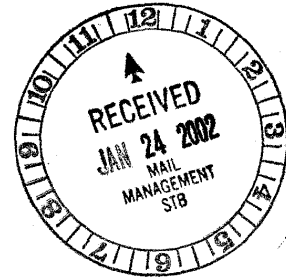


BEFORE THE
SURFACE TRANSPORTATION BOARD
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C. 20423



DID # 0101878001

Consolidation Coal Sales Company,

Plaintiff,

v.

Consolidated Rail Corporation,

Defendant.

STB Docket No. FD34169

FILED

JAN 24 2002

SURFACE
TRANSPORTATION BOARD

204565

PETITION FOR DECLARATORY ORDER

FEE RECEIVED

JAN 24 2002

SURFACE
TRANSPORTATION BOARD

ENTERED
Office of the Secretary

JAN 24 2002

Part of
Public Record

Kenneth A. Murphy, Esquire
MILLER, ALFANO & RASPANTI, P.C.
1818 Market Street
Suite 3402
Philadelphia, PA 19103
(215) 972-6400

Attorneys For Petitioner,
Consolidation Coal Sales Company

Consolidation Coal Sales Company, :
 :
 Plaintiff, : STB Docket No. FD34169
 v. :
 :
 Consolidated Rail Corporation, :
 :
 Defendant. :

Petitioner, Consolidation Coal Sales Company ("CCSC"), by and through its counsel, Miller, Alfano & Raspanti, P.C., hereby submits this Petition For Declaratory Order, pursuant to 28 U.S.C. §1336(b) and the Interstate Commerce Commission Termination Act, 49 U.S.C. §§ 10101, et seq., seeking a declaration regarding (i) the nature and extent of Consolidated Rail Corporation's ("Conrail") obligations to CCSC, after June 1, 1999, under the terms of certain contractual agreements between the parties, and (ii) CCSC's entitlement to delivery of linehaul movements of export coal that Conrail historically moved through CCSC's Baltimore, Maryland Terminal Facility. In support of the Petition, CCSC further states the following:

I. Procedural Background

1. The instant Petition arises out of a matter presently pending before the United States District Court for the Eastern District of Pennsylvania, styled Consolidated Rail Corporation v. Qit-Fer et Titane, Inc., et al., No. 00-CV-338 (the "Eastern District Litigation").

2. In the Eastern District Litigation, Conrail sued CCSC for damages it sustained when CCSC allegedly handled and lost certain coal belonging to Conrail's customer, Qit-Fer et Titane, Inc. ("Qit"). (A Copy of Conrail's Amended Complaint in the Eastern District Litigation is Attached hereto as Exhibit A.)

3. In the Eastern District Litigation, CCSC filed a counterclaim against Conrail for certain minimum annual fee payments which Conrail was obligated to pay through calendar year 2011, under the terms of the Terminal Agreement between the parties. CCSC also seeks to enforce a related Letter Agreement between the parties and thus preclude the wrongful diversion of certain coal cargoes away from CCSC's terminal facility in Baltimore, Maryland. (A copy of CCSC's Answer And Counterclaim in the Eastern District Litigation is attached hereto as Exhibit B.)

4. The Eastern District Litigation was scheduled for trial on December 3, 2001, before the Honorable James T. Giles, Chief Judge, United States District Court for the Eastern District of Pennsylvania. In November 2001, Judge Giles assigned the matter to

Magistrate Judge Carol Sandra Moore Wells for mediation. On November 16, 2001, Magistrate Wells presided over a six-hour mediation session between Conrail and CCSC (the "Mediation").¹

5. As a result of the Mediation, CCSC and Conrail entered into a Stipulation And Order Referring Question To Surface Transportation Board, Placing Matter In Suspension And Dismissing Certain Claims (the "Stipulation"), which Judge Giles entered as an Order on November 29, 2001. (A copy of the Stipulation is attached hereto as Exhibit C.)

6. Thereafter, on or about December 20, 2001, Judge Giles entered a separate Order referring to the Surface Transportation Board ("STB") the questions set forth in the Stipulation, and requesting the STB to issue a declaration as to those questions. (A copy of December 20, 2001 Order is attached hereto as Exhibit D.)

II. Relevant Facts

7. On or about May 7, 1991 CCSC and Conrail entered into a binding contract known as the Transfer And Storage Agreement, regarding the services to be provided by CCSC to Conrail at CCSC's Baltimore, Maryland Terminal Facility (the "Terminal"), and the fees Conrail was to pay for those services (the "T&S Agreement").

¹ Early in the litigation Conrail dismissed its claim against Qit, in exchange for \$112,500.

8. The services CCSC provided under the T&S Agreement included the movement of coal trains through the Terminal for unloading, the unloading of Conrail shipped coal from rail cars, the reassembly of trains after unloading, the stockpiling of Conrail shipped coal, the reclaiming of Conrail shipped coal from stockpiles, the loading of Conrail shipped coal into vessels from stockpiles, the direct loading of Conrail shipped coal from train to vessel without stockpiling, the weighing and sampling of both inbound and outbound Conrail shipped coal, and the creation and maintenance of records concerning tonnages of Conrail shipped coal in storage or transferred through the Terminal.

9. Under the T&S Agreement, among other things, CCSC extended Conrail a ten percent (10%) "front end" reduction in fees.

10. In addition, CCSC made a substantial capital investment in expanding and upgrading its Baltimore Terminal Facility to accommodate the ensuing coal throughput.

11. Pursuant to Section 9e of the T&S Agreement, commonly referred to as the "take or pay" provision, Conrail was required to satisfy a minimum annual fee payment to CCSC through calendar year 2011. Specifically, Conrail was obligated to pay CCSC at least Four Million Dollars (\$4,000,000) in terminal fees per year.

12. In certain years, in good faith and in recognition of various market forces that were negatively impacting Conrail, CCSC

waived the guaranteed minimum fee obligation imposed upon Conrail by the take or pay provision.

13. On or about May 1998, Conrail and CCSC formally acknowledged CCSC's previous waivers of the take or pay provision, and agreed that CCSC would continue to forbear enforcement of the provision through December 31, 1998.

14. During calendar year 1999, Conrail failed to remit to CCSC terminal fee payments of at least Four Million Dollars, as required under Section 9e of the T&S Agreement.

15. During Calendar Year 1999, Conrail paid approximately Eight Hundred Thousand Dollars (\$800,000) in terminal fees to CCSC.

16. During calendar years 2000 and 2001, Conrail failed to make any of the terminal fee payments required under the terms of the T&S Agreement.

17. Despite demand, since 1999 Conrail has failed and refused to make, or otherwise ensure that CCSC receives, payment of the minimum terminal fees required under the terms of the T&S Agreement.

18. Contemporaneous with the negotiation and ultimate execution of the T&S Agreement, CCSC and Conrail reached certain additional fundamental agreements that were to govern the parties' relationship through April 30, 2011.

19. These additional agreements were reduced to writing in the form of a supplemental letter agreement dated February 14, 1992

(the "Letter Agreement") (copy attached as Exhibit B to Answer To Amended Complaint, Affirmative Defenses And Counterclaim of Consolidation Coal Sales Company). See Exhibit B.

20. For its part, CCSC agreed, among other things, to afford Conrail the right of first refusal in the event CCSC decided to dispose of all ownership interest in the Terminal to a non-CCSC affiliate during the term of the T&S Agreement.

21. In turn, Conrail agreed not to enter into any contracts or agreements involving the linehaul movement of coal to the Baltimore area that would place CCSC at a competitive disadvantage.

22. Consistent with the terms of this agreement, over the course of the parties' contractual relationship, all of Conrail's movements of export coal to the Baltimore area were directed to CCSC's Terminal Facility.

23. By agreement dated "as of" June 10, 1997, entitled Transaction Agreement by and among CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail Inc., Consolidated Rail Corporation and CRR Holdings LLC, Conrail assigned and divided its various rail assets among CSX Transportation, Inc., CSX Corporation, Norfolk Southern Corporation, and Norfolk Southern Railway Company (the Transaction Agreement").

24. On or about June 1, 1999, Conrail purportedly assigned its interests under the T&S Agreement to Pennsylvania Lines LLC,

which subsequently assigned its interest in the T&S Agreement to Norfolk Southern Railway ("Norfolk Southern").

25. Since June 1999, Norfolk Southern has been responsible for the linehaul movement of substantial export coal tonnage to the Baltimore area.

26. Much of the coal which Norfolk Southern now moves to the Baltimore area originates from coal mines previously serviced by the former Monongahela Railroad -- railroad lines to which Conrail previously had virtual exclusive access.

27. Upon information and belief, Norfolk Southern has granted CSX Transportation, Inc. equal access to these lines.

28. CSX, for its part, has moved substantial coal tonnage to the Baltimore area -- virtually all of it to CSX's terminal facility known as Curtis Bay.

29. Upon information and belief, at or about the time of the Transaction Agreement, and thereafter, Conrail failed to alert and inform CSX Transportation Inc. and Norfolk Southern of Conrail's ongoing obligations to CCSC under the terms of the T&S Agreement and the related Letter Agreement.

30. Further, Conrail remains a viable corporate entity, operating local rail freight service as an agent for its owners, CSX Corporation and Norfolk Southern Corporation.

31. Neither the T&S Agreement nor the Letter Agreement has been terminated.

32. The diversion of linehaul movements of coal away from the CCSC Terminal, to CSX's Curtis Bay terminal, has prevented CCSC from realizing the full extent of terminal fee revenue to which it is entitled under the T&S Agreement and the related Letter Agreement, and has placed CCSC at a competitive disadvantage.

33. Conrail stands in breach of both the T&S Agreement and the Letter Agreement.

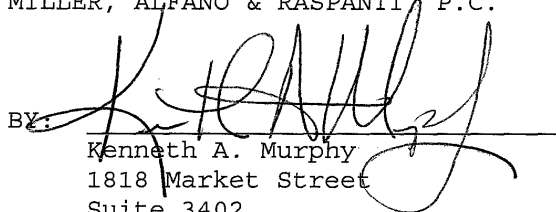
34. As a result of Conrail's breach, CCSC has lost and will continue to lose, millions of dollars associated with 1) the linehaul movements of export coal that have been diverted to CSX's Curtis Bay terminal facility, and ii) the non-payment of annual minimum terminal fees due under the take or pay provision of the T&S Agreement.

35. In the Eastern District Litigation, Conrail has asserted that it is absolved of all performance responsibilities under both the T&S Agreement and the Letter Agreement by virtue of this Board's approval of the joint application for division of Conrail's rail assets.

WHEREFORE, Petitioner Consolidation Coal Sales Company requests that the Surface Transportation Board issue an Order declaring: (i) that the Transfer and Storage Agreement between Conrail and CCSC was not terminated, or otherwise rendered without affect, by virtue of the Surface Transportation Board's approval of the acquisition of control of Conrail by (a) CSX Corporation and

CSX Transportation, Inc. (collectively, CSX), and (b) Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, Norfolk Southern); and the division of the assets of Conrail by and between CSX and Norfolk Southern; (ii) that Conrail remains obligated to pay CCSC, or to ensure payment to CCSC, of annual minimum terminal fees, through 2011, under the terms of the Transfer And Storage Agreement; (iii) that the diversion to CSX's Curtis Bay terminal facility of certain linehaul movements of export coal emanating from mines serviced by the former Monongahela Rail Line constitutes a breach of the 1992 Letter Agreement between CCSC and Conrail, for which CCSC is entitled to damages.

MILLER, ALFANO & RASPANTI P.C.

BY: 

Kenneth A. Murphy
1818 Market Street
Suite 3402
Philadelphia, PA 19103
(215) 972-6400

January 23, 2002

F:\PBL\KAM\Consol Inc\Petition For Declaratory Order.wpd

SUMMONS IN A CIVIL ACTION

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CONSOLIDATED RAIL CORPORATION

v.

QIT-FER ET TITANE, INC.

CIVIL ACTION NO. 00-328

TO: (NAME AND ADDRESS OF
DEFENDANT)

Consolidated Coal Sales Company
3800 Newgate Avenue
Baltimore, MD

YOU ARE HEREBY SUMMONED and required to serve upon

Plaintiff's Attorney (Name and Address)

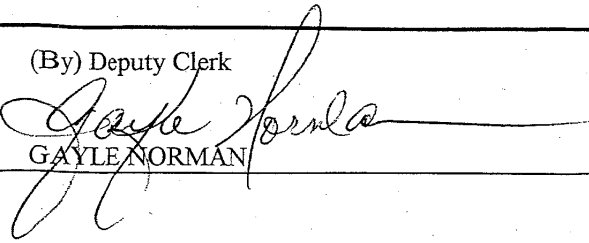
John K. Fiorilla, Esq.
Watson, Stevens, Fiorilla & Rutter
390 Geirge St.
P.O> Box 1185
New Brunswick, NJ 08903

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Michael E. Kunz, Clerk of Court

Date: 9/8/00

(By) Deputy Clerk


GAYLE NORMAN

United States District Court

FOR THE EASTERN

DISTRICT OF

PENNSYLVANIA

CONSOLIDATED RAIL CORPORATION, A
Pennsylvania Corporation

SUMMONS IN A CIVIL ACTION

V.

CASE NUMBER: 00-CV-338

QIT-FER ET TITANE, INC., A
Canadian Corporation, and
CONSOLIDATION COAL SALES COMPANY,
A Delaware Corporation

TO: (Name and Address of Defendant)

QIT-FER ET TITANE, INC.
1625 Route Marie Victorin
Tracy, Quebec J3R1M6
Canada

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

JOHN K. FIORILLA, ESQ.
Watson, Stevens, Fiorilla & Rutter, LLP
390 George St.
P.O. Box 1185
New Brunswick, New Jersey 08903
732 - 545-2250

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK

DATE

United States District Court

FOR THE EASTERN

DISTRICT OF

PENNSYLVANIA

CONSOLIDATED RAIL CORPORATION, A
Pennsylvania Corporation

SUMMONS IN A CIVIL ACTION

V.

