in control of the LLCs' strategy. In any event, there is no indication he has been replaced in terms of strategy. See Motion for Sanctions against Riffin, Exhibit F, second email and attachments. Mr. Hyman, who recently attended a meeting with Forest City Ratner bringing Mr. Riffin along, continues to exchange information with Mr. Riffin on the Riffin litigation over the Harsimus Branch against Forest City Ratner. See Motion for Sanctions against Riffin, Exhibits G, J (supplied by the LLCs) and I, item 4. Mr. Hyman continues to operate at the apparent agent for the LLCs. Unfortunately, if Mr. Hyman is the apparent agent of the LLCs, then the LLCs may continue to be bound according to the general law of agency.[2] Mr. Horgan as counsel for the LLCs cannot simply turn Mr. Hyman on or off as agent in accordance with whatever Mr. Horgan feels works for his legal strategy of the moment. Mr. Hyman has governed the affairs of the LLCs for over a decade, and continues to operate as an apparent agent for the LLCs. Mr.

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[2] Apparent agency or "agency by estoppel" is an agency "created by operation of law and established by a principal's actions that would reasonable lead a third person to conclude that an agency exists." Black's Law Dictionary, 7th ed., pp. 62 & 63.

Horgan points to no action by Mr. Hyman or the LLCs formally or informally renouncing agency.

In all events, counsel for City et al sought stipulations, as City et al sought in its discovery, detailing who was manager for the LLCs and when and for what reasons Mr. Hyman had resigned, and if he was no longer an agent, when and under what notice. In order to protect City et al, counsel further asked the LLCs to stipulate that they would not have any dealings with Riffin. In short, in order to forego discovery on the issue, City sought a clear renunciation of Mr. Hyman's agency for the LLCs, and any dealings now or in the future between the LLCs and Mr. Riffin.

The LLCs refused all stipulations sought by the City: They declined to renounce Mr. Hyman as an agent; they declined to stipulate against future dealings between the LLCs and Riffin; and they declined to stipulate as to their dealings with Riffin. The LLCs through Mr. Horgan terminated negotiations to obviate the discovery conflict on Friday September 9. See Exhibit C. This motion to compel is made after that breakdown of negotiations to resolve the discovery dispute.

I. Relevancy

In a September 1 cover letter which the LLCs furnished City et al along with their objections to the document request, the

LLCs seemed to suggest that Riffin's mis-use of STB remedies and jurisdiction was not relevant.

Conrail and the LLCs have objected that the City is abusing the OFA process by wishing to secure the Branch for trail and park use; STB has responded by requiring (for the first time in decades of rail regulation) that the City demonstrate rail need, feasibility and public support for its OFA. In so doing, Conrail and the LLCs have acknowledged that abuse of the OFA process is relevant. STB seems to support this view, having remarked 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. But Mr. Hyman in the past has sought to employ the OFA process to obtain property for real estate development from Conrail in Jersey City. See Conrail - Abandonment- Edgewater Branch, ICC dkt AB 167-1036 (1987).[3] Abuse of process is a charge frequently levied in OFA proceedings involving Mr. Riffin. Here he professes to be serving as an alternative means to facilitate the Hyman real

[3] Ironically, one of the documents which Riffin furnished in response to City et al's discovery request was a letter by the JCRA (an independent agency of the City) to ICC objecting to Mr. Hyman's mis-use of OFA in AB 167-1036. Motion for Sanctions against Riffin, Exhibit D, Aug. 9, 2016 email Hyman to Riffin (attaches JCRA to ICC letter).

estate interests. The LLCs at the very least indicate they wish to be able to deal with him in the future. Discovery is relevant and appropriate.

Moreover, this case involves at heart an illegal de facto abandonment of a line containing an historic asset (the six block long Harsimus Embankment) that is supposed to be protected under, inter alia, section 106 of the National Historic Preservation Act. STB long ago indicated that de facto abandonments were unlawful, that they could compromise compliance with the Nation's environmental and historic preservation laws, and that the agency would take "whatever steps [were] necessary to enforce compliance with [the law.]" 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. If the OFA process is being abused by Mr. Riffin and the Hyman interests in a fashion that directly threatens the historic Harsimus Embankment with demolition and real estate development, then "whatever steps" surely includes preventing an abusive OFA. Discovery to show mis-use of the OFA process by Mr. Riffin on behalf of and in concert with the Hyman interests for these additional reasons is both relevant and appropriate.

II. The LLCs' Objections Are Without Merit

City et al.'s interrogatories and requests for admission basically sought information put at issue by statements by Mr. Horgan to the effect that Mr. Hyman was no longer manager or agent for the LLCs. They also explored whether the LLCs indeed had cut themselves off from dealing with Riffin. Some of the document requests also involved these issues; the remainder involved communications between Riffin and the Hyman interests.

A. LLCs' General Objections to the Interrogatories, Requests for Admission and for Document Production Are Unavailing

The LLCs make a total of five general objections (LLCs' Answers and Objections to Interrogatories at 2; LLCs' Responses and Objections to Admissions at 2-3; and LLCs' Reponses and Objections to Requests for Production of Documents at 3-5) to City et al's discovery requests. None of the objections has merit.

1. The LLCs claim that the discovery is directed against Mr. and Mrs. Hyman and NZ Funding, and that is improper because they and NZ Funding LLC are not "parties" to the proceeding. The discovery was directed at the LLCs, which are corporations, and therefore appropriately to their "representatives, owners, managers or agents, past as well as current." E.g., Interrogatories, p. 1. This is standard practice in dealing with corporate entities. Mr. Hyman is the manager (or the immediate past manager) of the LLCs, and Mrs. Hyman is the

owner. Mrs. Hyman is also the apparent owner of NZ Funding, LLC, of which Mr. Hyman also has served as apparent manager. The LLCs have failed to pay their taxes, causing tax sales of the property in question in this proceeding to NZ Funding. NZ Funding has not yet foreclosed on the tax sales, but is evidently being primed to do so in an effort to defeat STB jurisdiction.[4] City et al are entitled to inquire into the actions of all of the LLCs' agents (including information concerning their capacity to act for the LLCs) and most especially Mr. and Mrs. Hyman. To suggest that discovery of the communications and actions of the apparent agents of the LLCs is improper would insulate corporate entities from disclosure of actions and inactions on their part.

In any event, STB follows the, inter alia, the rules of evidence for non-jury trials in federal courts (49 CFR 1114.1), and essentially the same for discovery (49 CFR 1114.21). It is standard federal discovery procedure that "[d]ocuments held by the party's attorney, expert, insurance company, accountant, spouse, contractor, officer, or agent are deemed to be within the party's control." Baicker-McKee, et al., Federal Civil Rules Handbook 927 (2016). Where an attorney (here, Mr. Horgan answers/objects, he as responding agent is obligated to "provide

[4] See Motion for Sanctions against Riffin, Exhibit F, Hyman to Riffin email March 19, 2016, and attachment.

the composite knowledge available to the party." Handbook at 913. Answers must include "all information within the party's possession, custody, or control or known by the party's agents." Handbook at 912. A footnote (p. 912 n. 19) to the last quote indicates that affiliated corporations under common control must also produce responsive material. The LLCs' objection as to parties is therefore spurious.

2. In their general objections to Interrogatories and to the Document Requests, the LLCs claim that RTC and the Embankment Preservation Coalition are not proper proponents of discovery as they have not filed a Notice of Intent to OFA. The LLCs and Conrail lost their argument that RTC and the Coalition lacked standing for purposes of judicial review long ago [City of Jersey City v. Consolidated Rail Corporation, 668 F.3d 741 (D.C. Cir. 2012)]. RTC and Embankment Preservation Coalition have been parties to F.D. 34818 since its inception in 2006, and to AB 167-1189X (and related cases) long before the LLCs intervened. City et al (including RTC and the Coalition) collectively support STB remedies and federally mediated state law remedies (NJSA 48:12-125.1) under which the relevant portion of the Harsimus Branch would be preserved for transportation (rail and compatible trail) and historic preservation purposes. RTC and the Coalition oppose mis-use of the OFA remedy by Mr. Riffin to facilitate Mr. Hyman's (the LLCs') real estate

interests and destruction of Jersey City's last under-used transportation corridor. RTC and the Coalition are properly concerned that Riffin and the LLCs would augment rather than address Jersey City's congestion and open space needs. RTC and the Coalition have sufficient interest in preventing mis-use and abuse of STB remedies to be readily entitled to seek discovery showing that the LLCs and Riffin are engaged in an effort to mis-use and abuse STB remedies.

