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VIA FEDERAL EXPRESS

September 8, 2005

214666



Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20006

Re: *PCI Transportation, Inc. v. Fort Worth & Western Railroad Company*
STB Docket No. NOR 42094

Dear Secretary Williams:

Enclosed for filing on behalf of Respondent in the above-captioned docket are an original and ten (10) copies each of

- (1) Motion to Dismiss, or in the Alternative, to Hold the Matter in Abeyance,
- (2) Brief in Support of Motion to Dismiss, or in the Alternative, to Hold the Matter in Abeyance, and
- (3) Declaration of Counsel in Support of Motion to Dismiss, or in the Alternative, to Hold the Matter in Abeyance.

Please file-stamp the extra copy provided and return to me in the postage-paid, addressed envelope enclosed.

Thank you.

Yours truly,

Paul H. Lamboley

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Office of Proceedings

PHL/nd
Enc.

SEP - 9 2005

Part of
Public Record

214666

UNITED STATES OF AMERICA

BEFORE THE SURFACE TRANSPORTATION BOARD

STB DOCKET NO. NOR 42094

PCI TRANSPORTATION, INC.

Complainant,

v.

FORT WORTH & WESTERN RAIL COMPANY

Respondent.



MOTION TO DISMISS OR, IN THE ALTERNATIVE,
TO HOLD THE MATTER IN ABEYANCE

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Richard C. DeBerry
Russell A. Devenport
McDonald Sanders
777 Main Street, Suite 1300
Fort Worth, TX 76102
Tel. 817.336.8651
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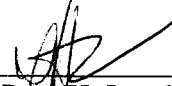
Attorneys for Respondent
Fort Worth & Western Railroad Company

MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO
HOLD THE MATTER IN ABEYANCE

Respondent Fort Worth & Western Railroad Company (FWWR) moves the Surface Transportation Board (STB or Board) to dismiss the Complaint filed August 8, 2005 by Complainant PCI Transportation, Inc. (PCI) on the grounds that PCI's Complaint fails to state claims cognizable by the Board upon which relief can be granted under the Interstate Commerce Act (ICA) as amended by the Interstate Commerce Commission Termination Act (ICCTA), 49 U.S.C. §§10101 *et seq.*

In the alternative, FWWR requests that the Board hold the matter in abeyance pending further action, that may include referral of questions, by the United States District Court for the Northern District of Texas, Fort Worth Division in Civil Action No. 4-04-cv-211 Y, entitled *PCI Transportation, Inc. (Plaintiff) v. Fort Worth & Western Railroad Company, Inc. (Defendant)*, reopened August 22, 2005 following Decision and Judgment/Mandate of the United States Court of Appeals for the 5th Circuit filed July 26, 2005 in Case No. 04-10965 entitled *PCI Transportation, Inc. (Plaintiff-Appellant) v. Fort Worth & Western Railroad Company, Inc. (Defendant-Appellee)* involving the parties named and issues raised in the Complaint on file before the Board.

In support of this motion, FWWR relies on its brief and the declaration of its counsel submitted in support of this motion.

Respectfully submitted September 8, 2005 by  for
Paul H. Lamboley

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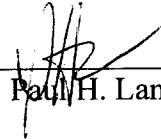
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Attorneys for Respondent
Fort Worth & Western Railroad Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served on Counsel of Record identified below via first class U.S. mail, postage prepaid, this 9th day of September, 2005:

H. Allen Pennington
Pennington Hill & Baker, LLP
The Fort Worth Club Tower
777 Taylor Street, Suite 890
Fort Worth, TX 76102
Tel. 817.332.5055
Fax 817.332.5054
E-mail: apennington@phblaw.com



Paul H. Lamboley

214666
UNITED STATES OF AMERICA

BEFORE THE SURFACE TRANSPORTATION BOARD

STB DOCKET NO. NOR 42094

PCI TRANSPORTATION, INC.

Complainant,

v.

FORT WORTH & WESTERN RAIL COMPANY

Respondent.



DECLARATION OF COUNSEL IN SUPPORT OF
MOTION TO DISMISS OR, IN THE ALTERNATIVE
TO HOLD THE MATTER IN ABEYANCE

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September 8, 2005

Attorneys for Respondent
Fort Worth & Western Railroad Company

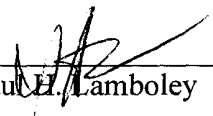
DECLARATION OF COUNSEL IN SUPPORT OF
MOTION TO DISMISS OR, IN THE ALTERNATIVE
TO HOLD THE MATTER IN ABEYANCE

Paul H. Lamboley, under penalty of perjury, makes the following declaration in support of the Motion to Dismiss, or in the Alternative, to Hold the Matter in Abeyance submitted by Respondent Fort Worth & Western Railroad Company (FWWR):

1. I am one of the attorneys for Respondent FWWR, and make this declaration based on personal knowledge of the facts stated herein.

2. Attached hereto are true and correct copies of documents obtained and identified as follows:

- | | |
|-----------|--|
| Exhibit A | Docket History of Case No. 4:04-cv-211 Y before the United States District Court for the Northern District of Texas, Fort Worth Division, entitled <i>PCI Transportation, Inc v. Fort Worth & Western Railroad Company</i> , downloaded from the pacer system August 25, 2005. |
| Exhibit B | Order Reopening Case issued by the District Court August 22, 2005, downloaded from the pacer system August 25, 2005. |
| Exhibit C | Plaintiff's Second Amended Complaint filed August 3, 2004 in the District Court by PCI Transportation, Inc. |

Respectfully submitted September 8, 2005 by  for
Paul H. Lamboley

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Attorneys for Respondent
Fort Worth & Western Railroad Company

Exhibit A Docket History of Case No. 4:04-cv-211 Y before the United States District Court for the Northern District of Texas, Fort Worth Division, entitled *PCI Transportation, Inc v. Fort Worth & Western Railroad Company*, downloaded from the pacer system August 25, 2005.

ECF, JURY, STAYED

**U.S. District Court
Northern District of Texas (Fort Worth)
CIVIL DOCKET FOR CASE #: 4:04-cv-00211**

PCI Transportation Inc v. Fort Worth & Western Railroad
Company
Assigned to: Judge Terry R Means
Cause: 28:1441 Petition for Removal- Contract Default

Date Filed: 03/19/2004
Jury Demand: Plaintiff
Nature of Suit: 450 Commerce ICC
Rates, Etc.
Jurisdiction: Federal Question

Plaintiff

PCI Transportation Inc

represented by **H Allen Pennington, Jr**
Pennington Hill & Baker
777 Taylor St
Suite 890
Fort Worth, TX 76102
817/332-5055
Email: apennington@phblaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

**Fort Worth & Western Railroad
Company**

represented by **Richard C DeBerry**
McDonald Sanders
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Suite 1300
Fort Worth, TX 76102
817/336-8651
Fax: 817/334-0271 FAX
Email: rdeberry@mcdonaldlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Russell A Devenport
McDonald Sanders
777 Main St
Suite 1300
Fort Worth, TX 76102
817/336-8651
Email: rdevenport@mcdonaldlaw.com

Counter Claimant

Fort Worth & Western Railroad

represented by **Russell A Devenport**

Company

(See above for address)

V.

Counter Defendant**PCI Transportation Inc**

Date Filed	#	Docket Text
03/19/2004	<u>1</u>	NOTICE OF REMOVAL from 141st Judicial District Court Tarrant County TX, case number 141-204556-04. (Filing fee \$ 150 receipt number 48378.), filed by attorney Richard C DeBerry on behalf of Fort Worth & Western Railroad Company.(dld,) (Entered: 03/22/2004)
03/19/2004	<u>2</u>	CERTIFICATE OF INTERESTED PERSONS by Fort Worth & Western Railroad Company. (dld,) (Entered: 03/22/2004)
03/19/2004		ANSWER filed in state court on 3/18/04 by defendant Fort Worth & Western Railroad Company.(dld,) (Entered: 03/22/2004)
03/22/2004	<u>3</u>	ORDER EXPEDITING BRIEFING REGARDING MOTION TO REMAND....the deft's response, if any, to the motion to remand must be filed w/the clerk, and serving on opposing counsel so that it is rcvd nlt 4:30pm on Fri 26 2004; ptlf's reply to deft's response, if any, shall be filed nlt 4:30 Tue Mar 30 2004. (Signed by Judge Terry R Means on 3/22/04) (wrb,) (Entered: 03/22/2004)
03/22/2004	<u>4</u>	First AMENDED ANSWER to, COUNTERCLAIM against PCI Transportation Inc by Fort Worth & Western Railroad Company. (dld,) (Entered: 03/23/2004)
03/22/2004	<u>5</u>	Emergency MOTION to Remand and brief in support thereof by PCI Transportation Inc (wrb,) (Entered: 03/23/2004)
03/22/2004	<u>6</u>	Unopposed MOTION for Voluntary Dismissal of a Specific Claim for Relief and brief in support thereof by PCI Transportation Inc (wrb,) (Entered: 03/23/2004)
03/23/2004	<u>7</u>	ORDER ON MOTION TO DISMISS SPECIFIC CLAIM...granting <u>6</u> Motion for Voluntary Dismissal of a Specific Claim for Relief against Defendant Fort Worth & Western Railroad Company Inc from "imposing or attempting to impose any demurrage charges upon PCI, or in the alternative, imposing or attempting to impose any demurrage charges upon PCI when timely delivery of PCI's cars on a first-in, first-out basis would have resulted in no demurrage charges, and in those situations where no demurrage charges would accrue but for FWWR's service failures"; see order for specifics. (Signed by Judge Terry R Means on 3/23/2004) (dld,) (Entered: 03/24/2004)
03/26/2004	<u>8</u>	ORDER TO SUBMIT JOINT STATUS REPORT AND PROPOSED DISCOVERY PLAN....jsrpt due w/in 30 days of the date of the filing of this order. (Signed by Judge Terry R Means on 03/26/04) (wrb,)

