

245576

ORIGINAL

CLARK HILL Strasburger

ENTERED
Office of Proceedings
April 25, 2018
Part of
Public Record

Clark Hill Strasburger
1025 Connecticut Avenue, N.W.
Suite 717
Washington, D.C. 20036-4104
T 202 742 8600
F 202 742 8699

clarkhill.com

John D. Heffner
T (202) 742-8607
F (202) 742-8697
Email: John.Heffner@clarkhillstrasburger.com

April 25, 2018

Ms. Cynthia T. Brown
Chief of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001



RE: FD 36184, Hainesport Transportation Group, LLC- Corporate Family Transaction Exemption

FD 36185, Hainesport Industrial Railroad, LLC-Lease and Operation Exemption

Dear Ms. Brown:

On behalf of Hainesport Transportation Group, LLC ("HTG"), and Hainesport Industrial Railroad, LLC ("Hainesport Industrial"), I am filing an original and 10 copies of the following four documents:

1. In FD 36184, on behalf of HTG a notice of exemption under 49 CFR 1180.2(d)(3) for a corporate family transaction covering the insertion of a noncarrier holding company between the individual owners of two short line railroads and their individual owners;
2. In FD 36184, on behalf of HTG a Motion to Dismiss this exemption notice as not required on the grounds the transaction does not require agency approval;
3. In FD 36185, on behalf of Hainesport Industrial, a notice of exemption under 49 CFR 1150.41 covering its lease and operation of a rail line owned by Hainesport Secondary Railroad, LLC;

FILED
April 25, 2018
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
April 25, 2018
SURFACE
TRANSPORTATION BOARD

April 25, 2018
Page 2

4. In FD 36185, on behalf of Hainesport Industrial, a letter requesting a waiver of the Board's regulation at 49 CFR 1150.42(e) requiring a 60 day notice to affected employees.

I am including a computer disk containing these four documents as well as check payable to the Board for \$3,400 covering the requisite filing fees.

Sincerely yours,

CLARK HILL STRASBURGER



John D. Heffner
Attorney

JDH:jh

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36184



HAINESPORT TRANSPORTATION GROUP, LLC
- CORPORATE FAMILY TRANSACTION EXEMPTION -

VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (3)

MOTION TO DISMISS

Submitted By:

John D. Heffner
ClarkHillStrasburger
1025 Connecticut Ave., N.W.
Suite 717
Washington, D.C. 20036
(202) 742-8607

Counsel for Applicants

Dated: April 25, 2018

I.
INTRODUCTION AND BACKGROUND

Pursuant to 49 CFR§1104.13(a) of the Board's Rules of Practice, Hainesport Transportation Group, LLC, a noncarrier ("HTG"), and its two owners, Darryl Caplan and Ronald Bridges (hereafter "Applicants"), have filed a Notice of Exemption under 49 CFR §1180.2(d)(3) for a corporate family transaction exemption. The transaction which they propose to undertake is a very simple one which Applicants believe does not require prior Board approval. Applicants currently own two short line railroads in New Jersey: Hainesport Industrial Railroad, LLC ("Hainesport Industrial") and Hainesport Secondary Railroad, LLC ("Hainesport Secondary"). Hainesport Secondary owns a piece of property which Hainesport Industrial leases from it and over which Hainesport Secondary provides common carrier railroad service. Very simply, Mssrs. Caplan and Bridges propose to trade their ownership interests in the two railroads for an identical ownership interest in HTG in the same proportions as they current own in these two railroads.

II.
ARGUMENT

Applicants believe that their transaction does not require Board approval and request that the Board issue a decision confirming that fact. Should the Board believe otherwise, Applicants request a decision granting them a corporate family

transaction exemption authorizing this transaction. Applicants do not anticipate any opposition to either this request or their Notice of Exemption.