CASE NUMBER: 00-CV-338

QIT-FER ET TITANE, INC., A
Canadian Corporation, and
CONSOLIDATION COAL SALES COMPANY,
A Delaware Corporation

TO: (Name and Address of Defendant)

Consolidated Coal Sales Company
3800 Newgate Avenue
Baltimore, Maryland

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

JOHN K. FIORILLA, ESQ.
Watson, Stevens, Fiorilla & Rutter, LLP
390 George St.
P.O. Box 1185
New Brunswick, New Jersey 08903
732 - 545-2250

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK

DATE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

CONSOLIDATED RAIL CORPORATION,
A Pennsylvania Corporation

Plaintiff,

v.

QIT FER et TITANE, INC.
A Canadian Corporation

And

CONSOLIDATION COAL SALES COMPANY,
A Delaware Corporation

Defendants.

CIVIL ACTION

DOCKET NO: 00-CV-338

AMENDED COMPLAINT

Plaintiff, Consolidated Rail Corporation (hereinafter "Conrail") by way of an Amended Complaint against defendants says:

FIRST COUNT

1. The Court has jurisdiction in this matter pursuant to 28 U.S.C.A. § 1332(a) with the amount in controversy being \$670,436.63.

2. Conrail is a Pennsylvania corporation with its principal place of business at 2001 Market Street, Philadelphia, Pennsylvania. Conrail is a common carrier by rail.

3. Defendant Qit Fer et Titane, Inc., (hereinafter "QIT"), is a Canadian corporation with its principal place of business at Sorrel, Quebec JJ3P-5p6. QIT is a shipper of anthracite

coal originating in the United States to points abroad, taking delivery of said coal at Baltimore, Maryland.

4. Defendant Consolidation Coal Sales Company, (hereinafter "CCSC"), is a Delaware corporation, which operates a coal terminal facility with a place of business at 3800 Newgate Avenue, Baltimore, Maryland.

5. The subject matter of this action stems from the obligations pursuant to two separate contracts; one between Conrail and QIT and one between Conrail and CCSC, both of which are hereinafter more particularly described in Paragraphs 6 and 14.

6. Specifically, Conrail entered into a transportation contract with QIT for the movement and export of coal. This contract bears the number ICC CR-C 19124, (hereinafter "Transportation Contract") and was effective between January 1, 1995, and December 31, 1999. Paragraph 1 of the Transportation Contract provides that performance thereunder "shall be governed by the Laws of Pennsylvania." A copy of said contract is attached hereto as Exhibit A.

7. Paragraph 8 of the Transportation Contract specifically states that Conrail agrees to "perform the transportation of the named commodity, from the named origins, via the named route, to the named destination at the rates and/or charges stated. . .and [QIT] agrees to pay those rates and/or charges for said transportation."

8. Paragraph 7 of the Transportation Contract also provides in part that "[p]ayment

of such charges shall be made in accordance with CONRAIL'S general credit policy in effect at the time the particular transportation service is performed. . . ." A copy of the Credit Agreement dated on or about April 20, 1979, (hereinafter "Credit Agreement"), is attached hereto as Exhibit B.

9. From 1995 through 1996, Conrail delivered several shipments of QIT's coal to CCSC's marine loading terminal in Baltimore, Maryland, for transloading onto approximately 10 vessels destined for QIT in Canada.

10. Conrail billed QIT for the freight charges incurred as a result of these shipments in accordance with the Transportation Contract.

11. Although QIT paid some of the freight charges for said deliveries, it refused to pay \$670,436.63 in freight charges, alleging that some of the coal was damaged and/or lost (hereinafter collectively "Coal Shortage"). Consequently, QIT claimed it received less coal than it should have. A breakdown of the specifics of QIT's alleged claimed lost cargo is attached hereto as Exhibit C. **(Exhibit C is attached hereto only as information on QIT's alleged lost cargo and is without prejudice to Conrail's rights. Any statements contained in Exhibit C shall not constitute any admissions with respect to Conrail nor necessarily be deemed admissible in the event of a trial on this matter).** QIT's allegations are more fully set forth in the Second Count contained herein.

12. QIT's failure to pay these outstanding freight charges, which are lawfully due to Conrail, constitutes a material breach of the Transportation Contract as well as of the Credit

Agreement.

WHEREFORE, Plaintiff Conrail respectfully requests the following relief against Defendant QIT:

- (1) compensatory damages of \$670,436.63;
- (2) interest and costs; and
- (3) such other relief as the Court deems appropriate.

SECOND COUNT

13. Conrail repeats the allegations contained in the First Count of Conrail's Complaint as though fully set forth herein.

14. On May 1, 1991, Conrail and CCSC entered into a Transfer and Storage Agreement, (hereinafter "Transfer and Storage Agreement"), with respect to services to be provided by CCSC to Conrail at CCSC's Baltimore, Maryland Terminal. The term of the Transfer and Storage Agreement is from May 1, 1991, to April 30, 2011. A copy of the Transfer and Storage Agreement is attached hereto as Exhibit D.

15. The Transfer and Storage Agreement also provides that its provisions shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania.

16. Pursuant to Section 8 of the Transfer and Storage Agreement, coal delivered by

Conrail remains the property of Conrail's customers, such as QIT.

17. Pursuant to the Transfer and Storage Agreement, Conrail's customer's coal may be stockpiled and reclaimed from CCSC's stockpiles. See generally Transfer and Storage Agreement, Section 2(g). Pursuant to Section 7(f) of this Agreement, CCSC is "responsible for all recordkeeping required to monitor coal stockpiles. CCSC shall not be responsible for shortfalls in coal tonnages unless such shortfalls are caused by the negligence or willful misconduct of CCSC." Accordingly, any lost product should be placed in the appropriate stockpiles on behalf of Conrail's customers.

18. Conrail investigated the potential causes of QIT's Coal Shortage and determined that it was caused by CCSC's coal handling and spillage procedures at its terminal.

19. In 1996 and 1997, Conrail advised CCSC that its coal handling and spillage procedures at its terminal were causing QIT's Coal Shortage.

20. Despite the Coal Shortage, Conrail paid CCSC's terminal fees for the amount of coal Conrail delivered to CCSC's terminal, which is more than what CCSC ultimately transloaded onto the vessels at its terminal. Consequently, CCSC has overcharged Conrail terminal fees in violation of the Transfer and Storage Agreement.

21. Because CCSC caused QIT's Coal Shortage, QIT refuses to pay Conrail's freight charges in the amount of **\$670,436.63**. See Exhibit C.

WHEREFORE, in the alternative, Plaintiff Conrail respectfully requests judgment against Defendant CCSC in its favor for the following relief:

- (1) compensatory damages in the amount of \$670,436.63 plus any excess terminal fees Conrail paid to CCSC, together with interest and costs;
- (2) indemnification; and
- (3) such other relief as the Court deems appropriate.

THIRD COUNT

22. Conrail repeats the allegations contained in the First and Second Counts of Conrail's Complaint as though fully set forth herein.

23. Upon information and belief, CCSC, as a matter of its own policy, generally recovers all lost and spilled product in its terminal and resells it for its own benefit. Since QIT's Coal Shortage is unaccounted for, upon information and belief, CCSC has resold it for its own benefit.

24. Consequently, CCSC has been unjustly enriched to Conrail's and QIT's detriment. CCSC has retained the moneys it received from the resale of QIT's Coal Shortage while Conrail went uncompensated for its legitimate freight charges for coal it actually delivered to CCSC's terminal.

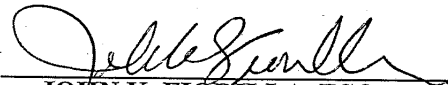
WHEREFORE, in the alternative, Plaintiff Conrail respectfully requests judgment against Defendant CCSC in its favor for the following relief:

- (1) compensatory damages in the amount of \$670,436.63 plus any excess terminal fees Conrail paid to CCSC, together with interest and costs;
- (2) indemnification;

- (3) an order restraining CCSC from reselling coal that belongs to the customers of Conrail, its successors and/or assigns; and
- (4) such other relief as the Court deems appropriate.

WATSON, STEVENS, FIORILLA & RUTTER, LLP

BY



JOHN K. FIORILLA, ESQ.

ATTORNEY FOR PLAINTIFF

CONSOLIDATED RAIL CORPORATION

390 George Street

P. O. Box 1185

New Brunswick, NJ 08903

(732) 545-2250

JF 6463

DATED: September 7, 2000

EXHIBIT A

**EXPORT COAL
TRANSPORTATION CONTRACT**

CONTRACT NUMBER ICC CR-C-19124

THIS TRANSPORTATION CONTRACT, is hereby entered into between Consolidated Rail Corporation, Philadelphia, Pa., (CONRAIL), Reading, Blue Mountain and Northern Railroad Company (RBMN), Port Clinton, PA 19549, Collectively ("Carriers"), and QIT Fer et Titane, Inc. (Customer).

1. This Contract shall be effective on the date on which it is filed with the Interstate Commerce Commission (ICC), or its successor regulatory authority, subject to the provisions of 49 CFR 1313.2 and 1313.3, and shall expire with December 31, 1999. The term of this Contract may be extended only by written amendment to this Contract. Performance under this Contract shall be governed by the Laws of Pennsylvania except as otherwise provided herein.

The parties agree that, once this Contract is approved by the ICC, the rates, terms and conditions contained herein shall apply to shipments made pursuant to this Contract as of January 1, 1995. If this Contract is not approved by the ICC, the Contract shall automatically terminate and QIT is under no further obligation to adhere to the terms as outlined in this Agreement except that the applicable tariff rate in effect shall apply to any shipment made prior to the Contract termination.

2. Rates and special provisions of Attachments A and B named in this Contract apply to the exclusion of rates published elsewhere, except as otherwise provided in this Contract. The waybill date will govern as the date on which a shipment has been made. Rates apply only from the origins to the destination named via route shown herein, and do not apply from or to intermediate points. Except as otherwise provided herein, these rates involve only line-haul

transportation and transfer of coal from rail cars to vessel and/or stockpile and may not be used in combination with other rates for the purpose of shipping from or to points other than specifically named in this Contract. These rates are current as of the effective date of this Contract.

3. Except as modified in this Contract, all classifications, tariffs, exempt circulars, government, AAR and Carriers rules, regulations, and provisions, including, but not limited to, permits, winter conditions and port rules, loading, Uniform Straight Bill of Lading provisions and its terms, etc., will apply, except that no stop-off, or transit privileges will be permitted. The Uniform Freight Classification Rules 10, 13, 24, 29 and 34, or exceptions thereto, will not apply. Provisions governing detention, demurrage, weights (weighing) and/or permitting are as stated in Sections 9, 10, and 11.

4. A. Customer understands that he is receiving a reduced rate in consideration of which he agrees that Carriers will not be liable for any loss or damage to anthracite due to reduction in the average size of the anthracite during loading of the rail cars, transportation, transfer from rail car to ground storage, from rail car to vessel, or from ground storage to vessel. Customer shall indemnify and hold Carriers harmless against any claims for degradation of anthracite coal made by any person regardless of the extent to which the degree of degradation exceeds the allowable degradation permitted under the Defense Fuel Supply Center Contract, or any other Contract involving delivery of coal transported by Carriers under this Contract. Liability for loss and damage to coal other than degradation shall be as described in Section 4. B.

4. B. Carriers shall be liable to Customer only for loss, damage or injury, but not degradation to anthracite, resulting from Carriers' negligence during provision of the transportation service here involved; provided however, that Carriers shall not, under any circumstances, be liable where loss, damage or injury is caused by an Act

of God, act of a public enemy, act of any governmental or military authority, by overloaded rail cars or any defect in the commodity when loaded, the act or omission of Customer or its suppliers, or for consequential, special, indirect or punitive damages or attorney's fees, or for any amount in excess of Customer's full and actual loss on the commodities shipped. Claims made pursuant to the terms of this paragraph shall be filed with CONRAIL's Director of Claims Administration in accordance with the provisions set forth in Section 2. (B) of the Contract Terms and Conditions contained in the Uniform Straight Bill of Lading, and shall be documented in accordance with the provisions of Title 49 of the Code of Federal Regulations, Part 1005. Venue for suit under this section shall be in a U. S. District Court in Philadelphia, Pennsylvania.

5. Carriers shall provide equipment and service under this Contract on the same basis that it provides same to other customers who do not have Contracts with Carriers. Customer shall provide CONRAIL's Director Service Planning with an equipment order in conformance with CONRAIL's export coal permit requirements.

6. In the event that any party(ies) is/are unable to perform as stated in this Contract due to or as a result of one or more of the following causes: Act of God, including, but not limited to floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions; Act of public enemy, war, blockade, insurrection, riot, vandalism or sabotage; fire, accident, wreck, derailment, washout, or explosion; strike, lockout or labor dispute; embargoes or AAR service orders; or governmental laws, orders or regulations, this Contract shall be suspended and total volume commitment reduced accordingly at the affected origins and/or destination only insofar as said origins and/or destination are affected by described disability and only for the duration of such disability.

The party(ies) experiencing the disability will send written notice to the other party(ies) to this Contract, stating the Contract number and the location and

nature of such disability. This notice shall be sent within ten (10) days of the beginning of the disability. Written notice shall also be sent within ten (10) days of the end of such disability.

7. Customer shall place, or cause to be placed, the following notation on all shipping instructions prepared for shipments under this Contract: **"Shipped under Contract Number ICC CR-C-19124"**. Failure to insert the Contract Number will result in assessment of tariff rates. Freight bills will be presented based on shipping instructions as provided by shipper. Charges prescribed herein apply in addition to all other transportation, accessorial and/or demurrage charges which lawfully apply at or between points named herein. Payment of such charges shall be made in accordance with CONRAIL's general credit policy in effect at the time the particular transportation service is performed, as published in tariff(s) lawfully filed with the ICC. In the absence of such tariff(s), payment shall be made in accordance with ICC Credit Regulations, 49 CFR 1320, which are in effect at the time the particular transportation service is performed.

CONRAIL's acceptance of a partial payment containing a restricted endorsement does not limit the obligation of Customer for payment to CONRAIL of the full amount of charges due under this Contract and/or otherwise applicable tariff charges for traffic covered hereby.

When a party other than Customer is to be billed for transportation provided hereunder, Customer agrees to reimburse Carriers for such payment where said party fails to make payment.