		(Entered: 03/26/2004)
03/26/2004	<u>9</u>	DEMAND for Trial by Jury by PCI Transportation Inc. (wrb,) (Entered: 03/29/2004)
03/26/2004	<u>10</u>	Defendant's RESPONSE to Plaintiff's <u>5</u> Emergency MOTION to Remand and brief in support filed by Fort Worth & Western Railroad Company. (wrb,) (Entered: 03/29/2004)
03/26/2004	<u>11</u>	Appendix in Support re <u>10</u> Response to Motion filed by Fort Worth & Western Railroad Company. (wrb,) (Entered: 03/29/2004)
03/30/2004	<u>12</u>	REPLY to Response to Motion re <u>5</u> MOTION to Remand filed by PCI Transportation Inc. (dld,) (Entered: 03/31/2004)
04/08/2004	<u>13</u>	ORDER denying <u>5</u> Motion to Remand (Signed by Judge Terry R Means on 4/8/04) (wrb,) (Entered: 04/08/2004)
04/16/2004	<u>14</u>	MOTION for Hearing on Temporary Injunction by PCI Transportation Inc with Brief in Support. (pdm,) (Entered: 04/16/2004)
04/19/2004	<u>15</u>	RESPONSE to re <u>14</u> MOTION for Hearing on Temporary Injunction filed by Fort Worth & Western Railroad Company. (dld,) (Entered: 04/20/2004)
04/20/2004	<u>16</u>	ORDER denying <u>14</u> Motion for Hearing. (Signed by Judge Terry R Means on 4/20/04) (wrb,) (Entered: 04/20/2004)
04/23/2004	<u>17</u>	JOINT STATUS REPORT and Proposed Discovery Plan by Fort Worth & Western Railroad Company, PCI Transportation Inc. (wrb,) (Entered: 04/23/2004)
04/29/2004	<u>18</u>	MOTION for Preliminary Injunction by PCI Transportation Inc (wrb,) (Entered: 04/30/2004)
04/29/2004	<u>19</u>	Brief in Support re <u>18</u> MOTION for Injunction filed by PCI Transportation Inc. (wrb,) (Entered: 04/30/2004)
04/29/2004	<u>20</u>	Appendix in Support re <u>18</u> MOTION for Injunction filed by PCI Transportation Inc. (wrb,) (Entered: 04/30/2004)
04/29/2004	<u>21</u>	MOTION for Leave to File Plaintiff's First Amended Complaint by PCI Transportation Inc (wrb,) (Entered: 04/30/2004)
04/29/2004	<u>22</u>	INITIAL SCHEDULING ORDER: parties to participate in formal settlement conf nlt Aug 16 2004 Amended Pleadings due by 7/1/2004. Discovery due by 7/30/2004. Joinder of Parties due by 5/21/2004. Motions due by 8/30/2004. (Signed by Judge Terry R Means on 4/29/04) (wrb,) (Entered: 05/03/2004)
05/17/2004	<u>23</u>	RESPONSE to Plaintiff's Motion re <u>18</u> MOTION for Injunction filed by Fort Worth & Western Railroad Company. (wrb,) (Entered: 05/17/2004)
05/17/2004	<u>24</u>	Appendix in Support re <u>23</u> Response to Motion filed by Fort Worth & Western Railroad Company. (wrb,) (Entered: 05/17/2004)

06/02/2004	<u>25</u>	ORDER granting <u>21</u> Motion to File Plaintiff's First Amended Complaint (Signed by Judge Terry R Means on 6/2/04) (wrb,) (Entered: 06/03/2004)
06/02/2004	<u>26</u>	Plaintiff's First AMENDED COMPLAINT against Fort Worth & Western Railroad Company , filed by PCI Transportation Inc.(wrb,) (Entered: 06/03/2004)
06/25/2004	<u>27</u>	ANSWER to Counterclaim by PCI Transportation Inc.(wrb,) (Entered: 06/28/2004)
06/25/2004	<u>28</u>	MOTION for Leave to File Plaintiff's Second Amended Complaint by PCI Transportation Inc (wrb,) (Entered: 06/28/2004)
07/01/2004	<u>29</u>	MOTION to File Second Amended Answer to Complaint & Counterclaim by Fort Worth & Western Railroad Company with Brief in Support. (pdm,) (Entered: 07/02/2004)
07/06/2004	<u>30</u>	ORDER denying <u>18</u> Motion for Injunction (Signed by Judge Terry R Means on 7/6/04) (wrb,) (Entered: 07/08/2004)
07/19/2004	<u>31</u>	MOTION for Reconsideration re <u>30</u> Order on Motion for Injunction by PCI Transportation Inc (wrb,) (Entered: 07/21/2004)
07/29/2004	<u>32</u>	ORDER granting <u>28</u> Motion for Leave to File Second Amended Complaint. (Signed by Judge Terry R Means on 7/29/04) (dld,) (Entered: 07/30/2004)
07/29/2004	<u>33</u>	SECOND AMENDED COMPLAINT against Fort Worth & Western Railroad Company , filed by PCI Transportation Inc.(dld,) (Entered: 07/30/2004)
07/29/2004	<u>34</u>	ORDER granting <u>29</u> Motion to Amend Answer and Counterclaim (Signed by Judge Terry R Means on 7/29/04) (dld,) (Entered: 07/30/2004)
07/29/2004	<u>35</u>	SECOND AMENDED ANSWER and COUNTERCLAIM by Fort Worth & Western Railroad Company. (dld,) (Entered: 07/30/2004)
07/30/2004	<u>36</u>	Unopposed MOTION for Leave to Substitute Verified Second Amended Complaint by PCI Transportation Inc (wrb,) (Entered: 08/03/2004)
08/03/2004	<u>37</u>	ORDER granting <u>36</u> Motion for leave to substitute verified second amended complaint (Signed by Judge Terry R Means on 8/3/04) (wrb,) (Entered: 08/03/2004)
08/03/2004	<u>39</u>	PLA'S SECOND AMENDED COMPLAINT against Fort Worth & Western Railroad Company , filed by PCI Transportation Inc.(mjw,) (Entered: 08/05/2004)
08/03/2004	<u>40</u>	AMENDED DOCUMENT by PCI Transportation Inc. Amendment to <u>31</u> MOTION for Reconsideration re <u>30</u> Order on Motion for Injunction...And Request for Hearing and Brief in Support (mjw,) (Entered: 08/05/2004)

08/03/2004	<u>41</u>	Supplemental Appendix in Support re <u>40</u> Amended Motion for Reconsideration filed by PCI Transportation Inc. (mjlw,) (Entered: 08/05/2004)
08/03/2004	<u>43</u>	SETTLEMENT CONFERENCE REPORT re:RESPONSE to Order re <u>22</u> Scheduling Order, filed by PCI Transportation Inc. (dld,) (Entered: 08/06/2004)
08/04/2004	<u>38</u>	Interlocutory NOTICE OF APPEAL as to <u>30</u> Order on Motion for Injunction, <u>13</u> Order on Motion to Remand by PCI Transportation Inc. Filing fee \$ 255, receipt number 49738, filed by Atty H Allen Pennington Jr, No hrs held. (Entered: 08/05/2004)
08/04/2004	<u>42</u>	ORDER RENDERING MOTION MOOT; finding as moot <u>31</u> Motion for Reconsideration (Signed by Judge Terry R Means on 8/4/04) (wrb,) (Entered: 08/05/2004)
08/05/2004		Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re <u>38</u> Notice of Appeal; along with a transmittal letter. (csw,) (Entered: 08/05/2004)
08/06/2004	<u>45</u>	DEFENDANT'S SETTLEMENT CONFERENCE REPORT by Fort Worth & Western Railroad Company. (wrb,) (Entered: 08/10/2004)
08/09/2004	<u>44</u>	ORDER RETAINING RECORD IN DISTRICT COURT: ORDERED by the Court, pursuant to Rule 11(e), FRAP, that the Clerk of this DC shall retain the record or parts thereof subject to the request of the Court of Appeals. FURTHER ORDERED that the pla, file with the Clerk of the Court, a designation of record and a Transcript Order within ten (10) days from the signing of this order. Upon receipt of the designation, and transcripts if ordered, the Clerk of the Court shall transmit a certified record to the Clerk of the US Court of Appeals for the Fifth Circuit. FURTHER ORDERED that the Clerk of the Court shall immediately transmit the partial record on appeal, which consists of a certified copy of this order and of the docket entries, to the Clerk of the US Court of Appeals for the Fifth Circuit. (Signed by Judge Terry R Means on August 9, 2004) (csw,) (Entered: 08/09/2004)
08/12/2004	<u>46</u>	Plaintiff's ANSWER to First Amended Counterclaim by PCI Transportation Inc.(wrb,) (Entered: 08/16/2004)
08/16/2004	<u>47</u>	Transcript Order Form: transcript not requested re <u>38</u> Notice of Appeal...no hrs. (csw,) (Entered: 08/17/2004)
08/16/2004	<u>48</u>	Statement of Issues for Appeal re <u>38</u> Notice of Appeal filed by PCI Transportation Inc. (csw,) (Entered: 08/17/2004)
08/16/2004	<u>49</u>	DESIGNATION of Record on Appeal by PCI Transportation Inc re <u>38</u> Notice of Appeal (csw,) (Entered: 08/17/2004)
08/23/2004		USCA Case Number 04-10965 for <u>38</u> Notice of Appeal filed by PCI Transportation Inc. (csw,) (Entered: 08/24/2004)
08/23/2004	<u>50</u>	RESPONSE to Plaintiff's Amended <u>31</u> MOTION for Reconsideration re

