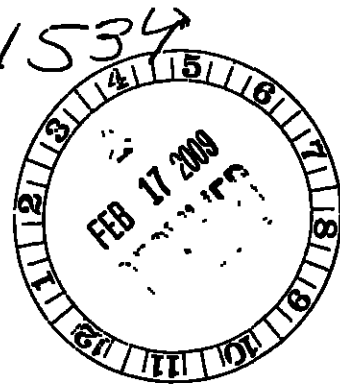


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KARI MORELL



kmorell@dc.bjllp.com

February 17, 2009

BY HAND DELIVERY

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
FEB 17 2009
Part of
Public Record

Re STB Finance Docket No. 35206, Petition For Injunctive Relief

Dear Acting Secretary Quinlan:

Attached for filing are the original and ten copies of the Reply of BNSF Railway Company To Petition For Injunctive Relief And Motion For Temporary Restraining Order And Preliminary Injunction.

Please time and date stamp the extra copy of the Reply and return it with our messenger.

If you have any questions, please contact me.

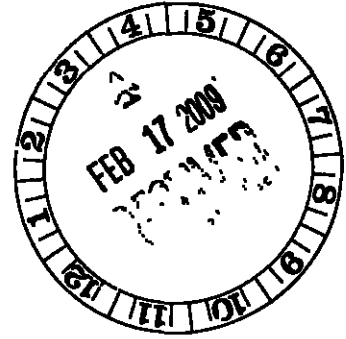
Sincerely yours,

Karl Morell

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35206



REPLY OF BNSF RAILWAY COMPANY TO PETITION FOR INJUNCTIVE RELIEF AND
MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

ENTERED
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FEB 17 2009
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Public Record

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Attorneys for
BNSF Railway Company

Dated. February 17, 2009

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO 35206

REPLY OF BNSF RAILWAY COMPANY TO PETITION FOR INJUNCTIVE RELIEF AND
MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

BNSF Railway Company ("**BNSF**") hereby replies in opposition to the Petition for Injunctive Relief ("**Petition**") and Motion for Temporary Restraining Order and Preliminary Injunction ("**Motion**") purportedly filed by Mr Edwin Kessler ("**Kessler**") with the Surface Transportation Board ("**Board**" or "**STB**") on January 26, 2009.

The Petition and Motion seek certain injunctive relief regarding a locomotive purportedly owned by Kessler (the "**Locomotive**") currently sitting on railcar HTTX 93507 in Oklahoma City, OK. As is demonstrated below, the Locomotive was purchased by James Riffin ("**Riffin**"), the signatures on the affirmations to the Petition and Motion are forgeries and the waybill governing the movement of the Locomotive is a fraud.

The owner of the Locomotive is Riffin, an individual with a reputation for being a professional troublemaker. It appears that the signatures on the affirmations were forged by Riffin and BNSF has reason to believe that the fraudulent waybill was submitted to BNSF by Riffin and not Kessler.

According to the Baltimore City Paper ("**City Paper**"), Riffin has a long history of run-ins with the law. In 1990, Riffin was apparently arrested on six counts of theft conspiracy. According to the City Paper, Riffin pled "not guilty and not criminally responsible by reason of

insanity.” The City Paper also reported that Riffin was arrested in May 2005 on 13 counts of identity theft-related charges www.citypaper.com/news/story.asp?id=14634

Riffin is also a serial abuser of environmental and public health and safety laws at his self-proclaimed railroad facility at Cockeysville, MD. For example, Riffin has been charged with willfully discharging soil and sediment into a stream that eventually feeds into the main water source for Baltimore, MD. Also, on September 10, 2004, a Baltimore Department of Public Works inspector caught Riffin laying asphalt without a permit on city-owned watershed property adjacent to the Cockeysville facility. See Exhibit 1. Riffin’s continuing violations of environmental and public health and safety laws are set forth in the March 5, 2007 filing by the Maryland Transit Administration and the Maryland Department of the Environment in STB Finance Docket No. 34997, *James Riffin – Petition for Declaratory Order*

Riffin’s responses to the mounting fines, penalties and injunctions has been to proclaim himself a railroad, use the Board as a shield and assert federal preemption in countless court filings. On October 4, 2007, U S District Judge Richard D. Bennett branded Riffin a “frivolous” litigant and appropriately sanctioned Riffin against making any additional filings with the court without the court’s prior permission. In June 2008, Riffin spent nearly two weeks in the Baltimore County Detention Center for constructive contempt for failing to post a \$250,000 bond related to his flagrant environmental violations at the Cockeysville facility. It was only after a bank in Norman, OK extended credit to Riffin that he was released.¹

www.citypaper.com/news/story.asp?id=15955

¹ Not coincidentally, Kessler resides in Norman, OK. Also, according to court documents, Riffin had intended to spend the first day he was jailed traveling to Arkansas where his locomotive sat idle awaiting his arrival

Riffin, of course, is also no stranger to the Board. Riffin has made numerous frivolous and abusive filings with the Board in recent years² Most notable is Riffin's conduct in STB Docket No. AB-290 (Sub-No 293X), *Norfolk Southern Railway Company – Abandonment – Petition for Exemption – Norfolk and Virginia Beach, VA*. In that proceeding, Riffin filed a Notice of Intent to File an Offer of Financial Assistance ("**OFA**") From the filings and the Board's decision in that proceeding, it is obvious that Riffin had no real intention of acquiring the line Rather, Riffin intended to abuse the Board's OFA procedures to coerce Norfolk Southern Railway Company ("**NS**") into conveying to him the rail line located adjacent to Riffin's Cockeyville facility and to extort money from the City of Norfolk, VA. Attached as Exhibit 2 is the NS prepared transcript of the voicemail message Riffin left for the NS attorney handling the abandonment. In addition, Riffin called Mr Stanley Stein, Assistant City Manager for the City of Norfolk, and informed Mr. Stein that unless the City paid him off he would file an OFA and thwart the City's planned use of the rail corridor for a light rail project³

BACKGROUND

The saga of the Locomotive has its origin in STB Finance Docket No 35164, *BNSF Railway Company – Petition For Declaratory Order ("**Declaratory Order Proceeding**")* which is currently pending before the Board The *Declaratory Order Proceeding*, in turn, is an outgrowth of the proceeding in STB Docket No AB-6 (Sub-No 430X), *BNSF Railway Company – Abandonment Exemption – In Oklahoma County, OK* (not printed), served June 5, 2008 ("**Oklahoma City Abandonment**"). In *Oklahoma City Abandonment*, BNSF invoked the

² During the 18-month period ending in June 2008, Riffin made nearly 50 filings with the Board See Letter of Union Pacific Railroad dated June 11, 2008, filed in STB Docket No AB 33 (Sub-No 265X) That, of course, does not count the numerous forged filings Riffin may have made in recent years.

³ See Verified Statement of Stanley A. Stein, filed as Exhibit 2, to NS's Motion to Strike, filed on September 6, 2007, in STB Docket No AB-290 (Sub-No. 293X)

class exemption at 49 C.F.R. 1152, Subpart F to abandon three short segments of its rail line in Oklahoma City. Two of those segments needed to be relocated to make way for the Oklahoma City I-40 Crosstown Relocation project ("**Highway Project**").

The section of I-40 highway traversing Oklahoma City is outdated, in a deteriorating condition, and poses an imminent and serious safety hazard for the traveling public. Planning for the Highway Project began in 1996 and the planned realignment has been approved by all Federal, state and local officials and entities with jurisdiction over the matter. The new highway was expected to open in 2012 with a projected cost of \$557 million.

Certain individuals are embarked on a mission to stop the Highway Project. To date, they have failed at all levels of government. The Board is their last hope of derailing the Project. The Highway Project cannot be completed unless BNSF relocates two short segments of its track.⁴ These individuals appear to have no concern over the potential safety hazards the current highway poses or the costs associated with their requested realignment. ODOT estimates that the realignment sought by Kessler would delay the project by 5 to 8 years and cost the taxpayers \$240 to \$340 million. See Exhibit 3.

Kessler first made an appearance in *Oklahoma City Abandonment* on behalf of Common Cause Oklahoma by letter filed February 5, 2007. What is significant about that filing is the style of writing and the signature. See Exhibit 4. In the subsequent and ever more frequent and abusive filings the style changed significantly but the signature remained the same. Then, beginning with the Kessler Reply filed on January 14, 2008, the signature also changed. See Exhibit 5.

⁴ On January 30, 2009, the Oklahoma Department of Transportation ("**ODOT**") filed a letter with the Board in the Declaratory Order Proceeding urging the Board to expedite the proceeding because the delays are impacting the schedule and cost of the project.

Also, the Kessler pleadings started to be served from a Baltimore, MD post office ⁵ See Exhibit 6 Moreover, the signatures on the Petition and Motion do not match the signature on the Verified Statement of Kessler attached to the Petition The signature on the Verified Statement matches those of the Kessler filings in *Oklahoma City Abandonment* prior to January 14, 2008 The signatures on the Petition and Motion match those on the Kessler filings in *Oklahoma City Abandonment* after January 14, 2008 and all of the Kessler filings made in the *Declaratory Order Proceeding* The style of all but the first Kessler filing in *Oklahoma City Abandonment* is un-mistakenly that of Riffin The abusive and irritating nature of those filings is also characteristic of Riffin filings in other proceedings It appears that Riffin has been representing himself as an attorney, practicing law without a license and forging documents for some time

In the *Declaratory Order Proceeding*, BNSF is seeking a ruling from the Board that the two segments of BNSF track that lie in the path of the Highway Project are relocations not requiring prior Board approval BNSF is taking this course of action to accommodate ODOT and circumvent an attempt by Riffin to abuse the Board's OFA procedures to thwart the Highway Project as he had attempted to do in *Oklahoma City Abandonment* ⁶

The issue over the Locomotive was first raised in the Motion to Compel filed on September 5, 2008 in the *Declaratory Order Proceeding* In that filing, Riffin⁷ falsely represented to the Board that the Locomotive was owned by Kessler, that the locomotive was "blue-carded," and that Boardman Inc. ("Boardman") desired delivery of the Locomotive

⁵ The Petition and Motion were served on BNSF in an envelope postmarked Baltimore, MD

⁶ Attached as Exhibit 3 to the Petition filed by Kessler on March 21, 2007 in *Oklahoma City Abandonment* is a letter signed by J. Dennis, CEO of MDRC stating that MDRC would like to locate on the line Kessler was seeking to acquire under the OFA procedures MDRC is owned by Riffin and is headquartered at 1941 Greenspring Dr Timonium, MD, the home or business address of Riffin. See Exhibit 7. Apparently another one of Riffin's aliases is J. Dennis

⁷ Unless otherwise noted, BNSF will refer to the author of the filings as Riffin since he is the owner of the Locomotive and the real party of interest in this proceeding

Riffin asked the Board to compel BNSF to deliver the Locomotive to Boardman's rail spur. In its Motion to Strike or Reject the Motion to Compel, filed on September 24, 2008, BNSF pointed out that the Locomotive shipment was a prank, the waybill was fraudulent, the shipment could not be lawfully delivered to the Boardman spur, and, because Riffin refused to reroute the shipment to another location, demurrage charges were accumulating daily. The Board denied Riffin's Motion to Compel by decision served October 2, 2008, in the *Declaratory Order Proceeding*.