8. Carriers agree to perform the transportation of the named commodity, from the named origins, via the named route, to the named destination at the rates and/or charges stated in Attachment A, and Customer agrees to pay those rates and/or charges for said transportation.

9. Demurrage provisions at origin shall apply as published in Freight Tariff ICC RBMN 3007. Demurrage provisions at destination (Consolidation Coal Sales Terminal, Baltimore, MD (CCST)) shall apply as published in Freight Tariff ICC CR 4605-Series.

10. Shipments to CCST at Baltimore, MD shall be subject to the rules and provisions of Consolidation Coal Sales Company Baltimore Terminal Rules and Procedures for coal to be shipped to foreign destinations, a copy of which has been furnished to Customer.

Shipments to CCST at Baltimore, MD shall be subject to the rules and provisions of Consolidation Coal Sales Company Baltimore Terminal Deliveries and Vessel Requirements for coal shipped for export, a copy of which has been furnished to Customer.

When shipping to CCST at Baltimore, MD, Customer will advise CONRAIL's Director of Unit Train Operations, the date of an expected vessel. Customer will then arrange with CCST to accept Customer's coal for terminaling service. CCST will coordinate shipments with CONRAIL.

11. Rates in this Contract include weighing by Reading, Blue Mountain and Northern Railroad Company. Minimum weight per car is 90% of the marked capacity of the car. QIT will assist Conrail and RBMN to make QIT suppliers aware of the importance of loading a minimum of 90% of the marked capacity.

12. No provision of this Contract shall preclude Carriers from filing an abandonment application with the ICC and abandoning service to any point or points, or selling any line or lines to any point or points, including such points as may be involved in this Contract, in accordance with appropriate ICC certificates issued pursuant to such applications. Carriers' obligation to provide service under this Contract on such line(s) and to and from such affected points shall cease on and after the date said Carriers' line(s) is abandoned, sold, or otherwise disposed of.

In the event that Carriers, pursuant to the authority of the ICC, abandon, sell, or otherwise dispose of a line of railroad which provides the only connection between the line of railroad on which either the consignor's or consignee's facility is located, including the origins and/or destination, and other portions of the Carriers' system, the provisions of this Contract shall be inapplicable with respect to such line on and after the date the Carriers' connecting line is abandoned, sold or otherwise disposed of.

(A) At such time as Carriers supply System Diagram Maps to the ICC, Carriers shall supply copies of such maps to QIT. Carriers shall notify QIT at the same time any abandonment application is filed with the ICC that would affect any line of railroad on which the Contract traffic is moving. Carriers shall not petition for exemption from the ICC's procedures for abandonment with respect to any line of railroad on which the Contract traffic is moving.

(B) QIT shall retain all rights to protest to the appropriate regulatory authority any such abandonment of a line of railroad by Carriers.

(C) If any such abandonment by Carriers adversely affects Receiver's ability to meet its volume commitment stated in Attachment B, the parties agree to reduce such volume commitment by any amount equal to the traffic affected by the abandonment.

(D) In the event that Carriers sell a line which the consignor or consignee is located or a line that is part of the routing from the consignor to the consignee, Carriers will use their best effort to have the railroad purchasing said line or part of line assume the terms of this Contract.

13. Notices, statements, etc. which are required or permitted to be given under this Contract shall be sent to the parties identified below:

Mr. Andrew Muller, Jr., President
Reading, Blue Mountain and Northern Railroad Company
P. O. Box 218
Port Clinton, PA 19549

Manager-Transportation Contracts
Consolidated Rail Corporation
Room 20B, Two Commerce Square
P. O. Box 41420
Philadelphia, PA 19101-1420
U. S. A.

Mr. George DeSanti
Mgr.-Materials & Traffic
QIT Fer et Titane, Inc.
P. O. Box 560
Sorel, Quebec J3P-5P6
Canada

14. The parties agree that no change or modification to this Contract shall be of any force or effect unless it is incorporated in a written amendment executed by the parties.

15. When this Contract covers shipments of regulated commodities, this Contract is entered pursuant to 49 U.S.C. 10713.

16. The parties agree that all the terms and conditions in this Agreement shall remain confidential and shall not be disclosed to any other party, except to the extent necessary to obtain regulatory approval and/or to perform according to the terms and conditions of this Agreement.

17. No party(ies) may assign this Contract, in whole or in part, without the prior written consent of the other party(ies).

The parties, intending to be legally bound, have caused this Contract to be executed by their duly authorized representatives on the date(s) indicated below.

**READING, BLUE MOUNTAIN AND
NORTHERN RAILROAD COMPANY**

BY: Benny B. Hess

TITLE: Director of Coal

DATE: 4/4/95

CONSOLIDATED RAIL CORPORATION

BY: R A Linton

TITLE: A.V.P.-COAL MARKETING & SALES

DATE: 2/1/96

QIT FER ET TITANE, INC.

BY: [Signature]

TITLE: Traffic & Logistics

DATE: 4/24/95

**ATTACHMENT A TO
TRANSPORTATION CONTRACT ICC CR-C-19124**

APPLICABLE RATES AND SPECIAL PROVISIONS

Rates Include Transfer of Anthracite from Car-to-Ground Storage and/or Car-to-Vessel at Baltimore, MD

Origin: Origins in Pennsylvania on the
Reading, Blue Mountain and Northern Railroad

Destination: Consolidation Coal Sales Terminal (CCST),
Baltimore, MD, for export to QIT in
Sorel, Quebec, Canada

Route: RBMN-Reading, PA-CR

Commodity: Anthracite, Buckwheat Sizes and Smaller (STCC 11-112).

Rates Per Net Ton:

Note 1: In order to protect RATE A, the intent of the parties to this agreement is to maximize both the utilization of RBMN railcars and the utilization of dedicated ground storage capacity at CCST. The rate structure in RATE A (stated below) is based on the usage of approximately 275 RBMN cars to fulfill the tonnage requirements of QIT. It is not the intent of the parties involved to use CR cars, however, in the event that unusual circumstances occur outside of the control of QIT, Carriers and/or CCST, CR cars may be requested for loading in this service. All parties involved will endeavor to maximize the utilization of the ground storage capacity of 20,000 NT to 22,000 NT for the loading of each vessel. Regardless of vessel size, if each vessel's cargo is made up of a maximum of 275 cars direct dumped, with the balance of tonnage from ground storage, RATE A will apply. However, if more than 275 cars per vessel are direct dumped then the utilization of railcars and ground storage has not been maximized, and RATE B (stated below) will apply.

RATE A -- \$14.50 NT

RATE B -- \$17.00 NT

**ATTACHMENT A (Continued) TO
TRANSPORTATION CONTRACT ICC CR-C-19124**

- Note 2:** Anthracite rejected at Baltimore will be returned to origin at a rate of \$11.00 per net ton. Except when rejection is the fault of Carriers, in which instance return of cars will be free.
- Note 3:** It is understood and appreciated that all parties are acting in good faith. However, should the ground storage method not prove feasible, and therefore the provisions of RATE A are not met, QIT will have the right to revert to the usage of Conrail cars under the provisions of RATE B.
- Note 4:** To the extent that the parties involved are able to, QIT will make all reasonable efforts to reduce the number of dumps to a maximum of three (3). For Example: 1 train to ground storage
1 train to ground storage
3 trains direct to vessel

**ATTACHMENT B TO
TRANSPORTATION CONTRACT ICC CR-C-19124**

ADJUSTMENT OF RATES/ANNUAL VOLUME PROVISION

Adjustment of Rates in Attachment A:

- o Initial rate adjustment will be January 1, 1996 and every January 1 thereafter through January 1, 1999. The Consumer Price Index (C.P.I.) will be used. Adjustments will be calculated at 75% of the full C.P.I., excluding \$2.46 per net ton, which covers RBMN car costs.

- o Example, using a full C.P.I. adjustment of 4% on January 1, 1996:

Rate of \$14.50, - \$2.46 = \$12.04 X (75% of 4% = 3%) =
\$12.40; \$12.40 + \$2.46 = \$14.86 (New Rate)

Rate of \$17.00, - \$2.46 = \$14.54 X (75% of 4% = 3%) = \$14.98; \$14.98 +
\$2.46 = \$17.44 (New Rate)

Annual Volume:

- o Parties agree that during the term of this Contract a minimum of ninety percent (90%) of all Pennsylvania Anthracite consumed by QIT at its Sorel, Quebec plant will be routed via Conrail, meaning either via Conrail direct, or, in connection with the Reading, Blue Mountain and Northern Railroad-Conrail route. Any volume not meeting the 90% standard will be subject to a \$6.46 net ton payment by QIT to Carriers. This provision will be assessed on an annual basis (December 31, each year). During the term of this contract, QIT has the right to seek out mutually-agreeable alternative ports that will include the participation of Conrail and RBMN.
- o Customer shall maintain complete and accurate records sufficient to document Customer's performance under this Contract during each term thereof, and shall make all shipping books, documents, and records relating to Customer's performance under this Contract available for inspection by Conrail or its agent on reasonable notice and during normal business hours.

**Attachment C to Transportation Contract ICC CR-C-19124
Letter of Agreement Concerning Storage of Anthracite Coal**

Conrail, Consolidation Coal Sales Terminal (CCST) and QIT Fer et Titane, Inc. agree to the conditions listed below regarding the storage of Anthracite coal in conjunction with ICC CR-C-19124:

- 1) The stockpile will accommodate 20,000 to 22,000 Net Tons of anthracite coal.
- 2) The stockpile will be located in an area which prevents contamination from other stockpiled cargoes. The location of this stockpile will be mutually agreed to by QIT and CCST.
- 3) A wall will be placed around the stockpile in order to contain the anthracite and ensure that degradation from bulldozers or other unsuitable equipment will not occur. CCST should ensure that their loading equipment still has access to the pile in order to load the vessel.
- 4) CCST will ensure that the same precautions to prevent contamination currently in place for direct-dump cargo is in place for stockpiled coal.
- 5) CCST will provide training to its personnel to ensure that no bituminous tonnage will be erroneously put into the anthracite stockpile. It is understood by QIT that there is no electronic system to prevent this error.
- 6) Any coal remaining in cars after a ship loads will be dumped into the stockpile.
- 7) CCST will provide access for Inspectorate people to monitor the stockpile.
- 8) The cargo weight of the vessel will be determined by draft survey (National Cargo Bureau). QIT will be granted access to the stockpile periodically throughout the year for surveying.
- 9) The area dedicated to the anthracite stockpile will be ready to receive shipments no later than March 13, 1995.
- 10) To the extent that the parties involved are able to, QIT will make all reasonable efforts to reduce the number of dumps to a maximum of three (3).

For Example: 1 train to ground storage
 1 train to ground storage
 3 trains direct to vessel

CONSOLIDATED RAIL CORPORATION

QIT FER ET TITANE, INC.

BY: R. A. Lester

BY: [Signature]

TITLE: A.V.P.-COAL MARKETING & SALES

TITLE: Traffic Manager

DATE: May 30, 1995

DATE: April 29 1995

CONSOLIDATION COAL SALES TERMINAL

BY: [Signature]

TITLE: GENERAL MANAGER

DATE: February 16, 1996

**Attachment D to Transportation Contract ICC CR-C-19124
Refund Agreement**

Conrail agrees to pay a one time refund to QIT in the amount of \$2,979.76. This payment will occur within 60 days after the initial shipment of anthracite coal under Transportation Contract ICC CR-C-19124.

The provisions published herein will, if effective, not result in an effect on the quality of the human environment.

ICC CR-C-19124

CONSOLIDATED RAIL CORPORATION

CONTRACT SUMMARY

ISSUED FEBRUARY 22, 1996

EFFECTIVE FEBRUARY 28, 1996

ISSUED BY:
A. J. MCGEE, JR.
MANAGER - TARIFF PUB
P. O. BOX 41423
PHILADELPHIA, PA. 19101-1423

EXHIBIT B

4-10-79 QIT - FER ET TITANE, INC

CONSOLIDATED RAIL CORPORATION

T.O. 7200 R5 2-78
PRINTED IN U.S.A.

CREDIT MANAGER,
Rm. 907, 15 N. 32nd Street
Phila., Pa. 19104

APRIL 20, 1979

Application is hereby made for a credit accommodation for the settlement of freight tariff charges at the following Station/s: _____

Full name of applicant: QIT - FER ET TITANE INC Telephone No.: 514-844-1592

Principal office: 1010 SHERBROOKE ST. WEST Street MONTREAL QUE City H3A 2V2 Zip

(a) CORPORATION under laws of State of QUEBEC CANADA

(b) PARTNERSHIP: Names of Members _____

(c) TRADE NAME: Name/s of Individual/s _____

Business: MINING (Indicate: Manufacturer, Wholesaler, or Retailer)

Credit previously received at the following Station/s: _____

Bank and location, if member of a Freight Payment Plan: _____

If not a member and additional information is desired, please check here ☐

Amount of credit desired within the credit period: \$ 150,000

Bank Reference: CAN. IMPERIAL BANK OF COMMERCE 1111 DORCHESTER BLVD WEST
Name FULL STREET Address & BANK ACCOUNT NUMBER
MONTREAL

Furnish current balance sheet — Profit & Loss Statement.

Bills to be sent to (Address): Box 560 LORL QUEBEC CANADA

Payments to be made from (Address): 1010 SHERBROOKE ST. WEST MONTREAL

If Subsidiary Company, give Name, (KENNECOTT COPPER CORPORATION
address of Parent Company and : 161 EAST 47TH ST. NEW YORK
nature of business : COPPER MINING

All bills under this agreement will be paid within the credit period, in accordance with regulations of the Interstate Commerce Commission. In event of an error, the freight bill will be corrected and paid accordingly, the change indicated on the face of the bill supported by the tariff reference where classification or rate is involved. Settlements will not be withheld on account of any question as to the correctness of charges which cannot be immediately adjusted, or for alleged overcharges, or any accounts that may be claimed to be due from the Railroad Company; but in such cases a claim will be filed for refund of charges believed to be in excess of the lawful amount due.

NR 117 4-27-79
Bank 4-27-79

QIT FER ET TITANE INC

By: [Signature]

Title: TREASURER

1010 SHERBROOKE ST WEST

MONTREAL (Number and Street)

QUEBEC (City and State) CANADA

nature of such disability. This notice shall be sent within ten (10) days of the beginning of the disability. Written notice shall also be sent within ten (10) days of the end of such disability.