3. The LLCs object that the medical condition of Mr. Hyman is personal information outside the scope of proper discovery. The identity of the LLCs manager and agents is highly relevant when the LLCs' own legal counsel calls into question who is speaking for and running his client. The LLCs' counsel (Mr. Horgan) placed Mr. Hyman's management and agency status and medical condition at issue when he linked the two as an apparent excuse for Mr. Hyman's dealings with Mr. Riffin. However, he then admitted that no documentation existed of the alleged resultant resignation of Mr. Hyman as manager of the LLCs, and he declined to stipulate to an end to Mr. Hyman's apparent agency or to dealings with Riffin, or to further dealings with Riffin. The LLCs cannot on the one hand claim that Mr. Hyman's actions somehow should be disregarded and on the other hand assert that there is no documentation that he is no longer manager or apparent agent and refuse to provide anything to

substantiate an alleged medical condition, when he is actively engaged in activities with Mr. Riffin on behalf of the LLCs. So far as City et al can tell, the law firm representing the LLCs looks to Mr. Hyman as apparent agent for the LLCs. See cover email to discovery in note 1, supra. If the LLCs wish to keep Mr. Hyman's medical condition confidential, they can supply it pursuant to an appropriate protective order.

4. In their general objections to the requests for admission, the LLCs claim the admissions sought by City is "overbroad." To the contrary, the requests are quite specific, dealing with Mr. Hyman's condition, continued apparent agency and dealings with Hyman now or in the future.

The LLCs cite an STB decision on November 2, 2015, in this proceeding for the proposition that overbroad discovery "is not proper in exempt abandonment proceedings." The referenced decision allowed Riffin to late-file his Notice of Intent to OFA, and seemed to suggest the Board would evaluate whether he met OFA standards after further showings. It did not discuss discovery, and neither foreclosed nor curtailed it. The LLCs appear to have mis-cited the decision. In any event, City et al have already indicated the relevancy of the matters at issue in Part I, supra. Although discovery (other than on environmental issues) ordinarily does not occur in exempt abandonment proceedings because there are stringent time deadlines (too

tight for discovery to occur) and because there are seldom economic issues, AB 1267-1189X is an extraordinary case. AB 167-1189X has no applicable time deadlines (all schedules having been vacated by the agency). Environmental and historic review is far from completed. Moreover, the very background of this proceeding is extraordinary: the LLCs have stated that Conrail's unlawful de facto abandonment and sale of the rail line in question in this proceeding to the LLCs in the first instance was based on fraudulent misrepresentations by Conrail to the LLCs, the City, the agency and the Courts. The LLCs nonetheless seek to secure the line they allege was fraudulently sold them in order to demolish the six block historic Embankment that since 2000 has been eligible for the National Register of Historic Places and evidently replace it with skyscrapers. The LLCs, with the joinder of Conrail, have sued the City in state courts for demolition permits and to prevent the City from seeking to employ its federal remedies in this proceeding. Yet the Harsimus Branch from CP Waldo to Marin Boulevard is the last remaining under-utilized transportation corridor to serve increasingly congested downtown Jersey City. It is also the preferred route for the East Coast Greenway. It is now under attack by Mr. Riffin's mis-use of the OFA process to backstop or otherwise assist the Hyman interests. The discovery tendered by City et al is clearly appropriate.

5. The LLCs in their general objection to document requests at p. 5 argue that the document requests are "duplicative, burdensome and thus improper" because they are similar to document requests to Mr. Riffin. The fact that two parties have the same document does not mean that a third party cannot request it from both. Riffin may have lost or destroyed some documents; the LLCs others. In any event, the LLCs were provided with Riffin's responsive documents before they filed this objection.

As a general matter, all that is required is a review of the emails and attachments, or other documents, received and sent by the Hymnans and their various agents on which Mr. Riffin is a sender or recipient. This is hardly burdensome given the modern word search technology. Anything the LLCs (through their owner, manager, or apparent agents) in fact provide to Mr. Riffin is not protected under any privilege or work product rule. In short, the LLCs vague objection is spurious.

B. LLCs' Specific Objections to the Interrogatories and Requests for Admission

Interrogatories and first two requests for admission. The LLCs basically reiterate spurious general objection that they need not provide information concerning or held by agents and managers of the LLCs, on the ground the agents and managers

are not parties. This objection is unavailing for the reasons already discussed.

Requests for Admissions 3-6. In Requests for Admission 3- to 6, the LLCs are asked to renounce future relationships with Mr. Riffin, including supplying financial support for any OFA in AB 167-1189X, and including supplying assistance in the form of witness and attorney's fees for Mr. Riffin in AB 167-1189X and in civil litigation by Riffin relating to any portion of the Harsimus Branch. The LLCs object on the ground (stated in their response to number 3 at p. 6) that this "is a disguised request for a stipulation ... that has been rejected by the LLCs [because they do not want to be precluded from cooperating with Riffin]." Since a request for admission if admitted amounts to a stipulation (49 CFR 1114.27(b)), the fact that this is so is not grounds for objection. If the LLCs do not want to make the admission, then they should deny the matter as 49 CFR 1114.27(a) provides, and not confuse the matter by "objecting." The LLCs if they wish to deny are required to "fairly meet the substance of the requested objection…." Id. Judging from their objections, the LLCs wish to continue to deal with Riffin in the future in support of his OFA. They should simply so indicate rather than purport to object.

C. The LLCs' Objections to the Document Requests Are Without Merit

Doc. Req. 1 - 3. The LLCs object to City et al's document requests 1 to 3 number one for communications with Riffin concerning matters relating to the Harsimus Branch other than legal pleadings on the ground that the material is irrelevant. The LLCs say only legal pleadings have relevancy. This objection is spurious. City et al already has the legal pleadings of the LLCs and Riffin. To ask for them again is duplicative. They are also publicly available on the STB website. Documents relating to other Harsimus Branch litigation in which Riffin and the Hyman interests are engaging are relevant, and the exchange of those between Riffin and the Hyman interests would support City et al's contention that Riffin and the Hyman interests are mis-using the OFA process.

As to Doc. Req. 3 (documents relating to financial assistance for the Riffin OFA), the LLCs also object that this is outside the scope of the proceeding because the LLCs may choose to support an OFA (evidently by Riffin) if it will have "no impact upon their properties, or in some fashion as an alternative strategy." LLCs' Objections to Doc. Requests at unnumbered p. 7. This constitutes an admission that the LLCs are relying on Riffin as a possible alternative strategy, and supports City et al's contention that the Riffin OFA is a mis-use of process. All documents on this subject in possession of the LLCs (or Riffin) are highly relevant.

Doc. Req. 4. The LLCs object to providing documents relating to Riffin's Forest City litigation on two grounds. They claim it is similar to a request disallowed in an STB decision served November 2, 2015. The referenced STB decision did not disallow discovery; it allowed Riffin into the proceeding, making him subject to discovery. The LLCs also seem to claim that they need not produce documents because City et al are not "involved" in the Forest City proceeding. The Forest City litigation involves an effort by Riffin alongside Mr. Hyman to use the Riffin OFA as grounds to enjoin re-development of Metro Plaza pending STB action in AB 167-1189X. Riffin has explained that this is to pressure Conrail and the City to do a deal with Hyman (E.g., Motion for Sanctions against Riffin, Exhibit I, item 2. Documents dealing with this litigation are germane to the abusive nature of Riffin's OFA.