		<u>30</u> Order on Motion for Injunction filed by Fort Worth & Western Railroad Company. (wrb,) (Entered: 08/24/2004)
08/23/2004	<u>51</u>	Appendix in Support re <u>50</u> Defendant's Response to Plaintiff's Motion to Reconsider filed by Fort Worth & Western Railroad Company. (wrb,) (Entered: 08/24/2004)
08/30/2004	<u>52</u>	MOTION to Stay Action Pending Appeal by PCI Transportation Inc with Brief in Support. (dld,) (Entered: 08/31/2004)
08/30/2004	<u>53</u>	MOTION for Partial Summary Judgment by Fort Worth & Western Railroad Company (wrb,) (Entered: 08/31/2004)
08/30/2004	<u>54</u>	Memorandum in Support re <u>53</u> MOTION for Summary Judgment filed by Fort Worth & Western Railroad Company. (wrb,) (Entered: 08/31/2004)
08/30/2004	<u>55</u>	MOTION to Dismiss Claims for Injunction Relief and Brief in Support by Fort Worth & Western Railroad Company (wrb,) (Entered: 08/31/2004)
08/30/2004	<u>56</u>	Appendix in Support re <u>53</u> MOTION for Summary Judgment, <u>55</u> MOTION to Dismiss filed by Fort Worth & Western Railroad Company. (wrb,) (Entered: 08/31/2004)
09/02/2004		Certified and Transmitted Designated Record on Appeal to US Court of Appeals re <u>38</u> Notice of Appeal #04-10965 consisting of 3 volumes certified copies case papers designated by PCI Transportation; along with a cert cy of designation and docket entries and a transmittal letter. (csw,) (Entered: 09/02/2004)
09/07/2004	<u>57</u>	REPLY BRIEF to Response to Motion re <u>31</u> MOTION for Reconsideration re <u>30</u> Order on Motion for Injunction filed by PCI Transportation Inc. (mjw,) (Entered: 09/08/2004)
09/10/2004	<u>58</u>	RESPONSE to Motion re <u>52</u> MOTION to Stay filed by Fort Worth & Western Railroad Company. (wrb,) (Entered: 09/13/2004)
09/13/2004	<u>59</u>	REPLY BRIEF to Response to <u>52</u> MOTION to Stay filed by PCI Transportation Inc. (dld,) (Entered: 09/14/2004)
09/21/2004	<u>60</u>	STIPULATION FOR ENLARGEMENT OF TIME FOR PLAINTIFF TO FILE A RESPONSE TO FWWR'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT AND TO DISMISS CLAIMS FOR INJUNCTION RELIEF by Fort Worth & Western Railroad Company, PCI Transportation Inc. (wrb,) (Entered: 09/22/2004)
09/28/2004	<u>61</u>	Second STIPULATION for Enlargement of Time for Plaintiff to File a Response to FWWR's Motions for Partial Summary Judgment and to Dismiss Claims for Injunction Relief by Fort Worth & Western Railroad Company, PCI Transportation Inc. (dld,) (Entered: 09/29/2004)
10/05/2004	<u>62</u>	ORDER EXTENDING TIME FOR PLAINTIFF TO FILE RESPONSE...the pltf's responses to the deflt's motion for partial summary

		judgment and motion to dismiss claims for injunctive relief are due nlt 4pm Mon Oct 11 2004. (Signed by Judge Terry R Means on 10/5/04) (wrb,) (Entered: 10/05/2004)
10/08/2004	<u>63</u>	ORDER of USCA #04-10965 as to <u>38</u> Notice of Appeal filed by PCI Transportation Inc...ORDERED that appellant's motion for stay pending appeal is DENIED. (csw,) (Entered: 10/08/2004)
10/12/2004	<u>64</u>	MOTION for relief from order denying remand by PCI Transportation Inc (wrb,) (Entered: 10/13/2004)
10/12/2004	<u>65</u>	***UNFILED PER ORDER 10/13/04***Plaintiff's RESPONSE to Motion re <u>55</u> MOTION to Dismiss filed by PCI Transportation Inc. (wrb,) Modified on 10/14/2004 (pdm,). (Entered: 10/13/2004)
10/12/2004	<u>66</u>	**UNFILED PER ORDER 10/13/04***Plaintiff's RESPONSE to Motion re <u>53</u> MOTION for Summary Judgment filed by PCI Transportation Inc. (wrb,) Modified on 10/14/2004 (pdm,). (Entered: 10/13/2004)
10/12/2004	<u>67</u>	***UNFILED PER ORDER 10/13/04***Plaintiff's Brief in Support of <u>64</u> MOTION for relief from order denying remand, <u>65</u> Response to Motion filed by PCI Transportation Inc. (wrb,) Modified on 10/14/2004 (pdm,). (Entered: 10/13/2004)
10/12/2004	<u>68</u>	***UNFILED PER ORDER 10/13/04***Brief in Support re <u>66</u> Response to Motion for Partial Summary Judgment filed by PCI Transportation Inc. (wrb,) Modified on 10/14/2004 (pdm,). (Entered: 10/13/2004)
10/12/2004	<u>69</u>	***UNFILED PER ORDER 10/13/04***Appendix in Support of <u>66</u> Response to Motion, <u>65</u> Response to Motion filed by PCI Transportation Inc. (wrb,) Modified on 10/14/2004 (pdm,). (Entered: 10/13/2004)
10/12/2004	<u>70</u>	***UNFILED PER ORDER 10/13/04***OBJECTIONS TO THE DECLARATION OF JIM MARTIN in support of Defendant's Motion for Partial Summary Judgment and Defendant's Motion to Dismiss Claims for Injunctive Relief filed by PCI Transportation Inc. (wrb,) Modified on 10/14/2004 (pdm,). (Entered: 10/13/2004)
10/13/2004	<u>71</u>	Order Unfiling <u>66</u> Response to Motion filed by PCI Transportation Inc due to the following deficiency: Not in proper form, no case number. (Signed by Judge Terry R Means on 10/13/04) (pdm,) (Entered: 10/14/2004)
10/13/2004	<u>72</u>	Order Unfiling <u>68</u> Response in Support of Motion filed by PCI Transportation Inc due to the following deficiency: Not in proper form, no case number. (Signed by Judge Terry R Means on 10/13/04) (pdm,) (Entered: 10/14/2004)
10/13/2004	<u>73</u>	Order Unfiling <u>67</u> Response in Support of Motion filed by PCI Transportation Inc due to the following deficiency: Not in proper form, no case number. (Signed by Judge Terry R Means on 10/13/04) (pdm,) (Entered: 10/14/2004)

10/13/2004	<u>74</u>	Order Unfiling <u>65</u> Response to Motion filed by PCI Transportation Inc due to the following deficiency: Not in proper form, no case number. (Signed by Judge Terry R Means on 10/13/04) (pdm,) (Entered: 10/14/2004)
10/13/2004	<u>75</u>	Order Unfiling <u>70</u> Response in Opposition, filed by PCI Transportation Inc due to the following deficiency: Not in proper form, no case number. (Signed by Judge Terry R Means on 10/13/04) (pdm,) (Entered: 10/14/2004)
10/13/2004	<u>76</u>	Order Unfiling <u>69</u> Appendix in Support filed by PCI Transportation Inc due to the following deficiency: Not in proper form, not securely bound. (Signed by Judge Terry R Means on 10/13/04) (pdm,) (Entered: 10/14/2004)
10/15/2004	<u>77</u>	PLA'S RESPONSE to DFT'S Motion re <u>53</u> MOTION for Partial Summary Judgment filed by PCI Transportation Inc. (mjw,) (Entered: 10/18/2004)
10/15/2004	<u>78</u>	Appendix in Support re <u>77</u> Response to Motion for partial summary judgment filed by PCI Transportation Inc. (mjw,) (Entered: 10/18/2004)
10/15/2004	<u>79</u>	PLA'S RESPONSE to Motion re <u>55</u> MOTION to Dismiss Claims for Injunctive Relief filed by PCI Transportation Inc. (mjw,) (Entered: 10/18/2004)
10/15/2004	<u>80</u>	PLA'S Memorandum in Support re <u>79</u> Response to Motion to dismiss claims for injunctive relief filed by PCI Transportation Inc. (mjw,) (Entered: 10/18/2004)
10/15/2004		MOTION for Relief from Order Denying Remand of Case by PCI Transportation Inc (mjw,) (Entered: 10/18/2004)
10/15/2004	<u>81</u>	PLA'S Appendix in Support re <u>77</u> Response to Motion to dismiss, <u>79</u> Response to Motion for partial summary judgment filed by PCI Transportation Inc. (mjw,) (Entered: 10/18/2004)
10/15/2004	<u>82</u>	OBJECTIONS TO THE DECLARATION OF JIM MARTIN IN SUPPORT OF DFT'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DFT'S MOTION TO DISMISS CLAIMS FOR INJUNCTIVE RELIEF filed by PCI Transportation Inc. (mjw,) (Entered: 10/18/2004)
10/19/2004	<u>83</u>	ORDER of USCA #04-10965 as to <u>38</u> Notice of Appeal filed by PCI Transportation Inc...ORDERED that appellant's motion for stay pending appeal is Denied. (csw,) (Entered: 10/20/2004)
11/01/2004	<u>84</u>	REPLY to Response to Motion re <u>53</u> MOTION for Summary Judgment filed by Fort Worth & Western Railroad Company. (wrb,) (Entered: 11/02/2004)
11/01/2004	<u>85</u>	REPLY to Response to Motion re <u>55</u> MOTION to Dismiss filed by Fort Worth & Western Railroad Company. (wrb,) (Entered: 11/02/2004)