7. Customer shall place, or cause to be placed, the following notation on all shipping instructions prepared for shipments under this Contract: "Shipped under Contract Number ICC CR-C-19124". Failure to insert the Contract Number will result in assessment of tariff rates. Freight bills will be presented based on shipping instructions as provided by shipper. Charges prescribed herein apply in addition to all other transportation, accessorial and/or demurrage charges which lawfully apply at or between points named herein. Payment of such charges shall be made in accordance with CONRAIL's general credit policy in effect at the time the particular transportation service is performed, as published in tariff(s) lawfully filed with the ICC. In the absence of such tariff(s), payment shall be made in accordance with ICC Credit Regulations, 49 CFR 1320, which are in effect at the time the particular transportation service is performed.

CONRAIL's acceptance of a partial payment containing a restricted endorsement does not limit the obligation of Customer for payment to CONRAIL of the full amount of charges due under this Contract and/or otherwise applicable tariff charges for traffic covered hereby.

When a party other than Customer is to be billed for transportation provided hereunder, Customer agrees to reimburse Carriers for such payment where said party fails to make payment.

8. Carriers agree to perform the transportation of the named commodity, from the named origins, via the named route, to the named destination at the rates and/or charges stated in Attachment A, and Customer agrees to pay those rates and/or charges for said transportation.

Part 1005. Venue for suit under this section shall be in a U. S. District Court in Philadelphia, Pennsylvania.

5. Conrail shall provide equipment and service under this Contract on the same basis that it provides same to other customers who do not have Contracts with Conrail. Customer shall provide CONRAIL's Director Service Planning with an equipment order in conformance with CONRAIL's export coal permit requirements.

6. In the event that any party(ies) is/are unable to perform as stated in this Contract due to or as a result of one or more of the following causes: Act of God, including, but not limited to floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions; Act of public enemy, war, blockade, insurrection, riot, vandalism or sabotage; fire, accident, wreck, derailment, washout, or explosion; strike, lockout or labor dispute; embargoes or AAR service orders; or governmental laws, orders or regulations, this Contract shall be suspended and total volume commitment reduced accordingly at the affected origins and/or destination only insofar as said origins and/or destination are affected by described disability and only for the duration of such disability.

The party(ies) experiencing the disability will send written notice to the other party(ies) to this Contract, stating the Contract number and the location and nature of such disability. This notice shall be sent within ten (10) days of the beginning of the disability. Written notice shall also be sent within ten (10) days of the end of such disability.

7. Customer shall place, or cause to be placed, the following notation on all shipping instructions prepared for shipments under this Contract: "Shipped under Contract Number ICC CR-C-20496". Failure to insert the Contract Number will result in assessment of tariff rates. Freight bills will be presented based on shipping instructions as provided by shipper. Charges prescribed herein apply in addition to all other transportation, accessorial and/or demurrage charges which lawfully apply at or between points named herein. Payment of such charges shall be made in accordance with CONRAIL's general credit policy in effect at the time the particular transportation service is performed, as published in tariff(s) lawfully filed with the ICC. In the absence of such tariff(s), payment

shall be made in accordance with ICC Credit Regulations, 49 CFR 1320, which are in effect at the time the particular transportation service is performed.

Conrail's acceptance of a partial payment containing a restricted endorsement does not limit the obligation of Customer for payment to Conrail of the full amount of charges due under this Contract and/or otherwise applicable tariff charges for traffic covered hereby.

When a party other than Customer is to be billed for transportation provided hereunder, Customer agrees to reimburse Conrail for such payment where said party fails to make payment.

8. Conrail agrees to perform the transportation of the named commodity, from the named origins, via the named route, to the named destination at the rates and/or charges stated in Attachment A, and Customer agrees to pay those rates and/or charges for said transportation.

9. Loading provisions at origin shall be as stated in ICC CR 9112-Series lawfully on file with the ICC (including all supplements to and/or successive or replacement issues thereof). Demurrage provisions at destination (Consolidation Coal Sales Terminal, Baltimore, MD (CCST)) shall apply as published in Freight Tariff ICC CR 9112-Series.

10. Shipments to CCST at Baltimore, MD shall be subject to the rules and provisions of Consolidation Coal Sales Company Baltimore Terminal Rules and Procedures for coal to be shipped to foreign destinations, a copy of which has been furnished to Customer.

When shipping to CCST at Baltimore, MD, Customer will advise CONRAIL's Director of Unit Train Operations, the date of an expected vessel. Customer will then arrange with CCST to accept Customer's coal for terminaling service. CCST will coordinate shipments with CONRAIL.

11. Rates in this Contract include weighing by Conrail at Allentown, PA. Minimum weight per car is 90% of the marked capacity of the car. QIT will assist Conrail to make suppliers aware of the importance of loading a minimum of 90% of the marked capacity.

EXHIBIT C

CLAIM FOR LOST CARGO					
Net Wet Tons					20-déc-96
	TONNAGE	AVG. COST OF MATERIAL	TRANSPORTATION		AMOUNT OF CLAIM
1995	1260.92	\$73.00	\$14.50	=	\$87.50
1996					
VESSEL 1	1273.29	\$73.00	\$14.73	=	\$87.73
VESSEL 2	843.07	\$73.00	\$14.73	=	\$87.73
VESSEL 3	588.76	\$73.00	\$14.73	=	\$87.73
VESSEL 4	1820.68	\$73.00	\$14.73	=	\$87.73
VESSEL 5	112.23	\$73.00	\$14.73	=	\$87.73
VESSEL 6	923.37	\$73.00	\$14.73	=	\$87.73
VESSEL 7	549.91	\$73.00	\$14.73	=	\$87.73
VESSEL 8	576.12	\$73.00	\$14.73	=	\$87.73
VESSEL 9	1252.82	\$73.00	\$14.73	=	\$87.73
VESSEL 10	584.24	\$73.00	\$14.73	=	\$87.73
TOTAL:	7464.69				87.644
DEADFREIGHT: **					
VESSEL 1	1,955.50				\$14,412.04
VESSEL 10:	190.10				\$1,437.35
GRAND TOTAL:					\$670,436.63

(*) This number is composed of a loss in 1995 and a loss in 1996 after vessel 1.
Average inventory taken after the end of the season:
4952.92 Books
3692.00 Physical Inventory (Average of 4 different parties)
1260.92 1995

It would appear that this loss occurred principally with the eighth shipment.
No apparent loss on ninth vessel, (which was loaded directly from rail cars.

(**) Extra charges from shipowner due to lack of material.

(copalreco.xls)

ATTACHED ONLY AS INFORMATION ON QIT'S ALLEGED LOST CARGO AND IS WITHOUT PREJUDICE TO CONRAIL'S RIGHTS. ANY STATEMENTS CONTAINED HEREIN SHALL NOT CONSTITUTE ADMISSIONS WITH RESPECT TO CONRAIL NOR NECESSARILY BE DEEMED ADMISSIBLE IN THE EVENT OF TRIAL ON THIS MATTER.

EXHIBIT D

**TRANSFER
AND
STORAGE
AGREEMENT**

CONRAIL

CCSC

BALTIMORE TERMINAL

TRANSFER AND STORAGE AGREEMENT

THIS AGREEMENT made and entered into effect this 1st day of May, 1991, by and between CONSOLIDATION COAL SALES COMPANY, a Delaware corporation, with offices located in Baltimore, Maryland (hereinafter called "CCSC") and CONSOLIDATED RAIL CORPORATION, with offices located at One Liberty Place, 1650 Market Street, Philadelphia, Pennsylvania (hereinafter called "CONRAIL") provides as follows:

WHEREAS, CCSC owns and operates a coal terminal facility in Baltimore, Maryland; and

WHEREAS, CONRAIL desires to utilize CCSC's coal terminal facility for coal which it carries for others under private contracts of carriage;

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter set forth, the parties agree that CONRAIL shall have the right to utilize the coal terminal facility in accordance with the following terms and conditions:

1. TERM

The term of this Agreement shall be from May 1, 1991 to April 30, 2011, a period of twenty years, unless sooner terminated in accordance with this Agreement.

2. DEFINITIONS

The following terms shall have these meanings where used in this Agreement.

(a) "Terminal" shall mean the coal terminal owned and operated by CCSC located on the north shore of the Patapsco River, at 3800 Newgate Avenue in the City of Baltimore, Maryland, which unloads coal from railcars, stockpiles, reclaims, weighs, samples and loads coal into vessels.

(b) "CONRAIL Coal" shall mean all coal delivered to the Terminal by CONRAIL for handling by CCSC pursuant to this Agreement. The term shall not include any coal owned by CCSC or Consolidation Coal Company, or any coal handled by the Terminal pursuant to any Terminal contract between CCSC and any third party.

(c) "Export Coal" shall mean any CONRAIL Coal delivered to the Terminal for shipment from the Terminal to any destination outside of the United States, Puerto Rico or the Virgin Islands.

(d) "Domestic Coal" shall mean any CONRAIL Coal delivered to the Terminal for shipment from the Terminal to any destination within the United States, Puerto Rico or the Virgin Islands.

(e) "The Customer" referred to in the Baltimore Terminal Rules and Procedures attached hereto as appendices shall mean CONRAIL.

(f) "Bethlehem Coal" shall mean CONRAIL Coal delivered to the Terminal for eventual shipment from the Terminal to the Sparrows Point steel plant of Bethlehem Steel Corporation.

(g) "CCSC's services hereunder" shall mean the movement of coal trains through the Terminal for unloading, the unloading of CONRAIL Coal from rail cars, the reassembly of trains after

unloading, the stockpiling of CONRAIL Coal, the reclaiming of CONRAIL Coal from stockpiles, the loading of CONRAIL Coal into vessels from stockpiles, the direct loading of CONRAIL Coal from train to vessel without stockpiling, the weighing and sampling of both inbound and outbound CONRAIL Coal, and the creation and maintenance of up-to-date records concerning tonnages of CONRAIL Coal in storage or transferred through the Terminal during the previous forty-eight (48) months.

(h) "Contract Year" shall mean a period of twelve consecutive months from May 1 to April 30.

3. TERMINAL RULES AND PROCEDURES

The rules and procedures governing the operation of the Terminal are attached hereto as appendices, and incorporated herein by reference. Said rules and procedures shall prevail except as otherwise agreed by the parties in this Agreement. In the appendices all references to "the customer" shall refer to CONRAIL. It is understood that CONRAIL will not be the owner of the coal which will move to and through the Terminal pursuant to this Agreement.

4. MINIMUM AND MAXIMUM QUANTITIES

It is contemplated by the parties that CONRAIL's use of the Terminal during each Contract Year of this Agreement shall fall in the range of three million five hundred thousand tons to seven million tons (3,500,000 tons to 7,000,000 tons) of coal put into the Terminal. CCSC guarantees CONRAIL that the Terminal will accept and handle, in accordance with this Agreement, during any

Contract Year, up to Seven Million tons of CONRAIL Coal. CONRAIL guarantees that at least ninety-five percent (95%) of the coal which CONRAIL carries over its tracks for delivery to the Sparrows Point steel plant of Bethlehem Steel Corporation shall move through the Terminal pursuant to this Agreement. CCSC shall have no obligation to accept at the Terminal in any one Contract Year more than 7,000,000 tons of CONRAIL Coal.

5. AVOIDANCE OF COMMON CARRIER STATUS

All coal delivered by CONRAIL to the Terminal is expected to be coal carried by CONRAIL not as a common carrier but rather under private transportation contracts pursuant to 49 USC 10713, which transportation, after regulatory approval is obtained, is not subject to the jurisdiction of the Interstate Commerce Commission. CCSC is not a common carrier and does not under this Agreement or in any other respect hold itself out to CONRAIL, any customer of CONRAIL, or any other user of the Terminal as a provider of common carrier services of any type or as the owner or operator of a public facility. If at any future time during the term of this Agreement CONRAIL should desire to deliver to the Terminal coal which it carries as a common carrier and not under private contract of carriage, CONRAIL shall first submit to the Interstate Commerce Commission a petition for exemption of the Terminal service provided hereunder from the jurisdiction of the Commission under subchapter 105 of the Interstate Commerce Act. CCSC shall support such petition before the Commission. Such petition for exemption shall be filed pursuant to 49 U.S.C.

10505. When such an exemption is granted, and for so long as the exemption remains in effect, the common carrier restriction imposed upon CONRAIL by this paragraph shall be suspended.

6. TRAIN SIZES AND UNLOADING TIME

(a) Trains of Conrail Coal delivered to the Terminal are expected to carry between 7,000 and 10,000 tons of coal. The length of any such train will not exceed one hundred cars of one hundred ton capacity per car, or an equivalent length for trains consisting in whole or in part of smaller or larger capacity cars, unless CCSC consents to the delivery of longer trains from time to time. As physical handling capacities at the Terminal may allow, CCSC agrees that it will not unreasonably withhold its consent to the delivery of long trains. If any train in excess of the foregoing length restriction is delivered to the Terminal without CCSC's consent, CCSC shall have the right to accept or reject the portion of the train in excess of 100 cars. CCSC agrees that it will accept shipments of CONRAIL Coal in consignments of less than 7,000 tons if the deliveries of such smaller consignments are scheduled and coordinated to limit interference with normal Terminal operations and to limit the operating costs of both CCSC and CONRAIL.

(b) In the event CONRAIL plans to deliver a trainload of coal which exceeds the length restriction imposed by subparagraph (a) above, and CCSC advises CONRAIL that the Terminal will be unable to accommodate the excess cars immediately, CONRAIL will deliver only 100 cars (or equivalent car lengths) to

the Terminal. The balance of the trainload consignment shall be held by CONRAIL at a site of CONRAIL's choosing. The balance of the trainload consignment shall be delivered by CONRAIL after receiving a delivery request from the Terminal. Free time for unloading any such oversize trainload consignment balance shall commence when such oversize trainload consignment balance is delivered to the Terminal.