Doc. Req. 5-8. These document requests seek documents showing Mr. Hyman's resignation as manager of the LLCs, and the date and reasons; documents bearing on Mr. Hyman's continued agency or other role for the LLCs, documents relating to guardianship or power of attorney over or for Mr. Hyman, and documents indicating who if anyone is Mr. Hyman's legal counsel.

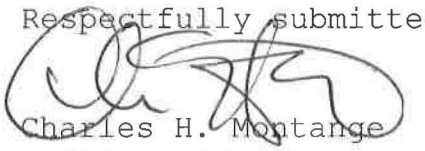
The LLCs basically make the same contentions as set forth in their general objections, to which City et al have already responded. Since the LLCs' legal counsel has sought to avoid

responsibility for correspondence between the LLCs and Mr. Riffin on the ground that Mr. Hyman was no longer manager of the LLCs, City et al are entitled to documents bearing on this claim and on whether Mr. Hyman is nonetheless functioning as an apparent agent of the LLCs. The fact that LLCs' counsel makes a claim does not mean that the subject matter of the claim is no longer a matter of discovery. To date, the LLCs have made claims concerning their relationship to Riffin to which City et al will not stipulate because they appear contrary to fact. City et al are entitled to discovery on those matters. To date, the LLCs have made representations that Mr. Hyman is no longer their manager, and, maybe no longer their agent. This also seems contrary to fact, and City et al are entitled to discovery on these claims. City et al are not interested in a fictional reality about the dealings and parallel conduct of Mr. Riffin and the LLCs. In addition, if the LLCs' counsel in effect is suggesting that Mr. Hyman is pursuing a course of action that is not in accordance with the course being pursued by the LLCs, then Mr. Hyman's interests no longer mesh with the LLCs and City et al are entitled to seek documents indicating if he has separate counsel, or has given a power of attorney or is under a guardianship.

Conclusion

City et al respectfully request that an order be entered compelling the LLCs to respond with answers rather than objections to City et al's interrogatories and requests for admission, and with all documents sought by City et al's document requests within ten days of entry of the order.

Respectfully submitted,



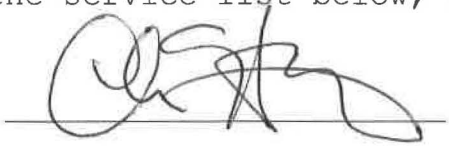
Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739
Counsel for City et al

Attachments:

Exhibit A (City et al's discovery requests - interrogatories, requests for admission, requests for production)
Exhibit B (LLCs' objections to interrogs, req. adm., & req. production)
Exhibit C (LLCs' email terminating negotiations, Sept. 9 and City et al's response to LLCs' parting shots)

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

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

Justin Frohwith, President
Jersey City Landmarks Conservancy
54 Duncan Avenue
Jersey City, NJ 07303

Jeremy Jacobson, President
Harsimus Cove Association
20 Erie Street, Apt. #2
Jersey City, NJ 07302

President
Hamilton Park Neighborhood Association
PMB 166
344 Grove Street
Jersey City, NJ 07302

Jill Edelman, President
Powerhouse Arts District Nbd Ass'n
140 Bay Street, Unit 6J
Jersey City, NJ 07302

President
The Village Nbd Ass'n
365 Second Street
Jersey City, NJ 07302

President
Van Vorst Park Association
91 Bright Street
Jersey City, NJ 07302
President
Historic Paulus Hook Ass'n
192 Washington Street
Jersey City, NJ 07302

Dennis Markatos-Soriano
Exec. Director
East Coast Greenway Alliance
5315 Highgate Drive, Suite 105
Durham, NC 27713

Gregory A. Remaud
Conservation Director
NY/NJ Baykeeper
52 West Front Street
Keyport, NJ 07735

Sam Pesin, President
Friends of Liberty State Park
580 Jersey Ave., Apt. 3L
Jersey City, NJ 07302

Aaron Morrill
Civic JC
64 Wayne St.
Jersey City, NJ 07302

Eric S. Strohmeyer
Vice President, COO
CNJ Rail Corporation
81 Century Lane
Watchung, NJ 07069 [also by email]

James Riffin
PO Box 4044
Timonium, MD 21094 [also by email]

Supplemental Service List

Per a prior request of the Board, service is also made on the following addressees, although none is believed to continue to represent a party in the proceeding and/or is otherwise superceded.

Stephen Marks
Hudson County
583 Newark Avenue
Jersey City, NJ 07306

Gretchen Scheiman
Historic Paulus Hook Association
121 Grand Street
Jersey City, MJ 07302

Exhibit A

Michael Selender
Jersey City Landmarks Conservancy
P.O. Box 68
Jersey City, NJ 07303-0068

Brian P. Stack
411 Palisade Avenue
Jersey City, MJ 07307

Dan Weber
Van Vorst Park Association
2989 Varick Street
Jersey City, NJ 07302

Subject: AB 167-1189X -- Harsimus

From: C. Montange (c.montange@frontier.com)

To: dehorgan@lawwmm.com;

Cc: rmjenkins@mayerbrown.com; cnjrail@yahoo.com;

Bcc: aferster@railstotrails.org; jcurley@curlaw.com; moher1@aol.com; gucciardos@comcast.net; schambers@jcnj.org;

Date: Thursday, August 11, 2016 3:15 PM

Mr. Horgan, part of the problem in working out a stipulation with the LLCs (as I originally suggested) that would moot the motion to compel before ALJ Dring is the sometimes contradictory remarks you have made to me in emails and orally, or the failure to respond to concerns, and the confusion that this has raised in terms of preparing stipulations. For example, you wish to stipulate that Mr. Hyman is no longer manager of the LLCs due to a medical condition, but you decline to discuss (at least in writing) whether there is a guardianship, a power of attorney, or a date associated with the diagnosis of the medical condition, or when Mr. Hyman resigned as manager. As a result, we do not know what Mr. Hyman has arranged with Riffin (which certainly still appears highly relevant if Riffin is discharging his part of a bargain or commitment that Mr. Hyman has struck with him while operating at LLCs' agent), when Mr. Hyman's medical problem was first diagnosed, and when Mr. Hyman resigned as manager. In addition, we do not know what management arrangements now exist. Indeed, we do not know if you continue to represent Mr. Hyman, or even can do so if his interests conflict with the LLCs (if they do not, then he would appear still to be acting in agency for them), so the stipulation may not be valid as to him and we need to know whether it is or is not. And the LLCs appear in any event to be taking advantage of -- or at least they are the intended beneficiaries of and are not objecting to -- current actions of Mr. Hyman in league with Mr. Riffin in attacking the jurisdiction of or remedies administered by STB, as manifest in the new civil action against Forest City. Unless the LLCs somehow sever all relationship with Riffin (that would seem to require control over Mr. Hyman's dealings with Riffin which the LLCs so far as we know are not even seeking), discovery of what the LLCs through Mr. Hyman and Mr. Riffin are doing remains relevant and material. I would be derelict not to pursue it. Moreover, you wish to treat the stipulations regarding discovery against Riffin as precluding discovery on these matters against the LLCs as moot or irrelevant. By providing the questions we have about the Riffin-LLCs relationship to your clients, we can arrive at stipulations that are on point in this regard, and at least have some feel for what you wish us to waive further inquiry into. Candidly, the LLCs appear to be a rudderless ship, or if anything, under the guidance of a skipper whom the rest of the ship are trying vaguely to disavow while riding along to see if he still gets them what he wants.

In short, it strikes me that the only way to proceed is formally to tender discovery requests to the LLCs and their reps, now or previous, on the Riffin matters to tie down all the loose ends. City et al are prepared to negotiate stipulations, if possible, that would abate all this discovery, as well as the discovery dispute subject to our motion to compel, on the basis of

the issues raised by events involving Riffin and the LLCs. At least some of these matters may be amenable to stipulation. To the extent anything is not, then the LLCs will have to respond to our discovery pursuant to Part 1114.