REPLY

In the Petition, Riffin seeks to have the Board enjoin BNSF from: (1) not delivering the Locomotive to the Boardman spur, (2) charging for any demurrage, storage or any other charges associated with the Locomotive, (3) selling the Locomotive at auction, and (4) refusing to pay Riffin \$50.00 per day for each day since August 20, 2008, for Riffin's loss of use of the Locomotive. Petition at 1. In the Motion, Riffin seeks a temporary restraining order and preliminary injunction enjoining BNSF from auctioning off the Locomotive. Motion at 5-6.

To obtain an injunction under 49 U.S.C. § 721(b)(4), the moving party must demonstrate that: (1) there is a strong likelihood that the movant will prevail on the merits; (2) that the movant will suffer irreparable harm in the absence of the requested relief; (3) that other interested parties will not be substantially harmed; and (4) granting the injunction is in the public interest. See *DeBruce Grain, Inc. v. Union Pacific RR.*, 2 S.T.B. 773, 775 n. 3 (1997) citing *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (“*Petroleum Jobbers*”). It is the movant's obligation to justify the exercise of such an extraordinary remedy, STB Docket No. AB-398 (Sub-No. 5X), *San Joaquin Valley Railroad*

Company – Abandonment Exemption – In Tulare and Kern Counties, CA (not printed), served April 3, 1998, and the movant carries the burden of persuasion on each of the four elements required for the extraordinary relief. *Canal Authority of Fla V Callaway*, 489 F 2d 567, 573 (5th Cir 1974)

As is demonstrated below, Riffin has failed to meet the criteria for the granting of an injunction. Riffin has not shown that there is a strong likelihood he will prevail on the merits, that he will suffer irreparable harm in the absence of an injunction, that an injunction would not substantially harm other parties, or that granting an injunction would be in the public interest

Riffin Is Unlikely To Prevail On The Merits

Riffin has not demonstrated, and cannot demonstrate, that BNSF is in violation of its common carrier obligation to deliver the Locomotive either to Boardman's spur track or to a parcel of vacant land Kessler or Riffin allegedly leases.

The Locomotive was consigned to the Boardman spur. Upon arrival of the Locomotive in Oklahoma City, BNSF made a number of contacts with Boardman to arrange for the delivery of the Locomotive. An immediate problem uncovered by BNSF was that Boardman no longer had an effective track agreement with BNSF. When a party requests shipment through BNSF's online system, such system does not verify the existence of an effective track agreement permitting delivery to the desired location.⁸ For liability and safety reasons, BNSF will not enter upon a shipper's tracks without an agreement covering BNSF's use of the tracks. BNSF offered to enter into a new track agreement with Boardman so that the Locomotive could be delivered, but Boardman declined the offer.

⁸ It is the responsibility of the consignee or consignor to ensure a track agreement is in effect allowing the desired delivery.

On October 27, 2008, after a number of phone conversations, Ms Susan Odom, Manager Network Strategy for BNSF, contacted Mr James W Hagemann, Boardman's Chief Financial Officer, inquiring whether Boardman still wished to have the Locomotive delivered to their facility Mr Hagemann responded that "Boardman has no need for a locomotive." See Exhibit 8. BNSF has no knowledge as to what, if any, arrangement Riffin or Kessler had with Boardman BNSF, however, may not lawfully and will not from a liability standpoint enter upon the property of another without both their permission and an effective track agreement

Pursuant to 49 U.S.C. § 80111(d)(2) and (3), a common carrier is not liable for failure to deliver goods if "the goods have been sold lawfully to satisfy a carrier's lien" or "the goods have not been claimed." Here, the owner of the track where delivery is to take place has refused to take delivery and the consignee refuses to pay his outstanding charges or notify BNSF of an alternate delivery location.

Riffin has concocted a new scheme whereby Riffin or Kessler allegedly is leasing some land adjacent to the Boardman facility But BNSF's common carrier obligation does not extend to delivering shipments to vacant land adjacent to its mainline tracks.

Given the fraudulent nature of the waybill, it is highly questionable whether BNSF ever had a common carrier obligation to deliver the Locomotive In any event, BNSF's common carrier obligation to deliver the Locomotive terminated when delivery to the designated track became legally impossible and when Riffin and Kessler refused, after repeated requests, to provide disposition instructions

Consequently, there is no likelihood, much less a strong likelihood, that Riffin will prevail on the merits.

Contract Terms and Conditions of the Uniform Bill of Lading, provide, in pertinent part, that

“(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 day after notice of arrival shall have been duly sent or given, the carrier may sell the same at public action .”

“(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.”

See 49 C F R § 1035, Appendix B, Section 4(b) and (e)(emphasis added) See also Uniform Freight Classification 6000-M, Section 4 (b) and (e), attached as Exhibit 9

BNSF Rules Book 6100-A, Item 2240, provides, in pertinent part. that.

“In case of refusal by consignee to accept the freight, or if freight is unclaimed five days after notice of arrival has been duly sent or given, consignor will be sent a notice showing.

**Name of consignee
Description of freight
Point of origin and date of shipment whether property has been refused or remains unclaimed,**

which notice should also state substantially that if disposition is not arranged for, the property will be subject to sale as provided in Section 4, Paragraph (b) of the Uniform Bill of Lading as published in Tariff UFC 6000-Series.”

See Exhibit 10

The notice BNSF provided to Kessler and Riffin⁹ goes well beyond what is required by statute, regulation or BNSF's tariffs. On November 26, 2008, BNSF notified Kessler that

⁹ One of the notices to Riffin was sent by certified mail but returned to BNSF marked “Return to Sender Unclaimed Unable to Forward ” Apparently, Riffin refuses to accept any certified mail *See Exhibit 12.*

Boardman is refusing to accept the shipment and that the shipment is accruing daily demurrage charges BNSF asked Kessler to make alternative arrangements for delivery of the Locomotive On December 18, 2008, BNSF notified Kessler and Riffin that the Locomotive was subject to sale at public auction pursuant to Section 4, Paragraph (b) of the Uniform Bill of Lading published in BNSF Tariff UFC 6000-Series because they had failed to provide disposition instructions. BNSF gave Kessler or Riffin until December 29, 2008 to arrange for the disposition of the Locomotive. On January 8, 2009, BNSF again notified Kessler and Riffin about the need to arrange for the disposition of the Locomotive and gave them until January 17, 2009 to do so. To date, all efforts by BNSF to deliver the locomotive have been ignored by Kessler and Riffin. See Exhibit 11

In summary, BNSF's conduct with respect to the Locomotive has been in full compliance with the law A common carrier by railroad has neither the right nor the obligation to deliver a shipment to a consignee that refuses to accept the shipment BNSF has duly given notice to both Riffin and Kessler that the shipment cannot be delivered as consigned and requested instructions for disposition of the shipment. In light of their refusal to provide such instructions, BNSF has no legal option other than to sell the Locomotive at auction.¹⁰

Denial of the Injunction Will Not Cause Riffin Irreparable Harm.

Riffin claims he will be irreparably harmed if BNSF auctions the Locomotive because "Kessler's 'blue-carded' locomotive is one-of-a-kind, unique, historic and cannot be replaced " Petition at 10 The Locomotive is not owned by Kessler; it is owned by Riffin Attached as Exhibit 12 is the Verified Statement of Mr. Robert Fuller, the Vice President and General

¹⁰ BNSF was in the process of completing the newspaper notice requirement for the auction when the Petition and Motion were filed Unless ordered to do otherwise by the Board, BNSF will restart that process in the very near future and will keep the Board apprised as the auction moves forward

Manager of Delta Valley & Southern Railway Company ("**DVS**"), a former owner of the Locomotive According to Mr. Fuller, DVS exchanged the Locomotive for a Trackmobile owned by Mr. Jeremy Funderburk, who, in turn, sold the Locomotive to Riffin

The Locomotive is also not "blue-carded;" it cannot pass inspection in its current condition.¹¹ According to Mr. Fuller, the Locomotive was taken out of service in early 2007, when a 92-day inspection determined that the wheels would not gage. Since the cost of repairing that defect likely exceeds the value of the Locomotive, the Locomotive, from an operational standpoint, is a pile of junk The Locomotive is "one-of-a-kind" only in the sense that every locomotive is "one-of-a-kind." Riffin claims that the Locomotive is "unique" but fails to identify either the model or make of the Locomotive. Attached as Exhibit 13 is the Verified Statement of Mr. Jerry A. Pinkepank, an expert in the field of locomotives According to Mr. Pinkepank the Locomotive is not unique or a collector's item since it was common and regarded as uninteresting Mr. Pinkepank believes the Locomotive is not worth more than its scrap value, which he estimates to be \$25,000. In his Verified Statement at 1, Kessler claims, without any supporting evidence, that the Locomotive "*has a value in excess of \$100,000.00*" Even if that valuation were accurate, which it is not, it hardly renders the Locomotive one-of-a-kind, unique, historic or irreplaceable

In any event, Riffin's characterization of the Locomotive, even if accurate, does not rise to the level of sustaining a finding of irreparable harm. See STB Finance Docket No. 34145, *Bulkmatic Railroad Corporation – Acquisition Exemption – Bulkmatic Transport Company* (not printed), served December 27, 2001 The showing of "mere injuries, however substantial, in terms of money expended in the absence of a stay" do not constitute irreparable injury because

¹¹ The false representation that the Locomotive is in compliance with Federal Railroad Administration safety requirements may constitute a violation of 49 C.F.R. § 229.7 (b)

adequate compensatory relief can be had at a later date *Petroleum Jobbers*, at 925 Neither the Board nor the courts have found economic injuries of this nature to be irreparable because they are compensable through reparations. See Finance Docket No. 30965 (Sub-No. 1), *Delaware and Hudson Railway Co – Lease and Trackage Rights Exemption – Springfield Terminal Railway Company* (not printed), served July 15, 1988; STB Finance Docket No 33326, *I&M Rail Link, LLC – Acquisition and Operation Exemption – Certain Lines of Soo Line Railroad Company D/B/A Canadian Pacific Railway* (not printed), served April 4, 1997

Moreover, any harm that Riffin will suffer is self-inflicted. As noted above, Riffin has been given notice that the Locomotive cannot lawfully be delivered to the Boardman spur, that BNSF needs alternative delivery instructions and that unless Riffin does so the Locomotive will be sold at auction

Granting An Injunction Would Harm BNSF and Riffin

Granting an injunction would prevent BNSF from selling the Locomotive to minimize Riffin's damages from the ever increasing demurrage charges, since Riffin refuses to provide disposition instructions At the same time, BNSF is incurring daily car hire charges for storing the Locomotive Consequently, an injunction would financially harm both BNSF and Riffin

An Injunction Is Not In The Public Interest

Riffin has failed to demonstrate how issuance of an injunction would further the public interest Riffin makes the nonsensical argument that railroads have a common carrier obligation to provide rail service at all locations along their rail lines Railroads have an obligation to provide service on *reasonable* request. A consignor has the obligation to designate a destination location that the railroad can lawfully access and where the lading can be safely unloaded It was Riffin, and not BNSF, who designated the Boardman spur for delivery. It was Boardman who

refused to accept the shipment and not BNSF who refused to make the delivery. It is certainly not *reasonable* for Riffin to insist that BNSF deliver the Locomotive to a track owned by a third party that refuses to accept the shipment. It is also not *reasonable* for Riffin and Kessler to refuse to designate an alternative destination and insist that BNSF store the shipment for free until Riffin finds an alternative location. According to Mr. Fuller, Riffin also left the locomotive stored at DVS for several months, ignoring numerous attempts to arrange for pick up or delivery.

