

LAW OFFICES
GEORGE M. ALLEN *

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206 SOCIETY DRIVE, SUITE A
TELLURIDE, COLORADO 81435
TELEPHONE: 970-369-1000
FACSIMILE: 970-369-1009
CELLULAR: 970-260-3895
EMAIL: alnoma@yahoo.com

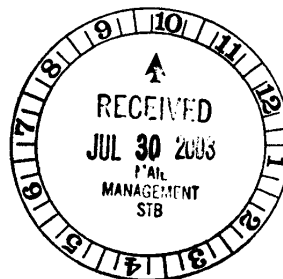
2202 S. MOUNTAIN VISTA LANE
PROVO, UTAH 84606
TELEPHONE: 801-375-7486
FACSIMILE: 801-375-8399

* ADMITTED TO PRACTICE IN
COLORADO, UTAH AND HAWAII

Telluride
July 26, 2003

Honorable Vernon Williams
Surface Transportation Board
1925 K Street N.W., Suite 700
Washington DC 20423-0001

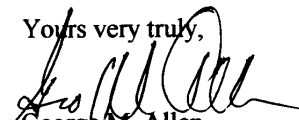
Re: F.D. 34376
City of Creede



Dear Secretary Williams:

This transmits ten copies of the Plaintiff's Motion For Enlargement of Time Within Which To File Materials With The Surface Transportation Board, forwarded today to the U.S. District Court in Denver. Our filing with the Board on July 2, 2003, which was attached to our U.S. District Court filing, is omitted from this submission in the interest of conservation of resources. Please make this submission part of the record in the above referenced matter.

Yours very truly,


George M. Allen

cc: Thomas F. McFarland, Esq.

Enclosure

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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Honorable Robert Blackburn
United States District Judge

Honorable Craig B. Shaffer
United States Magistrate Judge

CIVIL ACTION NO. 01-RB-0318

CITY OF CREEDE,
a Colorado Municipal Corporation,

Plaintiff,

-VS-

DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION,
a Colorado Not-For-Profit Corporation
and DONALD H. SHANK,

Defendants.

**PLAINTIFF'S MOTION FOR ENLARGEMENT
OF TIME WITHIN WHICH TO FILE MATERIALS
WITH THE SURFACE TRANSPORTATION BOARD**

Local Rule 7.1 Compliance

The undersigned telephoned opposing counsel, Raymond Micklewright, on July 24, 2003, to learn of his position as to the filing of supplemental materials. Mr. Micklewright stated that he opposes the filing.

Motion To Enlarge Time

Plaintiff hereby moves that the time for filing of materials from the record of this Court with

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the Surface Transportation Board be enlarged from July 28, 2003 to Friday, August 29, 2003.

Grounds for this motion are set forth below:

1. The undersigned has not had available professional time over the past several months to both review the entire District Court record of this matter and to prepare the materials necessary to be filed with the Surface Transportation Board.
2. The problems which have confronted the undersigned are as follows:
 - A. Four different trips to Omaha, Nebraska since mid-April, 2003, all related to the move of my 89 year old mother, who suffers from both Alzheimer's Disease and Parkinson's syndrome. In mid-May we moved my mother from Omaha to a nursing facility in Kensington, Maryland. Since I have been her primary member of the family contact and caregiver over the past several years, it was imperative that I be in Omaha to assist my brother David Allen, who flew with her from Omaha to Washington, D.C. on May 19, 2003.
 - B. In early July, 2003, while in Washington, D.C. to make the filing of the referral petition in this matter (a copy of which is attached), I also met with nursing home supervisory personnel at the facility where my mother is being cared for in Kensington, Maryland. Those meetings precluded my devoting full time to preparation of STB submission materials.
 - C. At the same time as dealing with the above matters, it was necessary to devote very large amounts of time to sale of my mother's home in Omaha, Nebraska. I hold her Power of Attorney and I was thus the only person who could make final decisions

regarding the numerous issues associated with sale, which included warranties, negotiation of final sale price and removal of the accumulated belongings amassed by my parents over the 49 years in which they lived in the house. These included a library of over 2,000 volumes and several thousand volumes of tape recordings made by my late father during his career as a radio broadcaster specializing in agricultural news issues (the tapes have been donated to Iowa State University). Most of the library was donated to the Omaha Public Library, while certain other items, including paintings, furniture, etc. had to be removed from the house and placed in storage.

- D. The above issues were complicated by personal health care issues which took place in the same time period. I underwent knee surgery at Aspen, Colorado on May 6, 2003. In October, 2001, I underwent bilateral knee replacement surgery in Aspen. The May 6, 2003 surgery was needed to remove a calcified bursal sac and for an arthroscopic procedure to debride the right knee and clear it of obstructions to the new prosthetic knee. The surgery involved both an arthroscopic procedure and an incision to remove the bursa.
- E. I also underwent a diagnostic surgical procedure in Grand Junction, Colorado on June 17, 2003 to determine whether an abdominal area malignancy was present. The biopsy results, fortunately (or, unfortunately, depending on one's point of view), were negative but the procedure involved several days of pre-surgical work-up, insertion of dyes, etc.

3. In addition to the above distractions, I have been committed to another very complex litigation/administrative matter which has precluded having enough time to complete review of all records in this matter prior to making the final record submission to the STB. That matter involves my acting as referring counsel with respect to a Chapter 11 bankruptcy court reorganization of a producing mine near Carbondale, Colorado. The bankruptcy proceeding of the mine operator, Robert L. Congdon, in U.S. Bankruptcy Court Case No. 03-11462, has directly impacted my professional obligations to the minority interest holders of the mine (two trusts for minors established in 1994), whose interests I have represented in state court litigation in Garfield County over the past three years. The Chapter 11 reorganization has required literally scores of hours of my time since this Court's 28 U.S.C. §1336(b) referral order, and has also necessitated almost weekly trips to Carbondale from my home in Telluride to monitor progress of mining operations under the reorganization plan. Under the proposed plan filed with the Bankruptcy Court, my client, the former wife of the debtor-in-possession, is the primary provider of post-petition financing and is also obligated to protect her children's interests. Since the mine involves proven deposits with values running well into eight figures, the pressure to go forward has been enormous and that pressure has diminished the time I might devote to this matter.
4. I spoke yesterday (July 25, 2003) with Joseph Detmar, an officer in the Office of Proceedings of the Surface Transportation Board, to inquire as to likely Board action

establishing a procedural schedule (as contemplated by paragraph 6 of this Court's May 9, 2003 Order). Mr. Detmar advised that the Board has not yet established a procedure for dealing with this Court's referral and would not do so prior to the July 28, 2003 deadline, and might not do so at all, but instead await review of materials submitted to the Board by the parties.

5. After discussion with Mr. Detmar, he advised that the Board would be unlikely to object to further time for submission of additional record materials and he suggested, since the 80 day timeline resulting from this Court's May 9, 2003 order was a deadline of this Court, and not the Surface Transportation Board, that we apply to this Court for additional time for the STB submission. Mr. Detmar stated that since this matter is still in a very preliminary stage in the STB, there would be no problem from the STB point of view if the Petitioner's record materials were to come in at the end of August rather than the end of July, 2003.

Conclusion

For the reasons set forth above, we respectfully move that the time for filing of record materials from the files of this Court with the Surface Transportation Board be enlarged to and including Friday, August 29, 2003.

Respectfully submitted,



George M. Allen,
Counsel for Plaintiff City of Creede

CERTIFICATE OF SERVICE

I hereby certify that I have, at Telluride, Colorado this 26th day of July, 2003, served a true copy of the documents denominated below on the parties and/or counsel listed below by the means of service shown below:

Documents Served

**PLAINTIFF'S MOTION FOR ENLARGEMENT OF TIME WITHIN WHICH TO FILE
MATERIALS WITH THE SURFACE TRANSPORTATION BOARD**

Means of Service

- ☐ facsimile
- ☒ Email to Messrs. Micklewright, McFarland and Barnhart and Mayor Myers
- ☒ U.S. Mail, Postage Prepaid to the Surface Transportation Board
- ☐ Overnight Courier
- ☐ Hand Delivery

Counsel Served

Raymond P. Micklewright, Esq.
WOLF & SLATKIN
44 Cook Street,
Suite 1000
Denver CO 80206-5827
Telephone: 303-355-2999
Facsimile: 303-329-6826

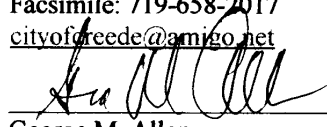
W. Randolph Barnhart, Esq.
HILLYARD & BARNHART
7887 East Belleview Ave., Ste. 1200
Englewood CO 80111
Telephone: 303-793-0700
Facsimile: 303-793-1950
Email: : rbarnhart@hblegal.com

Courtesy Copies to:

Thomas F. McFarland, Esq.
208 South LaSalle Street, Ste. 1890
Chicago IL 60604
Telephone: 312-236-0204
Facsimile: 312-201-9695
Email: mcfarland@aol.com

Hon. Vernon Williams
Surface Transportation Board
1925 K Street, N.W.
Suite 700
Washington DC 20423-0001

Hon. B. J. Myers
Mayor
City of Creede
P.O. Box 457
Creede CO 81130
Telephone: 719-658-2276
Facsimile: 719-658-2017
cityofcreede@amigo.net



George M. Allen

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