(c)(1) Except as otherwise provided in this subparagraph (c), one day (twenty-four hours) free time will be allowed for CCSC to unload cars included in a trainload consignment. Free time will begin to run at the first 12:01 a.m. following actual placement of the train for unloading, except as otherwise provided in subparagraph (c)(2). Actual placement is made when cars are placed in an accessible area for unloading. If such actual placement is prevented due to any cause attributable to CCSC and within CCSC's ability to control, the cars shall be considered constructively placed. When cars are held short of the Terminal, notice shall be sent or given in writing, by telephone, telefax, panafax, etc., or in a manner otherwise agreed to by CONRAIL and CCSC, that the cars are being held by CONRAIL under constructive placement. When cars are constructively placed, free time of 24 hours shall be computed from the first 12:01 a.m. after notice of placement is received by CCSC. After expiration of the free time allotted to a car, CCSC shall be assessed detention charges of Twenty Dollars per

car per day (twenty-four hours), or fraction thereof, on each car not unloaded until the car is unloaded and released to CONRAIL. Unloading and release shall include advice by CCSC to CONRAIL, either in writing or by telephone, telefax, panafax, etc., or in a manner otherwise agreed to in writing, that the cars are unloaded and are available to CONRAIL. Cars will be considered released at the date and time such advice is received by CONRAIL. Information given shall include car initials and numbers (or train symbol if the entire train is being released at the same time).

(c)(2) Computation of free time for unloading of cars placed, or constructively placed, on Friday, Saturday, or Sunday will not start until 12:01 a.m. on the Monday following. Computation of free time for cars placed, or constructively placed, for unloading the day previous to any Holiday will not start until 12:01 a.m. on the day following such Holiday. When a Holiday follows a Sunday, computation of free time for cars placed, or constructively placed, for unloading on the previous Friday, Saturday or Sunday will not start until 12:01 a.m. on the Tuesday following. Holidays shall include only the following: New Year's Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

(c)(3) When, at the time of constructive placement or actual placement on CCSC's rail siding, lading in any car is frozen or congealed so as to require heating, thawing or

loosening to unload, the 24-hours free unloading time shall be extended by 24 hours, provided that CCSC sends to CONRAIL, within ten days after the date on which the car is released by CCSC, a written statement certifying that the car's lading was frozen when the car was received by CCSC, identifying the car by initial and number, and specifying the day or days during which any time was expended by CCSC in heating, thawing, or loosening the lading to unload the car. If such written statement is mailed by CCSC, the date of such notice shall be determined by the postmark.

(c)(4) If, by reason of force majeure or breakdown of terminal equipment, CCSC cannot unload and release, in accordance with the free time provisions of this sub-paragraph, all cars of a consignment placed prior to the onset of the force majeure or breakdown condition, no detention charges will be assessed. CCSC must certify to CONRAIL, in writing within ten days from the date the force majeure condition terminated, the nature and actual commencement time of the disability, and that as a result CCSC was unable to unload and release all the cars of a consignment. The notice must also include the actual time that the force majeure or breakdown condition terminated.

(c)(5) When two or more trainload consignments are bunched, CCSC shall be allowed additional free time of 24-hours for each trainload consignment, without conflict with the free time of any other trainload consignment; provided, however, if a trainload consignment is released by CCSC prior to the expiration of the 24-hours free time allotted to that train, the free time

on the next trainload shall commence as of the hour of release of the prior trainload consignment. The word "bunched" is defined to mean the actual or constructive placement of two or more trains which creates a conflict or overlap between or among the 24 hour free time periods allotted to the trains.

(d) During any calendar month in which the volume of coal transported via CONRAIL to the terminal exceeds 850,000 net tons, or during any seven consecutive day period in which the volume transported via CONRAIL to the terminal exceeds 200,000 net tons, the following provisions will apply, in addition to subparagraph (c) above: (1) free time shall be increased by 24-hours per car; and (2) a debit day shall be offset by a credit day. A credit day shall be earned by dumping a car in advance of expiration of free time during either the subject month, the prior month, or the subsequent month.

(e) The demurrage charge specified in sub-paragraph (c)(1) above will be increased or decreased in accordance with the Railroad Cost Recovery Index (RCRI) on October 1 of each year beginning October 1, 1991. On October 1 of each year the adjustment will be calculated by applying the percentage change between the RCRI for the third quarter of the previous year against the charge that is in effect on September 30. Should the Interstate Commerce Commission cancel or cease promulgation of the RCRI, the parties will utilize the American Association of Railroads (AAR) Wage and Price Index. If the AAR does not publish any such index, then adjustment to the base rates as

provided herein shall be in accordance with an index and methodology mutually agreed upon by the parties.

7. STORAGE SPACE FOR COAL

(a) CCSC shall provide at the Terminal outside ground storage space for up to eight storage piles of CONRAIL Coal. Each of these piles shall be a transient storage pile created to receive coal for scheduled vessel cargo liftings, and to hold that coal only temporarily until the vessel designated for that cargo is loaded.

(b) With respect to these piles, if coal remains in any such storage pile for longer than thirty (30) days, and if the vessel designated to carry that coal has not been loaded for whatever reason, CONRAIL shall pay CCSC an additional Terminal Fee of Ten Cents (10¢) per day for each ton of coal in the pile beyond the initial thirty (30) day period. If coal remains in any such storage pile for longer than thirty (30) days, and if the vessel designated to carry that coal has loaded and left that coal behind, CONRAIL shall pay CCSC an additional Terminal Fee of Thirty Cents (30¢) per day instead of Ten Cents (10¢) per day, for each ton of coal that remains in storage beyond the initial thirty (30) day period and after the designated vessel has sailed.

(c) CCSC shall not be required to overload any stockpile, to blend coals, or to move coal from one stockpile to another unless otherwise agreed by the parties.

(d) In no event shall use of any coal storage area at the Terminal be construed as a lease or sublease agreement between CCSC and CONRAIL.

(e) In the event that CONRAIL Coal is left remaining in a transient pile after the vessel originally intended to carry that coal has loaded and sailed, no additional Terminal Fee shall be assessed for that coal under subparagraph (b) of this Paragraph 7 if all remaining coal in the pile is loaded aboard another vessel within thirty days after the coal arrived at the Terminal.

(f) CCSC will be responsible for all recordkeeping required to monitor coal stockpiles. CONRAIL retains the right, on reasonable notice, to audit such records periodically. CCSC shall not be responsible for shortfalls in coal tonnages unless such shortfalls are caused by the negligence or willful misconduct of CCSC.

8. OWNERSHIP OF COAL

CONRAIL Coal for which CCSC provides Terminal services shall be and shall remain the property of CONRAIL's customers. CONRAIL accepts sole responsibility hereunder, as principal and not as the agent of any of its customers, for adherence to the terms of this Agreement. CONRAIL shall see to the prompt payment of all taxes with respect to that coal, including, but not limited to, ad valorem taxes, if any, which may be assessed against such coal, and the filing of all tax returns required by the owner of said coal. CONRAIL agrees to indemnify and hold CCSC harmless with respect to all such taxes.

9. TERMINAL FEES

(a) CONRAIL shall pay a Terminal Fee to CCSC for use of the Terminal and for CCSC's services hereunder. Subject to adjustment as per subparagraph (c), and subject to the minimum Fee payment obligations set forth in subparagraphs (e), (f) and (g), the Terminal Fee, payable on each ton (2,000 pounds) of CONRAIL Coal which CONRAIL puts into the Terminal, shall be calculated as follows:

- i. For Bethlehem coal the Terminal Fee shall be One Dollar and Fifty cents (\$1.50) per ton through December 31, 1997. From and after that date the Terminal Fee for Bethlehem Coal shall be the same as the Terminal Fee on all other Conrail Coal.
- ii. For Conrail Coal other than Bethlehem Coal, the Terminal Fee shall be Two Dollars (\$2) per ton through December 31, 1997. Effective January 1, 1998, the Terminal Fee for all CONRAIL Coal shall be increased from \$2 to \$2.20 per ton.

(b) The Terminal Fee on CONRAIL Coal shall be payable when the coal is delivered to the Terminal.

(c) On July 1, 1991, and on each January 1 and July 1 thereafter during the term of this Agreement, the Terminal Fees payable under Paragraph 7 and this Paragraph 9 shall be adjusted based on weighted average percentage changes in the average values of the price and earnings indices and electric power costs per kilowatt hour set forth below in the table at the end of this

sub-paragraph 9(c). The price and earnings indices used shall be the average of those first published by the U. S. Bureau of Labor Statistics, for the fourth, fifth and sixth months preceding the date of adjustment. The power costs used shall be CCSC's average cost per kilowatt hour for electric power consumed at the Terminal during the twelve consecutive monthly billing periods preceding the date of adjustment, including demand charges. The base values used for calculating the percentages of changes in the said price indices shall be the average index values for November and December of 1990 and January of 1991. The base value used for calculating the percentage of change in the Terminal's average electric power cost per kilowatt hour shall be the average cost per kilowatt hour for the twelve consecutive monthly periods beginning with January of 1990, including demand charges. The relative weights assigned to each of the three aforementioned factors are set forth in the table at the end of this sub-paragraph 9(c). The weighted average percent change shall be multiplied by the applicable Terminal Fee yielding the adjustment to the Terminal Fee to be effective on the applicable adjustment date, in substitution for previous adjustments made pursuant to these provisions. All adjustments shall be rounded to the nearest cent per ton. No Terminal Fee hereunder shall be adjusted to a level below the amount of that fee set forth in subparagraph (a) of this Paragraph 9. There shall be no adjustment made as of July 1, 1991, to the Terminal Fee payable on Conrail Coal other than Bethlehem Coal. The Fee adjustment

which would otherwise be made with respect to such coal as of July 1, 1991, shall be deferred until the next Terminal Fee adjustment date, January 1, 1992.

<u>Component</u>	<u>Index</u>	<u>Relative Weight</u>
Labor	Employment and Earnings. Average hourly earnings of production workers on manufacturing payrolls in Baltimore, MD. Table C-8.	40%
Power	Average cost per kilowatt hour for electric power consumed at the Terminal.	10%
Supplies & Other	Producer Price Index for Industrial Commodities	<u>50%</u>
		100%

(d) The Terminal Fee adjustment provisions set forth above are expected to cover CCSC's cost increases or decreases due to ordinary inflation or deflation of wages and prices. If other cost changes are experienced by CCSC during the term of this Agreement caused by unexpected tax increases or decreases, new legislation or administrative regulations concerning employee benefits or health and safety requirements (including, but not limited to, increased dust control requirements), new or revised environmental quality control requirements, and any other such new or revised governmental imposts or requirements, it is agreed that a pro rata portion of the increase or decrease in cost attributable in any part to any one or more of such causes shall be passed through to CONRAIL as provided below. Such cost increases or decreases are hereinafter referred to as "extraordinary cost changes." The pro rata portion of the

extraordinary cost change which shall be passed through to CONRAIL for any Contract Year shall be determined and paid or credited as follows:

First: CCSC shall advise CONRAIL, on or before June 1 of each year, of the total extraordinary cost change experienced during the previous Contract Year.

Second: CCSC shall advise CONRAIL, on or before June 1 of each year, of the total number of tons of coal received by the Terminal from all sources; the total number of tons of CONRAIL Coal received by the Terminal; and the total number of tons of Bethlehem Coal received by the Terminal; all during the previous Contract Year.

Third: On or before March 1 of each year CCSC shall provide CONRAIL with documentation substantiating the extraordinary cost change for the previous Contract Year.

Fourth: The pro rata share of the extraordinary cost change attributable to CONRAIL Coal, and reimbursable or creditable pursuant to this sub-paragraph, shall be determined by multiplying the total extraordinary cost change by the percentage of all coal received by the Terminal during the prior Contract Year attributable to CONRAIL Coal.

Fifth: On or before August 1, CONRAIL shall remit to CCSC, or CCSC shall credit CONRAIL's account for, the total amount of the reimbursable or creditable cost increase or decrease determined as hereinabove provided.

(e) CONRAIL shall pay CCSC at least Four Million Dollars (\$4,000,000) in Terminal Fees per Contract Year. Any shortfall in payments shall be calculated by CCSC and billed to CONRAIL as promptly as possible after the end of each Contract Year. This minimum annual Terminal Fee of \$4,000,000 shall be adjusted in accordance with sub-paragraph (c) of this Paragraph 9. It is understood and agreed that Terminal Fees paid by CONRAIL for any Contract Year in excess of the minimum shall not be credited toward CONRAIL's minimum Terminal Fee payment obligation for any prior or subsequent Contract Year. Supplemental Terminal Fees paid pursuant to sub-paragraph (f) of this Paragraph 9 shall be credited toward this minimum Terminal Fee obligation.

(f) If CONRAIL puts less than three million five hundred thousand (3,500,000) tons of Export Coal into the Terminal during any Contract Year, the Terminal Fee for that coal shall not be Two Dollars (\$2) per ton, but instead shall be Two Dollars and Twenty-two cents (\$2.22) per ton on the first one million five hundred thousand (1,500,000) tons and One Dollar and Eighty-three and One-half Cents (\$1.835) per ton on each ton in excess of 1,500,000 tons, and less than 3,500,000 tons, of Export Coal put into the Terminal during that Contract Year. (All such per ton figures are subject to adjustment in accordance with subparagraph (c) of this Paragraph 9.) CCSC shall calculate any supplemental Terminal Fee owed by CONRAIL pursuant to this subparagraph (f) and shall invoice CONRAIL for such supplemental fee as soon as practicable after the end of each Contract Year. Any

supplemental Terminal Fee paid by CONRAIL pursuant to this subparagraph shall be credited toward CONRAIL's minimum Terminal Fee payment obligation under subparagraph (e) for the same Contract Year. There shall be no supplemental Terminal Fees payable pursuant to this subparagraph (f) with respect to Export Coal entering the Terminal on or after January 1, 1998.

(g) Commencing May 1, 1992, if CONRAIL puts less than one million (1,000,000) tons of Bethlehem Coal into the Terminal during any Contract Year prior to 1998, the Terminal Fee for that coal shall be Two Dollars (\$2) per ton, adjusted in accordance with sub-paragraph (c) of this Paragraph 9. CCSC shall calculate any supplemental Terminal Fee owed by CONRAIL pursuant to this sub-paragraph (g) and shall invoice CONRAIL for such supplemental fee as soon as practicable after the end of each Contract Year.