11/01/2004	<u>86</u>	RESPONSE to Motion re MOTION for Relief from Order Denying Remand of Case filed by Fort Worth & Western Railroad Company. (wrb,) (Entered: 11/02/2004)
11/01/2004	<u>87</u>	RESPONSE to Plaintiff PCI's <u>82</u> Objections to the Declaration of Jim Martin filed by Fort Worth & Western Railroad Company. (wrb,) (Entered: 11/02/2004)
11/04/2004	<u>88</u>	ORDER granting <u>52</u> Motion to Stay...Case is STAYED until the 5th Circuit issues its mandate regarding the pla's appeals of this Court's July 6, 2004, order and April 8, 2004 order; case is ADMINISTRATIVELY CLOSED in an effort to manage court's docket more efficiently. Case may be reopened, without prejudice, upon the motion of either party, once the Fifth Circuit issues its mandate regarding the appeals. (Signed by Judge Terry R Means on 11/4/2004) (csw,) (Entered: 11/05/2004)
11/04/2004		Order Directing Administrative Closure per <u>88</u> order (Signed by Judge Terry R Means on 11/4/2004) (csw,) (Entered: 11/05/2004)
11/17/2004		Certified and Transmitted SUPPLEMENTAL Record on Appeal to US Court of Appeals re <u>38</u> Notice of Appeal #04-10965 consisting of 1 volume supplemental case papers which includes a cert cy of docket entries, 1 exhibit folder which contains appendix document #81; along with a transmittal letter. (Original record sent) (csw,) (Entered: 11/17/2004)
08/18/2005	<u>92</u>	NOTICE OF FILING OF CLAIMS BEFORE THE SURFACE TRANSPORTATION BOARD, MOTION TO DISMISS OR STAY COUNTERCLAIMS AND BRIEF IN SUPPORT THEREOF by PCI Transportation Inc (wrb,) (Entered: 08/19/2005)
08/18/2005	<u>93</u>	Appendix in Support of <u>92</u> PCI Transportation Inc's Motion to Dismiss filed by PCI Transportation Inc. (wrb,) (Entered: 08/19/2005)
08/19/2005	<u>89</u>	JUDGMENT/MANDATE of USCA #04-10965 as to <u>38</u> Notice of Appeal filed by PCI Transportation Inc...ordered and adjudged that the judgment of the DC is affirmed. Further ORDERED that pla-appellant pay to dft-appellee the costs on appeal to be taxed by the Clerk of this Court. Issued as Mandate: 8/17/2005. (csw,) (Entered: 08/19/2005)
08/19/2005	<u>90</u>	Opinion of USCA (certified copy) #04-10965 in accordance with USCA judgment re <u>38</u> Notice of Appeal filed by PCI Transportation Inc...the DC's orders denying PCI's motion for remand and denying PCI's motion for a preliminary injunction including its refusal to conduct a hearing are in all respects Affirmed. (csw,) (Entered: 08/19/2005)
08/19/2005	<u>91</u>	Appeal Record Returned: <u>38</u> Notice of Appeal re: USCA #04-10965 consisting of 3 volumes case papers, 1 vol supplemental case papers, appendix document #81, 2 sealed envelopes record supplemented at 5th. (csw,) (Entered: 08/19/2005)
08/22/2005	<u>94</u>	Order Designating Case for ECF - see order for specifics. (Signed by Judge Terry R Means on 08/22/05) (wrb,) (Entered: 08/23/2005)

08/22/2005	<u>95</u>	ORDER:, Case reopened. Because the reason for the stay and admin closure - the appeal- has been resolved, this court orders this case reopened and lifts the stay. The clerk shall note on the docket that this case is no longer administratively closed. (Signed by Judge Terry R Means on 8/22/05) (wrb,) (Entered: 08/23/2005)
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Transaction Receipt			
08/25/2005 23:05:23			
PACER Login:	pl0613	Client Code:	
Description:	Docket Report	Search Criteria:	4:04-cv-00211
Billable Pages:	6	Cost:	0.48

Exhibit B Order Reopening Case issued by the District Court August 22, 2005,
downloaded from the pacer system August 25, 2005.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

PCI TRANSPORTATION, INC.

VS.

FORT WORTH & WESTERN RAILROAD
COMPANY, INC.

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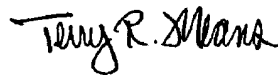
CASE NO. 4:04-CV-211-Y

ORDER REOPENING CASE
(with special instruction to the clerk)

This Court denied plaintiff PCI Transportation, Inc.'s motion to remand this case to state court and motion for preliminary injunction. [Docs. # 13 & 30.] PCI appealed these rulings, and this Court stayed this action pending appeal and administratively closed it. [Doc. # 88.] On July 26, 2005, the Fifth Circuit Court of Appeals affirmed this Court's orders on the two motions. *PCI Transp. Inc. v. Fort Worth & W. R.R. Co.*, No. 04-10965, 2005 WL 1731748 (5th Cir. July 26, 2005). On August 18, 2005, PCI filed a motion to dismiss the case because it has filed its claims in the Surface Transportation Board.¹ [Doc. # 92.] This Court received the Fifth Circuit's mandate the next day. [Doc. # 89.]

Because the reason for the stay and administrative closure—the appeal—has been resolved, this Court ORDERS this case REOPENED and LIFTS the stay. The clerk shall note on the docket of this case that this case is no longer administratively closed.

SIGNED August 22, 2005.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

TRM/ah

¹Defendant Fort Worth & Western Railroad Company's response to the motion to dismiss is due on or before September 7, 2005.

Exhibit C Plaintiff's Second Amended Complaint filed August 3, 2004 in the
District Court by PCI Transportation, Inc.

CERTIFICATE OF SERVICE

Page 1

FACTUAL BACKGROUND

4. PCI is in the business of receiving and handling rail cargo in Fort Worth, Texas, and is located on a railroad spur which comes off the Union Pacific and Burlington Northern railroad lines (the "Fort Worth Main Lines") which pass through the central north side of Fort Worth, Texas. These main railroad lines constitute a public utility which serves the public. FWWR either owns or controls the railroad tracks connecting PCI's spur to the Fort Worth Main Lines.

5. In approximately the Spring of 1998, FWWR and PCI entered into an agreement whereby FWWR would take into its business premises and rail yard, which is located at the Hodge railroad yard on Long Avenue in north Fort Worth, any railroad cars from the Fort Worth Main Lines bearing cargo ordered for delivery to Fort Worth by PCI.

6. PCI rents warehouse space of approximately 320,000 square feet at its Fort Worth location. The warehouses are served by the aforementioned railroad spur off the Union Pacific and Burlington Northern lines, which spur consists of an "A" and a "B" track. PCI's railroad spur can accommodate up to ten railroad cars for unloading into PCI's warehouse at one time when the cars are facing the correct way and are not positioned improperly on the spur tracks.

7. At the time of the original agreement between FWWR and PCI, FWWR agreed to provide PCI unlimited daily switches, that is, to provide PCI as many railroad cars as it desired from the available loaded cars located in FWWR's yard which were

bound for PCI. Based upon the agreement and commitment of FWWR, PCI was able to secure a long-term lease agreement of its warehouse space and spur with the Sylvania Industrial Park.

8. The business relationship between PCI and FWWR proceeded satisfactorily for a number of years. During that time, a course of dealing developed whereby FWWR would spot, or deliver, to PCI, the oldest cars first; that is, the cars would be delivered to PCI's spur by FWWR on a first-in, first-out basis. PCI would show that this has also been the custom and practice in the railroad industry, including, but not limited to, Tarrant County and the State of Texas, at all relevant times hereto.

9. In August, 2001, FWWR and PCI had a disagreement concerning a demurrage charge sought to be imposed by FWWR. Demurrage is a charge by a railroad company to a spur company, such as PCI, which is unable to take possession of a loaded railroad car within some agreed upon or legally imposed period of time after the car is received by the railroad company. On or about August 23, 2001, FWWR and PCI entered into a confidential written agreement regarding the parties' future relationship ("Agreement"). The Agreement is expressly made confidential and, therefore, Plaintiff will submit same to the Court for in-camera review in connection with any trial or hearing, and only the portions of the Agreement pertinent and necessary to this action are set forth herein. No monies exchanged hands between FWWR and PCI under this Agreement because FWWR receives its revenues for

receiving the loaded railroad cars from the mainland railroads, UPR and BN. Under this new Agreement, FWWR agreed to provide PCI one switch, or spot, of loaded cars per day to PCI's spur, and not to impose a demurrage charge to PCI unless it had to hold a loaded PCI-bound car for more than four days. Since execution of this Agreement, the parties' custom and practice has been that FWWR would deliver to PCI the oldest cars first; that is, the cars that have been in its possession the longest. This has also continued to be the standard practice in the industry, for obvious reasons, since August 23, 2001, and has been recognized and confirmed orally and in writing by FWWR as the parties' express agreement on several occasions since execution of the Agreement, including in correspondence between the parties attached hereto.

10. In reliance upon the new Agreement, and FWWR's express commitment to the four day demurrage agreement and the first-in, first-out delivery of cars under the Agreement, PCI entered into a renewal of the long term lease of its warehouse space and spur with the Sylvania Industrial Park. ✓

11. Recently, FWWR has varied from its first-in, first-out practice of delivery of PCI cars to the PCI spur, which has created situations where FWWR has held, against PCI's express wishes, railroad cars filled with important cargo belonging to PCI's customers for over four days. On some occasions, FWWR has then attempted to impose a demurrage charge to PCI because these cars have been in its yard for over four days. In these situations, which is certainly the case with the demurrage

charge referenced hereinafter, had FWWR honored its express agreement and its custom, practice and industry standard, the subject cars would not have been in the possession of FWWR for more than four days.