In addition to not having met their burden of proof, Riffin and Kessler come before the Board seeking equitable relief with unclean hands. Kessler has signed a verified statement knowing that it contains numerous false statements. For example, the Locomotive is not owned by Kessler nor is the Locomotive "blue-carded." These are two material but false facts that were knowingly and willfully made by Kessler. Kessler's conduct, thus, constitutes a federal crime punishable under 18 U.S.C. § 1001 by imprisonment of up to 5 years and fines of up to \$10,000 for each offense. Kessler's conduct is also punishable as perjury under 18 U.S.C. § 1621, which provides for fines of up to \$2,000 or imprisonment of up to 5 years for each offense.

The original waybill, presumably prepared by Riffin, listed the commodity being shipped as scrap. See Exhibit 14. A person that falsely makes or alters a bill of lading is subject to fines and imprisonment for not more than 5 years. 49 U.S.C. § 80116. BNSF has identified a witness who overheard Riffin bragging how he had put one over on BNSF by identifying the shipment as scrap in order to get a lower rate.¹²

¹² Riffin contends that he prepaid the freight charges for the Locomotive (Petition at 3) and complains about the delay in transit. Riffin, however, only pre-paid the applicable charges for scrap (\$1,634.52). See Exhibit 15. Once BNSF became aware that the bill of lading had been falsified, the shipment was set aside until the full payment of the applicable charges for the Locomotive was made. The second payment of \$2,768.48 was postmarked August 4, 2008. See Exhibit 16.

The Petition and Motion forged by Riffin also contain numerous false statements. For example, Riffin falsely claims that the Locomotive is owned by Kessler. Riffin also claims that the Locomotive is "blue carded," when he knows that the Locomotive was removed from service by a former owner. Riffin also alleges that Kessler contracted with BNSF to transport the Locomotive. But it was Riffin that made the first payment which fraudulently contended the shipment consisted of scrap.¹³ The second payment was purportedly made by Kessler but was drawn on a Hunt Valley, Maryland Bank of America and mailed from the same Baltimore Post Office as was the first payment. See Exhibits 15 and 16.

These are material and false facts that were knowingly and willfully made by Riffin. Riffin's conduct, thus, constitutes a federal criminal violation punishable under 18 U.S.C. § 1001 by imprisonment of up to 5 years and fines of up to \$10,000 for each offense. Riffin's conduct is also punishable as perjury under 18 U.S.C. § 1621, which provides for fines of up to \$2,000 or imprisonment of up to 5 years for each offense.

Riffin and Kessler come before the Board with forged filings, a falsified waybill, and numerous falsified statements made under oath and ask the Board to help them out of a situation of their own making. These two gentlemen give chutzpah new meaning!

¹³ The Cashier's Check contains a notation that the cargo is scrap. See Exhibit 15

CONCLUSION

For all of the foregoing reasons, BNSF respectfully urges the Board to deny the relief requested in the Petition and Motion. The Petition and Motion fall woefully short of meeting the requirements for injunctive relief. Alternatively, the Petition and Motion should be summarily rejected on grounds that the documents are forged and contain falsified information.

Respectfully submitted,



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Attorneys for
BNSF Railway Company

Dated February 17, 2009

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply has been served on the following by first class mail this 17th day of February, 2009.

James Riffin
1941 Greenspring Drive
Timonium, MD 21093

Edwin Kessler
1510 Rosemont Drive
Norman, OK 73072


Karl Morell

EXHIBIT 1

212282

CITY OF BALTIMORE

MARTIN O'NEILL Mayor



DEPARTMENT OF LAW

RALPH S. TYLLER City Solicitor
101 C. Hall
Baltimore, Maryland 21202

ENTERED
Office of Proceedings

OCT 20 2004

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Public Record

October 15, 2004



Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423

Re: Finance Docket No. 34501, James Riffin d/b/a The
Northern Central Railroad - Acquisition and Operation
Exemption - In York County, PA

Dear Secretary Williams:

It has come to the attention of the Mayor and City Council of Baltimore (the "City of Baltimore") that on or about September 17, 2004, James Riffin, doing business as The Northern Central Railroad, filed a "Notice of Intent to Construct, Operate and Maintain a Railroad Facility" (the "Notice of Intent") wherein Mr. Riffin proposed to construct and operate a railway line in portions of Baltimore County, Maryland, including property belonging to the City of Baltimore. The Notice of Intent was not served upon the City of Baltimore and indeed the City of Baltimore only discovered its existence because of information provided to the City by the Attorney General's Office of the State of Maryland. For the reasons set forth below, the City of Baltimore writes to express its support of the State of Maryland's Motion to Strike this Notice of Intent.

The Notice of Intent was filed by Mr. Riffin as an addition to his Answer to the Petition of the State of Maryland to Revoke the Verified Notice of Exemption. The Verified Notice of Exemption at issue in this proceeding was and has always been previously presented to the Surface Transportation Board (the "Board") by Mr. Riffin as a proposal to acquire a railway line located entirely within York County, Pennsylvania. Apparently, Mr. Riffin now seeks to expand his project into an entirely different political jurisdiction.



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The City of Baltimore owns property in Baltimore County near Beaver Run Lane (the "property") that serves as a watershed buffer for the Loch Raven Reservoir. The Loch Raven Reservoir is a principal source of drinking water for the City of Baltimore, as well as portions of Anne Arundel, Baltimore and Howard Counties. According to the Notice of Intent, Mr. Riffin plans to construct and operate a railway line directly on or across a portion of the property. This proposal would be totally inconsistent with the important public health purpose underlying the present use of this property.

The City of Baltimore's dealings with Mr. Riffin began on or about September 10, 2004 when Inspector Kenneth Church from the Baltimore City Department of Public Works ("DPW") issued a "Stop Work Order" to Mr. Riffin for grading and bulldozing operations being performed on the property without the City's approval. A copy of Inspector Church's field inspection report and "Stop Work Order" is attached below as Exhibit A.

On September 10, 2004, Mr. Riffin wrote two letters to DPW, copies of which are attached below as Exhibit B. Although Mr. Riffin indicated in one letter that he was seeking permission to restore the property to its condition prior to the unauthorized grading and bulldozing operations, at the same time in the other letter he indicated that he wanted to acquire a "railroad right of way across a portion of Baltimore City's watershed property." On September 30, 2003, George L. Winfield, Director of DPW, wrote back to Mr. Riffin to inform him that the City of Baltimore could not approve a request for a right of way to place and operate railroad tracks due to the particular public purpose being served by the property. A copy of this letter is attached below as Exhibit C.

Despite this clear indication by the City of Baltimore that it has no intent to enter into an agreement with Mr. Riffin for the conversion of its watershed buffer zone into a commercial enterprise, the City of Baltimore remains concerned that Mr. Riffin is attempting to make use of an expedited procedure before this Board to further what has become an ever-changing business proposal that has already caused some environmental damage and could cause substantially more.

For these reasons, the City of Baltimore offers its support not only for the State of Maryland's Motion to Strike the Notice of Intent, but also more generally for the State's Petition to Revoke the Verified Notice of Exemption. The City agrees with the State of Maryland that Mr. Riffin's various proposals should not be pursued under this Board's expedited class exemption procedure.

Thank you for the Board's consideration of this letter and the attached exhibits. Please direct all communications regarding this matter to the undersigned attorneys at this office.

In keeping with the Board's procedures, an original and ten copies of this correspondence are enclosed. The undersigned attorneys certify that copies have also been mailed to all parties to this proceeding.

Respectfully submitted,



Dawn S. Lettman
Assistant City Solicitor



Adam S. Levine
Assistant City Solicitor
Baltimore City Law Department
100 N. Holliday Street
Baltimore, MD 21202
(410) 396-3933
(410) 396-3925

Attorneys for the City
of Baltimore

Attachments

cc James Riffin dba NCRR
Charles Spitulink, Esq, and Alex Menendez, Esq ,
counsel for the State of Maryland
Adam D. Snyder, Assistant A G., Maryland Dept. of the
Environment
Ralph Tyler, City Solicitor
Sandra R Gutman, Chief Solicitor

George L. Winfield, Director, DPW
Paul Barnes, Right of Ways Section, DPW
Ralph Cullison, Environmental Services Div , DPW

EXHIBIT A

09/18/2004 14:46 4185239847
09/18/2004 14:12 418-325-4728

ENVIRON SERVICES DIV
DPW INSPECTIONS

PAGE 83
PAGE 82

CITY OF BALTIMORE
MARTIN O'MALLEY, Mayor



DEPARTMENT OF PUBLIC WORKS
BUREAU OF GENERAL SERVICES
CONSTRUCTION MANAGEMENT DIVISION
703 Abel Holmes Building
Baltimore, Maryland 21202

EROSION & SEDIMENT CONTROL FIELD INSPECTION REPORT

Inspection Date 9-10-04 Weather Clear Inspector Ken Church Phone 410-396-7200-3200
Site Location Banner Run Lane W B L
Owner's Name & Address Baltimore City Council
Contractor's Name & Address James Rippin
- 1941 Greenspring Dr Timonium MD 21093
Person Contacted (Include Title) James Rippin Phone 410-396-4610
Facility Type () Building Construction () Highway Construction (X) Other Cleaning Land
Plan # - Contract # - Permit # -

Complaint

YOU ARE HEREBY ORDERED IN ACCORDANCE WITH THE PROVISIONS OF APPLICABLE CITY CODE OR ORDINANCE TO CORRECT THE CONDITIONS LISTED BELOW.

Contractor has been asked to stop work on site
owned by Baltimore city. Contractor has no permits
or approved plans to build or disturb areas being disturbed.
Contractor must stabilize areas immediately. A stop
work order was issued to Mr. James Rippin. Site
will be monitored for stabilization. No work at all
is to be performed until a right of entry is obtained
from Mr. Paul Barnes (Baltimore City Public Works right of way)

When right of way is permitted asphalt spread in path is to be
removed. Areas are to be seeded and mulched.

Inspection Results

In Compliance

Noncompliance

Correct deficiencies by _____

OR

Violation will be issued

Stop Work Order will be issued 9-10-04

Site to be reinspected on

Random

Received by

Date 9-10-04

Inspector

Ken Church

CITY OF BALTIMORE

MARTIN O'MALLEY Mayor



DEPARTMENT OF PUBLIC WORKS

OFFICE OF THE DIRECTOR

PERMITS

204 Abel Wilson Municipal Building

Baltimore, Maryland 21205

STOP WORK ORDER NO.

