

ZUCKERT SCOUTT & RASENBERGER, L.L.P.
ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309
Telephone [202] 298-8660 Fax [202] 342-0683
www.zsrlaw.com



DIRECT DIAL (202) 973-7902
raallen@zsrlaw.com

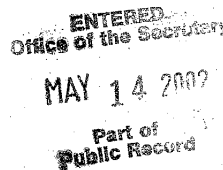
RICHARD A. ALLEN

May 14, 2002

205388

BY HAND DELIVERY

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423



Re: *Capitol Materials Incorporated -- Petition For Declaratory Order -- Certain Rates And Practices Of Norfolk Southern Railway Company*, STB Docket No. 42068.

Dear Secretary Williams:

We are in receipt of Capitol Materials' evidentiary filing dated May 8, 2002, and Norfolk Southern is preparing its responsive filing, which, under the procedural schedule, is due June 24, 2002.

We write now, however, to respond briefly to certain allegations found at pp. 3-5 of Capitol's "Supplemental Opening Statement," pertaining to NS' production of documents, which require an immediate response.

There, Capitol discusses certain highly confidential documents produced by NS following the Board's entry of the protective order in this case. In sum, Capitol asserts that NS' document production was incomplete and, remarkably, that the documents were "*intentionally disorganized*" in order to make it difficult for Capitol to prepare its filing. Capitol further asserts that "[g]iven the date of production of these documents, the condition in which they were produced and the date when [Capitol's supplemental filings] are due, it was impossible for Capitol to conduct a complete and detailed analysis" of the documents. Capitol therefore purports to reserve to itself the "right" to file, at some unspecified future time, yet a further "supplement" to its pleadings.

Capitol's allegations are utterly unfounded, and there is no basis for the Board to permit Capitol to file any further "supplement" to its pleading. In response to Capitol's discovery requests, NS conducted a reasonable search for responsive documents and has produced to Capitol all documents found as a result of that search, the only exceptions being the removal of interspersed documents that do not refer or relate to

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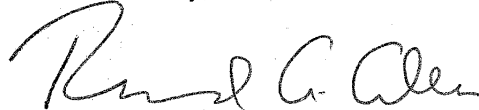
Capitol Materials – documents that therefore are not responsive to Capitol's requests, are not relevant to this proceeding, and to which Capitol is not entitled. The hundreds of pages of documents that were produced were produced to Capitol in the same order and organization in which they are kept in NS' files. Furthermore, the claim that none of the documents relate to Capitol's Bishop Street Facility is simply incorrect.

Capitol's counsel would have known all this if they had contacted us with their concerns before publicly broadcasting their specious allegations of bad faith, but they did not.

Further, Capitol's elliptical complaint about "the date of production of these documents" is also baseless. The Board entered the protective order in an order served April 19, 2002. Capitol provided us with the executed undertakings required for highly confidential material on April 23, 2002. The documents about which Capitol complains were sent to Capitol's counsel by overnight delivery *the very same day*. Indeed, under the terms of the protective order, we could not have done so earlier.

For the foregoing reasons, there is no basis for Capitol's allegations and there is no reason for the Board to permit Capitol any further supplementation of its pleadings. Capitol had the full measure of time allotted to it under the Board's revised procedural schedule. Capitol should not now be permitted to prejudice the orderly preparation of NS' response by filing, at some unspecified future date, a still further pleading of unknown content not contemplated by the procedural schedule.

Sincerely,



Richard A. Allen
Counsel for Norfolk Southern
Railway Company

cc (by mail and fax): Ira L. Rachelson, Esq.
Bruce E. Mitchell, Esq.