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THOMAS F. MCFARLAND

July 15, 2008

By e-filing

Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

Re: Docket No. 42107, *Railroad Salvage & Restoration, Inc. and G.F. Wiedeman International, Inc.* -- *Petition For Investigation And for Emergency Relief Under 49 U.S.C. 721(b)(4) -- Security Deposit For Demurrage Charges, Missouri & Northern Arkansas Railroad Company, Inc*

Dear Ms. Quinlan:

Enclosed please find a Reply In Opposition To Motion To Dismiss for filing with the Board in the above referenced matter.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Railroad Salvage
& Restoration, Inc. and
G.F. Wiedeman International, Inc.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

RAILROAD SALVAGE & RESTORATION,)	
INC. AND G.F. WIEDEMAN)	
INTERNATIONAL, INC. -- PETITION FOR)	
INVESTIGATION AND FOR)	
EMERGENCY RELIEF UNDER 49 U.S.C.)	DOCKET NO. 42107
§ 721(b)(4) -- SECURITY DEPOSIT FOR)	
DEMURRAGE CHARGES, MISSOURI &)	
NORTHERN ARKANSAS RAILROAD)	
COMPANY, INC)	

REPLY IN OPPOSITION TO
MOTION TO DISMISS

RAILROAD SALVAGE
& RESTORATION, INC.
1710 Joplin Street
Joplin, MO 64804

G.F. WIEDEMAN INTERNATIONAL, INC.
1710 Joplin Street
Joplin, MO 64804

Replicants

THOMAS F. McFARLAND
THOMAS F. MCFARLAND, P.C.
208 S. LaSalle St., #1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Replicants

DUE DATE. July 28, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

RAILROAD SALVAGE & RESTORATION,	)	
INC. AND G.F. WIEDEMAN	)	
INTERNATIONAL, INC. -- PETITION FOR	)	
INVESTIGATION AND FOR	)	
EMERGENCY RELIEF UNDER 49 U.S.C.	)	DOCKET NO. 42107
§ 721(b)(4) -- SECURITY DEPOSIT FOR	)	
DEMURRAGE CHARGES, MISSOURI &	)	
NORTHERN ARKANSAS RAILROAD	)	
COMPANY, INC.	)	

**REPLY IN OPPOSITION TO
MOTION TO DISMISS**

Pursuant to 49 C.F.R. § 1104.13(a), RAILROAD SALVAGE & RESTORATION, INC. (RSR) and G.F. WIEDEMAN INTERNATIONAL, INC. (GFW) hereby reply in opposition to a Motion to Dismiss (Motion) filed by MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC. (MNA) on July 8, 2008.

The Motion seeks dismissal of a Petition for Investigation and for Emergency Relief under 49 U.S.C. § 721(b)(4), filed by RSR and GFW on June 18, 2008.^{1/} In response to that Petition, the Board instituted an investigation and enjoined application of the involved tariff items to RSR and GFW until further order of the Board. See Decision served June 30, 2008. Inasmuch as the Petition was granted by virtue of institution of an investigation and issuance of an injunction, the Motion is in essence a request that the Board terminate the investigation as

^{1/} Incompletely referred to on page 3 of the Motion as a Petition for Investigation.

moot.^{2/} As set out below, the Motion should be denied because the revised tariff item issued by MNA by no means moots the Board's investigation.

MNA's Motion is predicated on the argument that the investigation is rendered moot because Revised Item 1010, which limits security deposits to \$25,000, "resolves" the issue of undue financial hardship that assertedly caused the Board to enjoin MNA's security deposit provisions in the Decision served June 30, 2008. That contention is unsound.^{3/}

That contention unjustifiably ignores the essential distinction between the Board's authority over the timing of tariff matter under 49 U.S.C. § 721(b)(4) and its authority over the ultimate lawfulness of tariff matter following full investigation. That distinction is explained in some detail at pages 6-8 of a Petition for Investigation and for Emergency Relief under 49 U.S.C. § 721(b)(94) directed at Revised Item 1010, filed by RSR and GFW on July 15, 2008. A copy of that Petition is attached to this Reply as Appendix 1.

The upshot of that distinction, as applied to the case at hand, is that MNA cannot lawfully abort the Board's investigation into the ultimate lawfulness of its tariff provisions regarding security deposits by publishing tariff matter that purports to resolve an issue that caused the

^{2/} The June 30 decision is moot insofar as it enjoined Item 1010 of RA Tariff 1000 because Revised Item 1010 replaced Item 1010.

^{3/} It is not at all clear that Revised Item 1010 resolves the issue of undue financial hardship. MNA alleges that a security deposit of \$50,000 per company "has been found reasonable" in *Rail General Exemption Authority -- Miscellaneous Agricultural Commodities -- Petition of G&T Terminal Packaging Co., Inc., et al to Revoke Conrail Exemption*, Ex Parte No. 346 (Sub-No. 14A), decision served June 13, 1989, at 4. (Motion at 4 and n. 2). However, the security deposit in that case was in the form of a letter of credit. That is not nearly as disruptive of a small company's financial liquidity as a requirement of a substantial cash deposit. *See infra*, at 4.