STOP WORK ORDER

INSPECTOR <i>Kenneth Church</i>	PHONE 388-4229 BETWEEN 8:00 A.M. & 4:00 P.M.	LOCATION OF PROPERTY <i>ACROSS from 10919 York Rd.</i>
STREET SECTION BLOCK LOT	OWNER'S NAME/ADDRESS <i>James Riffin 1941 Greenspring Dr TIMONION MD 21093</i>	CONTRACTOR'S NAME/ADDRESS

Pursuant to:

- () Section 111.1 and 118.0 of Article 22, Baltimore City Code (1987)
- () Section 10.04-06 of Article 10.04, City of Baltimore Department of Public Works, Specifications for Material, Highways, Bridges, Utilities and Incidental Structures (1979) and amendments
- () Section 4 (GP-5 07) of Standard Specifications for Construction & Materials, Maryland Department of Transportation, State Highway Administration (January 1982)

You are ordered upon receipt of this notice to stop all construction activities except those necessary to correct violations cited below. Normal construction activities cannot be resumed until the recipient of this notice receives a Notice to Proceed, in writing, from the Erosion and Sediment Control Section, Baltimore City Department of Public Works. Failure on your part to comply fully with this Notice will make it necessary to take action in accordance with the provisions of law.

VIOLATIONS

- 1 Working without proper permits (X)
Rectify by obtaining all required permits.
- 2 Working without proper erosion & sediment controls and without an approved erosion and sediment control plan. (X)
Rectify by obtaining an approved erosion and sediment control plan from the aforementioned Erosion and Sediment Control Section and implementing all measures as per approved plans.
- 3 The following conditions are in violation of ()
Permit No. _____ Plan No. _____
 - a) Lack of erosion and sediment control measures ()
Rectify by implementing all measures as per the aforementioned approved plan.
 - b) Failed to correct violations noted on Notice No. _____ ()
dated _____

<i>Kenneth Church</i> Server	<i>9/10/04</i> Date	<i>[Signature]</i> Person Served
---------------------------------	------------------------	-------------------------------------

EXHIBIT B



*THE NORTHERN CENTRAL
RAILROAD*



1941 Greenspring Drive
Timonium, Maryland 21063

Telephone (410) 453-8208
Fax (410) 453-8208
September 10, 2004

FROM James Riffin, CEO
The Northern Central Railroad

TO Paul Barnes
Chief, Watershed right-of-ways
Baltimore, MD 21202

Phone. (410) 396-5023
Fax (410) 837-8225

RE Right of entry onto Baltimore City watershed property

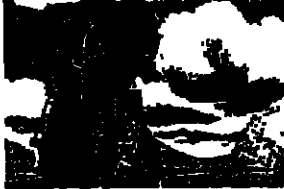
Dear Mr. Barnes:

I would like permission to enter upon a portion of the Baltimore City watershed property in the vicinity of point 74-14, which point is at the east end of Beaver Run Lane in Cockeysville, Maryland, for the following purposes

- 1 To seed and mulch bare earth adjacent to the west side of Beaver Dam Run, which bare earth is approximately 100 feet north of point 74-14
- 2 To remove bituminous asphalt fill material that was inadvertently placed on watershed property immediately north of point 74-14
- 3 To redistribute (flatten out) earthen material that was graded into a 'berm' adjacent to Beaver Dam Run, immediately north of point 74-14
- 4 To seed and mulch whatever bare earth remains after the earthen material has been redistributed

Sincerely,

James Riffin, CEO
The Northern Central Railroad



*THE NORTHERN CENTRAL
RAILROAD*



1941 Greenspring Drive
Timonium Maryland 21063

Telephone (410) 453-6208
Fax (410) 453-6208
September 10, 2004

FROM James Riffin, CEO
The Northern Central Railroad

TO George L. Winfield, Director
Public Works of Baltimore City
Baltimore, MD 21202

Phone (410) 396-3310
Fax (410) 539-6119

RE Construction of a railroad right-of-way on a portion of Baltimore City Watershed

Dear Mr. Winfield

The Northern Central Railroad, a Maryland Class III railroad, has a desire to construct a railroad right-of-way across a portion of Baltimore City's watershed property, located in Cockeysville, Maryland. The proposed right-of-way would be parallel with, and on the west / north side of Beaver Dam Run, beginning at point 74-13, passing by point 74-14, then continuing on to point 74-1, where the proposed right-of-way would intersect, then join the former Northern Central right-of-way.

At your convenience, I would like to enter into negotiations with the appropriate individual(s) regarding acquisition of a legal interest in the land that would constitute the proposed right-of-way. Please have the appropriate individual either call me, or write to me, suggesting a time and place where we might meet to discuss this matter.

Sincerely,

James Riffin, CEO
The Northern Central Railroad

EXHIBIT C

CITY OF BALTIMORE

MARTIN O MALLEY Mayor



DEPARTMENT OF PUBLIC WORKS

GEORGE L. WINFIELD Director
600 Abel Wolman Municipal Building
Baltimore, Maryland 21202

September 30, 2004

Mr James Riffin, CEO
1941 Greenspring Drive
Timonium, Maryland 21093

Dear Mr Riffin

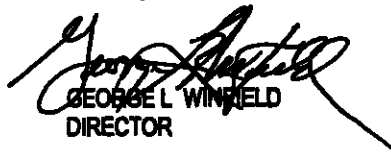
The Department of Public Works is in receipt of your letter dated September 10, 2004, wherein you request to construct a railroad right-of-way across a portion of the Loch Raven Reservoir area, adjacent to Beaver Run Dam

The City of Baltimore obtained the buffer lands surrounding the Loch Raven Reservoir for the purpose of maintaining a forested buffer between the reservoir and any human activity, either developmental or agricultural

The Bureau of Water and Wastewater, Environmental Services Division upon review of your request has determined that the granting of a railroad right-of-way would diminish the buffer that protects the water quality at the watershed. Therefore, the City cannot approve your request to construct the railroad across the watershed property

Thank you and if you have any questions concerning this matter, please feel free to contact Mr. Ralph Cullison, Chief, Environmental Services Division at (410) 396-0539

Sincerely,


GEORGE L. WINFIELD
DIRECTOR

GLW/PB lpl

cc Mr J Keith Scroggins
Mr Joseph Kostow
Mr Paul Barnes

EXHIBIT 2

Voicemail from Jim Riffin sent to James Paschall - July 23, 2007 at 11 16 a m

"G'Morning Mr Paschall. Jim Riffin. .Baltimore. 443-413-6210. .(I) had a thought and have a comment uh . .thought if I were to . if you were to abandon the Cockeysville Industrial Track Line, and I were to acquire it, I wouldn't have time or motivation to look at all your other filings I don't know if that's a good or a bad but .it is a thought uh...which leads us to the next one

I looked at one of your filings . uh . it's 290-293X.. looks like you filed it on the 19th of July it would appear that you've got a misleading statement - false or misleading statement in your document. uhm my position would be if you correct it, I don't have to talk about it uh .if you read Page Five of your NOE and Subparagraph Five, it talks about the System Diagram Map and in your document you state that you didn't put this little line of railroad I think it's in Norfolk uh on the System Diagram Map as being subject to abandon .uh because you didn't know you were going to abandon it .uhm If you look on Page 24 of your Environmental Statement, it says that in the First Quarter of 2006 . it's the 1,2,3 third paragraph down uh it says in the First Quarter of 2006 anticipating an abandonment filing covering the subject line you served the Environmental (unintelligible word) and Historic Reports Uh they seem to be directly contradictory uh if the First Quarter of 2006 you were anticipating an abandonment filing, then you did that long before July of 2007, so you need to correct one of 'em

Hey, why, uh I'd rather not comment on it to the Board, because if I do, then I have to file a petition to revoke, then you gotta start over again, then you gotta pay another fee, and that's just kind of a pain in the ass

My bigger interest is Cockeysville.. you really ought to seriously consider it filing an abandonment for that, let me acquire it, and I'll get off your back Talk to you later Bye "

Transcription checked against recording by James R Paschall

EXHIBIT 3



Thursday, November 20, 2008

ODOT Officials, SEDF Board Revisit Rail Service Concerns

By Lori Goat

Transportation officials attempted to alleviate rail service and connectivity concerns of the Shawnee Economic Development Foundation (SEDF) at a meeting last week

Secretary of Transportation Phil Thomlinson and Oklahoma Department of Transportation (ODOT) Director Gary Ridley expressed ODOT's view of how the construction of the new Interstate 40 Crosstown Expressway in Oklahoma City will and won't impact Shawnee at the Nov. 12 meeting

Ridley told SEDF members a new, state-of-the-art interchange rail yard being built northeast of downtown OKC will provide Shawnee with a through track, with no switching, and the abandonment of other lines won't hinder Shawnee train service

"The interchange yard will enhance all railway traffic," Ridley said

Shawnee city officials and the SEDF Rail Committee have been working with state agencies, with little to no success, to find a way to improve the 36 miles of track between Shawnee and OKC, which travels dangerously close to the North Canadian River. The track is classified as "Excepted Track," the lowest level of the Federal Railroad Administration's acceptable track. Due to the track's proximity to the river, it is in peril of being washed out during heavy rainfall.

In August, Oklahomans for New Transportation Alternatives Coalition (ONTRAC), a group that is promoting intermodal passenger rail service between OKC and outlying areas and perceives the partial destruction of OKC's Union Station to make way for the Crosstown Expressway as detrimental to their enterprise, lobbied the Shawnee City Commission and the SEDF to join them in the fight to move the expressway. The fight consisted of passing resolutions to send to Governor Brad Henry. City officials voted to unite with ONTRAC and passed the resolutions.

Part of the battle included being a party of record in a proceeding between the Surface Transportation Board (STB) and Burlington Northern Santa Fe Railway (BNSF). BNSF had filed an application to abandon track in OKC. The STB found that BNSF's application contained "false and misleading information," so the board denied the application. BNSF appealed the decision.

At a special SEDF meeting held on Nov. 3, Rail Committee member Jim Townsend shared his apprehensions of allowing BNSF to abandon the OKC lines. He feared it would create a bottleneck that would significantly slow Shawnee rail travel. The SEDF voted 10-3 to be a party of record in the STB and the BNSF proceeding.

On Nov. 12, Thomlinson and Ridley, armed with bird's-eye-view maps and photographs, showed the SEDF how Shawnee rail travel would be improved and explained the high-priced complexities of ONTRAC's goal to realign the expressway 200-400 feet south of Union Station.

"Moving the expressway would take out 15 to 20 homes, 8 to 10 businesses, and historical landmarks," Ridley said. "It would delay the project about 5 to 8 years and cost the taxpayers between \$240 to \$340 million in extra expense "

Then mayor-elect Linda Peterson asked Ridley if rail service would be interrupted during the expressway construction

"No," Ridley replied.

