

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35147

**NORFOLK SOUTHERN RAILWAY COMPANY, PAN AM RAILWAYS, INC., ET AL.
JOINT CONTROL AND OPERATING/POOLING AGREEMENTS PAN AM
SOUTHERN LLC**

**NOTICE OF INTENT TO PARTICIPATE -
U.S. CLAY PRODUCERS TRAFFIC ASSOCIATION, INC.**

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Dated July 10, 2008

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U.S. CLAY PRODUCERS TRAFFIC ASSOCIATION, INC.**

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Please enter the appearance of Vincent P. Szcligo, Esquire, counsel for the U.S. Clay Producers Traffic Association ("Clay Producers"), and note the intent of Clay Producers to participate in this proceeding, and related sub-proceeding, as a party of record. We request that the name of the undersigned be included on the official service list for the receipt of all pleadings and decisions in this proceeding.

While generally, the transaction appears to promise improved efficiencies in rail operations, the Clay Producers, who typically ship into this territory in privately owned tank cars and expect payment of compensation for the railroads' use of private tank cars. The history of private tank car compensation in the involved territory has caused Clay Producers to have great concerns as to whether the joint operations may cause ambiguity as to which party to the joint arrangement is responsible for payment of tank car compensation as required by the ICCTA and *Ex Parte No. 328, Tank Car Allowance System*, 31 C.C. 2d 196 (1986).

Clay Producers rely on the receipt of tank car compensation and are concerned that the multiple rail carriers to be involved may singularly deny having the statutory obligation to pay mileage compensation, as has been experienced by Clay Producers in the past. In other words, each of the several carriers may deny having the obligation while not disputing that a private tank car owner has a right to receive compensation from some other carrier involved in the transportation arrangement. *See, Engelhard Corp. v. Springfield Terminal Ry. and Consolidated Rail Corp.* 193 F. Supp. 2d 395 (D. Mass. 2002), *Engelhard Corporation - Petition for*

Declaratory Order, S I B Docket No 42075 (Decision Served September 24, 2004) and *Springfield Terminal Railway Company v United States Surface Transportation Board*, 04-cv-12705-RGS (U.S D C. Mass, Mem Order 2/2/2007)

Clay Produces fear that as the transportation arrangement between rail carriers become more complex, the opportunity for one carrier to avoid its statutory obligation to pay car compensation increases. However, Clay Producers believe that the involved carriers can satisfy these concerns through stipulation to conditions involving joint and several liability for payment of car compensation.

Respectfully submitted.

/s/Vincent P Szeligo

Vincent P Szeligo, Esq.

Dated July 10, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of July 2008, copies of this Notice to Participate are being served by first class mail upon the parties appearing on the Board current service list, as required by this Board's Order served June 26, 2008 and as posted on the Board's website this date

/s/ Vincent P Szeligo

Vincent P Szeligo