Board to enjoin the timing of such tariff provisions.^{4/} Other issues of lawfulness of the security deposit provisions remain to be addressed in the investigation, such as whether it is an unreasonable practice for MNA to require a substantial security deposit in cash in lieu of reasonable alternatives, such as a performance bond or letter of credit. Moreover, undue financial hardship was not the sole ground on which the Board enjoined the timing of the security deposit provisions. In the June 30 Decision, the Board also expressed concern that the requirement of a substantial security deposit in cash would unfairly coerce payment of disputed demurrage charges, including charges being litigated in pending Board proceedings, viz., at 4:

... MNA's demand for immediate payment of the full amount at issue in those proceedings as a precondition for continued rail service is an inappropriate self-help measure for a matter that is before the Board and will be resolved in due course ...

The limitation on the maximum amount of security deposit effected by Revised Item 1010 does not eliminate that legitimate concern.

It is thus shown that Revised Item 1010 by no means moots the Board's investigation into the lawfulness of MNA's security deposit provisions. As set out in the foregoing, MNA is flat-out wrong in the contending that there is no case or controversy remaining over the lawfulness of those provisions.

^{4/} RSR and GFW do not concede that Revised Item 1010 resolves the issue of undue financial hardship of MNA's security deposit provisions. (See note 3, *supra*).

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, MNA's Motion to Dismiss (i.e., Motion to Terminate the Investigation) should be denied.

Respectfully submitted,

RAILROAD SALVAGE
& RESTORATION, INC.
1710 Joplin Street
Joplin, MO 64804

G.F. WIEDEMAN INTERNATIONAL, INC
1710 Joplin Street
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Replicants

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(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Replicants

DUE DATE: July 28, 2008

APPENDIX 1

BEFORE THE
SURFACE TRANSPORTATION BOARD

RAILROAD SALVAGE & RESTORATION,)	
INC. AND G.F. WIEDEMAN)	
INTERNATIONAL, INC. -- PETITION FOR)	
INVESTIGATION AND FOR)	
EMERGENCY RELIEF UNDER 49 U.S.C.)	DOCKET NO. 42109
§ 721(b)(4) -- SECURITY DEPOSIT FOR)	
DEMURRAGE CHARGES, MISSOURI &)	
NORTHERN ARKANSAS RAILROAD)	
COMPANY, INC. (REVISED ITEM 1010))	

**PETITION FOR INVESTIGATION AND FOR
EMERGENCY RELIEF UNDER 49 U.S.C. § 721(b)(4)***

RAILROAD SALVAGE
& RESTORATION, INC.
1710 Joplin Street
Joplin, MO 64804

G.F. WIEDEMAN INTERNATIONAL, INC.
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Petitioners

THOMAS F. McFARLAND
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208 S. LaSalle St., #1890
Chicago, IL 60604-1112
(312) 236-0204
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Attorney for Petitioners

DATE FILED: July 15, 2008

* ACTION PRIOR TO JULY 28, 2008 IS RESPECTFULLY REQUESTED ON THE
PETITION FOR EMERGENCY RELIEF BECAUSE THAT IS THE PROPOSED
IMPLEMENTATION DATE OF REVISED ITEM 1010

BEFORE THE
SURFACE TRANSPORTATION BOARD

RAILROAD SALVAGE & RESTORATION,	)	
INC. AND G.F. WIEDEMAN	)	
INTERNATIONAL, INC. -- PETITION FOR	)	
INVESTIGATION AND FOR	)	
EMERGENCY RELIEF UNDER 49 U.S.C.	)	DOCKET NO. 42109
§ 721(b)(4) -- SECURITY DEPOSIT FOR	)	
DEMURRAGE CHARGES, MISSOURI &	)	
NORTHERN ARKANSAS RAILROAD	)	
COMPANY, INC. (REVISED ITEM 1010)	)	

**PETITION FOR INVESTIGATION AND FOR
EMERGENCY RELIEF UNDER 49 U.S.C. § 721(b)(4)**

Pursuant to 49 USC § 721(b)(4) and 49 C.F.R. § 1117.1, RAILROAD SALVAGE & RESTORATION, INC. (RSR) and G.F. WIEDEMAN INTERNATIONAL, INC. (GFW), referred to collectively as Petitioners, hereby petition for:

- (1) inclusion, in the pending investigation into the lawfulness of security deposit tariff provisions of MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC. (MNA), of Revised Item 1010 on Revised Page 3, Section II, of Rail America General Tariff RA 1000; and
- (2) an emergency order enjoining MNA from applying that revised tariff provision to Petitioners pending completion of that investigation.