Chuck Skillings told Thomlinson and Ridley that losing rail service to Shawnee would be catastrophic to existing and future Shawnee businesses

"This project has nothing to do with the problems Shawnee faces with the rail," Ridley said "But actually, it will improve connectivity in the long term "

Thomlinson, who had been mostly silent throughout the meeting, spoke up

"I've lived here for 40 years and I'm interested in the well-being of our town," he said "I had hoped you might question all the people who have been working on this project (Crosstown Expressway) for years before passing resolutions on the word of an outside group (ONTRAC) who, frankly, is concerned with their own agenda."

ONTRAC was scheduled to meet with the SEDF as the Countywide & Sun went to press

EXHIBIT 4

Edwin Kessler, Vice-Chair
Common Cause Oklahoma
1510 Rosemont Drive
Norman, Oklahoma 73072

Voice phone – 405-360-2194; Fax phone – 405-360-3246
E-mail – kess3@swbell.net

218582

February 5, 2007

Charles D. Nottingham, Chair
Surface Transportation Board
1925 K Street N W
Washington D.C. 20423-0001

ENTERED
Office of Proceedings
FEB 5 - 2007
Part of
Public Record

By fax to 202-565-9013

Dear Mr Nottingham,

We plead for an exception to your rules to allow a two-week extension for reply to your Decision, Docket Number AB_6_430_X

The concerned citizens whom I am representing have had little knowledge of technical matters concerning railroad abandonment issues and the associated role of the Surface Transportation Board. We were unaware of the publication on October 13, 2005, by BNSF and the Stillwater Central Railroad of its notice of abandonment and of its implications for abandonment. Although we read, several months later, your related decision of November 10, 2005, we still did not then realize that important related options were provided to citizens and various entities, and accordingly took no action but rather awaited your final decision. Because of the considerable time between then and now, we thought it possible that the STB would rule in favor of petitioners and forbid abandonment of the line, which is also an objective of Common Cause Oklahoma.

Now we have learned the meaning of an OFA and have sought and last week obtained important information from the Oklahoma Department of Transportation through the freedom of information act. I am pleased to write that ODOT has been very cooperative in this matter.

We need a two-week extension of time to obtain additional information including such as the following: a) An estimate of net liquidation value as provided by the railroads; this, of course, is tightly related to the amount of money that would have to be raised for purchase of the rail line, b) the prospect of obtaining sufficient money from interested investors, c) the prospect of provision of some services involving the Union Terminal, which we ardently seek to preserve; d) the prospect of freight business from at least four enterprises that we know to be located along the 2.5 mile segment.

Mr Nottingham, if we fail to come up with an offer for purchase of the two and a half mile railroad segment, it seems to us that your decision would not be impacted in any material way. It could still be effective on the announced date of February 25th. We do pray that you and the STB will help us to find a way to prevent Oklahoma, during its centennial year, from becoming the last place in the United States to remove railroad tracks and the functional capability of a terminal building in excellent condition, in favor of increased automobile travel. We also seek to demonstrate that preservation of existing facilities would provide some energy efficient transportation and a partial answer to the need to limit emissions of greenhouse gases. The alternative is a construction project that has been roundly condemned by a former OKC Planning Director and by a transportation authority formerly with the World Bank, will remove grade-separated crossings, will cost half a billion dollars, and bring more damaging ozone to Oklahoma City.

Thank you very much for consideration

Sincerely yours,



cc: Vernon A. Williams, Secretary, Sfc. Transportation Board - By fax to 202-565-9019
Sidney Strickland, Esq., Attorney, BNSF, By fax to 202-672-5399
Karl Morell, Esq., Attorney, Stillwater Central Railroad - By fax to 202-783-6974
Lynn Howell, Esq., Chair, Common Cause Oklahoma - By fax to 405-239-2121
Fritz R. Kahn, P.C. - By fax to 202-331-8330

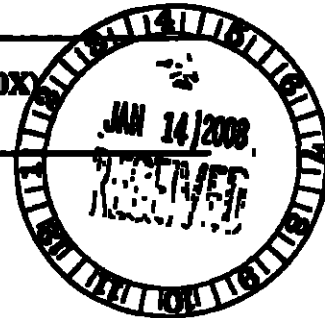
EXHIBIT 5

22/263

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-6 (Sub- No. 430X)

**BNSF RAILWAY COMPANY
ABANDONMENT EXEMPTION
IN OKLAHOMA COUNTY, OK**



ENTERED
Office of Proceedings
JAN 14 2008
Part of
Public Record

**REPLY TO BNSF'S
REQUEST FOR EXTENSION OF TIME TO CONSUMMATE ABANDONMENT**

1. Edwin Kessler ("Kessler"), herewith files his Reply to BNSF's Request for Extension of Time to Consummate Abandonment, and states:

**REPLY TO
REQUEST FOR EXTENSION OF TIME TO FILE CONSUMMATION NOTICE**

2. On December 26, 2007, BNSF asked the Board for a second extension of time for filing its Notice of Consummation in the above entitled case, until June 30, 2008. The only reason BNSF offered to justify its request for an extension of time, was "weather delays and scheduling difficulties with various construction projects."

3. 49 CFR 1152.29(e)(2) specifically states.

"The notice [of consummation] shall be filed within 1 year of the service date of the decision permitting the abandonment." . If, after 1 year from the date of service of a decision permitting abandonment, consummation has not been effected by the railroad's filing of a notice of consummation, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. In that event, a new proceeding would have to be instituted if the railroad wants to abandon the line. . For good cause shown, a railroad may file a request for an extension of time to file a notice so long as it does so sufficiently in advance of the expiration of the deadline for notifying the Board of consummation to allow for timely processing."

4 Kessler would argue, because BNSF has not demonstrated there were legal or regulatory barriers preventing it from consummating its abandonment of the Line, BNSF is not entitled, as a matter of right, to have the date by which it had to consummate abandonment of the Line, extended.

5. Kessler would further argue that BNSF has not shown good cause why it should be granted a second extension of time within which to file its consummation notice.

A. BNSF was granted authority to abandon the Line effective November 12, 2005. BNSF's consummation notice was due on or before November 12, 2006.

B. By decision dated October 6, 2006, the Board granted BNSF a 13 ½ month extension within which to file its notice of consummation, or until December 31, 2007. In BNSF's first request for an extension of time to file its notice of consummation, BNSF gave the same excuse it presently is using, to wit: that it was unable to consummate abandonment due to bad weather and scheduling difficulties.

C. On December 26, 2007, only five days before its notice of consummation was due, BNSF filed a second request for a second extension of time within which to file its notice of consummation, reiterating the same lame excuse it used more than 14 months ago.

D. Using "inclement weather and scheduling difficulties" as an excuse for its failure to timely consummate its abandonment, may have been plausible the first time it was offered. Using "inclement weather and scheduling difficulties" a second time, particularly in light of the fact that the summer of 2007 was one of the driest on record for Oklahoma, calls into question BNSF's credibility. How difficult is it to remove 2.95 miles of Line that essentially is on flat ground, has no vegetative growth on it, and is easily accessible? For a class I carrier to say it could not work into its schedule a 2-week job sometime during the past 27 months, is about as implausible an excuse as one could imagine.

6. Kessler would further argue that BNSF's second request for an extension of time to file its notice of consummation, did not comply with the requirements of 49 CFR 1152.29(e)(2), specifically: Its request for an extension of time was not filed "sufficiently in advance of the expiration of the deadline for notifying the Board of consummation to allow for timely processing."

- A. BNSF wanted until December 26, 2007 to file its request for an extension of time.**
- B The Board only had two working days following BNSF's filing within which to render a decision. (December 27 & 28, 2007. The Board was closed between December 29, 2007 and January 2, 2008.)**
- C. BNSF was fully aware of the Board's holidays schedule, and was fully aware that many Board employees took a much deserved holiday over the Christmas - New Year holiday period**
- D. The Board's regulations specifically grant Kessler 20 days within which to file a reply to BNSF's request for an extension of time, or until January 15, 2008, or some 2 weeks past the deadline date.**

7 For the foregoing reasons, Kessler would ask that the Board:

- A FIND that BNSF did not carry its burden of proving its failure to consummate its abandonment of the Line was due to legal or regulatory barriers, and**
- B FIND that BNSF did not carry its burden of showing good cause why it needed even more than the 13 ½ months of extra time the Board had already provided it with, to consummate its abandonment of the Line; and**
- C. FIND that BNSF did not submit its request for a second extension of time "sufficiently in advance of the expiration of the deadline for notifying the Board of consummation to allow for timely processing;" and**
- D. DECLARE that BNSF's authority to abandon the Line automatically expired on December 31, 2007; and**
- E. DECLARE that if BNSF still desires to abandon the Line, then BNSF shall be required to institute a new proceeding, which new proceeding should not be instituted**

until BNSF is able to work abandonment of the Line into its busy schedule; and
F For such other relief as would be appropriate and just.

Respectfully submitted,


Edwin Kessler

CERTIFICATE OF SERVICE

I hereby certify that on this - 14th day of January, 2008, a copy of the foregoing Reply to BNSF's Request for Extension of Time to Consummate Abandonment, was served by first class mail, postage prepaid, upon the parties of record noted below.


Edwin Kessler

Sidney L. Strickland, Jr
Sidney Strickland & Associates
Ste 101
3050 K Street, N.W.
Washington, DC 20007
(202) 295-4672

Karl Morell
Ball Janik LLP
Ste 225
1455 F Street, N.W.
Washington, DC 20005
(202) 638-3307

Fritz Kahn
8th Floor
1920 N Street, N W.
Washington, DC 20036-1601
(202) 263-4152

EXHIBIT 6

Kensler
19510 Beaumont
73072

BALTIMORE MD 212

07 APR 2008 PM 3 L



KARL MORELL

BAIL JANIK

STE 225

1455 F ST NW

WASHINGTON DC 20005

20004+1111

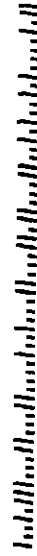


EXHIBIT 7

.

.

EXHIBIT THREE

MDRC

81 Century Lane
Watchung, NJ 07069

Phone (908) 361-2435

February 22, 2007

Edwin Kessler
1510 Rosemont Drive
Norman, OK 73072

Dear Mr Kessler:

Recently we read your Notice of Intent to File an Offer of Financial Assistance in AB 6 (Sub No 430X), *BNSF Railway Company – Abandonment Exemption – In Oklahoma County, Oklahoma*. In your filing, you indicated you have a desire to purchase from BNSF that portion of its line that it desires to abandon in Oklahoma City, Oklahoma

Our company is looking for a location to maintain and repair rail cars Oklahoma City would be an ideal location for these activities, particularly since a rail car manufacturer is located less than one mile from the line you propose to purchase. In addition, the line you propose to purchase is located adjacent to a Union Pacific line Having access to two Class I carriers is highly desirable .

With the above in mind, if you are successful in acquiring the BNSF line, please contact us, so that we may move forward with our desire to locate our facility along your newly purchased line

Sincerely,



J. Dennis, CEO
MDRC

BANKING. INVESTMENTS. INSURANCE.



