

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34865

ARKANSAS MIDLAND RAILROAD COMPANY, INC.
--PETITION FOR DECLARATORY ORDER--
CADDO VALLEY RAILROAD COMPANY

RESPONSE TO PETITION FOR DECLARATORY ORDER AND MOTION TO
DISMISS

Pursuant to 49 C.F.R. § 1104.13(a), this Response is filed on behalf of Bean Lumber Company and Curt Bean Lumber Company (collectively referred to hereinafter as “the Bean Companies”). As the Board’s records reflect, the Bean Companies have been involved in the struggle to maintain rail service on the Norman Branch since shortly after the Arkansas Midland Railroad Company, Inc. (“AMR”) acquired that line from the Union Pacific Railroad in the early 1990’s. After AMR embargoed rail service in December 1993 and thereafter refused to provide rail service to them, the Bean Companies took an active role in forcing the sale of the line to the Caddo Valley Railroad (“CVR”) pursuant to the statutory Feeder Rail Development Program codified at 49 U.S.C. §10907.

AMR’s claim that the CVR is a “structural artifice” that was set up to subvert the feeder statute is baseless. CVR was set up as a separate company for legitimate business reasons. In the first place, the Bean Companies are engaged in the lumber business and had no reason to be involved in the operations of a railroad. Second, no rational reason existed for potentially subjecting the Bean Companies to any potential financial risk or liability that might be occasioned by some action taken by the railroad. In short, there

were sound business reasons that prompted the Shippers to establish a separate corporate entity to own and operate the railroad. Third, it was then believed that ownership of a separate railroad corporation would best protect them from the harm that they had suffered as a result of AMR's unlawful refusal to provide rail service upon reasonable request.

Although the process took far longer than it should have, the feeder process eventually worked and reliable rail service was restored. Unfortunately, the delay in finalizing the acquisition of the line greatly increased the problems facing CVR as it struggled to overcome the effects of AMR's neglect, as compounded by the uncertainties of the prolonged litigation under the feeder statute. Although the Bean Companies have provided financial assistance to CVR over the past few years, they have reached the conclusion that preservation of rail service over the Norman Branch would best be served by having the current shareholders sell their CVR stock to an investor who has the expertise and willingness to operate the railroad.

The Bean Companies are aware of the statutory wording of section 10907(h). Because of the significant financial losses they suffered as a result of AMR's unlawful refusal to provide service when it owned the line, the Bean Companies have concluded that any agreement involving the line must involve the sale of the corporate stock of CVR and not merely the disposal of its assets. Those assets include, but are not limited to, the line of railroad that was acquired by CVR in 2000 when **AMR itself conveyed ownership of the line to CVR by quitclaim deed.** That approach is consistent with the spirit and intent of the Feeder Development Program which is designed and intended to

protect shippers, and not the railroads that refused to honor their common-carrier obligations.

Because time is of the essence, the Board is urged to summarily reject the petition for declaratory relief. Simply stated, nothing warrants any type of formal Board proceeding at this time. Because the statutory language of section 10907(h) is crystal clear, there is no reason for the Board to issue a declaratory order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. H. Streeter", written in a cursive style.

Richard H. Streeter
Barnes & Thornburg LLP
Attorneys for Bean Lumber Company
and Curt Bean Lumber Company

Dated: April 18, 2006

CERTIFICATE OF SERVICE

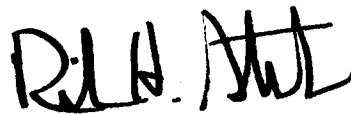
I hereby certify that on this 18th day of April 18, 2006, a true copy of the foregoing was served by overnight delivery and by e-mail upon the following:

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