**STANDARDS GOVERNING INVESTIGATION AND
EMERGENCY RELIEF UNDER 49 U.S.C. § 721(b)(4)**

Relief under 49 U.S.C. § 721 (b)(4) is governed by the judicial standards for determining requests for injunctive relief, i.e.:

- (1) substantial likelihood of success on the merits;
- (2) irreparable harm in the absence of relief;
- (3) no substantial harm to other parties; and
- (4) grant of relief in the public interest.

See DeBruce Grain, Inc. v. Union Pacific R.R., 2 S.T.B. 773, 775, n. 4 (1997).

ARGUMENT

MNA's revised tariff provision imposing a security deposit for payment of demurrage charges should be included in the pending Board investigation of whether MNA's security deposit tariff provisions constitute an unreasonable practice in violation of 49 U.S.C. § 10702(2). In addition, the Board should enjoin application of that revised tariff item to Petitioners pending completion of that investigation because the standards for granting relief under 49 U.S.C. § 721(b)(4) are shown to be satisfied.^{1/}

1. There Is A Substantial Likelihood That Petitioners Will Prevail On The Merits

If this Petition looks like "deja vu," it is because only a few days ago the Board began an investigation into the lawfulness of MNA's tariff provisions on security deposits for collection of demurrage charges, and enjoined application of those provisions to Petitioners until further order

^{1/} In the meantime, court-referred proceedings on the reasonableness of MNA's collection of demurrage charges are progressing in STB Docket No. 42102, *Railroad Salvage & Restoration, Inc. -- Pet. for Declar. Order -- Reasonableness of Demurrage Charges*, and STB Docket No. 42103, *G.F. Wiedeman International, Inc. -- Pet. for Declar. Order -- Reasonableness of Demurrage Charges* (consolidated). Petitioners' Opening Statement in those proceedings was filed on July 7, 2008. Petitioners contend that collection of demurrage charges would be an unreasonable practice in violation of 49 U.S.C. § 10702(2) to the extent that they exceed \$69,000 for RSR and \$3,345 for GFW. Petitioners have contractual and tariff applicability defenses to those amounts of demurrage charges that will be raised in court following the Board's resolution of referred issues.

of the Board. See Docket No. 42107, *Railroad Salvage & Restoration, Inc., et al -- Petition for Investigation and for Emergency Relief under 49 U.S.C. 721(B)(4) -- Security Deposit for Demurrage Charges, Missouri & Northern Arkansas Railroad Company, Inc.*, decision served June 30, 2008. (*June 30 Decision*).

Petitioners have a substantial likelihood of prevailing on the merits because Revised Item 1010, which imposes a revised provision for a security deposit for collection of demurrage charges, unlawfully impinges on the Board's process of investigating the reasonableness of MNA's practices in relation to imposition of such security deposits. Once the Board begins an investigation into the reasonableness of a rail carrier's tariff provisions, the rail carrier cannot, without leave of the Board, lawfully establish revised tariff provisions on the same subject matter prior to completion of the investigation. That is what MNA has done in the manner at hand.

Attached to this Petition as Appendix 1 is a copy of a revised tariff page on which Item 1000, Item 1010, and the beginning of Item 1020 appear. That tariff page was sent by Ms. Anita Horton of MNA by e-mail on July 7, 2008 to "undisclosed recipients," with the following message:

The 2 attachments contain revisions to our New Extended Asset tariff. Section II has a revised Page 3 and Section III has a revised Page 14. These changes are effective immediately and an electronic version of the complete tariff will be available on our web site shortly by going to www.railamerica.com, select rail maps, select MNA icon.

Petitioners received that message and the revised tariff item, but concluded initially that the tariff provision was not intended to apply to them because the Board had enjoined application of MNA's security deposit provisions to Petitioners "until further order of the Board." (*June 30 Decision* at 5).

However, several days later, Mr. G.W. Jackson of RSR and Mr. Ryan Jackson of GFW received identical letters from Mr. James M. Tilley of Rail America Operations Support Group, Inc., dated July 7, 2008, advising that if large amounts of contested demurrage charges plus interest were not paid to MNA by July 22, 2008, the revised security deposit tariff provision would be applied to them. The revised tariff provision requires a security deposit of the lesser of the amount of existing past due demurrage charges or \$25,000. Attached to this Petition as Appendices 2-A and 2-B are copies of Mr. Tilley's letters of July 7, 2008 to Mr. G.W. Jackson and to Mr. Ryan Jackson, respectively.

As is readily apparent from the foregoing, Rail America (RA) and MNA were making up tariff rules "on the fly." The revised tariff page (Appendix 1 hereto) is not numbered. It would not be identifiable as Revised Page 3 of Section II except for the accompanying e-mail message by Ms. Horton of MNA. Moreover, the revised tariff page has no issue date and no effective date. That surely is a material tariff defect.