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Monday, Dec 8, 2008
57,460,826 companies



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Mdrc-1 Llc

1941 Greenspring Dr, Lutherville Timonium, MD 21093-4158

Contact Phone: (443) 414-6210

URL (web address):

Business Category: Real Estate Development in Lutherville Timonium, MD

Industry (SIC): Land Subdividers and Developers, Except Cemeteries

Ads by Google

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[Rental Property Mortgages](#) Looking to refinance your apartment building? Low-doc, 30-yr. terms

The ads are not affiliated with Mdrc-1 Llc

Business Information

This company profile is for the private company Mdrc-1 Llc, located in Lutherville Timonium, MD
Mdrc-1 Llc's line of business is real estate development

Company Name: **Mdrc-1 Llc** Is This Your Company?

Address: 1941 Greenspring Dr, Lutherville Timonium, MD 21093-4158 ([Map](#))

Alt Business Name:

Location Type: Single Location

Est. Annual Sales: \$200,000

Est. # of Employees: 1

Est. Empl at Loc.: 1

Year Started:

State of Incorporation:

SIC #Code: 6552

Contact's Name: James Riffin

Contact's Title:

Related Info.

Other companies named
[Mdrc-1 Llc](#)

More Companies in

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EXHIBIT 8

Odom, Susan

From: Jim Hagemann [JHagemann@boardmaninc.com]
Sent: Friday, October 31, 2008 3:37 PM
To: Odom, Susan
Subject: RE: Locomotive shipment

Susan,

Boardman has no need for a locomotive

Thanks

James W. Hagemann, CPA
Chief Financial Officer
405/634-5434, ext 223
jhagemann@boardmaninc.com

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From: Odom, Susan [mailto:Susan.Odom@BNSF.com]
Sent: Monday, October 27, 2008 4:36 PM
To: jhagemann@boardmaninc.com
Cc: Clark, Kristy D; Johnson, Jerome M
Subject: Locomotive shipment

Mr. Hagemann,

I am just following up on our conversation of Friday, October 17. Does Boardman still wish to have the locomotive delivered to their facility in Oklahoma City? Please advise at your earliest convenience.

Susan Odom
Manager Network Strategy
BNSF Railway Company
2500 Lou Menk Drive
AOB - 3rd Floor
Fort Worth, TX 76131

817-352-6432 phone 817-352-7154 fax susan.odom@bnsf.com

This message may be confidential and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender by replying to this message and then delete it from your system. Thank you.

2/3/2009

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EXHIBIT 9

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NATIONAL RAILROAD FREIGHT COMMITTEE, AGENT

UNIFORM FREIGHT CLASSIFICATION 6000-M

**(CANCELS UNIFORM FREIGHT CLASSIFICATION 6000-L, EXCEPT
FOR THE ACCOUNT OF QBT WHICH FOR THE PURPOSE OF RATINGS SHOULD
REVERT BACK TO THE RATING SECTION OF 6000-L)**

RULES AND REGULATIONS

**THIS TARIFF IS APPLICABLE ONLY IN CONNECTION WITH TARIFFS
SPECIFICALLY SUBJECT HERETO**

ISSUED MARCH 15, 2001

EFFECTIVE APRIL 1, 2001

**Sandra Hladick
Tariff Publishing Officer
RAILINC
7001 Weston Parkway, Suite 200
Cary, NC 27513
(919) 651-5091**

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UNIFORM FREIGHT CLASSIFICATION 6000-M

NATIONAL RAILROAD FREIGHT COMMITTEE
7001 Weston Parkway, Suite 200, Cary, NC 27513
919-651-5020

BERNARD BONK
Chairman

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CANCELLATION NOTICE

The following provisions are hereby **▲+▲ CANCELLED**

INDEX OF ARTICLES

RATING SECTION

SPECIAL NOTICE, EXEMPTION FROM REGULATION

and all related provisions

Company

Plan

	Shipper	Agent
Per	Per	
Permanent post office address of shipper		

UNIFORM FREIGHT CLASSIFICATION 6000-M

CONTRACT TERMS AND CONDITIONS

Sec. 1 (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law or the act or default of the shipper or owner or for natural shrinkage. The carrier's liability shall be that of warehouseman, only for loss, damage or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination or tender of delivery of the property to the party entitled to receive it has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession) the carrier or party in possession shall not be liable for loss, damage or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner or party entitled to make such request or resulting from a defect or vice in the property or for country damage to cotton, or from riots or strikes.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere as required by quarantine regulations or authorities or for the carrier's despatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents or employees, nor for detention, loss or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur or damages they may be required to pay by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

Sec. 2 (a) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) As a condition precedent to recovery claims must be filed in writing with the receiving or delivering carrier or carrier issuing this bill of lading or carrier on whose line the loss, damage, injury or delay occurred, within nine months after delivery of the property (or in case of export traffic, within nine months after delivery at port of export) or in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed, and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

(c) Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance. Provided, That the carrier reimburse the claimant for the premium paid thereon.

Sec. 3 Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary co-operation and bailing at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for detention or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator may (unless otherwise expressly noted herein and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 4 (a) Property not removed by the party entitled to receive it within the free time allowed by tariffs, lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder at such place as may be designated by the carrier. Provided, That the carrier shall have first notified, sent or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned or if shipped order notify the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published. Provided, That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent or given.

(c) Where perishable property which has been transported hereunder is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale. Provided, That it first serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given in such manner as the avoidance of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under the section shall be applied by the carrier to the payment of freight, demurrage, storage and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property. If proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and except in case of carrier's negligence, when received from or delivered to such stations, wharves or landings shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels.

Sec. 5 No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6 Every party whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7 The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property, but, except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates by signature in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier contrary to such stipulation shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for such charges. Provided that, where the carrier has been instructed by the shipper or consignor to deliver said property to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of said property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in said property; and (b) prior to delivery of said property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title; and in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of said property; and in such cases the shipper or consignor, or in the case of a shipment to be reconsignee or diverted, the beneficial owner shall be liable for such additional charges if the consignee has given to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be liable for such additional charges. On shipments reconsignee or diverted by an agent who has furnished the carrier in the reconsignment or diversion order with a notice of agency and the proper name and address of the beneficial owner and where such shipments are refused or abandoned at ultimate destination, the said beneficial owner shall be liable for all legally applicable charges in connection therewith. If the reconsignee or diverter has given to the carrier erroneous information as to who the beneficial owner is, such reconsignee or diverter shall himself be liable for all such charges.

If a shipper or consignor of a shipment of property (other than a prepaid shipment) is also the consignee named in the bill of lading and prior to the time of delivery notifies in writing, a delivering carrier by railroad (a) to deliver such property at destination to another party; (b) that such party is the beneficial owner of such property; and (c) that delivery is to be made to such party only upon payment of all transportation charges in respect of the transportation of such property and delivery is made by the carrier to such party without such payment, such shipper or consignor shall not be liable (as shipper, consignor, consignee or otherwise) for such transportation charges but the party to whom delivery is so made shall in any event be liable for transportation charges billed against the property at the time of such delivery, and also for any additional charges, which may be found to be due after delivery of the property, except that if such party prior to such delivery has notified in writing the delivering carrier that he is not the beneficial owner of the property, and has given in writing to such delivering carrier the name and address of such beneficial owner, such party shall not be liable for any additional charges which may be found to be due after delivery of the property; but if the party to whom delivery is made has given to the carrier erroneous information as to the beneficial owner, such party shall nevertheless be liable for such additional charges. If the shipper or consignor has given to the delivering carrier erroneous information as to who the beneficial owner is, such shipper or consignor shall himself be liable for such transportation charges, notwithstanding the foregoing provisions of this paragraph and irrespective of any provisions to the contrary in the bill of lading or in the contract of transportation under which the shipment was made. The term "delivering carrier" means the line-haul carrier making ultimate delivery.

Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Where delivery is made by a common carrier by water the foregoing provisions of this section shall apply, except as may be inconsistent with Part III of the Interstate Commerce Act.

UNIFORM FREIGHT CLASSIFICATION 6000-M

Sec 8 If this bill of lading is issued on the order of the shipper or his agent, in exchange or in substitution for another bill of lading the shipper's signature to the prior bill of lading as to the statement of value or otherwise or election of common law or bill of lading liability in or in connection with such prior bill of lading shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec 9 (a) If all or any part of said property is carried by water over any part of said route and loss damage or injury to said property occurs while the same is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water (this bill of lading being such bill of lading if the property is transported by such water carrier thereunder) and by and under the laws and regulations applicable to transportation by water. Such water carriage shall be performed subject to all the terms and provisions of and all the exemptions from liability contained in the Act of the Congress of the United States approved on February 13 1893 and entitled "An act relating to the navigation of vessels etc." and of other statutes of the United States according carriers by water the protection of limited liability as well as the following subdivisions of this section and to the conditions contained in this bill of lading not inconsistent with this section when this bill of lading becomes the bill of lading of the carrier by water.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And when for any reason it is necessary any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports in or out of the customary route to tow and be towed, to transfer trans-ship or lighter to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General Average shall be payable according to the York-Antwerp Rules of 1924 Sections 1 to 15 inclusive, and Sections 17 to 22 inclusive and as to matters not covered thereby according to the laws and usages of the Port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation or in the management of the vessel or from any latent or other defects in the vessel, her machinery or appurtenances or from unseaworthiness whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence) the shippers, consignees and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lightering in or across rivers, harbors, or lakes when performed by or on behalf of rail carriers.

Sec 10 Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect and this bill of lading shall be enforceable according to its original tenor.

EXHIBIT 10

**BNSF RAILWAY COMPANY
BNSF RULES BOOK 6100-A
(Cancels BNSF Rules Book 6100)**

**CONTAINING
RULES, REGULATIONS AND SPECIAL CHARGES
GOVERNING
THE TRANSPORTATION OF FREIGHT
ON
BNSF RAILWAY COMPANY
IN
THE UNITED STATES AND CANADA
AND
REGULATIONS GOVERNING CURRENCY EXCHANGE ON TRAFFIC
FROM, TO AND BETWEEN STATIONS IN CANADA
AND
CAR HIRE ON TRAFFIC TO OR FROM MEXICO**

For explanation of abbreviations / reference marks, see Item 110

ALSO APPLICABLE ON INTRASTATE TRAFFIC

ISSUED DECEMBER 29, 2000

EFFECTIVE JANUARY 1, 2001

Issued by J. C. Engstrom, P. O. Box 961069, Ft. Worth, TX 76161-0069

BNSF Rules Book 6100 – A

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BNSF Rules Book 6100 – A

Item 2200 - Order Bills of Lading, Non-Acceptance on Grain to Mexico

Shipments of Grain and Grain Products, as defined in Tariff BNSF 4022-4023 Series, from BNSF origins to destinations in Mexico may only be made under a Straight Bill of Lading. Order Bills of Lading for shipments of Grain and Grain Products billed to destinations in Mexico will not be accepted by the BNSF.

Item 2220 - Receipt and Delivery of Freight, Restrictions On

Nothing in tariffs to which BNSF is a party shall require BNSF to receive or deliver any carload or less than carload shipment when such receipt or delivery is impracticable because of any riot, strike, picketing or other labor disturbance.