(h) Terminal Fees payable by CONRAIL for CONRAIL Coal shall be based upon CCSC's inbound belt scale weights, which are the weights used by CONRAIL for the calculation of linehaul freight charges under CONRAIL's linehaul transportation contracts. CCSC shall advise CONRAIL of those weights as soon as such coal is delivered to the Terminal. If the inbound belt scales are out of service, CCSC shall so advise CONRAIL, and CONRAIL shall use its best efforts to determine the weight of the coal by other methods such as the use of weigh-in-motion scales. It is agreed that there shall be no charge by CONRAIL for this weighing service. In the event that CONRAIL is unable to provide such alternative means of weighing the coal, then the weight of

the coal shall be determined by some method mutually agreed upon by CONRAIL and CCSC.

(i) Terminal Fees on CONRAIL Coal shall be paid by CONRAIL to CCSC within fifteen (15) days after CONRAIL received CCSC's invoice for such fees. Payments shall be made by wire transfer to Pittsburgh National Bank, Pittsburgh, PA to Account No. 1-010614 or by some other method of payment acceptable to CCSC. Overdue fees shall accumulate interest from the due date thereof until the date of eventual payment at a rate two percent per annum above the opening prime rate announced or in effect on the due date as quoted by Morgan Guaranty Trust Company of New York City.

10. FORCE MAJEURE

(a) The term "force majeure" as used herein shall mean (i) acts of God, acts of the public enemy, insurrections, riots, labor disputes, labor or material shortages, fires, explosions, floods, breakdowns of or damage to the loading or unloading facilities of the Terminal; breakdown, grounding or sinking of vessels or barges; derailments; interruption to transportation caused by Amtrak operating restrictions; embargoes, legislation, governmental regulation, orders or any other acts of any governmental or military authority; action or non-action by, or failure to obtain necessary authorizations or approvals from, any government agency or authority; or (ii) other causes (whether of a similar or dissimilar nature) beyond the reasonable control of the party affected thereby, which wholly or partially prevent the

performance of any of the duties and responsibilities of either party hereunder;

(b) If as a result of force majeure either CCSC or CONRAIL is totally or partially unable to carry out its obligations (other than for the payment of money), then such obligations shall be excused for the duration of such force majeure to the extent made necessary thereby.

(c) Each party hereto shall, in the event it experiences a force majeure condition, use all reasonable efforts to eliminate the force majeure and/or the effect thereof, insofar as is practicable and economically feasible, with all reasonable dispatch. Neither party hereto shall be required to settle differences with employees, unions or governmental claims by acceding to any demands when, in the discretion of the party whose performance is interfered with, it would be inadvisable to accede to such demands. The party asserting a force majeure condition shall give written notice thereof to the other party as promptly as practicable of the nature and probable duration of such force majeure.

(d) The parties hereto shall use reasonable efforts to schedule, for makeup loadings, those tonnages which are scheduled for loading but are not loaded at the Terminal due to events of force majeure suffered by either party (hereinafter "Force Majeure Tons"). Upon the termination of the Force Majeure event, CCSC shall review the established vessel schedule, taking into consideration all Terminal customers, and shall advise CONRAIL of

the feasibility of scheduling the Force Majeure Tons for a makeup loading time.

11. LIABILITY AND INDEMNIFICATION

(a) Responsibility for any claims, liabilities, demands, actions at law or equity, judgments, settlements, losses, damages, and expenses of every character, arising from the injury or death of any person or the damage, loss or destruction of any real or personal property, caused by or occurring in connection with the operation of the Terminal, (hereinafter referred to, collectively, as "claims"), shall be allocated as follows:

(1) Each party shall be solely responsible for Claims arising from its negligence, from its failure to comply with any law or regulation applicable to it, or from its failure to comply with its obligations under this Agreement.

(2) CCSC and CONRAIL shall be jointly responsible for any Claim arising from their joint or concurrent negligence or failure to comply with any law or regulation. The degree or proportion of responsibility to be borne by each party in such cases shall be proportionate to their respective degrees of culpability in each such case.

(b) The party which is responsible for such Claims shall release the other party from all responsibility for such Claims and shall defend, indemnify, protect, and save harmless the other party and its shareholders, directors, officers, agents, and employees from and against all such Claims.

(c) With respect to liability for site clean-up and other site remediation costs which might become payable under the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the parties agree that CCSC shall be responsible, generally, for conditions at the Terminal, including without limitation the responsibility for keeping hazardous substances out of the Terminal and cleaning up any hazardous substances which might be spilled, stored or disposed of at the Terminal. CCSC shall protect, indemnify and defend CONRAIL, and hold CONRAIL harmless, from and against any liability for the clean-up of any such substances, except for such substances which may have been transported to the Terminal by CONRAIL. With respect to hazardous substances which are transported to the Terminal by CONRAIL, the parties agree that CONRAIL shall bear full responsibility for paying all costs associated with such substances, and CONRAIL shall protect, indemnify and defend CCSC, and hold CCSC harmless, from and against any liability for the costs of cleaning up any such substances, disposing of them, or otherwise responding to the release or threatened release of such substances at the Terminal.

(d) CCSC shall comply with all federal, state and local laws, ordinances, rules and regulations designed to prevent or control the discharge of substances in the land, water or air.

12. FAIR AND EQUITABLE TREATMENT TO CONRAIL CUSTOMERS

The Terminal schedules its operations on a first-come-first served basis according to the terms of CCSC's contracts with its

customers. CCSC shall not deviate from this routine to the detriment of any CONRAIL customer; provided, however, that CCSC may deviate from such routine if such deviations are done in a consistent manner with all Terminal customers in order to facilitate direct shiploading or to eliminate or minimize vessel demurrage charges. If any CONRAIL customer believes that it is being unfairly treated by the Terminal, CCSC and CONRAIL shall confer in good faith regarding the complaint and attempt to understand and rectify the situation.

13. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties; provided neither party shall, without the prior written consent of the other, which consent shall not be unreasonably withheld, assign this Agreement, in whole or in part, whether by operation of law or otherwise, or sublease, license or transfer in whole or in part to any other person any right that it might have under this Agreement.

14. ENTIRETY, AMENDMENTS AND SEVERABILITY

This instrument and the Terminal Rules and Procedures attached hereto as appendices comprise the entire Agreement, merging and superseding all prior understandings and representations between the parties concerning the subject matter herein contained. All amendments, supplements, modification to and waivers of the terms of this Agreement shall be in writing and signed by the parties hereto. If any part, term or provision

of this Agreement is held by the courts, or by any agency having or purporting to have jurisdiction over the Agreement or the parties hereto, to be unenforceable, illegal, against public policy, or in conflict with any federal, state or local laws, such part, term or provision shall be considered severable from the rest of the Agreement. The remaining portions of the Agreement shall not be affected, and the rights and obligations of the parties shall be construed and inferred as if the Agreement did not contain the particular term, part or provision held to be invalid, unless the invalid provisions contain the material financial terms of this Agreement or, when considered in the aggregate, render the administration of this Agreement unreasonably burdensome, in which case this Agreement shall be terminated.

15. WAIVERS AND REMEDIES

The failure of either party hereto to insist in any one or more instances upon strict performance of any of the obligations of the other pursuant to this Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of the performance of any such obligation or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect. All remedies under this Agreement shall be cumulative and in addition to every other remedy provided herein or by law. In no event shall either party be liable to the other for incidental, special or consequential

damages arising out of a default in the performance of any of its obligations hereunder.

16. NOTICES

All notices tendered pursuant to this Agreement hereunder shall be in writing and shall be either delivered in person to the authorized representative of the party to be notified, or sent U. S. Registered or Certified Mail - Return Receipt Requested to said party at the addresses shown below, or at any subsequent address of which either party may designate:

CCSC: Consolidation Coal Sales Company
Baltimore Terminal Division
3800 Newgate Avenue
Baltimore, MD 21204

CONRAIL: Consolidated Rail Corporation
Assistant Vice President
Open Top Hopper Business Group, Room 1150
One Liberty Place
Philadelphia, PA 19103-2959

The parties may also serve any notices hereunder by telex to be confirmed by notice pursuant to this Article.

17. INTERPRETATION OF AGREEMENT

This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania. The headings of the paragraphs herein have been inserted as a convenience for purposes of reference and are not to be construed as having any binding effect on the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this agreement
as of the day and year first written above.

ATTEST:

Daniel E. Rogers

CONSOLIDATION COAL SALES COMPANY

By William G. Harris
Its William B. Harris
Vice President

ATTEST:

CONSOLIDATED RAIL CORPORATION

By Gordon K. Kuhn
Its Senior Vice President Marketing and Sales

**CONSOLIDATION COAL SALES COMPANY
BALTIMORE TERMINAL RULES AND PROCEDURES
FOR COAL TO BE SHIPPED TO FOREIGN DESTINATIONS**

Unless otherwise agreed by Consolidation Coal Sales Company the following rules and procedures apply to the receipt, storage, handling and vessel loading of coal delivered to Consolidation Coal Sales Company's marine terminal on the Patapsco River in Baltimore, Maryland, for eventual shipment by vessel to destinations outside the United States, the Virgin Islands and Puerto Rico. References are made in these rules and procedures to the owner of the coal being handled, the Terminal customer, the railroad delivering coal to the Terminal and the Terminal itself. All references to "the Terminal" mean Consolidation Coal Sales Company. References to "the coal owner" and "the customer" will usually refer to the same party. In some instances, however, the coal owner and the customer will be two different entities. As an example, coal owned by one person or company may be put through the Terminal by a broker or by the railroad which carries the owner's coal to the Terminal. This would be done as a service provide by the broker or railroad to the coal owner. In that case the Terminal customer is not the coal owner, but rather is the company which has a Transfer and Storage Agreement with the Terminal. The Terminal customer is the party ultimately

responsible for adherence to these rules and procedures by the coal owner and by the railroad delivering the coal to the Terminal. Therefore the Terminal customer should be certain that all parties involved in the shipping of coal through the Terminal are advised of these rules and procedures.

1. Scheduling of rail deliveries of coal to the Terminal shall be carefully coordinated among the Terminal, the owner of the coal and the railroad delivering the coal to the Terminal. All scheduling of rail deliveries shall be consistent with the trainload scheduling and permitting systems of the railroad and with the shipping and receiving schedules of the Terminal itself. The railroad shall telephone the Terminal of all train movements to the Terminal planned by the railroad for the following week.

The Terminal shall contact the railroad to confirm both the trainload schedules or permits and the Terminal's ability to accommodate the shipments as planned. If the Terminal will be unable to accommodate the shipments as planned, the Terminal shall so notify the railroad.

If neither the Terminal customer nor the railroad advises the Terminal of the following week's proposed train shipments to the Terminal, the Terminal shall have no obligation to accept any trains from the customer during the following week. In those circumstances the Terminal will attempt to accommodate the customer's trains but will have no obligation to do so.

2. Unless otherwise agreed by the Terminal, coal shall be delivered to the Terminal in trains carrying at least 7,000 tons of coal to be unloaded at the Terminal and such trains will not exceed the length of a train comprised of one hundred standard hopper cars each having a 100 ton capacity.

3. All coal which the owner of the coal wants to have sampled at the Terminal must be free-flowing and substantially free of foreign matter. If the coal is to be automatically sampled, the coal must be crushed to the point that the individual pieces of coal have no dimension larger than two inches. In the event that coal delivered to the Terminal does not meet these conditions, or if the automatic sampling system of the Terminal is disabled, a belt sample shall be manually taken if requested.

Proportionate and representative samples from each shipment of incoming and outgoing coal shall be taken by the Terminal or its agent in accordance with American Society of Testing and Materials (ASTM) standards. As soon as practicable after a sample is taken, the coal owner or his agent shall be notified that the sample is available. The Terminal shall not retain any coal samples. Samples shall be taken by an automatic mechanical sampling device. The customer, coal owner or its agent, at their

sole risk and expense, shall have the right at reasonable times to observe and inspect the sampling process and the equipment used in selecting samples. If sampling other than that described above is requested, a fee will be charged.

4. Trains will be accepted into the Terminal 365 days per year, provided that the Terminal has sufficient siding space to hold trains pending their unloading. The Terminal will operate every day of the year except, at the Terminal's option, New Year's Day, Washington's Birthday, Good Friday, Easter Sunday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Eve Day, Christmas Day, New Year's Eve Day, and such other "no work days" as the customer, the coal owner and the Terminal may agree upon.

5. Coal must be freezeproofed, if the Terminal so requests, between December 15 and the end of February, and at any other time that the Terminal advises that cold weather conditions require freezeproofing of the coal. The Terminal shall notify the customer and the coal owner when freezeproofing is required.

6. In the event the Terminal requests freezeproofing, and that request is not complied with, causing coal to arrive at the Terminal which is frozen or for some other reason cannot be handled by the Terminal, the Terminal may either reject the coal or notify the customer and coal owner of the deficiency. If such notification is given, the customer and coal owner shall have

four hours to instruct the Terminal what to do with the coal. If neither the customer nor the coal owner gives that instruction, then the Terminal may handle the coal and bill the customer for all extra costs incurred by the Terminal because of the deficiency. If the Terminal rejects the coal, is advised by the customer or the coal owner not to accept the coal, or otherwise does not unload the cars, all such coal held in rail cars shall be subject to the demurrage and constructive placement provisions of the rail transportation contract between the railroad and the coal owner.

7. With respect to any train loaded for dispatch to the Terminal, the customer or coal owner must advise the Terminal by telex of the train's identity, the total approximate weight of each type of coal loaded on the train, the individual car numbers and their approximate weights, the car numbers of each separate block of cars, and any other information concerning the train that the Terminal may request.

8. The coal owner and the railroad shall insure that the train symbol or identification number assigned to a train by the railroad is entered on the shipping instructions for that train.

9. The Terminal shall stockpile coal within the Terminal storage area in storage piles located wherever the Terminal manager decides. The Terminal will not commingle coals, and is not obligated to and will not transfer coal from one Terminal stockpile to another.

10. After a train is emptied it shall be reassembled by the Terminal on the Terminal's outbound tracks and readied for removal by the railroad.