According to Ms. Horton's message, Revised Tariff Item 1010 was to be effective immediately. Mr. Tilley's letters purported to give Petitioners 15 days from the date of those letters to take action to avoid the effect of the tariff item. Neither of those time frames complies with the requirement of at least 20 days' notice for a tariff item that changes a rail carrier's common carrier service terms. *See* 49 U.S.C. § 11101(c).

The next development was a letter from counsel for RA-MNA to counsel for Petitioners, dated July 9, 2008, copy attached hereto as Appendix 3. MNA appears to have belatedly recognized the notice requirement of 49 U.S.C. § 11101(c) because that letter purports to give Petitioners 21 days from issuance of the revised tariff item (i.e., until July 28, 2008) to act to

avoid the effect of that provision. That letter also provides MNA's theory of the case, namely, that Revised Item 1010 "complies" with the Board's June 30 decision because an offer of settlement made by Petitioners that was in excess of the security deposit limit as revised, shows that the revised security deposit provision would not place an undue financial burden on Petitioners

At the same time, MNA filed a motion to dismiss the Petition for Investigation and Emergency Relief that Petitioners filed in Docket No. 42107 on June 18, 2008. *See* MNA Motion to Dismiss in STB Docket No. 42107, filed on July 8, 2008. Inasmuch as a Board investigation proceeding had already begun in response to that Petition, MNA's Motion essentially seeks discontinuance of that investigation proceeding on the apparent ground that Revised Item 1010 satisfies all issues involved in that investigation. The practical effect of that Motion is to seek leave from the Board to implement Revised Item 1010 during a Board investigation into the lawfulness of MNA's tariff practices on the same subject matter. Petitioners are vehemently opposed to that Motion. Petitioners will file a reply in opposition to that motion in due course (by the July 28 deadline for reply).

It is evident that in issuing Revised Item 1010 in purported compliance with the Board's *June 30 Decision*, MNA has failed to perceive the essential distinction between the Board's authority over the timing of a tariff provision under 49 U.S.C. § 721(b)(4), and the Board's authority over the ultimate lawfulness of such tariff provision following an investigation. *See, e.g., Port of New York Authority v. United States*, 471 F.2d 783 (1971), and Brooks and Daily, "The Commission's Power of Suspension and Judicial Review Thereof," 27 I.C.C. Prac. J 589 (1960). The *June 30 Decision* relates to the timing of MNA's tariff provisions regarding security

deposits. In that respect, the Board was careful to caution that it was necessarily acting on an abbreviated record, viz.:

... we must act without the benefit of a fully developed evidentiary record and briefing on the issue. (*June 30 Decision* at 3)

* * *

... based solely on the limited filings thus far ... we find ... (*id.* at 4).

The Board emphasized that the ultimate lawfulness of MNA's security deposit provisions would be determined in a separate subsequent decision, viz.:

... In a subsequent decision, we will consider petitioners' allegation that the application of these provisions to them would be an unreasonable practice.

The upshot of the essential distinction between authority to enjoin the timing of a tariff provision and authority to determine the ultimate lawfulness of such provision in an investigation is that a rail carrier cannot unilaterally abort a Board investigation of the reasonableness of a tariff provision by taking tariff action that purports to "comply" with a ground stated by the Board for enjoining the timing of such tariff provision. That is so because an investigation inquiries into the lawfulness of all aspects of the involved tariff provisions, not just one or a few aspects that may have caused the Board to enjoin the effectiveness of such tariff provisions.

In the case at hand, undue financial hardship resulting from the amount of MNA's proposed security deposit is surely not the only aspect of MNA's security deposit tariff provision that is at issue in the Board's investigation of such provisions. Indeed, undue financial hardship was not even the sole ground on which the Board determined that Petitioners are likely to prevail on the merits. The Board also found merit in Petitioners' contention that MNA's proposed security deposit would be used unfairly to coerce payment of disputed demurrage charges,

including charges being litigated in pending Board proceedings, viz.:

... Accordingly, ... in view of the pending proceedings before us involving the disputed demurrage charges, we find that the petitioners have met the first prong of the *Holiday Tours* test.

Moreover, there are other aspects of MNA's tariff provisions on security deposits that require review in the Board's pending investigation. One such aspect is MNA's failure to provide for reasonable alternatives to the substantial cash payment required under Revised Item 1010, such as a performance bond or a letter of credit as was acceptable for compliance in Ex Parte No. 346 (Sub-No. 14A), *Rail General Exemption Authority -- Miscellaneous Agricultural Commodities -- Petition of G&T Term. Packaging, Co., Inc., et al. to Revoke Conrail Exemption*, 1989 WL 238801, decided June 13, 1989. Another is MNA's intent to apply the revised provision retroactively to demurrage charges that allegedly accrued long before the tariff provision became effective, instead of prospectively to charges that accrue on and after the effective date of the tariff provision.