Item 2240 - Refused or Unclaimed Freight

The following practice will be followed in the handling of freight which is refused or unclaimed:

- A Non-Perishable Freight Consignee, as described in the waybill, will be notified promptly of the arrival of shipments at destination. In case of refusal by consignee to accept the freight, or if freight is unclaimed five days after notice of arrival has been duly sent or given, consignor will be sent a notice showing:

Name of consignee

Description of freight

Point of origin and date of shipment whether property has been refused or remains unclaimed,

which notice should also state substantially that if disposition is not arranged for, the property will be subject to sale as provided in Section 4, Paragraph (b) of the Uniform Bill of Lading as published in Tariff UFC 6000-Series.

- B Perishable Freight Consignee will be notified promptly of the arrival of perishable freight, but whenever necessary to prevent loss or waste, perishable freight which is refused, unclaimed or undelivered may be sold at the discretion of the carrier, without advertising and without further notice, as provided in Section 4, Paragraph (c) of the Uniform Bill of Lading as published in Tariff UFC 6000-Series.
-

EXHIBIT 11



Susan Odom
Manager Network Strategy
BNSF Network Development

BNSF Railway Company
2500 Lou Menk Drive - AOB-3
Fort Worth, Texas 76131
tel 817-352-8432
fax 817-352-7154
email susan.odom@bnsf.com

November 26, 2008

VIA OVERNIGHT MAIL

Edwin Kessler
1510 Rosemont Drive
Norman, OK 73072

Re Delivery instructions for locomotive loaded on car HTTX 93507 (BNSF waybill #803781)

Dear Mr Kessler

To date, BNSF has been unable to deliver the above referenced locomotive that was shipped from Wilson, AR to Oklahoma City at your direction. The shipping instructions you provided show that the locomotive was moved for your account, in care of Boardman, Inc, however, Boardman has advised BNSF that they have no use for the locomotive. Meanwhile, car HTTX 93507 remains in the possession of BNSF's handling carrier, Stillwater Central Railroad, where it is accruing daily demurrage charges.

As consignee of the shipment, it is your legal responsibility to provide current, accurate information that will effect the shipment's prompt delivery and to arrange for the shipment's receipt in a reasonable period of time once notified that it is available for delivery.

The purpose of this letter is to inform you that BNSF demands disposition of this shipment within five (5) business days of the date you receive this letter. Please arrange for a viable alternate delivery location by logging on to the BNSF Web site (www.BNSF.com) and accessing our secured Internet application shipping instructions.

Be advised that BNSF will pursue all available remedies if this matter is not settled within the stipulated time.

Sincerely,

Susan Odom
Manager Network Strategy

cc: **Boardman, Inc**
1135 South McKinley
Oklahoma City, OK 73108

Walco Companies, Inc
315 West 3rd Street
Pittsburg, KS 66762



Susan Odom
Manager Network Strategy
BNSF Network Development

BNSF Railway Company
2500 Lou Menk Drive - AOB-3
Fort Worth, Texas 76131
tel 817-382-8432
fax 817-382-7154
email susan.odom@bnsf.com

December 18, 2008

VIA OVERNIGHT MAIL (signature required)

Edwin Kessler
1510 Rosemont Drive
Norman, OK 73072

Re Consignee Edwin Kessler
Locomotive (D V & S No 50) on flatcar (HTTX 93507)
Shipped 07/30/2008 from Wilson, AR

Dear Mr Kessler

BNSF waybill #603761, dated July 29, 2008, identifies you as the consignee for the locomotive referenced above that was shipped from Wilson, AR to Oklahoma City, OK. BNSF made numerous attempts to deliver the locomotive to Boardman, Inc, per your instructions, however, Boardman has refused to accept delivery of the locomotive and further advises BNSF that they have no use for the same.

BNSF demanded disposition of this shipment by letter to you dated 11/26/2008, delivered via UPS (Tracking Number 1Z FV2 485 01 9078 188 9) on 12/02/2008 at 9 34 a.m. To date we have received no response to our demand and the locomotive remains unclaimed and is in the possession of Stillwater Central Railroad Company. Because you failed to provide disposition instructions to BNSF, the locomotive is subject to sale at public auction as provided in Section 4, Paragraph (b) of the Uniform Bill of Lading published in BNSF Tariff UFC 6000-Series.

BNSF has reason to believe that James Riffin of Timonium, Maryland (copied on this letter) may be the owner of the locomotive. You or Mr Riffin (upon providing proof of ownership) have until the close of business on 12/29/2008 to arrange for disposition of the locomotive or the locomotive will be sold at public auction. Your disposition arrangements must include payment of all outstanding charges as well as pre-payment of freight charges for delivery. Otherwise, BNSF will deduct all outstanding charges from the proceeds of the public auction and send any remaining balance to you. Communication must also provide a specific acknowledgement that the consignee is prepared to receive the shipment and that it will be substantially received within 48 hours of notice of the shipment's arrival.

Please feel free to contact me if you have any questions

Sincerely,

Susan Odom
Manager Network Strategy

cc: James Riffin
1941 Greenspring Drive
Timonium, MD 21083
Boardman, Inc
Watco Companies, Inc



Susan Odom
Manager Network Strategy
BNSF Network Development

BNSF Railway Company
2800 Lou Mark Drive - AOB-3
Fort Worth, Texas 76131
tel 817-362-8432
fax 817-362-7154
email susan.odom@bnsf.com

January 8, 2008

VIA USPS CERTIFIED MAIL (signature required)

Edwin Kessler
1510 Rosemont Drive
Norman, OK 73072

Re Consignee: Edwin Kessler
Locomotive (D V & S No 50) on flatcar (HTTX 93507)
Shipped 07/30/2008 from Wilson, AR

Dear Mr Kessler,

This letter is being sent to you as a courtesy. It includes revised dates for your handling of the disposition of the above-referenced locomotive shipment.

BNSF waybill #803781, dated July 29, 2008, identifies you as the consignee for the locomotive referenced above that was shipped from Wilson, AR to Oklahoma City, OK. BNSF has made numerous attempts to deliver the locomotive to Boardman, Inc., per your instructions, however, Boardman has refused to accept delivery of the locomotive and further advises BNSF that they have no use for the same

BNSF demanded disposition of this shipment by letter dated 11/26/2008, delivered via UPS (Tracking Number 1Z FV2 495 01 9078 188 9) on 12/02/2008 at 9 34 a m To date we have received no response to our demand and the locomotive remains unclaimed and is in the possession of Stillwater Central Railroad Company. Because you failed to provide disposition instructions to BNSF, the locomotive is subject to sale at public auction as provided in Section 4, Paragraph (b) of the Uniform Bill of Lading published in BNSF Tariff UFC 6000-Series

BNSF has reason to believe that James Riffin of Timonium, Maryland (copied on this letter) may be the owner of the locomotive You or Mr Riffin (upon providing proof of ownership) have until the close of business on 1/17/2008 to arrange for disposition of the locomotive or the locomotive will be sold at public auction Your disposition arrangements must include payment of all outstanding charges as well as pre-payment of freight charges for delivery Otherwise, BNSF will deduct all outstanding charges from the proceeds of the public auction and send any remaining balance to you Communication must also provide a specific acknowledgement that the consignee is prepared to receive the shipment and that it will be substantially received within 48 hours of notice of the shipment's arrival

Please feel free to contact me if you have any questions

Sincerely,

Susan Odom
Manager Network Strategy

cc. James Riffin
1941 Greenspring Drive
Timonium, MD 21083

EXHIBIT 12

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EDWIN KESSLER –	§	
PRELIMINARY INJUNCTION	§	FINANCE DOCKET NO. 35206
PETITION FOR INJUNCTIVE RELIEF	§	

VERIFIED STATEMENT OF ROBERT FULLER

My name is Robert Fuller. I am the Vice President and General Manager of Delta Valley & Southern Railway Company (DVS) in Wilson, AR.

In early 2007, DVS exchanged with Jeremy Funderburk of Golden, MS, DVS's locomotive DV&S No. 50 for a Trackmobile® owned by Funderburk. Funderburk in turn sold DV&S No. 50 to James Riffin of Maryland. DV&S No. 50 remained on DVS's property until July 29, 2008. DV&S No. 50's engine was running at the time of the exchange with Funderburk, but the locomotive had been taken out of service by DVS in early 2007, when it failed to pass a routine 92-day inspection because the wheels would no longer gage.

DVS made numerous attempts to contact Riffin by phone to arrange for Riffin to remove the locomotive from DVS's property. On October 23, 2007, Riffin called DVS to confirm that Funderburk had authority to sell the locomotive, at which time I told Riffin that DVS wanted the locomotive removed from DVS property by the end of February 2008. During the following four months DVS continued to attempt to contact Riffin by USPS (regular and certified mail) and by telephone. Our certified letter to Riffin was returned "unclaimed". Riffin has since stated to me that he does not accept certified mail from anyone

Riffin came to Wilson, AR in July 2008, in person. At this time he made the necessary arrangements for placing the locomotive on a flat car for removal from DVS's property, and the locomotive was removed from DVS's property.

STATE OF ARKANSAS

§
§
§

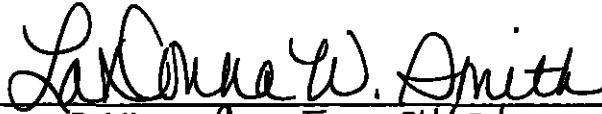
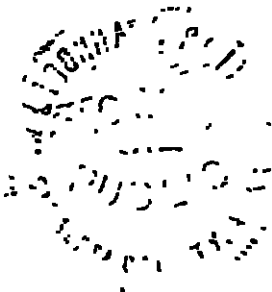
COUNTY OF MISSISSIPPI

Robert Fuller makes oath and says he is employed by Delta Valley & Southern Railway Company as Vice President and General Manager, that he is authorized to make the foregoing Verified Statement, that he has reviewed the foregoing Verified Statement, and that all representations set forth therein are true and correct to his current actual knowledge, information, and belief



Robert Fuller

Subscribed and sworn to before me
this 10 day of February, 2009.



Notary Public

Com. Exp. 04/17/2010

EXHIBIT 13

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EDWIN KESSLER -- PRELIMINARY INJUNCTION PETITION FOR INJUNCTIVE RELIEF	§ § §	FINANCE DOCKET NO 35206
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VERIFIED STATEMENT OF JERRY A. PINKEPANK

My name is Jerry A Pinkepank I am currently a consultant who served as a railroad officer from 1965 to 1989 and as a consultant continuously since that time My duties have required me to be familiar with the utility and maintainability of all the various locomotive types, and have placed me in touch with individuals having knowledge of the current market for locomotives, whom I have contacted in responding on this issue I am the author of the *Diesel Spotter's Guide* series of locomotive identification books, which are the standard reference on the topic for the period 1918 to 1986 I am also the founder of the locomotive publication *Extra 2200 South*, which has been published continuously since 1961 and is a standard research reference for specialists in locomotive history This background places me in a position to know whether or not a locomotive has value to collectors or museums as well as normal industrial value

The General Electric locomotive now in Oklahoma City (shown in the photograph attached to this Verified Statement as Exhibit 1), is former Delta Valley & Southern (DV&S) No 50 Although described as a 50-ton unit (and the road number assigned probably reflects that) the type was generally known as a "45-tonner" The actual weight of each locomotive built depended on the amount of ballasting requested by the buyer This GE model was generally equipped with two 150 hp Cummins HBI engines and driven by two traction motors, one on each truck, with the other axle connected by side rods or chain drive The DV&S No 50 is said to have been built in either 1954 or 1957, however, the form of hood (relatively wide) and hood door (with the pressed rectangles) dates the unit as being produced in the 1956-59 era.