12. Similarly, there are so-called "service failures" which occur from time to time in the performance of FWWR's obligations under the Agreement. For example, FWWR sometimes spots cars on PCI's spur backwards or in locations where they obviously cannot be unloaded with PCI's equipment. These cars cannot be unloaded in these situations, and therefore must be removed by FWWR and brought back the next day with the next group of cars. On some occasions, FWWR has then attempted to impose a demurrage charge on the misplaced cars or on other cars which are delayed by FWWR's service failures of this type, and not by any conduct or action on the part of PCI.

13. By letter dated February 3, 2004, a true and correct copy of which is attached as Exhibit "A" and incorporated by reference, FWWR provided written notice to PCI that if an invoice for July, 2003 demurrage in the amount of \$2,340.00 was not paid by February 20, 2004, then FWWR would cancel the parties' August 23, 2001 Agreement. FWWR further threatened PCI in its letter that PCI would be placed on a cash basis and that, with respect to all PCI-bound cars presently in its possession (which contain goods owned not by PCI, but by PCI's customers), PCI would be held on "constructive placement accruing demurrage until all outstanding invoices are paid." The July, 2004 invoices which FWWR is attempting to collect are based upon

situations where railroad cars were in the possession of FWWR for greater than four days solely because of its failure to deliver PCI cars on a first-in, first-out basis.

14. PCI first received the attached February 3, 2004 letter by telecopy on February 26, 2004, and had no knowledge of its contents or existence prior to that date.

15. Randy Gaston, the PCI representative and officer in Fort Worth, met with FWWR representatives, Jim Martin and Steve George, on March 1, 2004, to demonstrate, using FWWR's own records, that the cars for which the July, 2004 demurrage charges were being imposed would not have been in FWWR's possession more than four days had the PCI-bound cars been delivered to PCI on a first-in, first-out, or oldest-car, basis. At the meeting, the FWWR representatives acknowledged their mistake, and indicated that the demurrage charge would be withdrawn.

16. Then, the next day, Mr. Martin emailed PCI a new demand letter, a true and correct copy of which is attached hereto as Exhibit "B" and incorporated by reference, again demanding payment of the July, 2003 demurrage charge and stating that FWWR would place PCI in default under the Agreement if such bill was not paid by March 8, 2004. The letter acknowledges that the oldest cars were not delivered first to PCI, but states that this was done on the verbal instructions from one of PCI's yard employees. These alleged instructions never occurred but, in any event, at the March 1, 2003 meeting, Mr. Martin stated that any such oral instructions "[don't] matter unless it was in writing and my people know that." Mr. Gaston of PCI responded to

this letter late on March 2, 2004, by email, a true and correct copy of which is attached hereto as Exhibit "C" and incorporated by reference, reminding Mr. George of the acknowledgments of FWWR the previous day and asking for reconsideration of the demand. No response had been received to this request as of the time of filing of the original petition in this matter.

17. The actions of FWWR appear to be calculated to cause PCI to incur demurrage charges under the parties' Agreement, since a normal delivery schedule of the ten cars per day which PCI and its facility can accommodate would have resulted in no cars being in FWWR's yard for more than four days. FWWR has also recently taken the shocking and untenable position that demurrage charges are due regardless of whether its actions and negligence cause a delay in delivery of cars, including in those situations involving obvious service failures on the part of FWWR.

18. FWWR's foregoing actions constitute an obvious interference with PCI's contractual relations with its customers and its ability to deliver goods owned by PCI's customers on a timely basis.

19. PCI has no adequate remedy at law for FWWR's breaches of the Agreement and its threatened unlawful conduct. PCI has contracts with its customers to receive freight in Fort Worth via rail and to deliver same to its customers, and FWWR's actions are preventing PCI from honoring its contracts with its customers. FWWR's threatened immediate termination of the Agreement with PCI would deny PCI's access to the United States' public railroad system and would likely put PCI's

Fort Worth operation out of business immediately. In addition, such action would prevent PCI from being able to perform its contracts with its customers. PCI's injuries and losses from FWR's actions and threats are continuing.

20. This action was filed in State Court on March 5, 2004. At that time, a temporary restraining order was issued, which, among other things, prevented Defendant from providing any notice of cancellation of any agreements between PCI and FWR. As shown in the sworn Plaintiff's Original Petition filed in the state court proceeding, the primary basis for the application for the temporary restraining order was a March 2, 2004 letter from FWR (a copy of which is attached hereto as Exhibit "B"), which stated that if an alleged demurrage charge in the amount of \$2,130.00 was not paid by March 8, 2004, the contractual agreement dated August 23, 2001 between the parties would be cancelled. The state court enjoined this and other related actions by FWR.

21. Plaintiff stated under oath in its Original Petition that the purported \$2,130.00 demurrage charge was based upon a demonstrable situation where no charges would have been incurred had FWR delivered PCI's rail cars on an oldest-car-first basis, as it had agreed to do on many occasions, and as had become the course of dealing between the parties. In fact, Mr. Martin's March 2, 2004 letter expressly recognizes this obligation and course of dealing under the parties' agreement that the oldest cars would be delivered first, by stating, with reference to the August 23, 2001 contract:

You are aware of the discussions that ensued about the verbal instructions from PCI after receiving this demurrage bill and it was subsequently decided that the oldest cars would be placed first unless we received written instructions from PCI.

22. The purpose of the preliminary injunction sought herein is to prevent, among other things, FWR from violating the parties' express agreements and, specifically, from taking any further actions to cancel the August 23, 2001 agreement, based upon false demurrage bills, such as that which was the subject of the March 2, 2004 letter.

23. The hearing on the temporary injunction in state court was set for Monday, March 22, 2004, at 8:30 a.m. On Friday, March 19, 2004, the case was removed to this Honorable Court, long before any deadline for such removal, and notice was received by the undersigned counsel very late that afternoon that the case had been removed.

24. This Court entered its order on April 8, 2004, denying the Emergency Motion to Remand. The undersigned counsel learned of this order on Good Friday, April 9, 2004. On Monday morning, April 12, 2004, PCI received in the mail a new purported demurrage bill from FWR, a copy of which is attached hereto as Exhibit "D" and incorporated by reference. The bill is, quite obviously, not based upon the four-day demurrage period required by the parties' agreement, but appears instead to be based upon only two-day demurrage period. Thus, the demurrage bill is clearly not in compliance with the parties' agreement. The bill also seeks to charge PCI two-day

demurrage on several cars which were delivered in the weeks prior to the date of the March 2, 2004 letter from Mr. Martin referred to above. In other words, FWWR has now sent an invoice for two day demurrage for a period in which it recognizes that a four day demurrage agreement was in effect. Thus, this letter further demonstrates the false billing practices of FWWR which necessitated the filing of this lawsuit in the first place.

25. Counsel for FWWR has now delivered "notice type" correspondence dated April 20, 2004 that FWWR believes it is entitled to impose two day demurrage effective March 20, 2004, which would clearly evidence an attempt to cancel the Agreement while an injunction was in place prohibiting such action, and also is a clear attempt to take advantage of the timing of the removal of this case. Based upon the foregoing, it is clear that FWWR has utilized the removal of this case and the time which was necessary for this Court to consider the Emergency Motion to Remand, to attempt to change the status quo, or at least to take action from which it will argue that the status quo has changed.

26. The April 20, 2004 correspondence states that the Agreement is cancelled and terminated due to certain alleged conduct of PCI, and states that demurrage will be calculated based upon a Tariff, rather than the Agreement, effective March 20, 2004. Such correspondence states that the Agreement was terminated based upon one or more of the following factors:

- a. PCI's "repudiation" of the Agreement as to payment of future demurrage bills;
- b. failure to pay past demurrage bills; and
- c. breach of the Agreement by setting forth contents of the Agreement in public filings.

PCI promptly responded to such correspondence by pointing out that PCI had never stated any refusal to pay future legitimate demurrage bills, that PCI had never refused to pay any legitimate demurrage bills in the past and had in fact paid any such bills, and that PCI had not filed the Agreement in any public filings and had disclosed only terms of the Agreement in the courthouse necessary to enforce the Agreement. Nevertheless, FWWR continues to insist the Agreement is terminated and seeks to impose demurrage charges on any cars held by FWWR for more than two days, in violation of the Agreement.

27. Based upon FWWR's conduct and its attempts to take advantage of its removal of this case, PCI requests an immediate hearing on its temporary injunction in this matter. Counsel and PCI stand ready, willing and able to present their evidence, and to seek to obtain a temporary injunction from this Court, as prayed for herein.

CAUSES OF ACTION

Count I. Breach of Contract/Attorneys' Fees

28. The allegations of the foregoing paragraphs are incorporated herein by reference.

29. By FWWR's failure to deliver PCI cars on a first-in, first-out basis, and in attempting to impose demurrage charges when delays in delivery of cars is based upon FWWR's service failures, and then attempting to charge PCI demurrage on the cars that FWWR itself has caused to be delayed, Defendant FWWR has breached the August 23, 2001 Agreement. Defendant has also breached the agreement by attempting to impose demurrage charges based on a two day demurrage period as set forth in the April 12, 2004 demurrage bill. Upon the filing of this petition, PCI has been damaged as a result of such breach in an amount equal to the past demurrage charges which have improperly been imposed. However, if the actions of FWWR continue as outlined in the paragraphs above, PCI will be damaged in much greater amounts which will be proved at trial after appropriate discovery in this cause. Defendant FWWR has threatened to terminate the Agreement without providing Plaintiff notice of any plausible breach caused by Plaintiff.

30. PCI is also entitled to recovery of its attorneys' fees reasonably incurred in prosecuting these claims, in an amount and measure as shown at trial. Plaintiff has presented the contract claim and disputes contained herein to FWWR, and Defendant has refused to refund, write off or credit certain demurrage charges and has refused to act in accordance with the express terms of the parties Agreement.