As a courtesy, and in order to facilitate a resolution in advance of the Aug 24 hearing, here is a copy of our discovery to the LLCs, which was deposited with Fed X for next day delivery. Indeed, if your clients would fully, candidly and expeditiously answer the discovery requests, that would abate the need for our motion to compel as well, for, even as to the document requests, what Messrs Riffin and Hyman communicated to each other should be in the possession of both, and none of it is privileged in any way.

Attachments

- Jersey -- doc requests to LLCs aug 11.pdf (160.10KB)
- Jersey -- interrogatories to LLCs Aug 11.pdf (156.56KB)
- Jersey_-- requests for admissions to LLCs Aug 11.pdf (155.39KB)

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)

Interrogatories of
City et al to the LLCs

Pursuant to 49 C.F.R. 1114.26 and other applicable authority, interveners City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (City et al) hereby request the LLCs (including Steven and Victoria Hyman) to answer the following written interrogatories as soon as practicable but no later than August 26, 2016.

For all purposes herein, "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. The LLCs shall include past and current managers, representatives, agents and owners, including but not limited to Steven Hyman and Victoria Hyman.

These interrogatories are continuing. If the recipient becomes aware of information that causes any answer to be incorrect, then that information shall be supplied within three

business days of the recipient becoming aware of the information.

INTERROGATORIES

1. State the date upon which Steven Hyman "resigned as manager" for the LLCs for, in part, a "diagnosed medical condition adversely affecting Mr. Hyman's ability to act on the LLCs' behalf."

2. Summarize the "diagnosed medical condition affecting Mr. Hyman's ability to act on the LLCs' behalf."

3. Identify (name and business address) the person making the diagnosis of a medical condition adversely affecting Mr. Hyman's ability to act on the LLCs' behalf, and state the date on which the diagnosis was first made to Mr. Hyman or to Victoria Hyman.

4. Identify by stating title, date, sender and recipients all documents (other than those supplied in response to requests for production of documents) showing the resignation of Steven Hyman as manager of the LLCs.

5. Identify (name and business address) of any individual, including any guardian, who currently is manager for the LLCs.

6. Identify (name, address and telephone number) the attorney or attorneys representing Mr. Steve Hyman in connection with AB 167-1189X and any other proceeding

involving all or portions of the Harsimus Branch or property adjacent to the Harsimus Branch.

7. State whether Mr. Steve Hyman had executed a power of attorney to another individual or is under any form of legal guardianship. If he has executed a power of attorney, identify (name and business address) of the person or persons holding such power of attorney, and the date the power of attorney was executed. If he is under a guardianship, identify (name and business address) of the guardian, and the date on which the guardianship became effective.

8. State whether any measures have been taken to prevent Mr. Steven Hyman from taking actions in connection with AB 167-1189X or other proceedings or civil actions relating to the Harsimus Branch or any property adjacent thereto. If such measures have been taken, summarize those measures.

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 11 August 2016 of these interrogatories by email attachment addressed to dehorgan@lawwmm.com and by express delivery (next day delivery), to Daniel Horgan at his address of record.

s/
Charles H. Montange

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation –	)
Abandonment Exemption –	) AB 167 (Sub-no 1189X)
in Hudson County, NJ	)

REQUESTS FOR ADMISSIONS

City of Jersey City ("City"), Rails to Trails Conservancy ("RTC"), and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition ("Coalition") (collectively "City et al") make the following requests for admission to the Intervenor LLCs pursuant to 49 CFR 1114.27. As used in this response, "LLCs" shall refer to eight LLCS d/b/a 212 Marin Boulevard LLC, et al., and an additional LLC d/b/a NZ Funding, LLC, all under apparently common control and also collectively referred to as intervenors". The LLCs shall include all representatives, owners, managers, or agents, past as well as current. "OFA" shall mean "offer of financial assistance" pursuant to 49 U.S.C. 10904 in AB 167-1189X or any related proceeding.

Instructions: Pursuant to 49 CFR 1114.27, the matters below shall be deemed admitted by the LLCs unless within 15 days after service of these Admissions (service by Federal Express,

next day delivery, on 12 August 2016), a written answer or objection is tendered (to counsel making this Request of Admissions) addressed to the matter and signed by the party or its representative or counsel. If objection is made, the reasons shall be stated. The answer shall specifically admit or deny the matter, or set forth in detail reasons why the answering party cannot truthfully admit or deny the matter. A denial should fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify as much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or to deny.

Requested admissions

1. Steven Hyman, formerly the managing agent of the LLCs, has resigned as managing agent of the LLCs.
2. The aforesaid resignation, in part, was due to a diagnosed medical condition adversely affecting Mr. Hyman's ability to act on the LLCs' behalf.
3. The LLCs, including Steven Hyman and their current owner Victoria Hyman, now disclaim and disavow any prior act,

statement or document executed by Steven Hyman to the degree that it appears, or may be construed, to support any action by James Riffin in pursuit of an OFA or any other form of acquisition of a portion of the Harsimus Branch, or in connection with any civil litigation, appeal, or petition for review filed by James Riffin in connection with the Harsimus Branch or property adjoining the Branch.

4. The LLCs, including Steven and Victoria Hyman, will stop supporting, and will withdraw all support, financially or otherwise, directly or indirectly, of any OFA by Riffin, or civil litigation by Riffin, in connection with the Harsimus Branch.

5. The LLCs, including Steven and Victoria Hyman, will not lend, pledge or guarantee any money, credit, or thing of value to establish financial responsibility on the part of any OFA that may be filed in AB 167-1189X or any civil litigation connected to the Harsimus Branch instituted or pursued by James Riffin.

6. The LLCs, including Steven and Victoria Hyman, will not pay or cause to be paid to James Riffin any money, land, commission, finder's fee, reimbursement, or interest, nor will they pay or cause to be paid any witness fee or litigation cost or attorney's fee, to Mr. James Riffin or any attorney or witness appearing on his behalf or in

support of a position taken by him in AB 167-1189X or any related proceeding at STB, or in any civil litigation relating to any portion of the Harsimus Branch or property adjacent to any portion of the Harsimus Branch.

For: City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition

By: s/

Charles H. Montange, their counsel
426 NW 162d St.
Seattle, WA 98177
(206)546-1936

By my signature below, I certify service upon Daniel Horgan at his address of record, by deposit for express delivery, next business day, on August 11, 2016, with a courtesy copy by email attachment. A courtesy copy was similarly served upon Robert Jenkins, counsel for Conrail, at his address of record, by email attachment on the same date.

s/

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
City et al to the LLCs

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 the LLCs deliver copies of the documents requested below to counsel for City et al his address below on or before the date specified herein pursuant to reasonable terms for payment for costs of duplication and delivery agreed to in writing with the LLCs.

For all purposes herein, "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. The LLCs shall include past and current managers, representatives, agents and owners, including but not limited to Steven Hyman and Victoria Hyman.

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 corporation, or individual) who has filed a pleading in AB 167-1189X. Without limitation, documents shall include any emails sent to or received by Mr. Steven Hyman and all documents attached or related thereto.

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 in whole or in part the subject of the abandonment proceeding bearing STB docket AB 167 (Sub-no. 1189X).

Additional instructions. If the LLCs 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 have destroyed or erased any document responsive hereto, please indicate that responsive documents

have been destroyed or erased, state the approximate date, and state the LLCs document retention policy, if any.

City et al request a response as soon as reasonably practicable, and no later than Friday, September 2, 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 the LLCs' 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 the LLCs or any representative (current or past, including specifically Mr. Steve Hyman) of the LLCs from James Riffin relating in any fashion to the Harsimus Branch, including but not limited to disposition of property in the Harsimus Branch and potential or actual lawsuits or regulatory disputes concerning the Harsimus Branch in whole or in part, or relating to AB 167 (Sub-no. 1189X), other than legal pleading filed with the Surface Transportation Board in AB 167-1189X.

