

BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

204633

GS ROOFING PRODUCTS COMPANY, INC.,
BEAZER WEST, INC. d/b/a GIFFORD-HILL
& COMPANY, BEAN LUMBER COMPANY and
CURT BEAN LUMBER COMPANY,

Complainants,

v.

ARKANSAS MIDLAND RAILROAD and PINSLY
RAILROAD COMPANY, INC.,

Defendants.

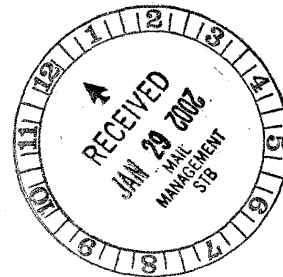
Docket No. 41230

ENTERED
Office of the Secretary

JAN 30 2002

Part of
Public Record

MOTION FOR PROTECTIVE ORDER



Comes now GS Roofing Products Company, Inc. ("GS Roofing"), by and through its counsel of record, and files this Motion for Protective Order, pursuant to 49 C.F.R. § 1114.21(c). In particular, GS Roofing requests that the Board enter an Order that discovery not be had due to Arkansas Midland Railroad Company's ("AMR") failure to seek discovery in a timely fashion.

On December 17, 2001, the Board issued its Decision reopening the instant proceeding to "permit the parties to submit additional evidence and argument on the computation of damages and to address the factors noted by AMR that are normally considered in determining damages for a breach of contract." Slip op. at 2. The Board established January 16, 2002 as the due date for the filing of simultaneous opening statements.

General Objections

AMR, which has already had several years to seek discovery, made no effort to obtain discovery of any matter during the 29 days following service of the Board's Order. Instead, it waited until January 15, 2002 – the day before opening statements were due – to serve its First Set of Interrogatories and Requests to Produce Documents on GS Roofing. By waiting until the day before opening statements were due, AMR violated the Board's rules of practice governing written interrogatories. As stated at 49 C.F.R. § 1114.26(c)(emphasis added):

No written interrogatories shall be served within 20 days prior to the date assigned for commencement of hearing or *the filing of opening statements of fact and argument under the modified procedure.*

Because AMR failed to comply with the Board's regulations governing the service of written interrogatories, GS Roofing is entitled to a protective order under 49 C.F.R. 1114.21(c).

GS Roofing further notes that it has already presented the Board and AMR with data that are relevant to the subject matter of the Interrogatories. Moreover, GS Roofing will respond in its Reply to several of the inquiries that appear to have been raised by the Interrogatories, such as the location of facilities owned by or affiliated with GS Roofing in 1994 that were capable of producing "headlap granules." As Mr. Cowart will explain, in 1994 GS Roofing operated regional facilities in Charleston, South Carolina and Rancho Cordova, California, in addition to the facility at Birds Mill or Glenwood, Arkansas. However, neither its Charleston nor Rancho Cordova facilities produced headlap granules during 1994.

AMR also seeks workpapers for the calculations in Attachment 2 to the Verified Statement of John W. Smith, dated July 20, 1994. *See* Document Production Request No. 1. Mr. Smith is no longer employed by GS Roofing. Furthermore, because the data that he used have been updated and corrected with year-end data by Mr. Gwynn, his calculations are moot. Hence, Mr. Smith's

workpapers, even if they could be located at this late date, would have no bearing on the final outcome of this proceeding.

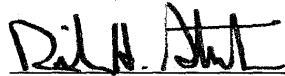
With regard to AMR's request for audited financial statements, it is noted that audited financial data were previously provided to the Board and counsel for AMR on June 27, 1997 in F.D. No. 32479, *Caddo Antoine and Little Missouri Railroad Company-Feeder Line Acquisition-Arkansas Midland Railroad Company Line Between Gurdon and Birds Mill, AR*. See Vol. VII, Highly Confidential Financial Statements of GS Roofing Products Company, Inc. (Submitted Under Seal). In any event, the information requested has no relevance or materiality with regard to the limited issue involved at this stage of the proceeding.

AMR has also sought production of various documents relating to the responses to Interrogatory Nos. 4, 5 and 6. Because no responses to interrogatories are due because of AMR's failure to comply with the Board's regulation governing the timely service of interrogatories, GS Roofing will not produce the requested documents, unless the Board orders it to do so.

Although GS Roofing wishes to cooperate fully with the Board, it strongly feels that the current discovery, especially to the extent that it focuses on data for 1992, 1993 and 1995, seeks material that is irrelevant and immaterial to any issue involved in this case. In addition, AMR has failed to explain why it did not seek discovery of this material at an earlier stage of the proceeding when it was readily available to GS Roofing. Simply stated, AMR waited for over seven and a half years to seek discovery of irrelevant information it is now demanding that GS Roofing provide by

January 30, 2002. Because there is no reason to condone AMR's failure to act in a timely fashion,
GS Roofing requests that the Board grant its Motion for Protective Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard H. Streeter", is written over a horizontal line.

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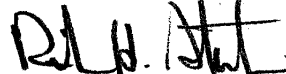
Counsel for GS Roofing Products Company, Inc.

Dated: January 29, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of January, 2002, served a true copy of the foregoing Motion for Protective Order filed on behalf of GS Roofing Products Company, Inc. by Federal Express on the following:

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Richard H. Streeter