For each of the foregoing reasons, and for all of them, the Board should find that there is a substantial likelihood that Petitioners will prevail on the merits.

2. Petitioners Would Be Irreparably Harmed In The Absence Of Relief

Revised Item 1010 reduces the degree of irreparable harm to Petitioners from MNA's security deposit provisions, but by no means does that provision eliminate such harm. It is a substantial burden for small shippers RSR and GFW to tie up \$50,000 in cash between them to satisfy MNA's security deposit requirement under pain of loss of rail service. There is no means to compensate RSR and GFW in damages following an investigation for the adverse effect on their businesses resulting from the loss of liquidity from tied-up cash. Thus, the harm to

Petitioners from the security deposit provision would indeed be irreparable.

3. Emergency Relief Would Not Substantially Harm MNA

As found by the Board in the *June 30 Decision* at 4, MNA's survival does not appear contingent on receiving a security deposit from RSR and GFW. That finding has even more force as to Revised Item 1010, that imposes a security deposit of a lesser amount. Moreover, as also noted in the *June 30 Decision* at 4, enjoining application of Revised Item 1010 to Petitioners would not prejudice MNA's collection effort against Petitioners.

4. Enjoining Application Of Revised Item 1010 To Petitioners Would Be Very Much In The Public Interest

In the *June 30 Decision* at 4, the Board correctly observed that:

MNA's demand for immediate payment of the full amount at issue in those (collection) proceedings as a precondition for continued rail service is an inappropriate self-help measure for a matter that is before the Board and will be resolved in due course . . .

On that basis, the Board found that the public interest warranted a stay of MNA's tariff provisions (*June 30 Decision* at 5).

Revised Item 1010 is likewise an unwarranted measure that would undermine the pending Board investigation of all aspects of lawfulness of MNA's security deposit provisions. MNA should not be permitted to take unilateral tariff action that would deprive the Board of jurisdiction to investigate the overall lawfulness of MNA's security deposit provisions. Accordingly, the public interest strongly supports an injunction preventing application of Revised Item 1010 to Petitioners while the Board's investigation goes forward.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should (1) include Revised Item 1010 in the pending investigation into the lawfulness of MNA's tariff provisions regarding security deposits; and (2) enjoin application of Revised Item 1010 to Petitioners pending completion of that investigation.

Respectfully submitted,

RAILROAD SALVAGE
& RESTORATION, INC.
1710 Joplin Street
Joplin, MO 64804

G.F. WIEDEMAN INTERNATIONAL, INC.
1710 Joplin Street
Joplin, MO 64804

Petitioners

Thomas F. McFarland

THOMAS F. McFARLAND
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mcfarland@aol.com

Attorney for Petitioners

DATE FILED: July 15, 2008

(ITEM - 1000) SECURITY DEPOSITS FOR PAYMENT OF DEMURRAGE AND STORAGE CHARGES

All Consignors, Consignees or agents thereof conducting business with a subscribing carrier, or on a subscribing carrier's property, will be required to apply for credit with the subscribing carrier.

Credit will be granted solely at the discretion of the subscribing carrier.

(ITEM - 1010) SECURITY DEPOSITS FOR PAYMENT ACCESSORIAL CHARGES

A security deposit to insure payment of any accessorial charges that may accrue will be required from every Consignor, Consignee, or agent thereof who:

- A. Is not on the Subscribing Carrier's credit list, and
- B. Fails to pay accessorial charges after specific written demand referring to this tariff provision.

A deposit must be paid, by wire transfer, before any freight car is delivered to such Consignor, Consignee, or agent thereof for Loading or Unloading. A deposit on one unit of equipment is not transferable to another.

A deposit for each car shall be in the minimum amount of two hundred dollars (200.00) or up to the maximum amount of accessorial charges that accrued on any one car during the preceding twelve (12) months.

In the case of a Consignor, Consignee or agent thereof receiving multiple carloads for Loading or Unloading, the total amount required to be deposited shall not exceed the lesser of the amount of existing past accessorial charges accrued by the Consignor, Consignee, or agent thereof due or \$25,000.

Once the Consignor, Consignee, or agent thereof is placed on Subscribing Carriers' authorized credit list, or has paid all outstanding accessorial charges and has given assurance to the satisfaction of the Carrier's credit office that future accessorial charges will be paid within the credit period prescribed in applicable tariffs, the Subscribing Carrier will refund the balance of the deposit to the Consignor, Consignee, or agent thereof by the 5th day of the month following that in which the equipment is released to the Subscribing Carrier after deducting any and all unpaid accessorial charges.

Security deposits will no longer be required after the Consignor, Consignee, or agent thereof either:

- A. Is placed on Subscribing Carriers' authorized credit list, or
- B. Has paid all outstanding accessorial charges and has given assurance to the satisfaction of the Carrier's credit office that future accessorial charges will be paid within the credit period prescribed in applicable tariffs.