Count II.
Intentional Interference with Existing and Prospective Contractual Relations

31. The allegations of the foregoing paragraphs are incorporated herein by reference.

32. Plaintiff PCI would show that Defendant FWWR, through its agents' and representatives' acts as set forth in the factual background above, have intentionally and/or wrongfully interfered with the contractual relations between Plaintiff and its customers. Specifically, Defendant has failed to provide PCI-bound railroad cars to PCI within the required time, which has resulted in delays in delivery of items to PCI's customers.

33. By engaging in the conduct outlined above, FWWR has intentionally deprived and interfered with PCI's business relationships, and its actual and prospective contractual relationships with all of PCI's customers for which it receives goods.

34. Based upon the foregoing facts, PCI would show that FWWR and its agents and representatives have tortiously and wrongfully interfered with existing and prospective contractual relations between PCI and its actual and prospective customers, for which PCI is entitled to its actual damages as proved at trial.

Count III.
Request for Temporary Restraining Order and Preliminary Injunction

35. The allegations of the foregoing paragraphs are incorporated herein by reference.

36. It is clear that (a) Plaintiff has a substantial likelihood of success on the merits of its case; (b) there is a substantial threat of irreparable injury to Plaintiff if the injunction is not issued; (c) that the threatened injury to Plaintiff outweighs any damage the preliminary injunction might cause to Defendant; and (d) that the preliminary injunction will not disserve the public interest in any way. Therefore, in order to preserve the status quo of Plaintiff's contractual rights during the pendency of this matter, it is essential that the Court immediately and temporarily restrain FWWR from the foregoing conduct, because of the imminent harm facing Plaintiff as described above. Therefore, PCI requests that the Court immediately and temporarily restrain FWWR, its officers, agents and employees, from the following acts:

- a. providing purported notice of cancellation of any agreements between PCI and FWWR;
- b. refusing to deliver a full spot of PCI-bound railroad cars with cargo per day to PCI on its spur, to the extent such cars are available;
- c. delivering cars to PCI's spur on any basis other than on the basis of delivery of those PCI-bound cars which have been in FWWR's possession the most number of days;
- d. imposing or attempting to impose any demurrage charges upon PCI when timely delivery of PCI's cars on a first-in, first-out basis would have resulted in no demurrage charges, and in those

situations where no demurrage charges would accrue but for FWWR's service failures;

- e. imposing or attempting to impose any demurrage charges upon PCI where the subject railroad car has been in FWWR's yard less than four days;
- f. refusing to deliver cars on the basis of alleged unpaid demurrage charges, which are based upon:
 - i. any cars held by FWWR in its yard for less than four days;
 - ii. any cars held by FWWR in its yard for more than four days, but having been in such yard for more than four days as a result of a) FWWR delivering less than a full spot of cars to PCI in the relevant preceding days; b) FWWR's service failures; or c) a combination of (a) and (b); and
- j. reporting to any credit reporting agency or any of PCI's creditors, brokers, or customers any alleged unpaid demurrage charges arising out of PCI's Fort Worth, Texas operation.

PCI further requests that the Court, after hearing the evidence, enter a preliminary injunction on the foregoing bases, or on such bases as modified by the Court, based upon the evidence presented and the Court's discretion as to the fashioning of the appropriate injunctive relief between the parties.

Count IV. Request for Permanent Injunction

~~37. The allegations of the foregoing paragraphs are incorporated herein by reference.~~

38. For the reasons stated in this pleading, PCI requests that, after trial, this Court grant a permanent injunction enjoining FWWR from all the foregoing activities. Plaintiff requests that the Court enjoin FWWR from these activities for a period of ten (10) years from the date of filing of this Petition or such other period found appropriate by the Court.

Count V. Alternative Wrongful Termination of Contract

39. The allegations of the foregoing paragraphs are incorporated herein by reference.

40. In the alternative to its injunctive claims herein, PCI would show that FWWR has wrongfully terminated the Agreement, if the Court finds that the April 20, 2004 correspondence referred to above, or any prior statements or conduct of FWWR proved at trial, has resulted in actual termination of the Agreement. None of the bases for such alleged termination are valid under the law or the facts, and such attempted termination is wrongful in all respects. The July, 2003 demurrage bill is not legitimate, and FWWR representatives expressly recognized its invalidity prior to the filing of this lawsuit. PCI has always recognized its obligation to pay legitimate demurrage bills and has done so in the past. FWWR cannot breach the Agreement by demanding payment of illegitimate demurrage bills and then complain about disclosure of

necessary terms of the Agreement in a lawsuit brought to enforce the very terms of the parties' Agreement.

41. Based upon the foregoing conduct of FWWR, it claims to have terminated the Agreement and, if effective, has wrongfully done so.

42. PCI's remedy at law for FWWR's potential wrongful termination of the Agreement is inadequate, given the fact that PCI will likely have to shut down its Fort Worth operation, and lose valuable customers and business if FWWR's purported termination of the Agreement is found to be effective. Nevertheless, in the alternative to its request for injunctive relief above, and in the event such relief is denied, PCI will seek to show its damages from the closure of its Fort Worth operation, which would likely result from termination of the Agreement, in an amount to be proved at trial, based upon its lost profits from the Fort Worth operation, the costs of closing such operation and the rental amounts which will have to be paid to the Sylvania Industrial Park as a result of such closure.

PRAYER

WHEREFORE, Plaintiff respectfully requests that Defendant FWWR be cited to appear and answer herein, and that upon hearing, Plaintiff PCI have and recover judgment against FWWR for all actual and consequential damages arising from the actions described herein as described above, pre- and post-judgment interest as allowed by Texas law, costs of court, and such other and further relief, both general

and special, at law and in equity, to which Plaintiff may show itself justly entitled. Plaintiff also seeks a preliminary and permanent injunction requiring defendants FWWR to act in accordance with the terms of the Agreement and refrain from the acts described the injunctive relief section, Plaintiff further prays that it be granted such other and further legal and equitable relief to which it shows itself justly entitled.



H. Allen Pennington, Jr.
State Bar No. 15758500

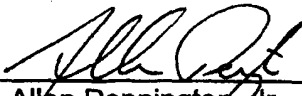
PENNINGTON, HILL & BAKER, LLP
777 Taylor Street, Suite 890
Fort Worth, Texas 76102
Telephone: (817) 332-5055
Facsimile: (817) 332-5054

ATTORNEY FOR PLAINTIFF
PCI TRANSPORTATION, INC.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been forwarded to counsel of record by hand delivery on this the 30th day of June, 2004.

Mr. Richard DeBerry
McDONALD SANDERS
777 Main Street, Suite 1300
Fort Worth, Texas 76102
Via Hand Delivery



H. Allen Pennington, Jr.

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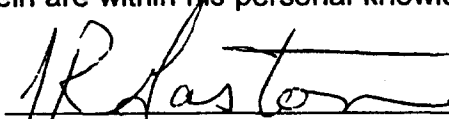
VERIFICATION

STATE OF TEXAS

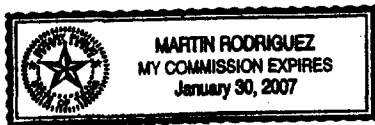
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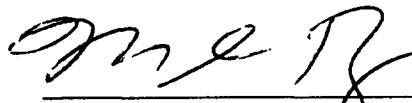
COUNTY OF TARRANT

Before me, the undersigned notary public, on this day personally appeared Randy Gaston, Vice President of PCI Transportation, Inc., known to me to be the person whose name is subscribed to the foregoing instrument and, being by me first duly sworn, and on oath deposed that he has read Plaintiff's Second Amended Complaint, and the facts contained therein are within his personal knowledge and are true and correct.


Randy Gaston

Subscribed and sworn to before me on this the 9th day of July, 2004.




Notary Public - State of Texas

R:\10\PCI\Fed Ct\Second Amended Complaint.doc

FWWK

7/310602

02/26

11:48 NO.685 01/01

FORT WORTH & WESTERN RAILROAD
A Tarantula Corporation Company

CERTIFIED MAIL #7001 1940 0000 7584 7689
Return Receipt Requested

February 3, 2004

Mr. Randy Gaston
PCI Transportation Inc.
3201 N. Sylvania Ave.
Fort Worth, TX 76111

Dear Randy:

The invoice for July 2003 demurrage in the amount of \$2,340.00 has not been paid. Charlie Godsey of our office has discussed this bill with you and has requested payment in full.

If payment in full is not received in our office by February 20, 2004, we will consider you in default of the Confidential Demurrage Contractual Agreement dated August 23, 2001 and demurrage provisions of FWWR Tariff 8001-F will be applied. Also, PCI will be placed on a cash basis and all cars destined to PCI will be held on constructive placement accruing demurrage until all outstanding invoices are paid.

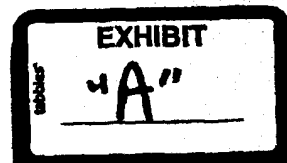
To avoid FWWR taking these actions, please pay all outstanding invoices as outlined above.

Sincerely,

Jim M. Martin
President and COO

6300 Ridglea Place, Suite 1200, Fort Worth, TX 76116-5738
Phone 817-763-8297 Fax 817-738-9657

000003



FORT WORTH & WESTERN RAILROAD
A Tarantula Corporation Company

Via Email

March 2, 2004

Mr. Randy Gaston
PCI Transportation Inc.
3201 N. Sylvania Ave.
Fort Worth, TX 76111

Dear Randy:

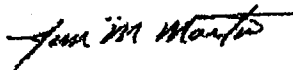
Thank you for meeting with Steve George and myself yesterday concerning the payment of the July 2003 demurrage invoice in the amount of \$2,340.00.

After further review it was determined that the outstanding demurrage due is \$2,130.00 as indicated in the letter you received from Charlie Godsey. The cars you indicated that were runaround were done so on the instructions of PCI. The instructions were verbal, but our managers have confirmed the verbal instructions from PCI personnel. You are aware of the discussions that ensued about the verbal instructions from PCI after receiving this demurrage bill and it was subsequently decided that the oldest cars would be placed first unless we received written instructions from PCI. The demurrage charges in the amount of \$2,130.00 are due and FWWR expects payment in full.