2. All documents (not otherwise provided pursuant to Doc. Req. 1) sent to or received by Mr. Steve Hyman or any other past or former manager, officer, employee, attorney or representative of

the LLCs from Mr. James Riffin relating to the Harsimus Branch, other than legal pleadings filed with the Surface Transportation Board in AB 167-1189X.

3. All documents relating to any financial assistance by the LLCs, directly or indirectly (such as, but not limited to, through any current or former manager, representative or agent), for the support of James Riffin for purposes of preparing for or making an "offer of financial assistance" in AB 167 (Sub-no. 1189X), or for purposes of preparing for or pursuing civil litigation relating to any part or alleged part of the Harsimus Branch.

4. All documents relating to meetings between Mr. Steven Hyman, Mr. James Riffin and "Forest City" (the developer of property in Jersey City east of Marin Boulevard and south of Sixth Street), or any other developer of property in Jersey City in connection with any portion of the Harsimus Branch or property adjacent thereto.

5. All documents manifesting the resignation of Steven Hyman as manager for the LLCs, including documents sufficient to show the date of and reason for such resignation.

6. All documents bearing on any continued agency or role of Mr. Steven Hyman for the LLCs or ownership interest or expectancy by Mr. Steven Hyman in the LLCs or any portion of the Harsimus Branch or property adjoining the Harsimus Branch.

7. Documents showing a guardianship over Mr. Steven Hyman, or a power of attorney for any individual to act on behalf of Mr. Steven Hyman, in AB 167-1189X.

8. Documents sufficient to indicate who, if anyone, is authorized to act as legal counsel for Mr. Steven Hyman in AB 167-1189X.

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 11 August 2016 of these document requests by email attachment addressed to dehorgan@lawwmm.com and by express delivery (next day delivery), to Daniel Horgan at his address of record.

Charles H. Montange

Exhibit B

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)

LLCs' Answers and Objections
to

Interrogatories of
City et al to the
LLCs

Pursuant to 49 C.F.R. 1114.26 and other applicable authority, interveners City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (City et al) hereby request the LLCs (including Steven and Victoria Hyman) to answer the following written interrogatories as soon as practicable but no later than August 26, 2016.

For all purposes herein, "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. The LLCs shall include past and current managers, representatives, agents and owners, including but not limited to Steven Hyman and Victoria Hyman.

These interrogatories are continuing. If the recipient

becomes aware of information that causes any answer to be incorrect, then that information shall be supplied within three business days of the recipient becoming aware of the information.

GENERAL OBJECTION: Steven and Victoria Hyman, and NZ Funding, LLC are not parties to these proceedings and it is improper to direct interrogatories to them as individuals or entities not within the jurisdiction of the STB in Exempt Abandonment proceedings.

The Rails to Trails Conservancy, and the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition have not filed any notice of intent to file an Offer of Financial Assistance (OFA) in these proceedings, they are not actual or potential shippers of freight by rail, and there is no legitimate reason for discovery in the STB's presently ongoing National Historic Preservation Act review by its Office of Environmental Analysis. Therefore, these interrogatories are improper as propounded by those two parties because they have no cognizable property or other interest to be protected in these proceedings that requires discovery. The inclusion of these entities impermissibly expands the scope of discovery in which they have no permissible interest.

Also, and in particular, the personal nature of the

inquiries, seeking private medical information on non-issues is entirely outside the scope of proper discovery in these proceedings. They appear on their face to be issued for the purposes of harassment, embarrassment and to increase the personal and financial burdens of the LLCs and their owner, Victoria Hyman, and upon Steven Hyman.

INTERROGATORIES

1. State the date upon which Steven Hyman "resigned as manager" for the LLCs for, in part, a "diagnosed medical condition adversely affecting Mr. Hyman's ability to act on the LLCs' behalf."

ANSWER: Objection. The requested information is not relevant to any issue in these proceedings. As such it is beyond the scope of discovery provided for in 49 CFR §1114.21. Each of the LLCs have appeared in these proceedings, and in related judicial proceedings, through counsel who have been permitted to appear and practice before the Surface Transportation Board, including their undersigned counsel. The LLCs, as intervening parties, are bound in these proceedings by and through their counsel. Steven Hyman, individually, is not a party to any proceeding before the STB, nor any related judicial proceeding. His personal status, condition, or authority is

not an issue, nor has it been heretofore. Therefore, the interrogatory is irrelevant and beyond the scope of proper discovery in these proceedings.

Without waiving any objection, the LLCs state that the last participation by Mr. Hyman in these STB proceedings was on March 2, 2016 when he appeared in person, along with the LLCs' counsel of record, at a meeting conducted by Victoria Rutson, Director, Office of Environmental Analysis, at the STB in Washington, DC. Thereafter, he has not represented the interests of the LLCs by any participation in these proceedings. No formal written resignation exists or is required by law, or otherwise. Nonetheless, Mr. Steven Hyman no longer acts on behalf of the LLCs.

2. Summarize the "diagnosed medical condition affecting Mr. Hyman's ability to act on the LLCs' behalf."

ANSWER: Objection. The LLCs have the same objection as stated for interrogatory #1, above. Mr. Hyman's medical condition is not a relevant consideration in any matter now or previously before the STB. Further, the LLCs cannot be conflated with the individual whose personal medical information is sought through this interrogatory. It would be highly improper, and an invasion of personal privacy for the procedures

of the agency to be used to compel an unnecessary and unwarranted disclosure of personal medical or similar information.

3. Identify (name and business address) the person making the diagnosis of a medical condition adversely affecting Mr. Hyman's ability to act on the LLCs' behalf, and state the date on which the diagnosis was first made to Mr. Hyman or to Victoria Hyman.

ANSWER: Objection. The LLCs have the same objection as stated for interrogatory #2, above.

4. Identify by stating title, date, sender and recipients all documents (other than those supplied in response to requests for production of documents) showing the resignation of Steven Hyman as manager of the LLCs.

ANSWER: Objection. The LLCs have the same objection as stated for interrogatory #1, above, and to any objections that may be raised to the stated requests for production of documents.

5. Identify (name and business address) of any individual, including any guardian, who currently is manager for the LLCs.

ANSWER: Objection. The LLCs have the same objection as stated for interrogatory #1, above. They

further object to the form of the question as to the use of the term "guardian" as it is not applicable to any non-natural person, and to the degree it is intended to refer to any natural person, the objection to interrogatory #2, above, is applicable here.

6. Identify (name, address and telephone number) the attorney or attorneys representing Mr. Steve Hyman in connection with AB 167-1189X and any other proceeding

ANSWER: Objection. The LLCs have the same objection as stated for interrogatory #1, above. Further, Mr. Steve Hyman is not a party in the referenced proceedings and therefore the question states a false premise that he is a party or participant in proceedings before the STB.

7. State whether Mr. Steve Hyman had executed a power of attorney to another individual or is under any form of legal guardianship. If he has executed a power of attorney, identify (name and business address) of the person or persons holding such power of attorney, and the date the power of attorney was executed. If he is under a guardianship, identify (name and business address) of the guardian, and the date on which the guardianship became effective.

ANSWER: Objection. The LLCs have the same objections as made to interrogatories 1, 2, 5 and 6, above.

8. State whether any measures have been taken to prevent Mr. Steven Hyman from taking actions in connection with AB 167-1189X or other proceedings or civil actions relating to the Harsimus Branch or any property adjacent thereto. If such measures have been taken, summarize those measures.

ANSWER: Objection. The LLCs have the same objections as made to interrogatories 1, 2, 5 and 6, above.

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 11 August 2016 of these interrogatories by email attachment addressed to dehorgan@lawwmm.com and by express delivery (next day delivery), to Daniel Horgan at his address of record.