(ITEM - 1020) APPLICATION FOR CREDIT

Date ____/____/____

Company Name _____ Phone _____
(Area code & number)

D/B/A _____ For Past _____ Years

Address _____
(Street) (City) (State) (Zip)

Former Business Address (If Applicable)

RailAmerica Operations Support Group, Inc.



A RailAmerica Company

Corporate Headquarters
5300 Broken Sound Blvd., NW
Boca Raton, Florida 33487
Tel: 561.994.6015
Fax: 561.994.0396

PRIVATE & CONFIDENTIAL

July 7, 2007

Mr. G. W. Jackson
Railroad Salvage & Restoration
1715 Joplin Street, Suite D
Joplin, MO 64804

Dear Mr. Jackson:

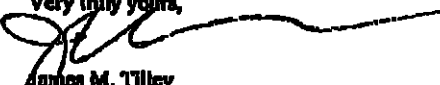
By this letter, pursuant to Tariff RA-1000, Item 1010, the Missouri & Northern Arkansas Railroad (M&NA) is demanding payment of all outstanding accessorial charges of \$325,923.06 plus accrued interest of \$181,096.95 (total of \$507,020.21) owed to M&NA by Railroad Salvage & Restoration ("RRS"). If you fail to make this payment by July 22, 2008, and if credit is denied, then effective Wednesday July 23, 2008 a security deposit will be required prior to placement of railcars consigned to your firm. If all outstanding accessorial charges have been paid, and M&NA's credit office is satisfied with the assurances of RRS that future accessorial charges will be paid within the prescribed credit period set forth in the Tariff, M&NA will refund any remaining balance of the deposit. In the event that future accessorial charges go unpaid and accrue in excess of the amount of the security deposit, another security deposit will be required. Tariff RA-1000 provides that the amount of the deposit is the lesser of the amount of the existing past due accessorial charges accrued by GPW or \$25,000. Because of the outstanding accessorial charges owed by RRS, excluding interest, RRS will be required to establish a \$25,000 security deposit.

Wiring instructions are provided below.

FED TAX ID 74-2862102
Bank Name: Bank of America
Beneficiary: RailAmerica Transportation Corp. and Missouri & Northern Arkansas Railroad
400 N. Ashley Drive
Tampa, FL 33602
Fed Wire - ABA #026009593
ACH Wire - ABA #063100277
Acct # 005487720539
Contact at RailAmerica - Rusham Brooks (phone # 561-226-1778)

Payments can be made to this account in U. S. dollars only. To properly credit your account RailAmerica, Inc. requires that EFT acknowledgements be sent to the following email address: DET-SIVR@railamerica.com

Very truly yours,


James M. Tilley
Director-Revenue Protection & Collections

RailAmerica Operations Support Group, Inc.

 A RailAmerica Company

Corporate Headquarters
5300 Broken Sound Blvd., NW
Boca Raton, Florida 33487
Tel: 561.994.6015
Fax: 561.994.0396

PRIVATE & CONFIDENTIAL

July 7, 2007

Mr. Ryan Jackson
G.F. Wiedeman International, Inc.
1715 Joplin Street, Suite D
Joplin, MO 64804

Dear Mr. Jackson:

By this letter, pursuant to Tariff RA-1000, Item 1010, the Missouri & Northern Arkansas Railroad (M&NA) is demanding payment of all outstanding accessorial charges of \$74,395.18 plus accrued interest of \$13,024.15 (total of \$74,395.18) owed to M&NA by G.F. Wiedeman International, Inc. ("GFW"). If you fail to make this payment by July 22, 2008, and if the credit application you filed on June 27, 2008 is denied, then effective Wednesday July 23, 2008 a security deposit will be required prior to placement of railcars consigned to your firm. If all outstanding accessorial charges have been paid, and M&NA's credit office is satisfied with the assurances of GFW that future accessorial charges will be paid within the prescribed credit period set forth in the Tariff, M&NA will refund any remaining balance of the deposit. In the event that future accessorial charges go unpaid and accrue in excess of the amount of the security deposit, another security deposit will be required. Tariff RA-1000 provides that the amount of the deposit is the lesser of the amount of the existing past due accessorial charges accrued by GFW or \$25,000. Because of the outstanding accessorial charges owed by GFW, excluding interest, GFW will be required to establish a \$25,000 security deposit.

Wiring instructions are provided below.