In 1992 the Interstate Commerce Commission issued a decision in *RailAmerica, Inc.—Corporate Family Transaction Exemption—Et Al*, FD 32068 (ICC served June 18, 1992) under almost identical facts. A copy of that decision is attached hereto. *RailAmerica* involved a situation where two individuals, John H. Marino and Eric D. Gerst, and one corporation, Boca Raton Capital Corporation,¹ owned the entire stock of two contiguous short line railroads in Michigan. The two individuals each owned 25% of the stock and the corporation owned the remaining 50%. The Commission had previously approved common control of these carriers by these parties. The railroad shareholders proposed to swap their stock in the two railroads for stock in a newly established holding company, RailAmerica, in exactly the same proportions as they had owned in the railroads. As a result, the individuals and Boca Raton would own stock in RailAmerica which would in turn own stock in the two railroads.

Citing *Woods Industries, Inc.—Control – United Transports, Inc.*, 85 M.C.C. 675 (1960), the Commission concluded that the proposed transaction would not result in a *cognizable* [emphasis supplied] change in control under 49 U.S.C. §11343(a)(4), today 49 U.S.C. 11323(a)(4) as there would be no change in

¹ Mariner was a predecessor to Boca Raton Capital.

management, service levels, operations, or competitive balance. The agency ruled that the mere insertion of a noncarrier holding company in the chain of control is a transaction outside the scope of 49 U.S.C. §11343(a)(4) and therefore does not require its approval.

Applicants' transaction similarly involves the insertion of a holding company, HTG, in the ownership chain. There will be no change in management, service levels, operations, or competitive balance.

III. CONCLUSION

Applicants submit that their transaction is beyond the scope of the Board's jurisdiction and requests a decision to that effect. Alternatively, should the Board disagree, they request issuance of a decision granting them a corporate family transaction exemption.

Respectfully submitted,



John D. Heffner

ClarkHillStrasburger

1025 Connecticut Ave., N.W.

Suite 717

Washington, D.C. 20036

(202) 742-8607

Counsel for Applicants

Dated: April 25, 2018

DO

JUN 18 1992

INTERSTATE COMMERCE COMMISSION

DECISION

Finance Docket No. 32068

RAILAMERICA, INC. -- CORPORATE FAMILY TRANSACTION
EXEMPTION -- HURON AND EASTERN RAILWAY
COMPANY, INC., AND SAGINAW VALLEY RAILWAY COMPANY, INC.

Decided: June 12, 1992

RailAmerica, Inc. (RailAmerica), filed a notice of exemption on May 15, 1992, under 49 CFR 1180.2(d)(2) and/or (3), with respect to the prior approval requirements of 49 U.S.C. 11343(a)(4) for its control of two class III rail carriers, Huron and Eastern Railway Company, Inc. (HESR), and Saginaw Valley Railway Company, Inc. (SGVY). If neither class exemption is applicable, RailAmerica seeks an individual exemption under 49 U.S.C. 10505.

The stockholders¹ of RailAmerica, a noncarrier holding company formed for the purpose of acquiring and managing shortline railroads, also own 100 percent of the issued and outstanding stock of HESR and SGVY.² Through this corporate family transaction, RailAmerica will exchange its common stock for all of the issued and outstanding common stock of HESR and SGVY. This change in the form of control is intended to improve operating economies and to facilitate a capital infusion through a public stock offering. Assertedly, the management of HESR and SGVY will not change; they will continue to operate as separate companies. Also the parties submit that the change in the form of control will not result in adverse changes in service levels, operations, or the competitive balance with carriers outside the corporate family.

The proposed transaction will not result in a cognizable change in control under section 11343(a)(4). The same stockholders who currently control HESR and SGVY will continue in control after the transaction through a new holding company. Under similar circumstances, the Commission has determined that the mere insertion of a noncarrier holding company in the chain of control is a transaction outside the scope of section 11343(a) and not subject to its prior approval. See Woods Industries, Inc.--Control--United Transports, Inc. 85 M.C.C. 675 (1960). Therefore, the notice of exemption will be dismissed.

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

It is ordered:

1. The notice of exemption is dismissed.

¹ John H. Marino (24.8 percent), Eric D. Gerst (25.2 percent), and Boca Raton Capital Corporation (50 percent).

² The common control of HESR and SGVY by John H. Marino, Eric D. Gerst, and Boca Raton Capital Corporation was approved in Finance Docket No. 31196, John H. Marino, Eric D. Gerst, and Mariner Corporation -- Control Exemp. -- Saginaw Valley Ry. Co. Inc. (not printed), served April 23, 1991.