_____

Charles H. Montange

The Foregoing Answers and Objections to interrogatories 1 through 8 are given on behalf of the eight New Jersey Limited Liability Companies first listed above, that is 212 Marin Boulevard, LLC, through and inclusive of 446 Newark Avenue, LLC. As to those individuals and the entity not parties to these proceedings that have been included within the definition of LLCs given with these interrogatories, service of discovery requests upon counsel for the eight referenced parties is not sufficient to compel discovery from non-parties or individuals in the circumstances.

DATED: AUGUST 26, 2016

S/ DANIEL E. HORGAN

Daniel E. Horgan, DC BAR #239772
Waters, McPherson, McNeill, P.C.
300 Lighting Way, 7th Floor
Secaucus, NJ 07096
201-330-7453
dehorgan@lawwmm.com

CERTIFICATION OF SERVICE

I hereby certify and declare that on this date copies of the foregoing answers and objections to interrogatories have been served upon all counsel in these proceedings and upon Eric Strohmeyer as CNJ Rail and James Riffin. Service has been made by means of deposit in US First Class Mail, and courtesy copies have been provided on this date by e-mail.

S/ DANIEL E. HORGAN

Daniel E. Horgan, DC BAR #239772
Waters, McPherson, McNeill, P.C.
300 Lighting Way, 7th Floor
Secaucus, NJ 07096
201-330-7453
dehorgan@lawwmm.com

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation –)
Abandonment Exemption –) AB 167 (Sub-no 1189X)
in Hudson County, NJ)

LLCs' Responses and Objections
to
REQUESTS FOR ADMISSIONS

City of Jersey City ("City"), Rails to Trails Conservancy ("RTC"), and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition ("Coalition") (collectively "City et al") make the following requests for admission to the Intervenor LLCs pursuant to 49 CFR 1114.27. As used in this response, "LLCs" shall refer to eight LLCS d/b/a 212 Marin Boulevard LLC, et al., and an additional LLC d/b/a NZ Funding, LLC, all under apparently common control and also collectively referred to as intervenors". The LLCs shall include all representatives, owners, managers, or agents, past as well as current. "OFA" shall mean "offer of financial assistance" pursuant to 49 U.S.C. 10904 in AB 167-1189X or any related proceeding.

Instructions: Pursuant to 49 CFR 1114.27, the matters below shall be deemed admitted by the LLCs unless within 15 days after service of these Admissions (service by Federal Express,

next day delivery, on 12 August 2016), a written answer or objection is tendered (to counsel making this Request of Admissions) addressed to the matter and signed by the party or its representative or counsel. If objection is made, the reasons shall be stated. The answer shall specifically admit or deny the matter, or set forth in detail reasons why the answering party cannot truthfully admit or deny the matter. A denial should fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify as much of it as is true and qualify or deny the remainder.

An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or to deny.

GENERAL OBJECTION: Steven Hyman, Victoria Hyman and NZ Funding, LLC are not parties to these proceedings and it is improper to direct requests for admissions to them as individuals or entities not within the jurisdiction of the STB in Exempt Abandonment proceedings. The Rails to Trails Conservancy, and the Pennsylvania Railroad Harsimus Stem Embankment

Preservation Coalition have not filed any notice of intent to file an Offer of Financial Assistance (0FA) in these proceedings, they are not actual or potential shippers of freight by rail, and there is no legitimate reason for discovery in the STB's presently ongoing National Historic Preservation Act review by its Office of Environmental Analysis. Therefore, these requests for admissions are improper as propounded by those two parties because they have no cognizable property or other interest to be protected in these proceedings that requires discovery. The inclusion of these entities impermissibly expands the scope of discovery in which they have no permissible interest.

There is no basis within these proceedings now before the STB that concerns the relationship (if any) between the LLCs and James Riffin. In a similar ruling on an analogous request for discovery between Conrail and the LLCs, the STB ruled on November 2, 2015 that similar overly broad requests by the same requestors were not proper in exempt abandonment proceedings. That ruling applies with equal force here to establish that the present requests are likewise improper.

The personal nature of certain of the inquiries, seeking private medical information on non-issues is

entirely outside the scope of proper discovery in these proceedings. Those requests appear on their face to be issued for the purposes of harassment, embarrassment and to increase the personal and financial burdens of the LLCs and their owner, Victoria Hyman, and upon Steven Hyman.

Requested admissions

1. Steven Hyman, formerly the managing agent of the LLCs, has resigned as managing agent of the LLCs.

ANSWER: Objection. The LLCs repeat and reassert their General Objection, above to this request. Without waiving objection to the relevance of Mr. Hyman's status, the LLCs admit that he is no longer the managing agent of the eight LLCs that have the status of intervenors in these STB proceedings.

2. The aforesaid resignation, in part, was due to a diagnosed medical condition adversely affecting Mr. Hyman's ability to act on the LLCs' behalf.

ANSWER: Objection. The LLCs repeat their general objection, above, and further state that any medical condition of their former manager is not relevant to these proceedings in any way. In addition, the personal nature of the inquiry, seeking private medical information on non-issues of a non-party is entirely outside the scope of proper discovery in these proceedings.

This inquiry, and line of inquiry, appears on its face to be issued for the purposes of harassment, embarrassment and to increase the personal and financial burdens of the LLCs and their owner, Victoria Hyman, and upon Steven Hyman.

3. The LLCs, including Steven Hyman and their current owner Victoria Hyman, now disclaim and disavow any prior act, statement or document executed by Steven Hyman to the degree that it appears, or may be construed, to support any action by James Riffin in pursuit of an OFA or any other form of acquisition of a portion of the Harsimus Branch, or in connection with any civil litigation, appeal, or petition for review filed by James Riffin in connection with the Harsimus Branch or property adjoining the Branch.

ANSWER: Objection. The request is improper in that it does not specify or provide any written statement or individual document to which it seeks a response, and the description of the universe of statements referred to is vague, subjective and overbroad. It is also irrelevant as it extends to matters, including matters in litigation, which themselves are not specified, future property acquisitions, and an overbroad universe of matters beyond the bounds and scope of the present STB proceedings. Since Steven Hyman can no longer act for the LLCs, he cannot presently affirm or disclaim anything

on their behalf, and the request is therefore moot and improper as to him. Even though it is recognized that any attempt to raise an admission limited by STB rules to these proceedings would be improper in other proceedings, that may not prevent the necessity of responding to the improper use of admissions given in these proceedings in other proceedings, or in the press or other public forums by the City and its co-litigants. Lastly, by way of objection with full reservation to make further objection and/or argument on this matter, the request abuses the STB discovery process as the form, scope and nature of the request for admission, is a disguised request for a stipulation with the City on an issue that has been rejected by the LLCs for the same reasons given above.

4. The LLCs, including Steven and Victoria Hyman, will stop supporting, and will withdraw all support, financially or otherwise, directly or indirectly, of any OFA by Riffin, or civil litigation by Riffin, in connection with the Harsimus Branch.

ANSWER: Objection. The LLCs repeat their general objection, above, and their specific objection to foregoing request #3. In addition to those objections, this request is improper as it is based up an assumed fact that the LLCs are supporting an OFA by Mr. Riffin. The request is overbroad and all-inclusive, not only as to any OFA but also to "civil litigation", since it would impermissibly

limit the LLCs' future options in the present STB proceedings and interfere with civil litigation. As a request for a present statement of position on future events, it is not a proper subject for a request for admission. Future decisions cannot, and need not, be made now, in a vacuum. Therefore, the request is improper in these respects also.

5. The LLCs, including Steven and Victoria Hyman, will not lend, pledge or guarantee any money, credit, or thing of value to establish financial responsibility on the part of any OFA that may be filed in AB 167-1189X or any civil litigation connected to the Harsimus Branch instituted or pursued by James Riffin.

ANSWER: Objection. The LLCs repeat their foregoing General Objection and the specific objections raised in response to the foregoing request #4, above.