If payment in full is not received in our office by March 8, 2004, we will consider you in default of the Confidential Demurrage Contractual Agreement dated August 23, 2001 and demurrage provisions of FWWR Tariff 8001-F will be applied. Also, PCI will be placed on a cash basis and all cars destined to PCI will be held on constructive placement accruing demurrage until all outstanding invoices are paid.

To avoid FWWR taking these actions, please pay all outstanding invoices as outlined above.

Sincerely,



Jim M. Martin
President and COO

6300 Ridglea Place, Suite 1200, Fort Worth, TX 76116-5738
Phone 817-763-8297 Fax 817-738-9657

000004



-----Original Message-----

From: Randy Gaston [mailto:randy@thepcdgroup.net]

Sent: Tuesday, March 02, 2004 4:32 PM

To: Steve George

Subject: RE: July 2003 Demurrage Bill

Steve,

I beg you to reconsider your stand on this.

The scenario of blaming it on Mario is in direct contradiction of what Jim Martin said. He interrupted me when I said I had heard the reason the cars were gone around request and Jim said, "that doesn't matter unless it was in writing and my people are saying stating Mario denies asking for those cars to be gone around and even if it is not) he wouldn't of done it for 11 days.

Please reconsider,

Randy

-----Original Message-----

From: Steve George [mailto:spg@fwwr.net]

Sent: Tuesday, March 02, 2004 2:27 PM

To: randy@thepcdgroup.net

Subject: July 2003 Demurrage Bill

Randy,

After our meeting yesterday, we have looked into the circumstances of the attached letter explains FWWR's position and payment in the amount of \$ 2004.

Sincerely,

Steve George

3/3/2004

000005



APR-12-2004 11:05 FROM:

8178398233

800 816 8260

P.002/006

FORT WORTH & WESTERN RAILROAD**INVOICE**

P. O. Box 122289
 Fort Worth, TX 76121-2269
 Phone (817)763-8297 • Fax (817)737-8402

Customer Copy

Date 04/06/04
 Invoice No. 1684
 Page No. 1
 Customer Code P1

Bill To:

PCI TRANSPORTATION
 3201 N. SYLVANIA
 FORT WORTH, TEXAS 76111
 USA

Ship To:

PCI TRANSPORTATION
 3201 N. SYLVANIA
 FORT WORTH, TEXAS 76111
 USA

Order #	Order Date	Customer PO	SM	Payment Terms	Ship Date	Freight	Shipped Via		
1684	03/31/04			10TH OF MONTH	04/01/04	COL			
Qty Ordered	Qty Shipped	Qty Backordered	Product Code	Description	UM	Disc%	Unit Price	Extension	
1.000	1.000	.000		DEMURRAGE	EA		4080.00	4080.00	
				DEMURRAGE					
Subtotal								4,080.00	

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Federal Tax ID Number: 75-2267711

EXHIBIT

"D"

Shipping & Handling 0.00

TOTAL 4,080.00

INITIAL	NUMBER	TRACK	COMMODITY	PCON	TIME	PACT	TIME	REL	TIME	DAYS	CREDIT	AMOUNT DUE
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BN	376443	A	BOARDS,SAWDUST	2/28/2004	7:05	3/1/2004	21:20	3/2/2004	10:20	3	3	0
WLO	504544	A	LUMBER	2/29/2004	7:05	3/1/2004	21:20	3/2/2004	16:40	3	2	30
BCIT	841698	A	LUMBER	3/2/2004	8:00	3/4/2004	18:00	3/8/2004	16:05	6	2	120
BN	250346	A	SHINGLES ASPHLT	3/2/2004	8:00	3/4/2004	18:00	3/8/2004	16:05	6	2	120
BN	249690	A	SHINGLES ASPHLT	3/2/2004	8:00	3/2/2004	20:20	3/5/2004	14:55	3	2	30
BN	249180	A	SHINGLES ASPHLT	3/2/2004	8:00	3/2/2004	20:20	3/4/2004	16:00	2	2	0
BN	249762	A	SHINGLES ASPHLT	3/2/2004	8:00	3/2/2004	20:20	3/4/2004	16:00	2	2	0
BN	249120	A	SHINGLES ASPHLT	3/2/2004	8:00	3/2/2004	20:20	3/3/2004	16:40	1	2	0
BN	250284	A	SHINGLES ASPHLT	3/2/2004	8:00	3/4/2004	18:00	3/5/2004	14:55	3	2	30
ABOX	52080	B	SHINGLES ASPHLT	3/2/2004	8:00	3/2/2004	20:20	3/5/2004	14:55	3	2	30
ABOX	52419	B	SHINGLES ASPHLT	3/2/2004	8:00	3/2/2004	20:20	3/5/2004	14:55	3	2	30
RBOX	1034	B	SHINGLES ASPHLT	3/2/2004	8:00	3/2/2004	20:20	3/5/2004	14:55	3	2	30
ABOX	51216	B	SHINGLES ASPHLT	3/2/2004	8:00	3/2/2004	20:20	3/4/2004	16:00	2	2	0
UP	354475	A	SHT JOBS GLV/LM	3/4/2004	7:30	3/5/2004	20:00	3/8/2004	16:05	4	3	30
BN	249380	A	SHINGLES ASPHLT	3/5/2004	7:18	3/5/2004	20:00	3/8/2004	16:30	4	3	30
BNSF	725081	A	SHINGLES ASPHLT	3/5/2004	7:18	3/5/2004	20:00	3/8/2004	16:05	3	3	0
TBOX	670065	A	SHT JOBS GLV/LM	3/6/2004	12:00	3/8/2004	18:25	3/11/2004	15:20	5	3	60
CNW	155945	A	FENCE PICKETS	3/6/2004	12:00	3/8/2004	18:25	3/10/2004	18:55	4	3	30
BNSF	781165	A	BOARDS,SAWDUST	3/6/2004	7:05	3/8/2004	18:25	3/9/2004	16:30	3	3	0
BN	249625	A	SHINGLES ASPHLT	3/7/2004	7:05	3/11/2004	23:40	3/12/2004	17:00	5	2	90
BN	249094	A	SHINGLES ASPHLT	3/7/2004	7:05	3/10/2004	21:00	3/11/2004	15:20	4	2	60
BN	248911	A	SHINGLES ASPHLT	3/7/2004	7:05	3/10/2004	21:00	3/11/2004	15:20	4	2	60
BN	250407	A	SHINGLES ASPHLT	3/7/2004	7:05	3/9/2004	20:50	3/10/2004	16:55	3	2	30
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BN	250276	A	SHINGLES ASPHLT	3/7/2004	7:05	3/8/2004	18:25	3/9/2004	16:30	2	2	0
BN	249570	A	SHINGLES ASPHLT	3/7/2004	7:05	3/8/2004	18:25	3/9/2004	16:30	2	2	0
ABOX	51219	B	SHINGLES ASPHLT	3/7/2004	7:05	3/10/2004	20:50	3/10/2004	16:55	3	2	30
NS	165175	E	STEEL	3/7/2004	7:05	3/10/2004	20:50	3/11/2004	15:20	4	2	60
CN	137471	E	BARS,JOBS,NEC	3/8/2004	8:00	3/11/2004	23:40	3/12/2004	17:00	4	2	60
KCS	125681	A	PLYWOOD	3/8/2004	7:20	3/11/2004	23:40	3/12/2004	17:00	3	2	30
IHB	419	G	BARS,JOBS,NEC	3/9/2004	8:00	3/11/2004	23:40	3/12/2004	17:00	3	2	30
RBOX	31545	B	PLYWOOD	3/10/2004	8:00	3/11/2004	23:40	3/12/2004	16:15	6	2	90
CNW	716289	A	LUMBER	3/11/2004	8:00	3/12/2004	20:50	3/17/2004	16:15	6	3	90
WLO	505074	A	LUMBER	3/11/2004	8:00	3/12/2004	20:50	3/17/2004	16:15	6	3	90