FED TAX ID 74-2862102
Bank Name: Bank of America
Beneficiary: RailAmerica Transportation Corp. and Missouri & Northern Arkansas Railroad
400 N. Ashley Drive
Tampa, FL 33602
Fed Wire - ABA #026009593
ACH Wire - ABA #063100277
Acct # 005487720539
Contact at RailAmerica - Rosham Brooks (phone # 561-226-1778)

Payments can be made to this account in U. S. dollars only. To properly credit your account RailAmerica, Inc. requires that BFT acknowledgements be sent to the following email address: BFT-SIVR@railamericainc.com

Very truly yours,


James M. Tilley
Director-Revenue Protection & Collections

LAW OFFICES OF
LOUIS E. GITOMER

LOUIS E. GITOMER
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July 9, 2008

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TOWSON, MARYLAND 21204-4022
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Thomas F. McFarland, Esq.
Thomas F. McFarland, PC
208 South LaSalle Street – Suite 1890
Chicago, IL 60604-0204

RE: **Missouri & Northern Arkansas Railroad Company, Inc. Tariff RA-1000, Item 1010**

Dear Mr. McFarland:

In the future, when you need to communicate with our client, the Missouri & Northern Arkansas Railroad Company, Inc. ("M&NA"), please contact either of the undersigned instead of the non-attorney staff of M&NA.

Your email to Ms. Anita Horton dated July 8, 2008 is in error. The Surface Transportation Board enjoined the M&NA from applying the security deposit provisions of its new demurrage tariff to Railroad Salvage & Restoration, Inc. ("RS&R") and G.F. Wiedeman International, Inc. ("GFW"). M&NA has removed the tariff that the Board enjoined it from applying to RS&R and GFW and has replaced it with a tariff that complies with the decision of the Board in *Railroad Salvage & Restoration, Inc., and G.F. Wiedeman International, Inc. – Petition for Investigation and for Emergency Relief Under 49 U.S.C. 721(B)(4) – Security Deposit for Demurrage Charges, Missouri & Northern Arkansas Railroad Company, Inc.*, STB Docket No. 42107 (STB served June 30, 2008).

As you are aware, on July 8, 2008, M&NA notified RS&R and GFW of what they have to do to obtain credit under Revised Tariff RA-1000, Item 1010. For your convenience, those letters are attached. Pursuant to Revised Tariff RA-1000, Item 1010, this letter clarifies that RS&R and GFW have until July 28, 2008, instead of the July 22, 2008 date in the letters from Mr. Tilley, to bring their accessorial charges current and have credit applications approved by M&NA in order to avoid being required to participate in the security deposit program of M&NA. Under the revised security deposit program, M&NA has decreased the required security deposit as far as RS&R and GFW are concerned to the lesser of the outstanding accessorial charges or \$25,000, instead of the outstanding accessorial charges that RS&R and GFW have accrued. Because Revised Tariff RA-1000, Item 1010 was issued on July 7, 2008 [RS&R and GFW will have until July 28, 2008 to act to maintain the same level of service.

The security deposit that would be required is about twenty percent of the cash settlement that RS&R and GFW voluntarily offered to M&NA. Since RS&R and GFW apparently made the settlement offer and payment offer in good faith, it is apparent that

Thomas F. McFarland, Esq.
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they have the funds available to pay the security deposit without hardship, unless they choose to pay their debt to M&NA.

Contrary to your statements to Ms. Horton, the Board has not enjoined the amended security deposit program, and M&NA is providing the notice required by 49 U.S.C. 11101(c) and 49 CFR 1300.4(a).

Again, in the future, please direct your inquiries and any other comments concerning this matter to counsel for M&NA. M&NA expects RS&R and GFW to comply with Revised Tariff RA-1000, Item 1010, as is M&NA and M&NA's other customers who have paid demurrage over the years.

Please contact me if you have any questions.

Sincerely yours,



Lecan M. Greenwald, Esq.
Vice President - Litigation
RailAmerica, Inc.
7411 Fullerton Street, Suite 300
Jacksonville, Florida 32256
(904) 538-6348
Lecan.Greenwald@RailAmerica.com

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Attorneys for MISSOURI &
NORTHERN ARKANSAS
RAILROAD COMPANY, INC.

Enclosures

RailAmerica Operations Support Group, Inc.

 A RailAmerica Company

Corporate Headquarters
5300 Broken Sound Blvd., NW
Boca Raton, Florida 33487
Tel: 561.994.6015
Fax: 561.994.0396

PRIVATE & CONFIDENTIAL

July 7, 2007

Mr. Ryan Jackson
G.F. Wiedeman International, Inc.
1715 Joplin Street, Suite D
Joplin, MO 64804

Dear Mr. Jackson:

By this letter, pursuant to Tariff RA-1000, Item 1010, the Missouri & Northern Arkansas Railroad (M&NA) is demanding payment of all outstanding accessorial charges of \$74,395.18 plus accrued interest of \$13,024.15 (total of \$74,395.18) owed to M&NA by G.F. Wiedeman International, Inc. ("GFW"). If you fail to make this payment by July 22, 2008, and if the credit application you filed on June 27, 2008 is denied, then effective Wednesday July 23, 2008 a security deposit will be required prior to placement of railcars consigned to your firm. If all outstanding accessorial charges have been paid, and M&NA's credit office is satisfied with the assurances of GFW that future accessorial charges will be paid within the prescribed credit period set forth in the Tariff, M&NA will refund any remaining balance of the deposit. In the event that future accessorial charges go unpaid and accrue in excess of the amount of the security deposit, another security deposit will be required. Tariff RA-1000 provides that the amount of the deposit is the lesser of the amount of the existing past due accessorial charges accrued by GFW or \$25,000. Because of the outstanding accessorial charges owed by GFW, excluding interest, *GFW will be required to establish a \$25,000 security deposit.*

Wiring instructions are provided below.