6. The LLCs, including Steven and Victoria Hyman, will not pay or cause to be paid to James Riffin any money, land, commission, finder's fee, reimbursement, or interest, nor will they pay or cause to be paid any witness fee or litigation cost or attorney's fee, to Mr. James Riffin or any attorney or witness appearing on his behalf or in support of a position taken by him in AB 167-1189X or any related proceeding at STB, or in any civil litigation relating to any portion of the Harsimus Branch or property

adjacent to any portion of the Harsimus Branch.

ANSWER: Objection. The LLCs repeat their foregoing General Objection and the specific objections raised in response to the foregoing request #4, above.

For: City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition

By: _____

Charles H. Montange, their counsel
426 NW 162d St.
Seattle, WA 98177
(206)546-1936

By my signature below, I certify service upon Daniel Horgan at his address of record, by deposit for express delivery, next business day, on August 11, 2016, with a courtesy copy by email attachment. A courtesy copy was similarly served upon Robert Jenkins, counsel for Conrail, at his address of record, by email attachment on the same date.

The Foregoing Answers and Objections to requests for admissions 1 through 6 are given on behalf of the eight New Jersey Limited Liability Companies first listed above, that is 212 Marin Boulevard, LLC, through and inclusive of 446 Newark Avenue, LLC. As to those individuals and the entity not parties to these proceedings, service of

discovery requests upon counsel for the eight referenced parties is not sufficient to compel discovery from non-parties or individuals.

DATED: AUGUST 26, 2016

S/ DANIEL E. HORGAN

Daniel E. Horgan, DC BAR #239772
Waters, McPherson, McNeill, P.C.
300 Lighting Way, 7th Floor
Secaucus, NJ 07096
201-330-7453
dehorgan@lawwmm.com

CERTIFICATION OF SERVICE

I hereby certify and declare that on this date copies of the foregoing responses to requests for admission have been served upon all counsel in these proceedings and upon Eric Strohmeyer as CNJ Rail and James Riffin. Service has been made by means of deposit in US First Class Mail, and courtesy copies have been provided on this date by e-mail.

S/ DANIEL E. HORGAN

Daniel E. Horgan, DC BAR #239772
Waters, McPherson, McNeill, P.C.
300 Lighting Way, 7th Floor
Secaucus, NJ 07096
201-330-7453
dehorgan@lawwmm.com

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)

LLC's Responses & Objections to City, et als.

Request for the Production of Documents

City et al to the LLCs

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 the LLCs deliver copies of the documents requested below to counsel for City et al his address below on or before the date specified herein pursuant to reasonable terms for payment for costs of duplication and delivery agreed to in writing with the LLCs.

For all purposes herein, "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. The LLCs shall include past and current managers, representatives, agents and owners, including but not limited to Steven Hyman and Victoria Hyman.

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 corporation, or individual) who has filed a pleading in AB 167-1189X. Without limitation, documents shall include any emails sent to or received by Mr. Steven Hyman and all documents attached or related thereto.

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 in whole or in part the subject of the abandonment proceeding bearing STB docket AB 167 (Sub-no. 1189X).

Additional instructions. If the LLCs 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 have destroyed or erased any document responsive hereto, please indicate that responsive documents

have been destroyed or erased, state the approximate date, and state the LLCs document retention policy, if any.

City et al request a response as soon as reasonably practicable, and no later than Friday, September 2, 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 the LLCs' receipt of the additional responsive material.

GENERAL OBJECTION: Steven and Victoria Hyman, and NZ Funding, LLC are not parties to these proceedings and it is improper to direct interrogatories to them as individuals or entities not within the jurisdiction of the STB in Exempt Abandonment proceedings. The Rails to Trails Conservancy, and the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition have not filed any notice of intent to file an Offer of Financial Assistance (0FA) in these proceedings, they are not actual or potential shippers of freight by rail, and there is no legitimate reason for discovery in the STB's presently ongoing National Historic Preservation Act review by its Office of Environmental Analysis. Therefore, these document requests are improper as propounded by those two parties

because they have no cognizable property or other interest to be protected in these proceedings that requires discovery. The inclusion of these entities impermissibly expands the scope of discovery in which they have no permissible interest.

There is no basis within these proceedings now before the STB that concerns the relationship (if any) between the LLCs and James Riffin. In a similar ruling on an analogous request for documents between Conrail and the LLCs, the STB ruled on November 2, 2015 that similar overly broad requests by the same requestors were not proper in exempt abandonment proceedings. That ruling applies with equal force here to establish that the present requests are likewise improper. The overbroad scope of the requests violates the strictures of 49 CFR §1114.30(b) as to particular documents or categories of documents requested, and the time specified for a response to the requests is unreasonable.

The personal nature of certain of the inquiries, seeking private medical information on non-issues is entirely outside the scope of proper discovery in these proceedings. Those requests appear on their face to be issued for the purposes of harassment, embarrassment and to increase the personal and financial burdens of the LLCs and their

owner, Victoria Hyman, and upon Steven Hyman. The overall burdens presented, including the need to review documents for privilege or other objections is likewise not possible to perform in a few weeks, would involve significant effort and expense, is clearly not required in exempt abandonment proceedings, and is not proportional in any way to those proceedings.

Finally, some of these requests are for similar, if not identical, information sought by other discovery requests that have been resolved between the City and Mr. Riffin before FERC Administrative Law Judge John P. Dring. If in those proceedings, should they continue, it is subsequently ruled that similar or identical requests are improper, then these request are also improper, duplicative and unduly burdensome. If, on the other hand, the ruling is to produce the documentation, then these requests are likewise duplicative, burdensome, and hence improper.

Document requests. All the following documents are hereby requested pursuant to the foregoing definitions and conditions:

1. All documents received or possessed by the LLCs or any representative (current or past, including specifically Mr. Steve Hyman) of the LLCs from James Riffin relating in any fashion to the Harsimus Branch, including but not limited to

disposition of property in the Harsimus Branch and potential or actual lawsuits or regulatory disputes concerning the Harsimus Branch in whole or in part, or relating to AB 167 (Sub-no. 1189X), other than legal pleading filed with the Surface Transportation Board in AB 167-1189X.

ANSWER: Objection. The request speaks its own objection by excluding documents relating to legal pleadings in the present STB proceedings, and by specifically including documents related to other lawsuits or regulatory disputes. By definition, the documents sought are not related to the present proceedings and the request for all documents of any nature concerning the Harsimus Branch sent or received to or from James Riffin is not only overbroad, but premised on an improper basis that any communication with James Riffin is an issue in these proceedings. Subjecting such documents to a blanket discovery request is an improper attempt to intimidate and harass the LLCs (and Mr. Riffin), and to prevent normal discourse and the full exercise of First Amendment Rights of free speech, communication and association with another party in these proceedings.

2. All documents (not otherwise provided pursuant to Doc. Req. 1) sent to or received by Mr. Steve Hyman or any other past or former manager, officer, employee, attorney or representative of the LLCs from Mr. James Riffin relating to the Harsimus Branch,

other than legal pleadings filed with the Surface Transportation Board in AB 167-1189X.

ANSWER: Objection. The LLCs repeat their objection to request #1, above. It is entirely improper to cast a document request, as this one is cast, for basically "everything else". Further, the request seems to suggest that the first request may be limited when it does not appear to be, and to the extent that it is some sort of catch-all request, it lacks the specificity and discrete focus required by STB discovery rules.

3. All documents relating to any financial assistance by the LLCs, directly or indirectly (such as, but not limited to, through any current or former manager, representative or agent), for the support of James Riffin for purposes of preparing for or making an "offer of financial assistance" in AB 167 (Sub-no. 1189X), or for purposes of preparing for or pursuing civil litigation relating to any part or alleged part of the Harsimus Branch.