11. The scheduling of ocean going vessels into the Terminal will be handled in accordance with the following procedure:

(a) At least 90 days prior to the commencement of each calendar quarter, the customer or coal owner shall see to it that the Terminal is advised by telex of the proposed schedule for coal shipments out of the Terminal during such calendar quarter, indicating the approximate monthly shipments, and specifying the respective quantities of coal proposed to be shipped from the Terminal by barge and by ocean vessel during each month of the calendar quarter.

(b) At least 60 days prior to the commencement of each calendar quarter, the Terminal shall telex the customer and coal owner acknowledging the approximate monthly shipments for such period and advising of any schedule conflicts and possible changes thereto.

(c) At least 25 days prior to commencement of each calendar month in which vessel loadings are to be scheduled, the customer or coal owner shall advise the Terminal by telex of its proposed vessel schedule for such period, indicating the approximate cargo lot size and estimated seven-day period of cargo lifting for each vessel. Within 48 hours following receipt of the proposed vessel

schedule program, the Terminal shall telex the customer and coal owner confirming the scheduled seven-day cargo lifting periods for the coal owner's nominated cargo lot size(s) during such calendar month or advising the customer and coal owner of required changes.

(d) For each vessel to be loaded, the customer or coal owner shall, at least twelve (12) calendar days prior to the requested loading date at the Terminal, provide the Terminal the following information:

- (i) the name of the vessel and its Summer Dead Weight Tonnage (SDWT);
- (ii) the requested loading date (within the scheduled seven-day cargo lifting period);
- (iii) the number of tons of coal to be loaded in the vessel ($\pm 10\%$);
- (iv) the vessel's destination(s) where the coal is to be unloaded.

(e) Within one business day (i.e., days other than Saturday, Sunday and holidays) after receipt of the information required under Paragraph 6(d), the Terminal shall set a scheduled loading date for the vessel at the Terminal, which date shall be the requested loading date, one calendar day prior thereto, or within three calendar days thereafter, subject to the following conditions:

- (i) The customer or coal owner (a) shall have the vessel, and the necessary quantity of coal to be loaded into

that vessel, available for loading and (b) shall have tendered valid Notice of Readiness of the arrived vessel for loading on the scheduled vessel loading date or within 48 hours thereof. The Terminal may, but shall have no obligation to, accept Notice of Readiness tendered prior to or after the period above described. If these conditions are not met, the Terminal shall not be obligated to accept Notice of Readiness when tendered nor shall the customer be entitled to the scheduled loading date, although the Terminal shall use a good faith effort to accommodate the customer's vessel as soon as practicable. Notwithstanding the preceding sentence, the customer may then request a second loading date, and the scheduling cycle shall begin again pursuant to sub-section (d) of this Paragraph 11. If the delayed vessel is engaged in domestic transportation of coal produced in the United States, the Terminal shall afford the vessel loading priority.

- (ii) The customer or coal owner may substitute a vessel of like kind and of comparable cargo size ($\pm 10\%$) for the vessel named in sub-section (d)(i) above for loading on the scheduled loading date provided the Terminal is notified of such substitution at least 24 hours prior to the scheduled loading date.

(iii) The Terminal shall accept a Notice of Readiness when tendered in accordance herewith, unless the Notice of Readiness does not comply with the terms of these rules and procedures. The Terminal shall berth the customer's vessel in the first available berth after valid Notice of Readiness is tendered unless a government or coastwise vessel is in port and is ready to be loaded; provided that the Terminal shall, notwithstanding the presence of any such vessel, be obligated to accept any valid Notice of Readiness within five calendar days after it is tendered. The Terminal may deviate from the first available berthing system in a consistent manner with all Terminal customers in order to eliminate or reduce vessel demurrage charges. Vessels engaged in the coastwise transportation of domestically produced coal will be accorded priority.

(f) The customer or the party chartering the vessel shall notify the Terminal of the vessel's time of sailing from its last port and shall see to it that the vessel gives to the Terminal seven days, 72 hours, 48 hours and 24 hours notices of its estimated time of arrival. Following the 24 hour notice, the vessel shall notify the Terminal promptly of any change of two hours or more in its arrival time. Such notices shall be given by cable, telex or telephone to the Terminal, to be established by practice.

(g) The provisions of this Paragraph 11 are intended to provide the Terminal, the customer and the coal owner with sufficient time to plan and coordinate the movement of coal into and through the Terminal. If the customer or the coal owner is unable to provide the notices and information as required by subparagraphs (a), (b), and (c) of this Paragraph 11 because of the non-repetitive nature of the coal owner's business, the Terminal shall make reasonable efforts to accommodate the coal owner's shipments, provided that the coal owner complies with all other subparagraphs of this Paragraph.

12. Vessels sent to the Terminal for loading must comply with all federal, state and local laws and regulations, including U. S. Coast Guard regulations, navigational rules and customs, and port and harbor regulations.

13. Ocean-going vessels to be loaded at the Terminal shall be gearless, single deck, self-trimming bulk carriers; combination vessels acceptable to the Terminal manager; or geared, single deck, self-trimming bulk carriers acceptable to the Terminal manager.

14. Barges to be loaded at the Terminal must be seaworthy and able to navigate safely to the east side of the Terminal pier where the Terminal will maintain twenty-five (25) feet mean low water. All other vessels must be able to navigate safely to the west side of the pier where the Terminal will maintain fifty (50) feet mean low water.

15. The Terminal will spout trim only.

16. The vessel's master or pilot is responsible for the docking, undocking, safe trim, stress and stability of any vessel delivered to the Terminal for loading. The Terminal shall not be responsible for the docking, undocking or shifting of any vessel, or delay for same unless the delay is directly caused by the Terminal or its personnel.

17. The Terminal may require the undocking to another safe berth, or to anchorage, of any vessel that is scheduled to receive, or is receiving, coal for any customer, if the vessel is unable to commence loading or has ceased normal loading operations, due to: breakdown of the vessel's machinery; inadequate deballasting capability that materially inhibits the rate of loading; failure of the vessel to comply with applicable port or other federal, state or local laws and/or regulations; labor disputes; force majeure; or any other cause beyond the Terminal's reasonable ability to control that delays the efficient use of the Terminal. If the undocking of a vessel in such circumstances is delayed due to any action or failure to act attributable to the vessel, its owner, its master and/or its crew, the customer shall pay any costs incurred by the Terminal as a result of such delay.

18. The customer or coal owner shall be responsible for the processing of all necessary documents for export and for the payment of appropriate fees, duties and costs, if any.

19. The customer will see to it that each vessel is equipped with adequate lighting, if necessary for night loading.

20. Vessel personnel shall remove and replace hatch covers at no cost to the Terminal.

21. The customer will ensure that each vessel shall be certified as ready to load by the National Cargo Bureau.

22. Vessels conforming to the following specifications can be received for loading at the Terminal:

Length-over-all.	1150'	maximum
Beam	175'	maximum
Depth (at pier).	50'	maximum
Depth in channel	47'	maximum
Air draft.	55'	maximum
Outreach (shiploader).	103'	maximum

23. In no way does the Terminal warrant, guarantee, or represent the depth of the channel in the Port of Baltimore, the Patapsco River and the Chesapeake Bay.

24. When loading is completed, the Terminal shall prepare a Statement of Facts which shall be signed by the vessel agent. The Terminal shall also prepare a receipt of tonnage to be signed by the captain or agent of the vessel prior to the vessel's departure, specifying the weight of coal loaded in the vessel by the Terminal. The captain or vessel agent may take exception to the Statement of Facts and/or the tonnage receipt, noting his exceptions in writing prior to the vessel's departure and providing the Terminal with a copy of his exceptions.

25. The Terminal shall load coal into vessels in such a manner as to dispatch each vessel as expeditiously as possible. The Terminal will load coal only into vessel storage compartments certified for loading by the National Cargo Bureau, unless otherwise authorized by the customer.

26. The Terminal shall provide the customer and the coal owner with a weight certificate for coal loaded into a vessel. The customer, the coal owner, or the agent of either of them, at their own risk and expense, may enter the Terminal premises during reasonable business hours to inspect and observe the weighing operation or scale calibration. (Terminal belt scales are inspected and calibrated in accordance with criteria established by the National Bureau of Standards, and a report of each such inspection and calibration is kept available at the Terminal for inspection by the customer.) In the event that all coal in a storage pile is not loaded into a vessel as scheduled, and coal remains in ground storage at the Terminal after the departure of the vessel which was supposed to carry that coal away from the Terminal, the Terminal shall provide the customer and coal owner weights of the leftover coal as determined by deducting outbound scale weights from inbound scale weights.

27. Coal for which the Terminal provides services shall be and remain the property of the coal owner. The owner of the coal shall see to the prompt payment of all taxes with respect to the coal, including, but not limited to, ad valorem taxes, if any, which may be assessed against the coal, and the filing of all tax

returns required to be filed by the owner of the coal. The coal owner must indemnify and hold the Terminal, the railroad, and all other parties harmless with respect to all such taxes.

28. If coal remains in any coal storage pile for longer than thirty (30) days, and if the vessel designated to carry that coal has not been loaded for whatever reason, the Terminal shall assess a coal storage fee of Ten Cents (\$.10) per day for each ton of coal in the pile beyond the initial thirty day period. If coal remains in any such storage pile for longer than thirty days, and if the vessel designated to carry that coal has loaded and left that coal behind, the Terminal shall assess a leftover coal storage fee of Thirty Cents (\$.30) per day, instead of Ten Cents per day, for each ton of coal that remains in storage beyond the initial thirty day period and after the designated vessel has sailed.

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Consolidated Rail Corporation,

Plaintiff,

v.

Qit-Fer et Titane, Inc.,

and

Consolidation Coal Sales Company,

Defendants.

FILED FEB 12 2001

Civil Action

No. 00-CV-338

ANSWER TO AMENDED COMPLAINT,
AFFIRMATIVE DEFENSES AND COUNTERCLAIM
OF CONSOLIDATION COAL SALES COMPANY

Defendant, Consolidation Coal Sales Company ("CCSC"), by and through its counsel, Miller, Alfano & Raspanti, P.C., hereby submits its Answer To Amended Complaint, filed by Consolidated Rail Corporation and responds as follows:

ANSWER

1. Denied as stated. It is admitted that the parties are diverse and that the amount in controversy is in excess of One Hundred Thousand Dollars (\$100,000).

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Denied. The allegations of Paragraph 6. are directed to a party other than Defendant CCSC and therefore are denied.

7. Denied. The allegations of Paragraph 7 are directed to a party other than Defendant CCSC and therefore are denied.

8. Denied. The allegations of Paragraph 8 are directed to a party other than Defendant CCSC and therefore are denied.

9. Denied. The allegations of Paragraph 9 are directed to a party other than Defendant CCSC and therefore are denied.

10. Denied. The allegations of Paragraph 10 are directed to a party other than Defendant CCSC and therefore are denied.

11. Denied. The allegations of Paragraph 11 are directed to a party other than Defendant CCSC and therefore are denied.

12. Denied. The allegations of Paragraph 12 are directed to a party other than Defendant CCSC and therefore are denied.

13. CCSC repeats and incorporates its responses to Paragraphs 1 through 12 as though fully set forth herein.

14. Admitted.

15. Admitted.

16. Admitted.

17. Denied as stated. The Transfer and Storage Agreement is a document which speaks for itself.

18. Denied. In 1998, after numerous meetings and exchanges of information with CCSC and Qit, Conrail ultimately determined

that the alleged shortages were attributable to variance in weights rather than a physical loss of coal.

19. Admitted.

20. Denied.

21. Denied.

WHEREFORE, Defendant CCSC respectfully requests that the Court enter judgment in its favor and against Plaintiff.

22. CCSC repeats and incorporates its responses to Paragraphs 14 through 21 as though fully set forth herein.

23. Denied.

24. Denied.

WHEREFORE, Defendant CCSC respectfully requests that the Court enter judgment in its favor and against Plaintiff.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff's claims are barred by the doctrine of waiver.

Second Affirmative Defense

Plaintiff's claims are barred by the doctrine of estoppel.

Third Affirmative Defense

Plaintiff's claims are barred by virtue of an accord and satisfaction of the subject debt.

Fourth Affirmative Defense

Plaintiff's claims are barred by the doctrine of laches.

Fifth Affirmative Defense

Plaintiff's claims are barred by the applicable statutes of limitation.

Sixth Affirmative Defense

Plaintiff's claims are barred by virtue of the release of liability it issued on behalf of Defendant CCSC.

Seventh Affirmative Defense

Plaintiff's claims are barred by the doctrine of Assumption of Risk.

Eighth Affirmative Defense

Plaintiff's allegations fail to state a cognizable claim under Pennsylvania law.

WHEREFORE, Defendant CCSC respectfully requests that the Court enter judgment in its favor and against Plaintiff.

COUNTERCLAIM

COUNT I

Breach of Contract

1. Defendant/Counterclaimant Consolidation Coal Sales Company ("CCSC") is a Delaware Corporation with its principal place of business at 3800 Newgate Avenue, Baltimore, Maryland.

2. Counterclaim Defendant Consolidated Rail Corporation ("Conrail") is a Pennsylvania Corporation with its principal place of business at 2001 Market Street, Philadelphia, Pennsylvania.

3. On or about May 7, 1991, CCSC and Conrail entered into a binding contract known as the Transfer And Storage Agreement (the "T&S Agreement") regarding the services to be provided by CCSC to Conrail at CCSC's Baltimore, Maryland Terminal (the "Terminal"), and the fees Conrail was to pay for those services. (Copy attached hereto as Exhibit A).

4. The services CCSC provided under the T&S Agreement included the movement of coal trains through the Terminal for unloading, the unloading of Conrail shipped coal from rail cars, the reassembly of trains after unloading, the stockpiling of Conrail shipped coal, the reclaiming of Conrail shipped coal from stockpiles, the loading of Conrail shipped coal into vessels from stockpiles, the direct loading of Conrail shipped coal from train to vessel without stockpiling, the weighing and sampling of both inbound and outbound Conrail shipped coal, and the creation and

maintenance of records concerning tonnages of Conrail shipped coal in storage or transferred through the Terminal.