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CSS	1723	E	SHEET,ORS,NEC	3/12/2004	20:51	3/12/2004	20:51	3/15/2004	16:15	3	3	0
BN	761179	A	BOARDS,SAWDUST	3/13/2004	7:05	3/15/2004	20:30	3/16/2004	16:00	3	3	0
BN	249883	A	SHINGLES ASPHLT	3/14/2004	8:05	3/15/2004	20:30	3/16/2004	16:00	2	2	0
ABOX	52430	B	SHINGLES ASPHLT	3/15/2004	8:00	3/16/2004	18:35	3/16/2004	16:15	3	2	30
BN	250041	A	SHINGLES ASPHLT	3/15/2004	8:00	3/17/2004	19:55	3/18/2004	16:15	3	2	30
BN	250053	A	SHINGLES ASPHLT	3/15/2004	8:00	3/17/2004	19:55	3/18/2004	16:15	3	2	30
BN	250469	A	SHINGLES ASPHLT	3/15/2004	13:01	3/15/2004	20:30	3/16/2004	16:00	1	2	0
WP	38500	A	PLYWOOD	3/15/2004	13:01	3/15/2004	20:30	3/16/2004	16:15	3	2	30
RBOX	40853	B	LUMBER	3/15/2004	8:00	3/16/2004	18:35	3/17/2004	16:15	2	2	0
ABOX	52188	B	SHINGLES ASPHLT	3/17/2004	8:00	3/19/2004	18:10	3/22/2004	14:40	5	5	0
GVSR	763153	A	PLYWOOD	3/17/2004	8:00	3/19/2004	18:10	3/22/2004	14:40	5	5	0
UP	354722	A	SHINGLES ASPHLT	3/17/2004	8:00	3/18/2004	18:40	3/19/2004	15:00	2	2	0
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BN	249841	A	SHINGLES ASPHLT	3/17/2004	8:00	3/18/2004	18:40	3/19/2004	15:00	2	2	0
BN	250057	A	SHINGLES ASPHLT	3/17/2004	8:00	3/18/2004	18:40	3/19/2004	15:00	2	2	0
BN	250411	A	SHINGLES ASPHLT	3/17/2004	8:00	3/18/2004	18:40	3/19/2004	15:00	2	2	0
BN	250446	A	SHINGLES ASPHLT	3/17/2004	8:00	3/17/2004	19:55	3/19/2004	15:00	2	2	0
RBOX	38591	B	FENCE PICKETS	3/18/2004	9:00	3/19/2004	18:10	3/22/2004	14:40	4	3	30
BN	250327	A	SHINGLES ASPHLT	3/18/2004	8:45	3/19/2004	18:10	3/22/2004	14:40	4	3	30
CSS	1738	E	SHEET,ORS,NEC	3/21/2004	11:16	3/22/2004	19:30	3/23/2004	15:30	2	2	0
TBOX	860517	B	PLYWOOD	3/22/2004	8:00	3/22/2004	19:30	3/23/2004	15:30	1	2	0
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BN	249037	A	SHINGLES ASPHLT	3/24/2004	19:05	3/24/2004	19:05	3/25/2004	10:55	1	2	0
BN	249596	A	SHINGLES ASPHLT	3/24/2004	19:05	3/24/2004	19:05	3/25/2004	10:55	1	2	0
BN	250424	A	SHINGLES ASPHLT	3/24/2004	19:05	3/24/2004	19:05	3/25/2004	10:55	1	2	0
BN	249020	A	SHINGLES ASPHLT	3/28/2004	18:40	3/28/2004	18:40	3/29/2004	16:10	3	3	0
BN	249815	A	SHINGLES ASPHLT	3/28/2004	18:40	3/28/2004	18:40	3/29/2004	16:10	3	3	0
BN	725833	A	SHINGLES ASPHLT	3/28/2004	18:40	3/28/2004	18:40	3/29/2004	16:10	3	3	0
BN	245853	A	LUMBER	3/27/2004	20:30	3/27/2004	22:35	3/31/2004	15:15	4	3	30
BCOL	60321	A	LUMBER	3/28/2004	14:00	3/28/2004	17:20	3/31/2004	15:15	3	2	30
NS	405006	A	ORINTD STRND BD	3/29/2004	8:00	3/29/2004	9:10	3/29/2004	16:10	1	2	0
BN	250165	A	SHINGLES ASPHLT	3/29/2004	17:20	3/29/2004	17:20	3/30/2004	14:50	1	2	0
BN	250303	A	SHINGLES ASPHLT	3/29/2004	17:20	3/29/2004	17:20	3/30/2004	14:50	1	2	0
RBOX	40573	B	SHINGLES ASPHLT	3/29/2004	17:20	3/29/2004	17:20	3/31/2004	15:15	2	2	0
ABOX	50470	B	SHINGLES ASPHLT	3/29/2004	17:20	3/29/2004	17:20	3/30/2004	14:50	1	2	0
BN	249150	A	SHINGLES ASPHLT	3/30/2004	8:00	3/30/2004	22:15	3/31/2004	15:15	1	2	0

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\$1,590.00

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INITIAL	NUMBER	B TRACK	COMMODITY	PCON	TIME	PACT	TIME	REL	TIME	DAYS	CREDIT	AMOUNT DUE
TTZX	85410	F	LUMBER	2/24/2004	8:00	2/27/2004	18:25	3/1/2004	15:10	6	2	120
BCOL	730074	F	LUMBER	2/24/2004	8:20	3/1/2004	20:20	3/2/2004	10:20	5	3	60
CLC	10003	F	LUMBER	2/26/2004	8:20	3/1/2004	20:20	3/2/2004	10:20	5	3	60
BCOL	730377	F	LUMBER	2/28/2004	8:20	2/27/2004	18:25	3/1/2004	15:10	4	8	30
CRLE	20505	F	LUMBER	2/28/2004	8:20	2/27/2004	18:25	3/1/2004	15:10	4	3	30
SRV	286168	F	LUMBER	2/28/2004	7:18	2/27/2004	18:25	3/1/2004	16:10	4	3	30
CN	624182	F	LUMBER	2/27/2004	7:30	3/2/2004	20:15	3/4/2004	16:00	6	3	90
TTZX	863891	F	LUMBER	2/27/2004	7:30	3/2/2004	20:15	3/3/2004	16:40	5	3	60
CLC	9972	F	LUMBER	2/27/2004	7:30	3/1/2004	20:20	3/2/2004	10:20	4	3	30
CRLE	20299	F	LUMBER	2/27/2004	7:30	3/1/2004	20:20	3/2/2004	10:20	4	3	30
TTZX	863289	F	LUMBER	2/28/2004	7:05	3/2/2004	20:16	3/3/2004	16:40	4	3	30
ATW	50036	F	LUMBER	2/28/2004	11:05	3/3/2004	19:20	3/4/2004	16:00	4	2	60
TTZX	862249	F	LUMBER	2/28/2004	7:05	3/2/2004	20:16	3/3/2004	16:40	3	2	30
CLC	9857	F	LUMBER	3/1/2004	7:30	3/4/2004	18:00	3/5/2004	16:05	7	2	150
CLC	9902	F	LUMBER	3/1/2004	7:30	3/4/2004	18:00	3/5/2004	16:05	7	2	150
TTZX	862841	F	LUMBER	3/1/2004	7:30	3/3/2004	18:20	3/4/2004	14:55	4	2	60
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BNSF	564008	F	LUMBER	3/1/2004	8:31	3/3/2004	19:20	3/4/2004	16:00	3	2	30
NOKL	730847	F	LUMBER	3/2/2004	19:00	3/5/2004	20:00	3/6/2004	16:30	7	2	150
BNSF	562165	F	LUMBER	3/2/2004	8:00	3/4/2004	18:00	3/5/2004	14:55	3	2	30
TTZX	863232	F	LUMBER	3/3/2004	7:17	3/6/2004	18:15	3/6/2004	16:30	6	2	120
NOKL	732870	F	LUMBER	3/3/2004	7:17	3/5/2004	20:00	3/6/2004	16:05	6	2	90
CRLE	20510	F	LUMBER	3/4/2004	7:30	3/6/2004	18:15	3/6/2004	16:30	5	3	60
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HLSC	2253	F	LUMBER	3/6/2004	12:00	3/6/2004	20:45	3/12/2004	17:00	6	3	90
CHTT	273226	F	LUMBER	3/6/2004	12:00	3/6/2004	20:45	3/11/2004	16:20	5	3	90
TTZX	861282	F	LUMBER	3/6/2004	8:00	3/6/2004	20:45	3/12/2004	17:00	6	2	60
TTZX	864159	F	LUMBER	3/6/2004	7:20	3/11/2004	23:40	3/15/2004	16:15	6	2	120
CHTT	273285	F	LUMBER	3/10/2004	8:00	3/11/2004	23:40	3/15/2004	16:15	5	2	90
BNSF	545819	F	LUMBER	3/11/2004	7:21	3/12/2004	20:55	3/15/2004	16:15	4	3	30
CLC	9846	F	LUMBER	3/12/2004	8:00	3/15/2004	18:45	3/17/2004	16:15	5	3	60
CLC	9898	F	LUMBER	3/12/2004	8:00	3/15/2004	18:45	3/18/2004	16:00	4	3	30
SSAM	38780	F	LUMBER	3/12/2004	8:00	3/15/2004	18:45	3/18/2004	16:00	4	3	30
CLC	9917	F	LUMBER	3/12/2004	20:55	3/12/2004	20:55	3/15/2004	16:15	3	3	0
CLC	9853	F	LUMBER	3/13/2004	7:05	3/15/2004	20:30	3/18/2004	16:00	3	3	0

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CLC	9705	F	LUMBER	3/14/2004	11:00	3/16/2004	18:30	3/19/2004	15:00	5	2	90
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CK	624346	F	LUMBER	3/18/2004	9:00	3/19/2004	18:15	3/22/2004	14:40	4	3	30
GTW	623580	F	LUMBER	3/18/2004	9:00	3/19/2004	18:15	3/22/2004	14:40	4	3	30
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SRY	286089	F	LUMBER	3/19/2004	8:30	3/22/2004	18:30	3/23/2004	15:30	4	3	30
TTZX	84594	F	LUMBER	3/23/2004	8:30	3/23/2004	18:15	3/23/2004	18:30	4	3	30
BNSF	545808	F	BOARDS, SAWDUST	3/23/2004	23:30	3/23/2004	20:10	3/24/2004	11:40	1	2	0
TTZX	861800	F	LUMBER	3/25/2004	23:30	3/25/2004	23:30	3/25/2004	14:56	1	2	0
BCOL	730100	F	LUMBER	3/26/2004	18:30	3/26/2004	18:30	3/30/2004	14:50	4	3	30
TTZX	864594	F	LUMBER	3/27/2004	20:00	3/27/2004	22:30	3/30/2004	14:50	3	3	0

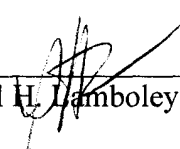
204 125 \$2,460.00

TOTAL AMOUNT DUE \$4,060.00

000010

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served on Counsel of Record identified below via first class U.S. mail, postage prepaid, this 9th day of September, 2005:

H. Allen Pennington
Pennington Hill & Baker, LLP
The Fort Worth Club Tower
777 Taylor Street, Suite 890
Fort Worth, TX 76102
Tel. 817.332.5055
Fax 817.332.5054
E-mail: apennington@phblaw.com



Paul H. Jamboley