The sale of this unit would have taken place sometime after December 10, 2003 when I observed it in operation on the DV&S This locomotive is not a collector's item as the general type was common and regarded as uninteresting On the DV&S the service performed was to handle cars of cotton seed for a distance of ¼ mile from the loading platform of the BNSF River Subdivision interchange at Evadale, Arkansas

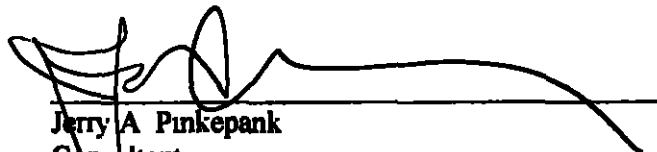
There is very little market for a locomotive of this size, because industrial customers now prefer the flexibility of rubber-tired switchers such as the Trackmobile® for moving only a few cars at a time Larger locomotives released by Class I carriers are readily available for heavier duty Due to the increasing size of cars and the shift to unit train and large multi-car shipments, locomotives in this size range have been generally squeezed out of the market

It was stated to me that the unit is in need of wheel work That is not surprising since movement at Evadale was through one curve, which would eventually result in uneven flange wear I would expect the wheels to require replacement rather than simply wheel truing This will require a shop with a drop table

With the above situation, it seems unlikely that this locomotive should be valued at anything above scrap value, which I estimate at \$25,000. By way of comparison, the Ballard Terminal in 2002 acquired a General Motors SW-1 (100 tons, 600hp, four traction motors) in running condition from Weyerhaeuser for \$50,000. You will note that the SW1 has twice the capability of the unit in question. I believe this to be indicative of the pricing today for industrial locomotives.

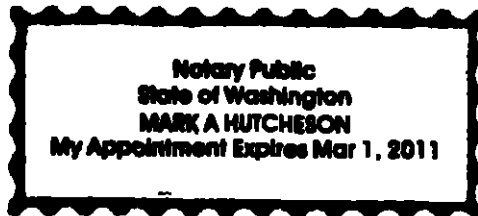
STATE OF WASHINGTON §
 §
COUNTY OF King §

Jerry A Pinkepank makes oath and says he is a consultant, that he is authorized to make the foregoing Verified Statement in Finance Docket No 35206, that he has reviewed the foregoing Verified Statement, and that all representations set forth therein are true and correct to his current actual knowledge, information, and belief.



Jerry A Pinkepank
Consultant

Subscribed and sworn to before me
this 9TH day of February, 2009





Notary Public

EXHIBIT 1

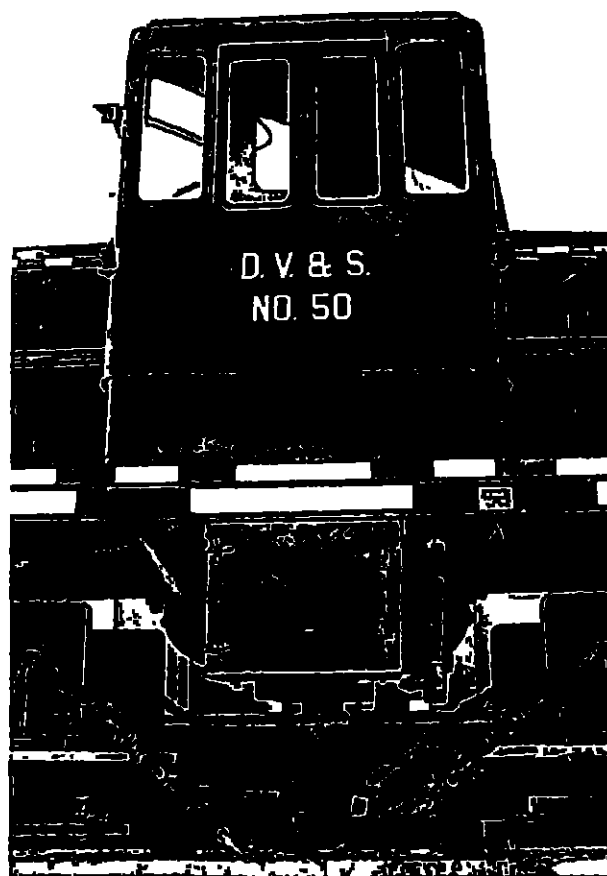


EXHIBIT 14

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*= BILL OF LADING FOR < HTTX 93507 > AT < WILSON >

BNSF RAILWAY COMPANY
STRAIGHT BILL OF LADING - SHORT FORM

< > ORIGINAL-NOT NEGOTIABLE < > SHIPPING ORDER < > MEMORANDUM

RECEIVED SUBJECT TO THE CLASSIFICATION AND TARIFFS IN EFFECT ON THE DATE OF THE RECEIPT BY THE CARRIER OF THE PROPERTY DESCRIBED IN THE ORIGINAL BILL OF LADING THE PROPERTY DESCRIBED BELOW IN APPARENT GOOD ORDER, EXCEPT AS NOTED (CONTENTS AND CONDITION OF CONTENTS OF PACKAGES UNKNOWN), MARKED CONSIGNED AND DESTINED AS INDICATED BELOW WHICH SAID COMPANY (THE WORD COMPANY BEING UNDERSTOOD THROUGHOUT THIS CONTRACT AS MEANING ANY PERSON OR CORPORATION IN POSSESSION OF THE PROPERTY UNDER THE CONTRACT) AGREES TO CARRY TO ITS USUAL PLACE OF DELIVERY AT SAID DESTINATION, IF ON ITS OWN ROAD OR ITS OWN WATER LINE, OTHERWISE TO DELIVER TO ANOTHER CARRIER ON THE ROUTE TO SAID DESTINATION.

IT IS MUTUALLY AGREED, AS TO EACH CARRIER OF ALL OR ANY OF THE PROPERTY TRANSPORTED HEREUNDER OVER ALL OR ANY PORTION OF THE ROUTE INDICATED HEREIN TO DESTINATION, AND AS TO EACH PARTY AT ANY TIME INTERESTED IN ALL OR ANY OF SAID PROPERTY, THAT EVERY SERVICE TO BE PERFORMED PURSUANT TO THIS BILL OF LADING CONTRACT SHALL BE SUBJECT TO THE TERMS AND CONDITIONS OF THE UNIFORM DOMESTIC STRAIGHT BILL OF LADING SET FORTH IN THE UNIFORM FREIGHT CLASSIFICATION TARIFF IN EFFECT ON THE DATE HEREOF, AND SAID TERMS AND CONDITIONS ARE INCORPORATED HEREIN BY REFERENCE

EDWIN KESSLER	SHIPPER PATRON CODE	SHIPPERS NO	NS
CARRIER BNSF RAILWAY COMPANY		CARRIERS NO	603761
AT. WILSON	AR	DATE: Jul 29, 2008	1600 HRS
FROM EDWIN KESSLER		LOAD NUMBER	RAMP

=====	=====
CONSIGNEE TO:	DELIVERY LOCATION
EDWIN KESSLER	OKLAHOMA CITY
ADDRESS	ROUTE
	BNSF

CITY AND STATE:	DELY CARRIER.	CAR	VEHICLE	KIND	LENGTH
OKLAHOMA CITY	OK	HTTX	93507	FC6	64 FT 10 IN

NO	NET	WEIGHTS AND RATES
PKGS	U/N DESCRIPTION OF ARTICLES	SUBJECT TO CORRECTION

=====	=====	=====
1	CLD SCRAP 1 OR S	103000 LB
	STCC=4021125	

===== ADDITIONAL PATRON INFORMATION =====

CARE OF: BOARDMAN INC
1135 SOUTH MCKINLEY
OKLAHOMA CITY OK

===== MISCELLANEOUS INFORMATION =====

EDT 404 RECVD FROM AWIE MSG SEQ# 8620252 ON 20080729 AT 1612 BILL CD S
MVMT RT O DVS I BNSF
PROJ RT O DVS I BNSF

SHIPPERS WEIGHT
EXTREME DIMENSION

*= BILL OF LADING FOR < HTTX

93507 > AT < WILSON >

PAGE. 2 OF 2

SECTION 7 NOT SIGNED
TO BE PREPAID

LOADING PERFORMED BY SHIPPER
SHIPPER: EDWINKESSLER
PER.

BNSF AGENT: M.L. BRADY
PER:

A-WME

EXHIBIT 15

J. Riffel
1941 Green Spring Dr
Timonium MD 21083

BALTIMORE MD 212

12 JUN 2008 PM 9 T



PNC BANK
High Rent Bus Ctr
Attn: Lock Box 773 110
160 Hanson Ct.
Wood Dale IL 60191

60191+1130



Bank of America



Cashier's Check

No. 3033905

Notes and checks are subject to the terms and conditions of the Bank of America National Association. This check is not valid unless countersigned by the Cashier or an authorized signatory.

Bank of America
Cashier

FOR: *WTTX Flat car - Wilson ARK - Memphis TN*
DATE: *402 H37*

DATE: *June 22, 1938*

3-10-38

TRAID = *1277.00*

Fuel = *362.52*

\$1639.52

3033905

3033905

Remitter (Purchased By)

20-14-374B 09-2005

PAY TO THE ORDER OF *WTTX Flat car - Wilson ARK - Memphis TN*

\$*1634.52**

To The *cashier*
Order *cash*
Of

PER ENVELOPE

Olayinka
Authorized Signature

VOID AFTER 90 DAYS

Bank of America, N.A.
San Antonio, Texas

EXHIBIT 16

Ed Kessler
1510 E. 3rd St
Denville NJ 07834

BALTIMORE MD 212

04 AUG 2008 PM 3 L



PNC BANK
High Point Bus Ctr
Lock Box 773-110
160 Hanson Ct.
Wood Dale Ill 60191

60191+1130 C002



Bank of America



Cashier's Check

No. 3157948

Made in furtherance of the provision clause is hereby assigned or sold, a check
remittance and delivery of this check will be made prior to expiration of the
check should be registered within 90 days.

Banking UNIT VALLEY
Center

5019063 00007

303157948

RECEIVED 04 2988

Date

FOR PAY TO THE ORDER OF CIGNA

Previous payment 1434.52
This payment 2768.48
Total Due 4199.00

NO ENDORSE

Remitter (Purchased By)

2768.48
\$

PAY TO THE ORDER OF SEVEN HUNDRED SIXTY EIGHT DOLLARS AND 49 CENTS**

To The
Order Of

Jessica Best

Authorized Signature

Bank of America, N.A.
San Antonio, Texas

VOID AFTER 90 DAYS

20-143774H 09-2005