5. Under the T&S Agreement, among other things, CCSC extended Conrail a ten percent (10%) "front end" reduction in fees.

6. Pursuant to Section 9e of the T&S Agreement, commonly referred to as the "take or pay" provision, Conrail was required to satisfy a minimum annual fee payment to CCSC through calendar year 2011. Specifically, Conrail was obligated to pay CCSC at least Four Million Dollars (\$4,000,000) in terminal fees per year.

7. In certain years, in good faith and in recognition of various market forces that were negatively impacting Conrail, CCSC waived the guaranteed minimum fee obligation imposed upon Conrail by the take or pay provision.

8. On or about May 1998, Conrail and CCSC formally acknowledged CCSC's previous waivers of the take or pay provision, and agreed that CCSC would continue to forbear enforcement of the provision through December 31, 1998.

9. During calendar year 1999, Conrail failed to remit to CCSC terminal fee payments of at least Four Million Dollars, as required under Section 9e of the T&S Agreement.

10. During Calendar Year 1999, Conrail paid approximately Eight Hundred Thousand Dollars (\$800,000) in terminal fees to CCSC.

11. Despite demand, Conrail has failed and refused to satisfy the balance of in excess of Three Million Two Hundred Thousand

Dollars (\$3,200,000) due CCSC for Calendar Year 1999 minimum terminal fees.

12. Conrail's failure to pay this outstanding balance, which is lawfully due to CCSC, constitutes a breach of the T&S Agreement.

WHEREFORE, Plaintiff Consolidation Coal Sales Company requests that the Court enter judgment in its favor and against Defendant Consolidated Rail Corporation, in an amount in excess of Three Million Two Hundred Thousand Dollars (3,200,000), along with interest, costs, attorneys fees and such other relief the Court deems appropriate.

COUNT II

Breach of Contract

13. CCSC incorporates herein by reference, the allegations in paragraphs 1 through 12 as though fully set forth.

14. Contemporaneous with the negotiation and ultimate execution of the T&S Agreement, CCSC and Conrail reached certain additional fundamental agreements that were to govern the parties' relationship through April 30, 2011.

15. These additional agreements were reduced to writing in the form of a supplemental letter agreement dated February 14, 1992 (the "Letter Agreement") (copy attached hereto as Exhibit B).

16. For its part, CCSC agreed, among other things, to afford Conrail the right of first refusal in the event CCSC decided to

dispose of all ownership interest in the Terminal to a non-CCSC affiliate during the term of the T&S Agreement.

17. In turn, Conrail agreed not to enter into any contracts involving the linehaul movement of coal to the Baltimore area that would place CCSC at a competitive disadvantage.

18. On or about June 1, 1999, Conrail purportedly assigned its interests under the T&S Agreement to Pennsylvania Lines LLC, which subsequently assigned its interest in the T&S Agreement to Norfolk Southern Railway ("Norfolk Southern").

19. Since June 1999, Norfolk Southern has been responsible for the linehaul movement of substantial coal tonnage to the Baltimore area.

20. Norfolk Southern has directed the majority of these linehaul movements to a terminal facility owned by CSX Transportation, Inc. ("CSX").

21. The diversion of these linehaul movements of coal away from the CCSC Terminal has prevented CCSC from realizing and receiving the minimal terminal fees to which it is entitled under the T&S Agreement.

22. Conrail failed and neglected to ensure that its assignees -- Pennsylvania Lines LLC and Norfolk Southern -- were aware of and complied with the terms of the Letter Agreement.

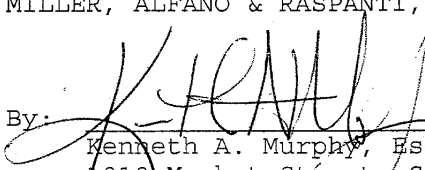
23. As a result of the division of these linehaul movements of coal to CSX's terminal facility, CCSC has been placed at a competitive disadvantage.

24. Accordingly, Conrail stands in breach of the Letter Agreement.

25. As a result of Conrail's breach, CCSC has lost and will continue to lose, millions of dollars associated with linehaul movements that have been diverted to CSX's terminal facility.

WHEREFORE, Plaintiff Consolidation Coal Sales Company requests that the Court enter judgment in its favor and against Defendant Consolidated Rail Corporation, in an amount in excess of Three Million Two Hundred Thousand Dollars (\$3,200,000), along with interest, costs, attorneys fees and such other relief the Court deems appropriate, and direct Defendant Consolidated Rail Corporation to compensate Plaintiff for any shortfall in minimum annual terminal fee payments Consolidation Coal Sales Company may experience through 2011, as a result of the diversion of certain linehaul movements of coal away from the CCSC Terminal.

MILLER, ALFANO & RASPANTI, P.C.

By: 

Kenneth A. Murphy, Esquire
1818 Market Street, Suite 3402
Philadelphia, PA 19103
(215) 972-6400

DATED: February 12, 2001

Attorneys for Defendant,
Consolidation Coal Sales Co.

EXHIBIT A

(TRANSFER AND STORAGE AGREEMENT REPRODUCED IN FULL AT EXHIBIT A)

TERMINAL COPY ✓

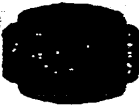
**TRANSFER
AND
STORAGE
AGREEMENT**

CONRAIL

CCSC

BALTIMORE TERMINAL

EXHIBIT B



Consolidation Coal Sales Company
Consol Plaza
Pittsburgh, Pennsylvania 15241
(412) 831-4000

February 14, 1992

Mr. Ralph B. Schurr
Manager - Coal Marketing - Export Sales
CONRAIL
1126 One Liberty Place
1650 Market Street
Philadelphia, PA 19103-7399

Dear Mr. Schurr:

Enclosed for execution by CONRAIL are two counterparts of the Transfer and Storage Agreement between Conrail and Consolidation Coal Sales Company, providing for the movement of Conrail coal through CCSC's Baltimore Terminal during the twenty-year period ending April 30, 2011.

We believe it is more appropriate to set forth in a separate, supplemental letter agreement, rather than in the main contract itself, the following essential understandings which underlie our two companies' contractual relationship regarding the Baltimore Terminal:

1. Conrail agrees that it will not promulgate any rates or enter into any contracts involving the linehaul movement of coal to the Baltimore area which discriminate (as defined in 49 U.S.C. §10741) against coal moving to CCSC's Baltimore Terminal, or which otherwise place the Terminal at a competitive disadvantage.
2. No later than October 31, 2010, representatives of our two companies will meet to discuss a renewal of the Transfer and Storage Agreement. At these meetings the parties will negotiate in good faith on the subjects of the Terminal fee to be charged during a renewal of the agreement, the formula by which the Terminal fee may be adjusted during such renewal, and any other matters which the parties may at that time agree to discuss.

Mr. Ralph B. Schurr

Page 2

February 14, 1992

3. During the term of the agreement, should Consolidation Coal Company require additional space at the Terminal for storage of Consol coal delivered via Conrail to the Terminal, then CCSC shall have the right to utilize storage space reserved for Conrail under the Agreement to store Consol coal.
4. Conrail will have the right of first offer in the event CCSC should decide to dispose of all ownership interest in the Baltimore Terminal during the term of the agreement to any party which is not affiliated with CCSC and not under common ownership with CCSC.

I believe this letter and the enclosed Transfer and Storage Agreement capture the conceptual points agreed to during our long negotiations. If Conrail concurs, please have both counterparts of the Transfer and Storage Agreement executed on behalf of your corporation, and also have the enclosed original counterpart of this letter executed on Conrail's behalf in the space provided below. Return one original of each to me.

Sincerely yours,

CONSOLIDATION COAL SALES COMPANY

By

William G. Karis
William G. Karis
Vice President

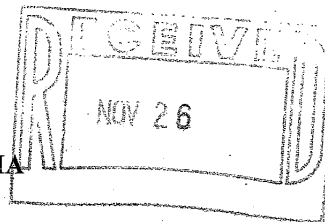
AGREED:

CONSOLIDATED RAIL CORPORATION

By _____

Exhibit C

56
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA



CONSOLIDATED RAIL CORPORATION,
A Pennsylvania Corporation,
Plaintiff,

CIVIL ACTION

v.

DOCKET NO.

QIT FER ET TITANE, INC.,
A Canadian Corporation,

00-CV-338

and

CONSOLIDATION COAL SALES COMPANY,
A Delaware Corporation,
Defendants.

FILED NOV 28 2001

**STIPULATION AND ORDER REFERRING QUESTION TO SURFACE
TRANSPORTATION BOARD, PLACING MATTER IN SUSPENSION AND
DISMISSING CERTAIN CLAIMS**

In connection with the above referenced matter, the existing litigants in this matter, Plaintiff, Consolidated Rail Corporation ("Conrail"), and Defendant, Consolidation Coal Sales Company ("CCSC"), do hereby stipulate and agree to the following.

WHEREAS the parties agree that it would be in the best interest of the Court and the parties to seek from the Surface Transportation Board ("STB") a definitive ruling on the nature and extent of Conrail's obligations, if any, after Split Date, June 1, 1999, to CCSC, under the terms of the Transfer and Storage Agreement, dated May 1, 1991, and the related Supplemental Letter Agreement, dated

ENTERED

NOV 29 2001

CLERK OF COURT

February 14, 1992, in light of the STB's Decision No. 89, dated July 20, 1998, and any related ruling(s), STB Finance Docket No. 33388, issued by the STB with respect to the joint acquisition and division of Conrail's operations among Norfolk Southern Corporation, CSX Transportation, Inc. and Conrail ("Decision No. 89").

WHEREAS the parties agree that the issue of CCSC's entitlement, if any, to minimum terminal fees after Split Date, June 1, 1999, as well as CCSC's entitlement, if any, to delivery of any line haul movements of export coal emanating from mines serviced by the former Monongahela Rail Line be determined by the STB in light of its Decision No. 89.

The parties therefore stipulate and the Court **ORDERS** that the issues contained in the Whereas clauses above are hereby referred to the STB for its opinion.

The parties further stipulate that Conrail dismisses with prejudice its claims in its case in chief against CCSC that relate to losses purportedly sustained by QIT Fer et Titane, Inc.

The parties further stipulate that CCSC dismisses with prejudice its Counterclaim against Conrail for minimum terminal fees allegedly due for Calendar Year 1999 pursuant to the Transfer and Storage Agreement.

The parties further stipulate and the Court hereby **ORDERS** that all proceedings in the present matter are hereby suspended for a period of six months pending the issuance of a definitive ruling by

the STB on the referred issues. Suspension of the proceedings will be extended beyond six months only for good cause shown.

WATSON, STEVENS, FIORILLA, & RUTTER, LLP
Attorneys for Plaintiff
CONSOLIDATED RAIL CORPORATION

DATED: 11/21/01

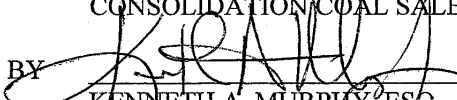
BY


JOHN K. FIORILLA, ESQ.

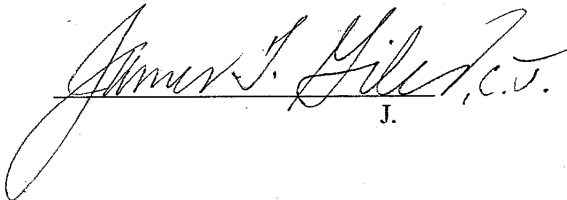
MILLER, ALFANO & RASPANTI, P.C.
Attorneys for Defendant
CONSOLIDATION COAL SALES COMPANY

DATED: 11/26/01

BY


KENNETH A. MURPHY, ESQ.

SO ORDERED


J.

DATED: 11/28/2001

Exhibit D

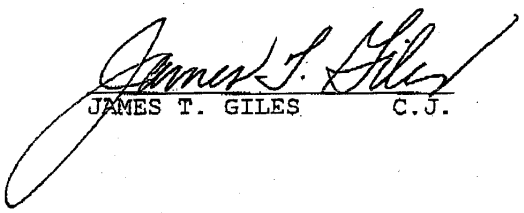
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Consolidated Rail Corporation : CIVIL ACTION
:
Plaintiff, :
v. :
:
Consolidated Coal Sales :
Corporation : NO. 00-0338
Defendant. :

ORDER

AND NOW, this 20th day of December 2001, it is hereby
ORDERED that the questions posed in the Stipulation & Order dated
November 29, 2001 are referred to the Surface Transportation
Board ("STB"), pursuant to 28 U.S.C. § 1336(b), and that the STB
shall advise this court of its answers to those questions within
ninety (90) days of this order or within such longer time period
as the court may allow upon application of the STB.

BY THE COURT:


JAMES T. GILES

C.J.

copies by FAX on
to

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of
Petition For Declaratory Order upon the following individuals and
in the manner indicated below:

VIA FIRST CLASS MAIL

John K. Fiorilla, Esquire
Watson, Stevens, Fiorilla
& Rutter, L.L.P.
390 George Street
P.O. Box 1185
New Brunswick, N.J. 08903

Counsel For
Consolidated Rail Corporation

William H. Johnson, Esquire
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-9241

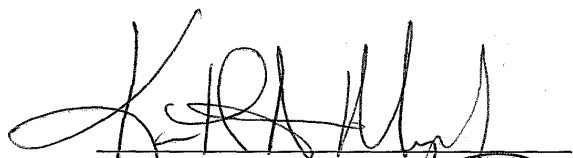
Counsel For
Norfolk Southern Corporation

Douglas R. Maxwell, Esquire
CSX Transportation, Inc.
Law Department
500 Water Street
Speed Code J-150
Jacksonville, FL 32202

Counsel For
CSX Transportation, Inc.

Honorable James T. Giles
Chief Judge
United States District Court for the
Eastern District of Pennsylvania
U.S. Courthouse
Room 17614
601 Market Street
Philadelphia, PA 19106

Magistrate Judge Carol Sandra
Moore Wells
United States District Court for the
Eastern District of Pennsylvania
U.S. Courthouse
Room 2716
601 Market Street
Philadelphia, PA 19106


Kenneth A. Murphy, Esquire
Miller, Alfano & Raspani, P.C.
1818 Market Street, Suite 3402
Philadelphia, PA 19103
(215) 972-6400

Attorneys for Defendant,
Consolidation Coal Sales Co.

DATED: January 23, 2002