ANSWER: Objection. The LLCs repeat their objections to the first two requests, above. The aspect of the request that refers to pursuing other civil litigation is per-se outside the scope of issues in these proceedings. Hypothetically, if the LLCs chose to support an OFA on property of Conrail that would have no impact upon their properties, or in some other fashion as an alternative strategy, they would be free to

do so. The STB has already ruled on November 2, 2015 in these proceedings that discovery in exempt abandonments is to be limited. That closes the door to this and all similar requests since the STB Director of Proceedings will decide each OFA if, as, and when filed. Therefore there are no pending or anticipated proceedings in which the requested information is either discoverable or relevant.

4. All documents relating to meetings between Mr. Steven Hyman, Mr. James Riffin and "Forest City" (the developer of property in Jersey City east of Marin Boulevard and south of Sixth Street), or any other developer of property in Jersey City in connection with any portion of the Harsimus Branch or property adjacent thereto.

ANSWER: Objection. A similar request for development related information was ruled out by the STB on November 2, 2015 in the context of documents between the LLCs and Conrail. This is the same improper request, but for a different developer, in this case one that is not even a party as is Conrail. The request seeks information concerning a developer that has been sued by Mr. Riffin in a Civil Action in the US District Court for the District of New Jersey under Docket No. 16-cv-4433. No party to that suit, other than the plaintiff, Riffin, is a party in the present STB proceedings. There is no issue pending before the STB to which any

meeting involving "Forest City" or "any other developer in Jersey City" is even remotely relevant. To the degree that the City, Rails to Trails and the Embankment Preservation Coalition seek discovery in litigation in which they are not involved, the request is irrelevant and an abuse of STB discovery procedures.

5. All documents manifesting the resignation of Steven Hyman as manager for the LLCs, including documents sufficient to show the date of and reason for such resignation.

ANSWER: Objection. This request seeks the same information as interrogatory #1 served concurrently with these document requests and is duplicative thereof. The requested information is not relevant to any issue in these proceedings. As such it is beyond the scope of discovery provided for in 49 CFR §1114.21. Steven Hyman, individually, is not a party to any proceeding before the STB, nor any related judicial proceeding. His personal status, condition, or authority is not an issue, nor has it been heretofore. Therefore, the interrogatory is irrelevant and beyond the scope of proper discovery in these proceedings. Without waiving any objections, the LLCs have established in these proceedings that Steven Hyman is no longer their manager. See concurrent Requests for Admissions #1, Answer and Objection.

6. All documents bearing on any continued agency or role of Mr. Steven Hyman for the LLCs or ownership interest or expectancy by Mr. Steven Hyman in the LLCs or any portion of the Harsimus Branch or property adjoining the Harsimus Branch.

ANSWER: Objection. The LLCs repeat their response to the foregoing request for documents. See also the General Objection, Objection to request #5, above, and #7, below, and Answer and Objection to concurrent Requests for Admissions #1.

7. Documents showing a guardianship over Mr. Steven Hyman, or a power of attorney for any individual to act on behalf of Mr. Steven Hyman, in AB 167-1189X.

ANSWER: Objection. Steven Hyman is not a party to these proceedings and it is improper to direct interrogatories to his individual condition or interest as an individual not within the jurisdiction of the STB in Exempt Abandonment proceedings. The personal nature of the inquiry, seeking private personal, business or medical information on non-issues, is entirely outside the scope of proper discovery in these proceedings. The requests appear on their face to be issued for the purposes of harassment, embarrassment and to increase the personal and financial burdens of the LLCs and their owner, Victoria Hyman, and upon Steven Hyman.

8. Documents sufficient to indicate who, if anyone, is authorized to act as legal counsel for Mr. Steven Hyman in AB 167-1189X.

ANSWER: Objection. Mr. Steve Hyman is not a party in the referenced proceedings and therefore the question states a false premise that he has a cognizable personal, financial or business interest the Harsimus Branch and that he is, or will be, a party to these proceedings. The question is improper and seeks non-existent information.

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 11 August 2016 of these document requests by email attachment addressed to dehorgan@lawwmm.com and by express delivery (next day delivery), to Daniel Horgan at his address of record.

_____

Charles H. Montange

The Foregoing Answers and Objections to requests for production of documents 1 through 8 are given on behalf of the eight New Jersey Limited Liability Companies first listed above, that is 212 Marin Boulevard, LLC, through and inclusive of 446 Newark Avenue, LLC. As to those individuals and the entity not parties to these proceedings that have been included within the definition of LLCs given with these requests, service of discovery requests upon counsel for the eight referenced parties is not sufficient to compel discovery from non-parties or individuals.

DATED: September 1, 2016

S/ DANIEL E. HORGAN

Daniel E. Horgan, DC BAR #239772
Waters, McPherson, McNeill, P.C.
300 Lighting Way, 7th Floor
Secaucus, NJ 07096
201-330-7453
dehorgan@lawwmm.com

CERTIFICATION OF SERVICE

I hereby certify and declare that on this date copies of the foregoing answers and objections to interrogatories have been served upon all counsel in these proceedings and upon Eric Strohmeyer as CNJ Rail and James Riffin. Service has been made by means of deposit in US First Class Mail, and courtesy copies have been provided on this date by e-mail.

S/ DANIEL E. HORGAN

Daniel E. Horgan, DC BAR #239772
Waters, McPherson, McNeill, P.C.
300 Lighting Way, 7th Floor
Secaucus, NJ 07096
201-330-7453
dehorgan@lawwmm.com

Exhibit C

Subject: Re: Stipulation

From: C. Montange (c.montange@frontier.com)

To: dehorgan@lawwmm.com;

Bcc: jfarrell@jcnj.org; schambers@jcnj.org; jcurley@curlaw.com; aferster@railstotrails.org; moher1@aol.com; gucciardos@comcast.net;

Date: Friday, September 9, 2016 5:13 PM

I have asked myself the question of what I would do as attorney for the LLCs. First, I would never have gotten them into this situation in the first place. This was obviously a line of railroad subject to STB jurisdiction. It looks to me like they breached NJ Title Standards when they purported to buy it. They were the only ones even to make an offer as I understand it. They took risks I would have counseled against. Second, once in the situation, I would have settled the case, because I would have evaluated it a loser for them. It follows, third, that I would try to settle the case now by accepting reasonable compensation and enjoying life. But I already told you that. As to discovery, I would not represent a client doing what yours is doing, and then deny it or deny its relevancy and obstinately refuse discovery. Under the ethical rules, attorneys for parties are supposed to cooperate on discovery, not try to create costly barriers like you or self-represented Riffin.

Please stop insinuating that we are clogging or delaying STB proceedings. Your client embarked on an eight year effort to evade STB jurisdiction with various claims that the H Branch was not a line, and you continued to battle against STB jurisdiction even after you admitted it by stipulation. Your firm and your client sued me personally and my clients and Andrea in a SLAPP type suit. Your client is on record with threats against anyone he views as an opponent. Your side has tried to evade STB jurisdiction and drive those seeking compliance with the law into submission. Between us, at least, please stop your posing. It makes me think any discussion with you is pointless. Now the Hyman interests are apparently and by your own admission working with Riffin.

Have a fantastic weekend.

On Friday, September 9, 2016 4:44 PM, "Horgan, Daniel" <dehorgan@lawwmm.com> wrote:

The facts are what I have represented to you in an effort to resolve this. They do not bless your requests for discovery as relevant. We will not participate in what we suspect is an improper effort to clog and delay STB proceedings on OFAs that have no merit because the City has no good faith plans for rail service on the LLCs' properties and the City wants to mis-use the OFA process to frustrate abandonment and confiscate the LLC's property. You are not satisfied with our efforts and our offer to give you more than you're entitled to in discovery.

You should ask yourself if you, as a lawyer for the LLCs, could do what you are asking us to do. The answer should be obvious. We cannot offer more than what is proper and we have offered all that is proper, both in response to your discovery and in these discussions. Conversely, you should recognize that you cannot show the relevance or justify what you are asking for from the LLCs.

So, at this point, discovery is concluded.

Good evening.

Sent from my iPhone

On Sep 9, 2016, at 5:30 PM, C. Montange <c.montange@frontier.com> wrote: