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THOMAS F. McFARLAND

July 2, 2004

By electronic mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Finance Docket No. 27590 (Sub-No. 3), *TTX Company - Application For
Approval Of Pooling Of Car Service With Respect To Flatcars*

Dear Mr. Williams:

Pursuant to the Board's decision in this matter served June 22, 2004, hereby transmitted for filing is a Summary of Points in Oral Argument in behalf of First Union Rail Corporation, David J. Joseph Co., and Bombardier Capital Rail, Inc.

This will also confirm the joint request of the above parties and of CIT Rail Resources and General Electric Railcar Services Corporation that their order of presentation in Panel III of the Oral Argument (as stated in the Appendix to the Board's decision served July 1, 2004) be reversed, i.e., that CIT Rail Resources, et al., argue first in Panel III, and that First Union Rail Corporation, et al., argue second in Panel III.

Very truly yours,

Thomas F. McFarland
*Attorney for First Union Rail Corporation,
David J. Joseph Co., and Bombardier
Capital Rail, Inc.*

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cc: All parties of record
Messrs. J.J. Thomas
R. Seymour
R. Grossman
J. Hudson
T. Savage
R. Mitchell

STB DOCKET NO. 27590 (SUB-NO. 3)

**SUMMARY OF POINTS IN ORAL ARGUMENT
IN BEHALF OF FIRST UNION RAIL CORPORATION,
DAVID J. JOSEPH CO. AND BOMBARDIER CAPITAL RAIL, INC.**

Mr. J.J. Thomas, President of First Union Rail Corporation, intends to address the following specific points at the oral argument in this matter on July 7, 2004:

It will be argued that TTX has grossly mischaracterized the extent of opposition to renewal of its pooling authority for flatcars.

It will be emphasized that conditions in the railroad industry and in the market for railroad freight cars have changed radically since the Board last reviewed TTX pooling of flatcars. Since the Board has statutory authority to grant or deny antitrust immunity in whole or in part as to any approved pooling agreement, it will be argued that antitrust rate immunity should not be conferred in conjunction with renewal of TTX's pooling authority.

It will be argued that pooling authority should not be renewed for specialized flatcars. It will be emphasized that TTX failed to sustain either element of its statutory burden of proof as to these car-types. TTX's failure is especially evident as to the issue of unreasonable restraint on competition.

It will be argued that assignment of cars by TTX should be prohibited, without exception. It will be shown that assignment is the antithesis of pooling, and that TTX has again not met its burden of proof as to implementation of this subject matter.

The arguments in written comments before the Board adequately state our position that the term for approved pooling of non-specialized flatcars should be limited to no more than 5 years and that TTX should not be permitted to make changes to its contract or operations without Board approval.

Respectfully submitted,

Thomas F. McFarland
*Attorney for First Union Rail Corporation,
David J. Joseph Co., and Bombardier
Capital Rail, Inc.*

Dated: July 2, 2004