

I. Introduction

1. Northdown Industries Inc. (“Northdown”) and Normerica Inc. (“Normerica”) (collectively, the “Companies”) are cat litter manufacturing companies that operate four manufacturing plants in Canada and the United States of America.
2. The primary ingredient in cat litter is sodium bentonite clay (the “Clay”). The Companies source the Clay from Wyoming. Due to the nature of the raw material and the Companies’ volume requirements, shipment of the Clay using the railway is the only viable method of transportation. Therefore, the Companies’ reliance on the railway is a key component to its operations. The cost of using rail services makes up approximately 24% percent of the Companies’ total net costs of producing its product.
3. Over the years, the Companies have actively participated in negotiations for fair rates with rail carriers in both Canada and the United States to no avail since the Companies are captive shippers. The result is that the Companies are subject to unilaterally imposed pricing and contract provisions, which appear to be a common experience of other similarly situated companies.
4. Although the Companies are constantly subject to hikes in shipping rates, the Companies’ major and undetermined costs, which are crippling, are a result of demurrage and accessorial charges.
5. The Companies pay approximately \$20 million USD per year to the rail providers. Of this amount, demurrage and accessorial changes account for approximately 10 percent.
6. In 2014, the Companies sent a representative to make submissions to the Surface Transportation Board (STB). In particular, the Companies made submissions about service-related issues that had caused rising, uncontrollable and apparently uncapped demurrage,

accessorial and incidental costs associated with using the rails. Five years later, the Companies are here again because the service-related issues have only worsened.

7. The rail carriers continue to provide unreliable service for a premium price, and shippers continue to have to sit back and accept rail carriers' unfair and unequitable practices. There must be a solution. There has to be a way to hold rail carriers' accountable.
8. Since 2014, the Companies have done all they could to implement practices to avoid the additional costs associated with shipping using the rails. Despite the Companies' efforts, including regularly auditing ordering practices and monitoring railcars, they continue to experience service-related issues, including delays or failure of the rail carriers to provide sufficient railcars to the Clay supplier, causing shortages of clay; continuous delays in estimated timelines; and bunching. As a consequence of these service-related issues, the Companies experience demurrage, additional labour costs, contract penalties, and inability to meet customer demands.

II. Service-related issues

9. The Companies regularly experience business interruptions as a direct result of service-related issues caused by the rail carriers.
10. The Companies pay approximately \$5.3 million USD annually to BNSF for freight rail services, approximately \$3.5 million USD to RCPE, approximately \$9.5 million USD to CP and approximately \$1.3 million USD to CN.
11. The Companies employ a team of employees tasked with strategically timing orders based on customer demands. The Companies' requirements are plant specific and may fluctuate throughout the year, but generally conform to the following:
 - a. Northdown, Dyersburg, Tennessee: 3-4 cars per day, 5 days per week
 - b. Northdown, Phoenix, Arizona: 2-4 cars per day, 5 days per week
 - c. Normerica, Lethbridge, Alberta: 2-4 cars per day, 5 days per week
 - d. Normerica, Brantford, Ontario: 5-6 cars per day, 5 days per week

12. Despite strategic ordering and constant monitoring, the rail carriers constantly fail to meet the Companies requirements. This results in either days when the manufacturing plants receive no rail cars and are therefore unable to produce product; or days when the manufacturing plants receive and/or have access to a week's worth of clay and are unable to process the Clay quick enough to accept and/or release railcars.
13. The rail carriers' service-related failures have an adverse impact on a shipper's ability to plan pick-ups. If the shipper plans too early, they receive penalties. When they plan later, they incur demurrage.
14. In both of the scenarios outlined in paragraph 12 of these submissions, the Companies incur additional, unexpected or accounted for fees and costs which gravely impact its business operations. These unaccounted-for fees, costs and penalties must be absorbed by the Companies and cannot be passed on to their customers.
15. In 2018, the Companies have incurred the following fees and costs as a result of the rail carrier's failure to stick to its own timelines:
 - a. CN Demurrage in the amount of approximately \$477,505.00
 - b. Union Pacific Demurrage in the amount of approximately \$226,380.00
 - c. CP Demurrage and accessorial charges in the amount of approximately \$430,000.00
16. The service-related issues caused by the rail carriers also negatively impact the Companies' employees. The Companies employ roughly 250 workers in the manufacturing plants whose jobs are solely dependant upon the availability of the Clay. These employees receive an hourly wage. When the manufacturing plants do not receive an adequate supply of Clay, the Companies cannot provide their employees with steady and reliable work. Without the Clay, the Companies must cancel shifts and employees do not receive pay.

17. Additionally, shippers must unwillingly accept the service-related failures of the rail carriers, including the rail carriers' inability to stick to any sort of timeline. However, the rail carriers expect shippers to adhere to very strict and precise deadlines for reporting empties and picking up rail cars. When shippers do not adhere to these inflexible deadlines, they are again faced with penalties.
18. Normerica has relied heavily on the Canadian Transportation Agency ("CTA") in order to manage its service-related disputes with Canadian rail carriers. The *Canada Transportation Act* (the "*Act*") grants the CTA the jurisdiction to adjudicate disputes between shippers and rail carriers. With the exception of matters involving the fairness of the rates offered by rail carriers (which are subject to Final Offer Arbitration), the CTA guides both shippers and rail carriers through an expedited dispute resolution process which is less formal and often less expensive than arbitration or court proceedings.
19. Through this process, Normerica has been able to seek the CTA's assistance in challenging various rail related disputes, including disputes related to demurrage and accessorial fees incurred as a result of rail movement in Canada. It has also challenged the applicability of interswitching rates as it relates to the movement of shipments to its facilities.
20. One of the key functions of the CTA is to hold the rail carriers accountable to the shippers and the public. The rail carriers have a lot of power and resources, and, in some circumstances, appear to have a monopoly over the shipment of certain goods. The CTA acts as a check and balance to the rail carriers' power. Absent an accessible forum to challenge unfair practices, small to medium sized shippers simply have to accept subpar and unreasonable service.
21. One of the hurdles that the Companies experience when challenging service rates in Canada is that when it is clear that the rail carriers are responsible for demurrage and accessorial fees, as well as delays in shipment, the Canadian carriers will place the blame on the U.S. Carriers, since the shipment originates in the State of Wyoming and is first carried by a U.S. Carrier.

22. Up until this point, the Companies have not found a fair and accessible method of challenging the service-related issues for the movement of traffic in the United States. These service-related issues also lead to high demurrage, penalties, additional fees and the inability to meet customer demands. This is a gap that must be filled. As it stands right now, the rail carriers are not held accountable and do not face consequences for their completely unfair and one-sided practices.
23. The absence of a fair and accessible process to challenge the rail carriers unfettered exercise of power has led to sub-par service. It has led to the rail carriers' refusal to take ownership over major service-related errors, including clear mistakes made by the carriers, and delayed and missed shipments. There are no consequences for these service-related errors. A captive shipper's only option is to accept this sub-par, unpredictable, overly expensive service, or else shut down its operations.
24. The Companies are making these submissions in support of their own interests, but also in support of all small to medium sized shippers whose voices often go unheard. The Companies are pleading with the STB to intervene and provide support to small and medium sized shippers.
25. The Companies thank the STB for granting them access to make these submissions. The STB's ongoing support is integral to the survival of all industries relying upon the rails.

All of which is respectfully submitted this 8th day of May 2019.

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