FFD TAX ID 74-2862102
Bank Name: Bank of America
Beneficiary: RailAmerica Transportation Corp. and Missouri & Northern Arkansas Railroad
400 N. Ashley Drive
Tampa, FL 33602
Fed Wire - ABA #026009393
ACH Wire - ABA #063100277
Acct # 005487720539
Contact at RailAmerica - Rusham Brooks (phone # 561-226-1778)

Payments can be made to this account in U. S. dollars only. To properly credit your account RailAmerica, Inc. requires that BFT acknowledgements be sent to the following email address: JFI-SIV@crj.hartfordia.com

Very truly yours,


James M. Tilley
Director-Revenue Protection & Collections

RailAmerica Operations Support Group, Inc.

 A RailAmerica Company

Corporate Headquarters
5300 Broken Sound Blvd., NW
Boca Raton, Florida 33487
Tel: 561.994.6015
Fax: 561.994.0396

PRIVATE & CONFIDENTIAL

July 7, 2007

Mr. G. W. Jackson
Railroad Salvage & Restoration
1715 Joplin Street, Suite D
Joplin, MO 64804

Dear Mr. Jackson:

By this letter, pursuant to Tariff RA-1000, Item 1010, the Missouri & Northern Arkansas Railroad (M&NA) is demanding payment of all outstanding accessorial charges of \$325,923.06 plus accrued interest of \$181,096.95 (total of \$507,020.21) owed to M&NA by Railroad Salvage & Restoration ("RRS"). If you fail to make this payment by July 22, 2008, and if credit is denied, then effective Wednesday July 23, 2008 a security deposit will be required prior to placement of railcars consigned to your firm. If all outstanding accessorial charges have been paid, and M&NA's credit office is satisfied with the assurances of RRS that future accessorial charges will be paid within the prescribed credit period set forth in the Tariff, M&NA will refund any remaining balance of the deposit. In the event that future accessorial charges go unpaid and accrue in excess of the amount of the security deposit, another security deposit will be required. Tariff RA-1000 provides that the amount of the deposit is the lesser of the amount of the existing past due accessorial charges accrued by G.W. or \$25,000. Because of the outstanding accessorial charges owed by RRS, excluding interest, RRS will be required to establish a \$25,000 security deposit.

Wiring instructions are provided below.

FIID TAX ID 74-2862102
Bank Name: Bank of America
Beneficiary: RailAmerica Transportation Corp. and Missouri & Northern Arkansas Railroad
400 N. Ashley Drive
Tampa, FL 33602
Fed Wire - ABA #026009593
ACH Wire - ABA #063100277
Acct # 003487720539
Contact at RailAmerica -- Rashawn Brooks (phone # 561-226-1778)

Payments can be made to this account in U. S. dollars only. To properly credit your account RailAmerica, Inc. requires that RFT acknowledgements be sent to the following email address: RFT-SJV@railamerica.com

Very truly yours,


James M. Tilley
Director-Revenue Protection & Collections

CERTIFICATE OF SERVICE

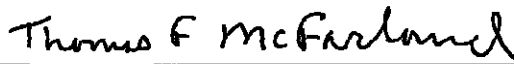
I hereby certify that on July 14, 2008, I served the foregoing document, Petition For Investigation And For Emergency Relief Under 49 U.S.C. § 721(b)(4) on Louis B. Gitomer, Esq., 600 Baltimore Avenue, Suite 301, Towson, MD 21204 and LEEAN M. GREENWALD, Esq., Vice President-Litigation, Rail America, Inc., 7411 Fullerton Street, Suite 300, Jacksonville, FL 32256, by UPS overnight mail.

Thomas F. McFarland

Thomas F. McFarland

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2008, I served the foregoing document, Reply In Opposition To Motion To Dismiss, on Louis E. Gitomer, Esq., lou_gitomer@verizon.net, 600 Baltimore Avenue, Suite 301, Towson, MD 21204 and Llean M. Greenwald, Esq , leean.greenwald@railamerica.com, Vice President-Litigation, Rail America, Inc., 7411 Fullerton Street, Suite 300, Jacksonville, FL 32256, by e-mail and first-class, U.S. mail, postage prepaid



Thomas F. McFarland